



# CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

## AGENDA

CITY COUNCIL - REGULAR MEETING  
TROUTDALE CITY HALL  
COUNCIL CHAMBERS  
104 SE KIBLING AVENUE  
TROUTDALE, OR 97060-2099

7:00 P.M. -- February 22, 2000

### Mayor

Paul Thalhoffer

### City Council

Pat Smith  
David Ripma  
Bruce Thompson  
Jim Kight  
Paul Rabe  
Doug Daoust

- (A) 1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE
- (A) 2. CONSENT AGENDA:
  - 2.1 Accept Minutes: January 11, 2000 Regular Meeting and January 25, 2000 Regular Meeting.
  - 2.2 Resolution: A Resolution Supporting House Bill 2082 (Measure 82), Transportation Funding Legislation.
  - 2.3 Motion: A Motion to approve revised Employment Agreement and salary increase for City Administrator.
- (I) 3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.
- (I) 4. REPORT: Briefing on Metro's Goal 5 Program and Draft Report. *Elaine Wilkerson, Metro*
- (A) 5. RESOLUTION: A Resolution authorizing Mt. Hood Cable Regulatory Commission (MHCRC) to develop and negotiate competitive cable and telecommunications franchise agreement(s) for consideration and final action by the City of Troutdale. *Norm Thomas*
- (A) 6. ORDINANCE (Introduced 2/8/00): An Ordinance repealing Chapter 13.10, Street Trees, of the Troutdale Municipal Code and adopting a new Chapter 13.10 entitled Trees. *Faith*
- (A) 7. ORDINANCE (Introduced 2/8/00): An Ordinance amending Title 5, Business Licenses and Regulations, Chapter 5.04, Business Licenses, and Chapter 5.08, Amusement and Vending Machines and Declaring an Emergency. *City Attorney*

- (I) 8. COUNCIL CONCERNS AND INITIATIVES
- (A) 9. ADJOURNMENT

  
Paul Thalkofer, Mayor

Dated: 2-17-00

**MINUTES**  
**Troutdale City Council - Regular Meeting**  
**Troutdale City Hall**  
**Council Chambers**  
**104 SE Kibling Avenue**  
**Troutdale, OR 97060-2099**

**February 22, 2000 7:00pm**

Meeting was called to order at 7:01 p.m. by Mayor Thalhofer.

**1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE**

Mayor Thalhofer called on Councilor Kight to lead us in the Pledge of Allegiance.

**PRESENT:** Smith, Ripma, Thompson, Kight, Rabe, Daoust, Thalhofer.

**STAFF:** Faith, Galloway, Berrest, Sercombe, Stickney

**GUESTS:** Lonnie Roberts, Robert Paine, Rod Monroe, Elaine Wilkerson, David Moskowitz, Scott Worthington, David Soloos, Norman Thomas

Mayor Thalhofer asked are there any agenda updates?

Galloway replied we have no updates this evening.

**2. CONSENT AGENDA:**

- 2.1 Accept Minutes:** January 11, 2000 Regular Meeting and January 25, 2000 Regular Meeting.
- 2.2 Resolution:** A Resolution Supporting House Bill 2082 (Measure 82), Transportation Funding Legislation.
- 2.3 Motion:** A Motion to approve revised Employment Agreement and salary increase for City Administrator.

Mayor Thalhofer called this item and read the consent agenda.

**MOTION: Councilor Thompson moved adoption of the consent agenda. Councilor Kight seconded the motion.**

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**

**3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.**

Lonnie Roberts stated I am here to introduce myself as a candidate for County Commissioner for District #4. In my past political experience, I had eighteen years as State Representative, my last

session was 1987. I have worked within the legislative process for a number of years and I have been very interested in local governments. I have lived most of my life in East County. I am running for this office because I believe it is very important for East County to have a very strong voice in the County Government. This is a very unique district because you have a number of small cities who have the right, in my opinion, to be heard on county issues. I am very strong about the services especially for the Sheriffs services. I want to make certain that the patrols are continued in this area. I also believe in maintaining the county services especially for seniors. I think East County deserves to be heard, you have the right to have an impact on County Government, you are a very important part of it and I run on those principles and if I have the privilege of being elected I will certainly be a strong voice for East County and for your rights to have input in County Government.

Scott Worthington stated I am here representing Reynolds Little League. Reynolds Little League is located within the Reynolds School District and that encompasses Troutdale, Fairview, Wood Village, and portions of Gresham and Portland but our home is in Troutdale at Columbia Park. Columbia Park is a wonderful facility and it is there because of the support that we have received from the City Staff, private businesses and the parents of our community. Tonight I would like to present you with a plaque in appreciation for all you have done for us. Without your support the park may have turned into something else. I am here to say thank you and I hope you keep supporting us.

#### **4. REPORT: Briefing on Metro's Goal 5 Program and Draft Report.**

Mayor Thalhoffer called this item.

