

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

**March 23, 2004**

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

Mayor Thalhofer called the meeting to order at 7:01pm.

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

**ABSENT:** Councilor Daoust (excused).

**STAFF:** Jim Galloway, Acting City Administrator; Rich Faith, Community Development Director; Marnie Allen, City Attorney; and Sarah Greif, Office Support Specialist.

**GUESTS:** See Attached List.

Mayor Thalhofer asked is there an agenda update?

Jim Galloway replied there is no update.

**2. CONSENT AGENDA:**

- 2.1 ACCEPT MINUTES:** January 27, 2004 Regular Meeting and February 10, 2004 Regular Meeting.
- 2.2 RESOLUTION:** A Resolution terminating an obsolete utility easement on the west side of Morgan Meadows phase I.
- 2.3 RESOLUTION:** A Resolution adjusting the Transportation Capital Improvement Plan and amending Resolution No. 1654.

**MOTION:** Councilor Thomas moved to adopt the consent agenda. Seconded by Councilor Kight. Motion passed unanimously.

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

None.

**4. PUBLIC HEARING / ORDINANCE (Introduced 3/9/04):** An Ordinance amending Title 13, Street Trees, Park and Recreation Areas, of the Troutdale Municipal Code.

Mayor Thalhofer read the Ordinance title and opened the public hearing at 7:05pm.

Rich Faith, Community Development Director stated at the last meeting on this matter Councilor Kight raised some questions about liability in the use of alcoholic beverages in our City Parks. In response to the questions that have been raised, our City Attorney said as long there are certain safeguards in place there would be no additional liability on the part of the City. Some of the safeguards would be a permit issued that would outline our rules and regulations relating to alcohol use. There would be a waiver of liability that the sponsors or users of the park would sign, releasing the City of liability in the use of alcohol. It might also include the requirements for an OLCC license if there is going to be any sale of alcoholic beverages and also having a police officer for alcohol monitoring in conjunction with that event. Those statements that I have mentioned are actually what are in place when someone now wants to rent and use the Sam Cox Building, we do have a permit form. However, with respect to community events that have been occurring in our parks, we have not been as rigid in application of that particular requirement and applying those particular safeguards. SummerFest is the one that comes to mind where we do have alcohol use as part of that activity. But over the years I don't think we really follow the practice of requiring the liability of waiver and so forth. In looking at the language that we had in section 13.20.190, staff felt that there was room for some correction or revision to better ensure that the safeguards would be implemented in conjunction with alcohol use at community events. The changes will require that a permit be issued for alcohol consumption as part of a community event, as part of that permit requirement the sponsors of the community event will be required to sign a liability waiver as we require that for anyone using the Sam Cox Building and the permit would spell out other rules and regulations of relevance to the sale or consumption of alcoholic beverages such as the OLCC permit requirement and alcohol monitoring. The final thing would be the change in the section that makes a clear distinction between permit requirements for use of the community buildings such as the Sam Cox Building and for the community events held on the park property. These amendments, other than the changes that I have just described to you, were all reviewed by the Parks Advisory Committee in the course of several meetings and they voted unanimously for the approval of those and they have then come to you with that recommendation and staff concurs with and supports the adoption of this Ordinance amending these 2 chapters.

Councilor Thomas stated in regards to 13.20.190, previously was consumption of alcoholic beverages restricted from any park or can we now open that for all parks?

Faith replied the current language in the code gives me the authorization to designate any park or portion of any park for alcohol use. The difference between what we are proposing and what is currently written is that technically the only time I could authorize that is if the alcohol consumption was either with a meal or in the preparation of a meal. It was a very narrow area of authorization and in reality it's not how it's been applied in the past. We've retained the ability to allow alcohol consumption in a park or portion of a park but now with qualifiers that in conjunction with a community event and with the newest language by permit only.

Councilor Thomas asked will that be a fee permit?

Faith replied no we do not propose a fee that a non-profit organization or sponsored organization would have to pay in order to have alcohol use in that park and it's limited to a community event so it would be part of our assistance in that event.

Councilor Kight asked why did you feel it was necessary to open up the entire park system to alcoholic beverages instead of designating one particular park, Glenn Otto Park?

Faith replied we are not opening the entire park system to this.

Councilor Kight stated potential.

