

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

Tuesday, February 10, 2004

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

Mayor Thalhofer called the meeting to order at 7:00pm.

PRESENT: Mayor Thalhofer, Councilor Gorsek, Councilor Ripma, Councilor Thomas, Councilor Kight, and Councilor Kyle.

ABSENT: Councilor Daoust (excused).

STAFF: Jim Galloway, Interim City Administrator; Rich Faith, Community Development Director; Marnie Allen, City Attorney; David Nelson, Chief of Police; and Debbie Stickney, City Recorder.

GUESTS: None.

Mayor Thalhofer asked Boy Scout Troop 174 to present the Colors and lead us in the Pledge of Allegiance.

3. PROCLAMATION: Scout Month – February 2004

Mayor Thalhofer read the proclamation.

The Scouts introduced themselves to the Council.

Mayor Thalhofer asked are there any agenda updates?

Galloway replied yes, we would like to postpone Agenda Item #8 to a future date.

2. CONSENT AGENDA:

2.1 Resolution: A Resolution accepting two perpetual exclusive utility easements from D.R. Horton Inc.- Portland on the west side of Morgan Meadows Phase 1.

2.2 Resolution: A Resolution accepting a perpetual utility easement from James E. Hensley, just east of SW 257th Avenue and just west of Morgan Meadows Phase 1, and rescinding Resolution #1680.

2.3 Resolution: A Resolution recognizing the completion of the public improvements associated with Partition Plat 2002-61 and accepting them into the City's Fixed Asset System.

Mayor Thalhofer read the consent agenda.

MOTION: Councilor Kight moved to accept the consent agenda. Seconded by Councilor Kyle. Motion passed unanimously.

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

None.

5. PUBLIC HEARING / ORDINANCE (Introduced 1/27/04): An Ordinance amending Chapter 1.04, General Provisions, of the Troutdale Municipal Code.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:13pm.

Jim Galloway, Interim City Administrator stated this is a housekeeping ordinance intended to amend Chapter 1.04 to provide a penalty clause that would apply to violations of the code if a more specific penalty is not included in the particular portion of the code that is affected.

Councilor Kyle asked could you give me an example of where this might be necessary? I know that we passed an ordinance addressing sidewalks and we had a penalty in there, so it wouldn't be used for that, but I am assuming that if we had not put a penalty in that chapter then it would apply.

Jim Galloway replied that would be an example. We have requirements in the code regarding a variety of nuisances that I think for the most part have their own penalty provisions but if they did not this would apply.

Councilor Kyle asked this would not apply to non-payment of your water bill would it?

Jim Galloway replied no.

Mayor Thalhofer asked in Section 1.04.095(B)(2) it reads engage or disengage in the conduct that constituted the violation. To engage in the conduct that constituted the violation, how does that work? I think this wording is a bit awkward.

Jim Galloway stated I believe that the intent of the language is if the requirement is to do something and you are not doing it then the court can tell you to engage in it. If the requirement is that you shouldn't do it and you are doing it the court can tell you to disengage or stop doing it.

Marnie Allen, City Attorney stated perhaps changing the wording to read, "engage in conduct, or disengage in the conduct that constituted the violation" would make this clearer.

Councilor Kight stated I want to focus on the amount of the fine where it reads up to \$1,000. What do we currently have the fine set at?

Marnie Allen replied it varies throughout the code.

Councilor Kight asked what is the highest penalty in the code?

Marnie Allen replied I believe there are sections in our code that authorize a fine up to \$5,000.

Councilor Kight asked what do other communities have as their fine amount?

Marnie Allen replied it varies.

Councilor Kight asked why did you choose \$1,000?

Marnie Allen replied we discussed it at a management team meeting and we came up with an amount that we felt was appropriate.

Councilor Kight asked could you describe a situation where this could be imposed?