Rod Monroe, Metro Councilor stated this is a briefing about fish and wildlife in this region. It is time for our region to protect our best resource areas and to restore degraded resource areas. We want to talk to you this evening about the proposed approach to a regional Goal 5 Fish and Wildlife Habitat Program. I would like to emphasize that this proposed set of regulatory and non-regulatory solutions is very much at the draft stage. There are issues that still need to be worked out and we need your help. Here are some key questions that we hope you can help us to address. Is a coordinated approach, like the one we are involved in, the best response to the Federal Endangered Species Act and its 4(d) Rule to gain an exception for urban development. Secondly, should jurisdictions be able to pursue individual responses to the 4(d) Rule. Thirdly, if the Metro Council adopts a regulatory program in June as proposed, how long would your city need to carry it into your code. Fourthly, what incentives could we offer to get property owners to restore degraded stream corridors. I would like to thank you for your efforts to carry Title 3 provisions for water quality and flood plain management into your code and encourage you to do that as soon as possible. At this time I would like to introduce Elaine Wilkerson, Growth Management Service Department Head at Metro. I would also like to recognize David Moskowitz, Salmon Recovery Coordinator at Metro.

Wilkerson stated as Councilor Monroe stated we are really working on this as a discussion draft. This document is entitled Streamside CPR (conservation, protection and restoration). Wilkerson reviewed this document which is contained in the packet.

Councilor Kight asked who came up with the 200' setback? How did that number come about?

Wilkerson replied it came from our review of a lot of the scientific literature, particularly literature from Washington State. We started off in a earlier draft with 150' plus a 25' impact zone and our

Technical Advisory Committee encouraged us to increase that distance. It's based primarily on the height of trees and it is because of the woody debris that results from trees and so the recommendation of the State and Federal Government has been that the setback or regulated area relate to the height of trees in the area. We have concluded that 175' is an expectation that we could have for mature trees and then the 25' that takes us to 200' is the impact zone. There is also a lot of literature that we reviewed about wildlife, particularly birds that showed that at least 200' would be necessary to create a habitat where the birds would frequent.

Councilor Kight stated that is a significant amount of real estate adjacent to creeks. Is there anybody on your Technical Committee that owns property that is adjacent to a stream that would have a financial impact?

Wilkerson replied I don't know the answer to that question.

Councilor Kight asked have you figured out what the financial impact would be on this decision to the individual property owner?

Wilkerson replied it is very difficult for us to do that at this point but we are looking at that. The reason it is so difficult is because of the permission for existing lots. What we really have said is we have a regulated area but anyone who has an existing property gets development on that property, we are just encouraging it to be as far away from the water. So when we look at it, it is very difficult to determine exactly what the impact is.

Moskowitz stated I think it is important to take into account the landscape that we are in. In the urban area where our Goal 5 program is going to apply, many of these areas are already developed and in that case this proposal, if there is already development there, there are no requirements that are going to be regulatory for that land owner. But if there is re-development in the future, then that is when we are going to try to have a program in place that tries to have some restoration principles apply. They may be voluntary, incentive based or they may be regulatory. We tried to have an exception here particularly for residential so a single lot owner who has a lot along a stream and wants to build a home there, they are going to get some economic use out of the lot but they may not be building their deck over the stream.

Rod Monroe stated we have recently brought a new area into the Urban Growth Boundary near Rock Creek Campus and Mt. Hood Community College, approximately 100 acres. There is a stream that runs through the property, and the developer anticipated that these rules were in the works, decided to allow for the 200' setback on either side of the stream. He developed a green corridor with trails and so on and used the stream as part of their development. Who is to say whether that cost him money in the long run or whether it will make him money. Maybe it increased the property value of the homes because they have this nice green corridor to a greater extent than the loss of the additional homes they could have put in if they would have moved closer to the stream. That is a hard question to answer. I do know that I looked at their development proposal and I was very impressed with the way that it fits in with what we are trying to do both in terms of meeting the fish habitat requirements and also in terms of open space.

Councilor Kight asked it looks like the bulk of the responsibility is in fact the people that live in these riparian corridors, and it doesn't address the majority of people, the commercial development and the residential community that is dumping storm water into these water ways.

Wilkerson replied I think that we have concluded that we need to wrap in some basic component standards for storm water management into this time frame that we are working on. I believe that what we will be doing is proposing that there be some effort to identify the kinds of things that are happening to part of the region already as the basic performance standard and to discourage or limit storm water. We know we have to deal with storm water, it is in the framework plan.

Councilor Kight asked what federal money do you expect to come to Metro as a result of this program?

Moskowitz replied the ESA listing will definitely attract additional federal funds, and they already have. In the last fiscal year the Congress appropriated \$9,000,000 for salmon recovery that came to Oregon and went to the Oregon Watershed Enhancement Board. Last year the State of Washington attracted over \$30,000,000 in funding. As you may know Oregon ranks about 49<sup>th</sup> out of 50 in terms of congressional clout. Nevertheless, we will have some federal help.