Faith replied that potential is already in the code. There was no limitation on any specific park the way it's currently written. The language now says the director, from time to time, may designate certain park or park areas where beer and wine can be served. I'm not restricted in that respect but as a matter of practice it's only taken place in Glenn Otto Park to my knowledge.

Councilor Kight said let's say there is a community event and they designate the area of CP Park, right next to the high school. As part of this event they are going to be serving alcoholic beverages but concurrently along with this community event, they also have a little league softball game in the other portion of the park. Is there any reason that you or whoever is in your position would have a way of excluding those people from using that park?

Faith replied absolutely.

Councilor Kight stated let's say somebody else replaces you. They could look at this not knowing the history behind it and say according to what I have before me, it looks like we could have a concurrent event as long as you meet the permitting, is that not true?

Faith said I think it's important to understand what constitutes a community event. There is a definition, not in this particular chapter but in our Development Code, that says a community event is one in which the City is a sponsor or assists in some manner. By virtue of that, it's something that the City has either traditionally or has expressed a willingness or desire to be a participant in that event. I think that by itself begins to shape where this is going to be held, when it's going to be held and certainly the image of the City's at stake and we're not going to want to have a beer fest next to a little league baseball game. If the sponsor of the event such as the Historical Society came to me directly and asked if I would be willing to grant them a permit to have alcohol use at this community event, I guess the way it's written, I have that discretion but I would be an idiot to say absolutely yes if I knew that there were other activities that would conflict with that.

Councilor Kight asked but ultimately that door is open?

Faith replied yes.

Councilor Kight asked does the police officer have the ability to close down an event if he sees people leaving the area that are obviously intoxicated to the point they shouldn't be driving a car? What is the police officers purpose for being there?

Faith replied I would say to make sure everyone is behaving themselves and conducting themselves in an orderly manner and that things aren't getting out of hand. I'm not sure precisely whether they have the authority to close it down but I think that if there is activity occurring which borders on violation of the law or the City's permit that they would have the authority to enforce the law by shutting down the event.

Councilor Kight asked is the officer told ahead of time if something happens he has the authority to close down the event or go to whomever is the responsible party and say obviously people are leaving intoxicated and getting into cars and driving, does he have the ability to say this event should be shut down, cut off the liquor?

Faith replied I believe that goes hand in hand with wearing the badge and being in the position that he is in.

Marnie Allen stated if an officer has probable cause to believe that someone was violating our Ordinance or any other law; public intoxication, potentially driving while under the influence, disorderly conduct, then they'd have the authority to arrest that person and site them for violating the law. If the question is can an officer go to the person in charge of the event and who's not breaking any law and say this event has gotten out of hand in the park and we want to close down the park, we'd have to look at our park regulations and if they are in violation of a park regulation then there is a section in here that specifically says the director or the director's authorized representative, which in this case would be the police officer, shall have the authority to eject from the park any person acting in violation of this chapter. So there is authority in here to eject people from the park including the person in charge of the event if they are acting contrary to the provisions in this Ordinance which would include the requirements in the permit.

Councilor Kight asked as far as financial liability, you indicated that the exposure to the City would be minimal, is that an accurate statement? Does that then require the organizer of the event to carry a liability policy for that event should an unlikely situation happen where someone is injured and/or killed as a result of being served alcohol at that event?

Allen stated I don't believe the City's practice has been to require anyone who's renting or using the park to provide a certificate of insurance that needs the City as an additional insured. I think that's fairly costly so I do not believe the City's been requiring that. What the City has been requiring is for that person to sign the permit with a provision that states they agree to indemnify and hold the City harmless if anything were to happen and the City were sued, which basically means we look to that person and their insurance policy for coverage but we're not named as an additional insured. The City's not requiring a policy in favor of the City.

Councilor Kight replied as you indicated it would indemnify the City but that doesn't necessarily insulate the City from a lawsuit. Particularly if the people involved in this event have no financial insurance. Let's say someone is involved in a very costly accident, generally speaking, the parties that are sued are those that have the deep pockets, the City. If the person putting on the event doesn't have a policy to pay for the accident then wouldn't the burden fall more or less on the City?