Marnie Allen replied one type of code violation that we see now are businesses who do not apply for a city business license and the city sends several notices and tries to get them to comply but they don't. The only way to get them to respond is to cite them into court. Sometimes what will happen is the first time they are cited into court, prior to appearing in court they may have paid for and submitted their business license application. Then when they appear before the Judge they say they won't do it again. The next year the same thing happens. In that situation where there is a repeat offender who doesn't seem to comply with the code and the city is incurring costs to try and enforce it the court recently imposed a fine of \$150. I don't believe that I have been involved in a code violation case where a fine has been imposed over \$300. Sometimes a portion of the fine will be suspended on the condition that they comply in the future.

Mayor Thalhofer asked is there anyone here that would like to speak to us on this issue?

None.

Mayor Thalhofer closed the public hearing at 7:24pm.

MOTION: Councilor Kight moved to adopt the ordinance amending Chapter 1.04, General Provision, of the Troutdale Municipal Code adding a penalty provision changing the language in Section 1.04.095(B)(2) to read, "Engage in conduct, or disengage in the conduct that constituted the violation. Seconded by Councilor Ripma.

Councilor Kight stated this is essentially a housekeeping measure and the city attorney gave an excellent example of someone who is in non-compliance who is given ample opportunity to make the correction and eventually comply and the following year they don't comply again and as a result of that we are incurring costs. There has to be a recovery process.

Councilor Ripma stated allowing the judge the option of imposing a fine or community service I think is a good way of enforcing our code and is a good addition to the code.

VOTE: Councilor Kyle – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Kight – Yes.

Motion Passed 6-0.

6. PUBLIC HEARING / ORDINANCE (Introduced 1/27/04): An Ordinance amending Title 2, Administration and Personnel, of the Troutdale Municipal Code. (Chapters 2.04 City Administrator; 2.06 City Attorney; 2.12 City Treasurer/Recorder; 2.16 Municipal Court; 2.32 Bonds for City Employees; 2.44 Reimbursement of Expenses and 2.60 Criminal History Checks for City Volunteers.)

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:26pm.

Marnie Allen, City Attorney stated at the first hearing on this ordinance council requested changes in Section 2.06.020 regarding the city attorney's responsibility. The language in Section 2.06.020 has been amended such that the city attorney is responsible for coordinating the use of outside legal counsel. The second question that came up was regarding additional language allowing the council president to perform the responsibilities of the mayor if the mayor is absent. Section 19 of the Troutdale Charter currently authorizes the council president to perform the responsibilities of the mayor, so we are not proposing additional language in Title 2 in that regard.

Councilor Gorsek asked in Section 2.06.020(1) does it have to specify that the legal advice is city business? There was some discussions after the League of Oregon Cities Conference about whether you act as a councilors attorney or not, does this need to be clearer?

Marnie Allen replied I don't believe that you need to add specific language that says I can only give you advice on city matters. I am comfortable with this language. If you wanted to put that language in you could.

Councilor Gorsek asked but you don't feel it is necessary?

Marnie Allen replied no.

Councilor Gorsek asked in 2.06.020(3) you are proposing to use the word coordinate the use of outside legal counsel, striking the word supervise?

Marnie Allen replied yes.

Councilor Gorsek asked Mr. Galloway is that the same intent of the memo that you wrote?

Jim Galloway replied yes. I think the language is sufficient for whatever decision is made regarding those responsibilities. As my memo indicated, I would prefer to allow the new city administrator to get involved in that before we make a significant change to the past policy, especially as it pertains to labor relations and negotiations.

Councilor Gorsek stated so we would continue with past practice, but Marnie's office would be informed of these legal issues.

Jim Galloway replied she would be made aware of what is occurring.

Mayor Thalhofers stated I guess your memo confuses me Mr. Galloway. We suggested a change that the city attorney be the coordinator of all legal matters. It seems that your memo is saying that the practice has not been that way and that you would prefer to continue on with the practice that the city has been doing over the years with regard to the labor attorney issues. This seems to be a conflicting staff report. My understanding of what we are doing is to coordinate, which means that the human resource manager could do what she has been doing but that she would have to inform the city attorney of what she has done so that the city attorney is aware of what is going on in the City at all times. That is what we intended. Is that the understanding of the Council?