Councilor Rabe asked the three different options are at the discretion of the City, Metro or the individual that is making the application, how will that work?

Wilkerson replied the City has control. The safe harbor is as I said, the base program or you can choose to apply the local options.

Councilor Rabe asked so the applicant could present a proposal and if it did not fit into option one, which is the default then they could go to option two or three. If we were to make an approval of the proposal using option two, is there a recourse that the city must abide by to Metro to justify going with an option other than number one?

Wilkerson replied option two, the local alternative, when we propose the Functional Plan language we are going to set up some criteria for review of those particular site specific applications and if the City is proceeding within the context of those criteria I would not anticipate a problem. We do review code amendments to ensure compliance with the Functional Plan.

Councilor Rabe asked if I felt it was in compliance based on our interpretation of the specific guidelines, does that at some point need to be submitted to Metro for review or is up to the City?

Wilkerson replied none of your comp plan or code changes have to be submitted for our approval. We receive copies of them for monitoring purposes and we do review your changes but we do not approve them. If we are unhappy with an action you have taken we would be an appellant.

Councilor Rabe asked in regards to the urban development changes, would it be necessary to implement any of these options. If I were looking at these different alternatives, but still waiting for urban development changes, I am trying to figure out how the two would dovetail together. It would almost appear to me that the two would need to be developed collaboratively such that they were both presented at the same time. Are you following my question?

Wilkerson replied not exactly.

Councilor Rabe stated you had mentioned some information about, in order to implement these there would have to be some significant changes in urban development plans. In other words we would have to make some amendments and it would almost seem if these came down the pike first

then it would seem difficult for any jurisdiction to make changes because this is in stone and now we are proposing these urban development changes that the city is suppose to impose. Is it possible that some of the jurisdictions might find some of those urban development changes less then helpful.

Wilkerson replied the reason we are doing this as a discussion draft is to give you an opportunity at this stage to talk about the approach to us and give us some advice on how you think it should proceed. Then again when we get to the Functional Plan stage you will have an opportunity to review the language and the Functional Plan language would be the language that would influence your code changes and your local rules so that would be your opportunity to comment.

Councilor Rabe asked my concern is that whenever you take away space, for lack of a better term, in terms of potential residential property you consequently have to look on the other side of the sheet and say we are going to need to increase density.

Wilkerson replied I have to assure you that Metro Council has been very clear that when there is a loss of capacity there will be UGB amendments to add land to the urban growth boundary. We are not expecting additional density in the local jurisdictions to compensate for the loss of this density.

Councilor Rabe stated one thing I might suggest is as you get to the nuts and bolts of this program, it might be wise to provide incentives for watershed councils. It would be possible to develop a collaboration of councils that share in watershed history, for instance Gresham, Wood Village, Fairview and Troutdale, all of us have individual efforts that we have worked on. What we have is a lot of people trying to do the same thing in a lot of different areas, it is very difficult to find any way to collaborate in a way to maximize the effort. That has been a problem, that we are all going down the same road but it is very difficult for us to travel on it in all different ways because there is really no incentive out there. It would be nice to see Metro come forward and put out a friendly incentive program.

Wilkerson replied that is a very good suggestion.

Councilor Daoust stated the National Marine Fishery Service has final approval over Metro's Urban Development Plan, it is interesting that they would approve such a large area plan with unknown development along streams. If we decided as a City to have our own local ordinances, would we then have to consult with the National Marine Fishery Service?

Moskowitz replied those are both good questions. The first one, there is no guarantee that when we adopt this that we will get a positive finding from NMFS, because we do not know where it is going to end up yet. On the second issue, that is a very hot topic right now. If Troutdale develops an Urban Development Plan, do you go to NMFS with that plan to seek approval or do you go in with a couple of different jurisdictions. The way the draft rule is written, the NMFS has indicated that they would like Metro to serve the function of adopting an integrated twelve step program that they could review and approve and therefore any jurisdiction that adopted that program would not need to seek independent approval from NMFS. There are several larger jurisdictions that don't necessarily want to work with Metro, they are going to work with us because they still have to adopt the Goal 5 program and change their ordinances in compliance with our Functional Plan, but they may seek independent approval of their own program. The final rule may reflect the ability to do that.

Councilor Daoust asked we have an area here in Troutdale that is along the Sandy River, where are old sewage treatment plant still is. It is about 24 acres and is right along the banks of the Sandy River. Would we have to do a local riparian district plan for an area that is to be developed?

Wilkerson replied if it is not in the flood plain, then you would only be required to have a 200' setback and the balance of the property could be developed. If it is in the flood plain, in part, that portion would be also regulated and there still would be land left sufficient to do the development and to restore the portion in the flood plain.