Allen stated only if the City was negligent and didn't take appropriate precautionary measures. For example, didn't require an OLCC permit, didn't have knowledge that someone was intoxicated in the City facility and knowing that, went ahead and let them drive. That's why I think my advice at the last meeting was that the issues associated with the City's liability are really case and fact specific. The City can be sued for a whole myriad of reasons and the merits of that lawsuit and the potential liability to the City isn't something that you can just assign a dollar amount to and answer in a black and white way. The City can take precautionary measures to minimize it's liability, I believe the City's doing that to the best of it's ability. It's just a matter of weighing your comfort level with the risks that are inherent in everything the City does.

Councilor Kight asked do you feel comfortable there is enough safeguards in here to protect the City given the fact we're serving alcohol?

Allen replied yes.

Councilor Kyle asked you must have a checklist that you go through that they have to have this and this and so forth before granting them the permit, don't you?

Faith replied yes, looking at the one we use for renting the Sam Cox Building there are questions asked. If you say that you are going to have alcohol, then it says you will need to have a police officer present, you will need to get an OLCC permit if you are going to be selling alcohol. These are all written right on the form and we use a similar form with the community events.

Councilor Gorsek stated on 13.20.170 (B) page 4, do we have any bridle trails?

Faith replied no.

Councilor Gorsek asked under 13.20.200, unlawful for any person to possess a glass container on or upon a designated beach area, I was wondering if it would be possible to include children's play areas?

Faith replied specifically just say children's play area?

Gorsek replied yes, where there's a concentrated swing set, jungle gym, and that kind of stuff. On page 6, 13.20.380, where it talks about authority to eject, do the police officers fill out any sort of park exclusion form? Is this only for that day or do they exclude them for a

period of time if somebody is being a problem? Some cities do a 30 day park exclusion, this is nothing like that?

Faith replied no.

Councilor Kight stated I asked the police about this specifically since I live next to Glenn Otto Park and what they have done in the past is photograph the individual and that person, depending on their violation, is excluded from the park sometimes for the entire summer.

Mayor Thalhoffer closed the public hearing at 7:27pm.

**MOTION: Councilor Ripma moved to adopt the Ordinance amending Title 13, Street Trees, Park and Recreation Areas, of the Troutdale Municipal Code with a change to the language in Section 13.20.200 to read, "It is unlawful for any person to possess a glass container of any type in, or upon, a designated beach area or designated children's play area". Seconded by Councilor Thomas.**

**Councilor Ripma stated I think these are good and necessary changes.**

**Councilor Kight stated the only caveat I have is I'm not sure I have the comfort level when it comes to serving alcohol, of course we have done it in the past and it hasn't been a problem. I think with the City Attorney's testimony as well Rich Faith, I think there is enough safeguards in place that if something catastrophic happens the City will not have an issue with liability.**

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

**Motion passed 6-0.**

**5. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 7 of the Troutdale Development Code relating to land divisions. (Text Amendment No. 35)**

Mayor Thalhoffer read the Ordinance title and opened the public hearing at 7:29pm.

Rich Faith stated Chapter 7 of the Troutdale Development Code regulates land divisions that include both partitions and sub-divisions. The chapter covers the full gamut of how we deal with subdivision applications, the process for land division applications, what must be submitted with the application, the standards that those land divisions must meet, various requirements that apply to the construction activities associated with subdivisions and other effects of land divisions. Recently there were some issues raised about financial guarantees which comes into play after the subdivision has been approved and they're into the construction phase of that development. The issue was brought to the City Council at a Work Session last September and as a result of that it was decided to amend our code to address

that. In looking at those particular amendments we also decided to clean up other sections of this chapter as well. What we have are almost entirely housekeeping changes for the purpose of improving the organization and clarity of Chapter 7 to remove any outdated provisions that are no longer applicable. There are quite a number of minor wording changes as you will see. Subsection 7.180(D), which is found on page 7-12, is the area of the code that talks about street trees. What we are proposing to do here is change this particular section so it is completely in alignment with provisions in the Municipal Code, Chapter 13.10, which we just amended so that the two are in sync. It spells out the procedure that we have for street trees such as in non-residential subdivisions; the developer is required to plant those as part of landscaping and tree planting requirements. With the development of a residential subdivision, the developer pays the City a street tree assessment and we purchase the trees and plant those after the homes have been built. The next point of note is to subsection 7.180(E)(8), on page 7-13, this particular section deals with standards for private drives. Current standard is erased at serving two or more residences, it must be a hard surface pavement with a minimum width of 24 feet if it is two-way traffic and 15 feet when accommodating one-way traffic. We're proposing to reduce those width standards to 20 feet for two-way traffic and 10 feet for one-way traffic because those standards meet the requirements for fire apparatus and I think that is a more reasonable standard to apply.