Councilor Thomas stated my understanding is that they would contact the City Attorney first.

Mayor Thalhofers stated I thought I understood that there would be cases that may need immediate action and Marnie may not be available like on Thursdays and Fridays, is that correct?

Marnie Allen replied I think there are situations where the human resources manager feels like she needs to take immediate action and make an immediate decision. Adding a requirement whereby she would need to contact me ahead of time would be overly burdensome to her in doing her job. In that regard, I do think that the human resources manager feels like there should be situations when she can call the outside attorney that the city has worked with in the past to get advice and proceed.

Mayor Thalhofers asked but she should keep you informed?

Marnie Allen replied under this language, and in discussions with the human resources manager, she will keep me informed and let me know about the legal matters that she is working on.

Jim Galloway stated I apologize if the memo was at all confusing. I think there were some different comments made during the last meeting as to exactly what coordinate meant. I think some of you indicated that it was simply that the human resources manager or any

department director who had a very specific need to seek outside legal counsel would keep the city attorney informed. I think there were other comments made indicating they thought that meant getting the city attorney's permission before calling an outside attorney. The purpose of my memo was to clarify how I would like to interpret coordinate, at least during the short term that I serve as interim city administrator. If there is a desire to make a more permanent change, I would like to allow the new city administrator to be involved in that discussion.

Councilor Kight stated so what you are saying is if the human resources manager is unable to contact you then she can contact an outside attorney that she has had a past relationship with and then you would be informed of the conversation she had with the attorney, but you are not privy to the information or advice that the attorney gave back to her?

Marnie Allen replied I could call any attorney that is working with the city and ask them what approach or strategy they are taking and what the legal issues are and they would give me that information. I guess to clarify, the City's practice, in large part because the city has never had an in-house attorney, has been for the human resources manager to work with this existing attorney without any prior contact with the city attorney or really any kind of reporting in after the fact. So, even under coordinate, I guess I don't believe that the human resources manager wants the added obstacle of even having to attempt to call me before she calls the outside attorney on legal issues. She would like to continue the current practice, which is that she handles all labor matters. I will be apprised as a courtesy so that I generally know what is going on.

Councilor Kight asked do you feel comfortable with that? Do you feel that you are best representing the city by being on the outside and getting secondhand information? Do you think it is in the best interest of the city?

Marnie Allen replied Councilor Kight I think that is a very good question and really what I would like to do is ask the Council for direction in what role you want me to play in serving the City's legal needs. I can either be more involved where I can do more of that legal work or take those calls in advance or I am comfortable with having the attorney that has been doing the labor work for the city continue to do that. I would like the Council to set the parameters on how you would like me to operate as your city attorney.

Councilor Kight asked do you feel comfortable in filling the role of the attorney that is currently doing that work now? Do you have any expertise in labor management and negotiations?

Marnie Allen replied that is a fair question. I would not want to take on labor negotiations on my own on behalf of the city right now. That is a complex area of law and the nature of my work as the city attorney doesn't always lend itself well to being a negotiator for labor negotiations. My preference would be to continue to use labor counsel to assist in those labor negotiations. With regards to general employment matters and questions, I may need to consult with the same employment attorney on some issues, but I think I could do some of that work if that was the desire of the Council.

Councilor Ripma stated I am a patent lawyer and I am the only lawyer that works for my company and I face this kind of question all the time. I coordinate the legal activity of the company in much the same way that I think Marnie would for the City. When I am asked a question about something that I am not an expert in I retain and/or advise department heads to retain outside counsel. They keep me informed but the contact is with them directly. The answer is that I am very comfortable having the city attorney refer matters in specific areas to other counsel. I think that is the best use of the City's money. I think this language captures exactly what we ought to have in our code.