Councilor Daoust asked if we did adopt the safe harbor, and we had more then two acres, and it was designated for office and mixed use, according to one of the tables we have there would only be 20% of the 200' strip that could have development in it, is that accurate?

Wilkerson replied in the case of a large site that has a portion regulated, the table that you are referring to was meant for when the entire area was regulated. In a case where only a portion is regulated, we would suggest that the entire development be proposed in the non-regulated area and that you back the density away from the regulated area. The table that you are referring to is very complicated and we are going to do some more work on it.

Councilor Daoust asked would private land owners, if we adopted this, be subject to third party suits if for instance they went against the ordinances?

Wilkerson replied first of all when you adopt the ordinances, you will only be permitting in compliance with those codes. So if someone actually built not in compliance with your code you would have problem with them anyway. They would be subject to the third party suit potentially if someone chose to take them to court.

Councilor Ripma asked you said that the district approach doesn't have to be done immediately, I am wondering if you need to make a decision on the expansion of the UGB and the district approach doesn't have to be done immediately, how are you going to know?

Wilkerson replied I don't know.

Monroe stated in 1995 when the Legislature passed the 20 year land law on House Bill 2709. Since that time we have been working to try to implement that with great difficulty. One of the first things we went through, we asked each local jurisdiction how much density, additional residential households, they could accommodate. We determined what kind of housing that could be adsorbed within the next twenty years within the current urban growth boundary based on that. Now, when we factor in 200' setbacks or whatever they be, and if those aren't determined by the time we have to make this final decision by next October, then we will have to base it on some assumptions. Then we are going to have to extend the urban growth boundary to meet those assumptions. I have been meeting with developers that say minimum protection in the riparian corridors but maximum expansion of the urban growth boundary. I have also been meeting with environmental groups that say maximum protection along streams but don't use that as an excuse to expand the urban growth boundary. I, and the majority of the Council, have been saying you can't have it both ways. If we are going to protect riparian zones that means additional expansion of the urban growth boundary, the majority of the Council is there and that is the direction that we are going.



Councilor Ripma stated you bring up a sensitive point in Troutdale because of this business of how much additional density we might be able to take. Theoretically, if we didn't expand the UGB, we dutifully answered that question and you have stuck us with that extra density ever since. We ended up with the most increased density of any city in the entire Metro Region. You have never backed off of that and even now Elaine's reviews and the Metro staff has continued to pound us with this extra density that we never agreed to, we just answered your question. I can say right now that my opinion would be, I would like to see us protect our stream corridors they are very important to Troutdale but we don't want to be stuck with more density from this and we have to get on with the necessary urban growth boundary expansion that you need to do. It has been a very difficult process and regardless of what you say it hasn't been successful so far and instead we go stuck with more density that we don't want and we never have agreed with it and we are going to challenge you if you continue to push it.

Wilkerson stated there is a very interesting question hidden in you remarks. You said how are you going to calculate the loss of capacity when you don't have to do riparian districts right away. That is a very fair question and there is no answer, we are trying to figure that out. One of the things that I assumed is the review of the maps we got from local jurisdictions that identify areas that are problems, areas that the safe harbor doesn't work very well. From that we may get a reasonable estimate.

Monroe stated I don't want to misconstrue, we are not saying that we are going to relieve any jurisdiction of there opportunity to accept some of the growth that is coming into our region, but I am saying this; the decision on riparian protection will not increase the density that you are expected to accept.

Councilor Ripma asked Title 3 is something that I believe that Metro is requiring of us and probably all cities, it also involves setbacks from streams. For some reason, correct me if I am wrong, we are being asked to deal with Title 3 before dealing with Goal 5. Why can't we be allowed to deal with these two issues together, they both involve setbacks?

Wilkerson replied you are not the first to ask this question. The problem we have is, when we initially set out the Functional Plan, the original proposal was that the water quality aspects were more straight forward they were not done under Goal 5, they were done under Goal 6 and the requirements were not as stringent for implementation. Because it was an early measure, through MPACT it was decided to proceed to do Title 3 first to ensure that we got the first measure in place as quickly as possible. Title 3 was quite prolonged to get to where it is and because of that I feel a little bit of anticipation that it might not be quite as smooth on Goal 5 as we would like. So, we have encourage everyone to adopt their Title 3 restrictions and get them into place and at least we would have that there until we resolve Goal 5.

Monroe stated that the Executive Officer has written you a letter saying that he could not recommend your extension until December. He suggested March of this year. The Council makes that decision, your request will come first to the Growth Management Committee that I sit on and is Chaired by Rod Park and I think we will probably be a little more flexible then the Executive Officer's recommendation but I would concur with Elaine, we would like to get this done before the building season gets into full swing.

Councilor Thompson asked do you have exceptions for steep slopes for the 200' setback?

Wilkerson replied steep slopes are part of that regulated area, where a steep slope beyond 25% slope, exceeds 200', the regulated area would go to the break in slope plus 25'.

**5. RESOLUTION: A Resolution authorizing Mt. Hood Cable Regulatory Commission (MHCRC) to develop and negotiate competitive cable and telecommunications franchise agreement(s) for consideration and final action by the City of Troutdale.**

Mayor Thalhoffer read the Resolution title and asked Norman Thomas to come forward.

Norman Thomas stated I represent Troutdale on the Mt. Hood Cable Regulatory Commission (MHCRC). The MHCRC was originally set up to just handle cable services and the three competitors that have come in will be offering service such as telephone along with cable services. What we are asking the city to do, is give us the authority to go ahead and negotiate on the City's behalf, the telephone side of the franchise.

Councilor Ripma asked just so I am understanding, the resolution before us seems to authorize the MHCRC to develop and negotiate necessary documents, franchise agreement for the provision of competitive cable and broadband communication services, does that just amount to telephone?

Thomas replied cable we already do, what we are asking for is to expand since we are going to negotiate with these companies already, is to go ahead and negotiate the telephone side of that which may include the internet broadband.

Councilor Ripma asked you mention broadband communications, that means telephone? The way this is worded it seems to be only talking about broadband not telephone.

Thomas replied it talks about communication services.

Councilor Ripma asked does this authorize you to talk about telephone service, is that what this means, telephone service?

David Soloos, MHCRC replied yes it does. The thinking here is because these companies are laying down fiberoptic cable that the telephone services that they may provide in the future may be going over that cable, that is known as broadband.

**MOTION: Councilor Ripma moved to adopt the Resolution. Seconded by Councilor Kight.**

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**

**6. ORDINANCE (Introduced 2/8/00): An Ordinance repealing Chapter 13.10, Street Trees, of the Troutdale Municipal Code and adopting a new Chapter 13.10 entitled Trees.**

Mayor Thalhoffer read the Ordinance title, closed the City Council meeting and opened the Public

Hearing at 9:34pm.

Faith stated this was introduced two weeks ago and during the discussion there were a number of questions raised. As a result of that staff has gone back and evaluated some of the language in the ordinance and has proposed some changes to address those concerns. First was in response to Councilor Daoust's comment about the knowledge that the Parks Superintendent would have to have to carry out all of the various responsibilities outlined under this code. That is accurate and I think in raising that question it caused us to look at that issue and in the future the responsibilities of carrying out the duties of the Tree Ordinance may not necessarily fall upon the Parks Superintendent, but that we actually have a position in the future that this responsibility could fall under and therefore to address that and I think to give a little more variables in who the actual staff person would be responsible for carrying out duties of this code we are proposing to change all references in this ordinance from superintendent to director, which means Director of Community Development or the director's designee. There was also some comment about confusing language in the code that seemed to be unclear about who actually has responsibility of maintaining the street trees, in looking at that we did feel that there could be some changes made that would clear up that confusion, and those changes are in the proposed ordinance before you. A third area of change had to do with the planting of street trees within residential subdivisions and the previous language was interpreted by some that it spells out that the developer is responsible for both planting trees and paying an assessment to the City to plant trees. We are proposing some changes to the text to clarify that the developer of a residential subdivision is not responsible for planting street trees but instead pays an assessment to the City and the City plants the trees. In the course of looking at these issues we also felt that the ordinance was not very clear on how violations were to be handled and therefore we proposed some changes specifically in section 13.10.200. We are deleting that but substituting in its place the language that was previously found in section 13.10.260. This change clarifies that where a nuisance is found to exist that the Director may proceed in abating the nuisance as set forth under the ordinances of the City which speaks specifically to the Nuisance Ordinance. A final point that was raised at the last meeting was a desire to have something recorded when a tree on private property is designated as historic or significant so that information will carry through in the chain of title. There has been a memo circulated from the City Attorney on that matter.

Councilor Kight asked the recommendations given by the City Attorney, it appears the one that would be the best would be the restrictive covenant, where the property owner conveys to the City a covenant protecting the tree and it carries on in the title.

Faith replied it is also my understanding that it would be a condition imposed at the time that the tree is designated as opposed to spelling that out in the Tree Ordinance itself.

Councilor Kight asked so this would be handled separately from the ordinance?

Faith replied I believe that in the adopting ordinance or resolution, whatever format you use in declaring a tree historic or significant, that we could spell it out within that adopting document that a restrictive covenant will be recorded to make sure that information is on record.

Councilor Kight asked does the Council need to take any action on it?

Sercombe replied the concept of a restrictive covenant is one that, it is a negotiated agreement between the property owner and the City. It would not be something that we could just say you

have to sign this. Generally speaking what the City would usually give up when they do something like that is they say we will help you maintain the tree or we will give something in return for it in exchange you give us a covenant or a easement to allow the preservation of this tree. That covenant is then recorded. It is a process that would exist completely apart from the regulation that you are adopting.

Councilor Kight asked does the restrictive covenant have to come before Council or is it something that staff can handle?