Councilor Gorsek stated just to follow-up on what Councilor Ripma was saying, the law is a huge thing and it is impossible to be an expert on everything.

Mayor Thalhoffer asked so the word coordinate, is that satisfactory? Did we give you proper direction?

Marnie Allen replied what I understand the council's intent with regards to the word coordinate is that department managers can use outside legal counsel, they will keep me informed of whatever the legal issue is that they are getting outside legal counsel on. That does not come up very often in the city but it does come up with labor employment. Our human resources manager will continue to use outside legal counsel for labor negotiations and employment matters but will let me know the status of those cases and projects she is working on. That is what I understand coordinate to mean and I am comfortable with that.

Councilor Kight stated you keep referring to the human resources manager using outside counsel, what about other department heads?

Marnie Allen replied the other example where it could come up would be with finance. We always use an outside firm to get finance counsel. Those transactions do not occur often and they are usually associated with issuing bonds or borrowing money. I would envision that there could be other times that outside legal counsel would be needed, such as a complex environmental case that is outside of my area of expertise or a complex significant piece of litigation that would require more resources than just one person could provide in order to adequately represent the city.

Councilor Kight asked is there a situation where a department manager could contact outside legal counsel and they wouldn't have to report to you or let you know that they had done so?

Marnie Allen replied that is not how the department managers within the city and I operate. We always share information and coordinate and consult with each other. Is it possible that could happen, I suppose, but not with the staff that we currently employ.

Councilor Thomas stated Mr. Galloway, I think there is kind of an issue here with checks and balances that we are trying to put into place. I think it is important to have those checks and balances. We have a city attorney who needs to know what is going on. That is my intent instead of just having someone say I am going to call this attorney without necessarily consulting with the city attorney because it may not be something that is worth it. I think it is

a value to have those checks and balances. I think the city administrator would want someone to check with them first before they went off and did something. Is that something that would work for you?

Jim Galloway replied I think the way that Councilor Ripma explained it is what I was trying to explain. I think there are situations that occur where it makes sense, especially in the labor area where there is a firm that specializes in that particular type of law that the city has an ongoing long-term relationship. This is certainly not something that comes up every day; it may come up once a month or once every few months. Usually its not that something comes to the attention of the human resources manager and the first thing she does is grab the phone and calls the labor attorney. I suspect that before it is even brought to the attention of the human resources manager that the supervisors and department managers are already involved. It is usually an issue that is fairly important and significant before that call would be made. I think the way that Councilor Ripma explained it would be the way that it has happened and the way that I would envision it continuing and that would be that the human resources manager would respond to a situation and if needed call the outside attorney and get the needed advice and at the next appropriate moment make sure that the city attorney is aware of what occurred.

Mayor Thalhofer asked is there anyone here that would like to speak to us on this issue?

None.

Mayor Thalhofer closed the public hearing at 7:49pm.

MOTION: Councilor Ripma moved to adopt the ordinance amending Title 2, Administration of Personnel, of the Troutdale Municipal Code. Seconded by Councilor Kight.

VOTE: Councilor Kyle – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Kight – Yes.

Motion passed 6-0.

7. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Title 6, Animals, of the Troutdale Municipal Code.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:51pm.

Chief Nelson stated we are trying to accomplish two things with this ordinance. The first is to clean up some language that was adopted from Multnomah County and secondly is to add some new language to put some enforcement authority in the city. Multnomah County originally had their animal control in the Multnomah County Code Chapter 8.10, that has since been changed to Chapter 13 so we are making that change in this ordinance. The second area gives authority, which we have not had in the past, to our officers to issue and cite animal violations into Troutdale Municipal Court.

Councilor Gorsek asked so currently our officers don't have that capability to cite those violations into Troutdale Municipal Court?

Chief Nelson replied correct.

Councilor Gorsek stated and Multnomah County Animal Control probably doesn't have a lot of resources at the present time. Have they traditionally been the ones to take care of enforcement?