Sercombe replied probably that should be brought before Council for approval on a case by case basis.

Councilor Kight asked couldn't it be part of our code? Why would we want to do it on a case by case basis?

Sercombe replied generally we bring contracts that are unusual between the City and anybody to the Council for approval. In terms of this restrictive covenant being recorded it my obligate the City to do some maintenance of the tree which should have the Council's blessing before it is recorded. I don't think there would be a need to amend you code to allow the City to enter into these restrictive covenants, it is something you can do under your Charter authority, so there is no need to have a code change to allow you to have that tool. I am saying, if you choose to use it in the future, to have easements or restrictive covenants, we would bring that back to you in the same way that we would bring back any easement that the City would accept for your approval.

Councilor Kight asked how would staff have clear direction that is the way we want to go, as far as the Council, relative to historic or a designated tree?

Sercombe replied it would be something that if a tree were designated historic, we would then perhaps try to negotiate a restrictive covenant with the property owner.

Councilor Kight replied automatically?

Sercombe stated that would be my recommendation.

Councilor Kight asked how is this going to be written so future employees, lets say Rich leaves for some reason and someone else takes over his position, how would they then know that?

Sercombe replied I hear what you are saying. In other words you are saying that we should put something in the code so that future staff would be aware of this. That can be done. My comment was that it was not necessary for that to be done in order for you to do it, but if you want to have it in there as a check list thing, we can do that.

Councilor Kight asked what is stopping someone from coming into your office and getting a tree removal permit and cutting down all of their trees?

Faith asked is this in conjunction with a development?

Councilor Kight replied no. It is a private property owner and he wants to remove all of his trees.

Faith stated is it developed or undeveloped?

Councilor Kight both.

Faith replied lets just assume it is a piece of property that he is required to get a permit in order to cut down a tree. And your question is what would prevent him from cutting them all down? In looking at his request I would have to evaluate his request for tree removal against the criteria and standards in the code and if this is an application for tree removal not in conjunction with a land use permit, there are six criteria spelled out here that I would be looking at: the request shall be permitted on a limited basis consistent with preservation of the site's future development potential and consistent with the following criteria: 1) wooded areas associated with natural drainage-ways and water areas shall be retained to preserve riparian habitat and to minimize erosion 2) wooded areas that will likely provide an attractive on-site amenity to occupants of future development shall be retained 3) wooded areas along ridgelines and hilltops shall be retained for their scenic and wildlife habitat values 4) wooded areas along property lines shall be retained to provide buffers from adjacent properties 5) trees shall be retained in sufficiently large areas and dense stands so as to ensure against windthrow 6) clear cuts of developable areas shall be avoided so as to retain a wooded character of future building sites, and to preserve housing and design options for future city residents. I guess I would have to evaluate the request against these criteria and see if it was justified. I might require them to retain an arborist to provide a report or documentation as to why all the trees need to come down. To answer your question, it is possible a permit might be granted to do that, but I think there are some standards here that we look at in order to avoid clear cutting all the trees on a piece of property.

Councilor Daoust asked on 13.10.100, it talks about new subdivisions and having an approved street tree plan for the area. We clarified that the developer does not plant the trees, that the City does but he has to pay the assessment. Who makes the street tree plan for the area?

Faith replied the street tree plan is really nothing more than the landscape plan that the developer is required to submit for the entire project, in not only encompasses landscaping that is going to be within the site itself, but it also requires street trees within the right-of-way or landscape strip of any frontage that property might have on a public street.

Councilor Daoust asked on the last page, point 4, wooded areas along property lines shall be retained to provide buffers from adjacent properties. Do those apply to land use applications also, or does this just apply to tree removal not in conjunction with a land use permit?

Faith replied the criteria that is going to be looked at for removal of trees in conjunction with a land use permit are those that are shown on page 8, beginning with "D".

Councilor Daoust asked what I was thinking about was the line of trees between Home Depot and Albertsons, the removal of those would be tied to a land use application and so the wording we have here for wooded areas along property lines shall be retained to provide buffers, that really would not be a factor then.

Faith stated we would have to look at it under the five standards that are listed under "D", 13.10.270. It is very possible that the property owner could have wanted to cut down those trees prior to when they were actually going to develop the site and had requested a tree removal permit

and then we could have prevented it.

Councilor Daoust stated but we can not prevent it under a land use application?

Faith replied I wouldn't say that we can not, we can't point to number 4 here but we have other standards here under "D" that we would use to evaluate that.

Councilor Ripma asked in the case where a permit is sought in conjunction with a land use application, the five things that you are referring to, if someone comes in and wants to develop a piece of property and they want to cut down all of the trees. One of the criteria for allowing them to cut down the trees is if tree removal is necessary in order to construct the proposed improvements or to otherwise utilize the applicants property in a matter consistent with its zoning. That seems to be an opening for cutting all of the trees down. I am wondering under what circumstances you could deny this if the owner comes in and says it is necessary to utilize the property.

Faith replied I would have to look at the specifics of that proposal. Certainly if they are intending to construct a building that is in a location where there are trees and the building can not go up without the removal of those trees, then I would think that is justification for granting the removal of those trees. However, if the building could be moved in such a manner to protect some of those trees then I believe that would be part of our obligation in evaluating that project, to recommend changes in the layout or design in order to salvage as many trees as possible.

Councilor Ripma asked the violation section, in addition to the fine of up to, not exceeding \$1,000 and or possible jail time, they are required to, if there is injury, mutilation or death of a tree regulated, the cost to replace it shall be borne by the party in violation in addition to the fine. If I am understanding, if someone cuts down a substantial tree they would be required to replace that tree with another substantial tree and potentially substantial cost, am I understanding that right?

Faith replied that is its intent. The intent of the language as it is now written is that if someone cut down a tree without obtaining a permit and they violated the code, that matter could be referred to municipal court for the imposition of the penalty that is outlined here. And in addition to the penalty for having violated the code, there is also a matter of restitution for the damages they have done. That is we can determine the value of the tree that has been cut down as part of the sentence or restitution that the violator is required to provide, it would be to replace the tree with one that they are physically able to replace or the City could provide the Judge with the information of what the value of the tree is and he could then impose, on top of any penalty or fine, that the violator pay the City the value of the tree and then the City can replace it.

Councilor Ripma asked Mr. Sercombe, do we have the authority to impose that sort of penalty?

Sercombe replied I think there are some legal issues that are presented like extreme cases of the City seeking to impose a fine of several thousand dollars and then pocket it. If we were asked to prosecute that sort of case, I think it would be a case you would take to circuit court not municipal court because of the jurisdictional limits of municipal courts in terms of what its authority might be. I think this code provision would allow circuit court to impose a fine. There are some constraints about if you are fined to large, then there are different legal procedures or rights that person has, it becomes almost a criminal prosecution at that point where they are entitled to court appointed

counsel. I also think that if we want to look at the question of whether or not we could impose this fine on someone, the value of this person's tree, and then not use that to improve the property of that person, that is really just taking the value of that tree away from the property owner and I would have to work through how we could do that without running into some issue of takings.

Councilor Ripma stated I was thinking that it couldn't work that way, we could make them put up a tree. Do you think it reads that way clearly enough?

Sercombe replied I think it allows us to do that. I would caution us if we were to try to use the money to plant trees someplace else.

Councilor Ripma asked my concern is in a typical situation, not unusual and I can imagine this happening, say the developer wants to put up apartments and decides to cut down trees that wouldn't qualify under this, so he goes ahead and does it and factors in the fine as part of his business expense, it does happen I assure you. An attempt to require, I am sorry you cut down ten trees that are over six inches and you have to put up ten big trees and it costs him \$5,000 each, that person given both the provision that I mentioned before that the person could argue that it was necessary to utilize my property and I should have been given the permit anyway and somehow escape the purpose of this ordinance. People who are in the business are going to know how to work this and I am wondering if you feel it is drafted tight enough?

Sercombe replied I think it is. I have represented in the last couple of years, a developer who was accused, in a different city, of violating a tree ordinance by cutting down trees in anticipation of a development without obtaining a permit and the dynamic there was that this developer ultimately had to come back to the city for a land use permit in order to develop the property. We eventually negotiated a compensation to the city to a street tree fund in exchange for the city not prosecuting this developer and it was in his interest to do that because had he been on the bad side of the city he would still have to process his land use applications through the city and they would have dinged him through that process as well. Typically developers, you will have some leverage over them through the land use system as well if they go ahead and clear the land in anticipation of a development. I think this ordinance has sufficient teeth in it to allow you that leverage to negotiate or prosecute if necessary.

Councilor Ripma stated as President of the Troutdale Historical Society I am delighted to hear about this possibility of somehow the City negotiating a restrictive covenant to protect something that amounts to something close to a historic type of designation. I am concerned that the State Statue requiring owner, owner permission is not the problem you can get it designated with owner permission, but a new owner or an owner changing his mind and wanting it removed, the current law requires that to be done. Is there any testing of it?

Sercombe replied no. I think most jurisdictions don't have code provisions to implement ORS 197.722. My suggestion to you is that if there is a way to get around it, it is through some sort of recorded covenant or contractual limitation that would exist apart from the regulation that involves compensation.

Mayor Thalhofer asked since we are making some additional changes beyond what staff has recommended, are we able to pass this tonight?

Sercombe replied if you want additional language on the restrictive covenant I think we should bring that back for an additional reading. Are there any other changes that you would like?

Mayor Thalsofer replied I think that was all.

Mayor Thalsofer asked if there was anyone here to speak to us on this issue?

No public testimony received.

Mayor Thalsofer closed the Public Hearing and reconvened the City Council meeting at 10:18pm.