Chief Nelson replied yes.

Mayor Thalhoffer asked why does the Police Department want to get involved in animal enforcement? Does that mean that our officers are going to be chasing dogs?

Chief Nelson replied we do that now from time to time because Multnomah County has reduced their services. Currently we are taking some action on animal calls, this just gives us the authority to do it locally.

Councilor Kight asked what happens if animal control is not available and lets say you get a call for a large reptile. How would that be handled if the officer was not trained to handle that situation?

Chief Nelson replied we would handle it the same as we do now. We would contain the area and keep it safe for the public and call an expert who can deal with the situation.

Councilor Kight asked have you ever engaged in transporting animals?

Chief Nelson replied we have, primarily just dogs. Because the animal control facility is located in Troutdale they have given us access to the facility to lodge animals there 24/7.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this issue?

None.

Mayor Thalhoffer closed the public hearing at 7:56 and stated that there will be a second public hearing on this ordinance on February 24th.

8. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 13.20, Parks and Recreation, of the Troutdale Municipal Code.

This item was postponed to a future date.

9. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Title 15 and Chapter 12.05 of the Troutdale Municipal Code pertaining to buildings and construction, and street naming.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:57pm.

Rich Faith, Community Development Director stated Title 15 of the Municipal Code regulates building and construction related activities. There are currently six different chapters that comprise Title 15 and some of the provisions within those various chapters are quite outdated and really need to be updated to reflect what our current practices and standards are. At the same time within Chapter 12.05 of the Municipal Code, which falls under the public works category there are some provisions that we are transferring into Title 15.

Rich Faith outlined the revisions that are being proposed which are contained in his staff report.

Councilor Thomas asked in Chapter 15.30 it reads Columbia Highway, should it be Historic Columbia River Highway?

Rich Faith replied that was carried over from the previous language, it would be appropriate to change that to Historic Columbia River Highway. I will make that change.

Councilor Kight asked in Section 15.12.090 Fire Safety Inspection Program, who establishes the fees for inspecting the businesses on an annual basis?

Rich Faith replied there are no fees. I believe that was an issue that was discussed at a work session just recently and Council decided not to impose fees.

Councilor Kight asked in that same section on the bottom of page 5, line 45 – 48 reads, “The administrative enforcement fee for inspection violations shall be established by Troutdale City Council resolution.” Since we haven’t enacted any, there are no fees, is that correct?

Marnie Allen stated it is my understanding that right now the Council, in the resolution that sets the fees for the City, has an administrative enforcement fee that is collected whenever our code enforcement officer has to take action to enforce compliance with the nuisance code. Section 12.15.090(4) says if you don’t comply with the Uniform Fire Code Violations it is a nuisance and if our code enforcement officer has to then enforce that you will pay the fee that anyone else pays for not complying with our nuisance code.

Councilor Kight asked but the initial annual inspection fee is not applicable in Troutdale, correct?

Rich Faith replied that is correct.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this issue?

None.

Mayor Thalhoffer closed the public hearing at 8:12pm and stated a second public hearing will be held on this ordinance at our February 24th meeting.

10. COUNCIL CONCERNS AND INITIATIVES:

Councilor Thomas stated he went on a police ride-along and was very impressed with the professionalism and caring attitude of our police force.

Mayor Thalhofer stated I will be attending a Union Pacific meeting on February 19th and I will report back to you.

Councilor Kight stated there is an abandoned house on Historic Columbia River Highway, just north of Jackson Park Road on the east side. I would like to request that Rich Faith have the Code Enforcement Officer take a look at this house. I have new information that the bank is the titleholder of this property.

11. ADJOURNMENT:

MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Thomas. Motion passed unanimously.

Meeting adjourned at 8:12pm.

Paul Thalhofer, Mayor

Approved March 23, 2004

ATTEST:

Debbie Stickney, City Recorder