**7. ORDINANCE (Introduced 2/8/00): An Ordinance amending Title 5, Business Licenses and Regulations, Chapter 5.04, Business Licenses, and Chapter 5.08, Amusement and Vending Machines and Declaring an Emergency.**

Mayor Thalsofer read the Ordinance title, closed the City Council Meeting and opened the Public Hearing at 10:19pm.

Sercombe stated my understanding that this is an amendment to the City's process that it uses in issuing business licenses. They are basically housekeeping issues. One of the main changes is that the role of the Mayor in this ordinance is replaced by the Chief of Police because the Mayor's duties have changed. The Mayor is now a member of the Council and the business license ordinance was done when the Mayor's duties were entirely different, and because the Mayor is voting on the matter with the Council, his/her role in terms of presenting a case to the Council should be changed to a staff role. The proposal is that the Chief of Police play the role in presenting issues about denial of business licenses to the Council. There is also another change here that allows the Chief of Police to use the Law Enforcement Data System to consider whether or not to allow or disallow a business. Our experience in implementation of this ordinance in the past several years has been that sometime an individual, because of their criminal history has convictions for crimes, felt that it would be inappropriate to issue them a license especially if they are going to be going door to door or in close contact with home owners or residents.

Council had no questions.

Mayor Thalsofer asked if there was anyone here to speak to us on this issue.

No public testimony receive.

Mayor Thalsofer closed the Public Hearing and reconvened the City Council Meeting at 10:23pm

**MOTION: Councilor Ripma moved to adopt the Ordinance. Seconded by Councilor Kight.**

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**



## 8. COUNCIL CONCERNS AND INITIATIVES

Mayor Thalhoffer called this item.

Councilor Kight stated I attended the JPACT meeting at Metro. On February 15<sup>th</sup> I attended at Tri-Met a meeting, two issues that I brought up was that we need more bus shelters in east county and some of the light-rail trains that are running into Portland, particularly on west side, are running at full capacity so I suggested having an express bus. Finally on February 11<sup>th</sup> I attended a meeting in Portland in regards to Measure 82.

Councilor Daoust stated I wanted to update you on the Troutdale Boosters Lifeline Program that was started last week. They are offering \$3,000 to assist elderly people and storm victims. This works hand in hand with Multnomah County's Aging and Disability services. Joining the Boosters in this is AMR, Gresham Fire Station 75 and the Troutdale Police Department.

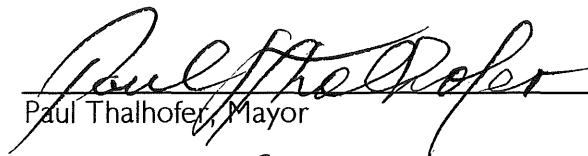
Mayor Thalhoffer stated I attended the League of Women Voters of East Multnomah County's Annual Brunch at McMenamins. I will have a resolution supporting the Reynolds bond measure to bring before Council in March. I have had a gentle little nudge from some kids who are interested in skateboarding for us to think about this some more. I wasn't here when they came but I heard there was about sixteen of them so they left a note for me that I would like to read: "Us skateboarders really need a skate park in Troutdale. We have tried before and donated money but the government screwed us so we don't have anyplace to skate but our driveways. Right now I have sixteen people with me, I love you man, you are the best. Please, please, please make us one. I'll be back". We don't know where we would put one at this time, but we sure want to try to accommodate these kids.

## 9. ADJOURNMENT

**MOTION: Councilor Thompson moved to adjourn the meeting. Councilor Kight seconded the motion.**

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**

Meeting was adjourned at 10:29pm

  
\_\_\_\_\_  
Paul Thalhoffer, Mayor  
Dated: 3-29-00

ATTEST:

  
\_\_\_\_\_  
Debbie Stickney, City Recorder

# CITY OF TROUTDALE PUBLIC ATTENDANCE RECORD

February 22, 2000  
CITY COUNCIL REGULAR MEETING

PLEASE COMPLETE THE FOLLOWING

NAME <small>(please print)</small>	ADDRESS	PHONE #
Mark Berrest	Police Dept	665-5175
Rich Faith	Community Development	" "
Lorrie Roberts	15815 S.E. Mill	255-9887
ROBERT PAINE	1022 SE 172 <sup>ND</sup>	254-4129
Rod Monroe	7802 SE 111 <sup>th</sup> Ave Port OR	797-1552
Elaine Wilkerson	metro 2424 NE 25 <sup>th</sup> Ave Portland	797-1738
David Moskowitz	Metro	797 1579
Scott Worthington	Be 4351 SE 43 <sup>rd</sup> Pl TD 97040	492-3899
Rod Monroe	Metro	797-1552
DAVID SOLOOS	Mt Hood Cable Reg. Commission 1120 SW 5 <sup>th</sup> Rm 704 PDX 97204	823-5359
Norman Thomas	2751 SW clara ct	667-4320