Councilor Thomas asked is there a reason for that standard?

Faith replied because the emergency services say that they need 20 feet of clearance to be able to get to a fire or in most cases they are talking about a fire apparatus. The standard is 20 feet of clearance if it's two-way traffic. If it's only one-way, half of that is of course 10 feet. Then the third area is in section 7.350, which is found on page 7-22. This is the section dealing with financial guarantees. We are trying to clean up some types of financial guarantees that we no longer accept and then add those that we are willing to accept. One of those that is being added is a letter of credit and with respect to the use of a letter of credit, the amendment would require that it cannot be a diminishing value over the life of that letter of credit. This was the primary topic of your Work Session on this issue back in September. Then the remainder of the amendments, within this section and all of the other sections of Chapter 7, are primarily to reflect the City's current practices in how we handle construction activity and the various things related to the improvements that go with those subdivisions. There is one other change that we would like to propose at this time on what was sent out to you and that is in section 7.410, which is on page 7-26. This section deals with certificates of completion. When the developer has built the infrastructure for a subdivision there is a point at which the City acknowledges the completion of those improvements and will issue a certificate of completion which basically is a signal that you can now obtain your building permits to commence construction of the buildings. We talk about the various types of improvements of the streets, sanitary and storm sewer, water system and other improvements such as street lighting and felt that this is a bit narrow and doesn't quite capture everything that we are intending when we speak about these other types of improvements. We would like to clarify this by inserting, where we have the parenthetical language such as street lighting, including but not limited to street lighting and underground utilities and this becomes more encompassing than all the various types of utilities that are part of a subdivision and I think it's clear in terms of what we are intending that need to be

completed before a certificate of completion will be issued. The Planning Commission reviewed these at a public hearing in February, their findings are included as an exhibit to my staff report, they did find in their final order and recommendation that the various criteria has been met and therefore are forwarding these amendments to the City Council with a recommendation for adoption.

Councilor Thomas asked on page 7-6 paragraph 11, why did you choose to use the 100-year flood plane?

Faith replied because the 100-year flood plane is also commonly referred to as a special flood pattern area under the FIMA. Both on FIMA and within our own Development Code there are additional restrictions about the development in the 100-year flood plane.

Councilor Thomas asked on 7-15 paragraph one, it talks about using the Bureau of Environmental Services from City of Portland for sanitation, are they the only people that do that?

Faith replied yes, I think the responsibility rests with Multnomah County but it's contracted out to the City of Portland. My understanding is the City of Portland's Bureau of Environmental Services are the only ones in Multnomah County that can review septic systems and have certified Sanitarian's that can evaluate and issue permits for them.

Councilor Thomas asked on page 7-18 in regards to street standards and construction, I was wondering if we need to put anything in here about traffic calming?

Faith replied there is a provision on page 7-16. It says in paragraph 2, where the length or the design of the street allows or promotes excessive speeds, traffic management such as speed humps and traffic circles are encouraged and may be required, if needed, to ensure the safe operation of the street.

Councilor Thomas asked what happens when a couple of years past development this becomes an issue?

Faith replied we have a procedure already in place and I don't recall the exact details.

Councilor Thomas asked can we go back to the developer and say these should have been part of the development?

Faith replied no, I would say we would probably be stretching things if after a subdivisions been built, the homes are occupied, we've already issued a certificate of completion and accepted the improvements and then go back to the developer and say we made an error and should have had you do this.

Mayor Thalhoffer stated this is probably not germane to the issue but I thought we might require a developer to provide park land as part of the development. We've talked about that off and on but I don't think we've ever had any organized effort to make that happen.



Faith replied that's correct. It has been mentioned indirectly at different times. It could very well be incorporated into this chapter if that's the desire of the Council. Maybe it would be appropriate as part of a Work Session to get a little bit of instruction as to what you would like.

Mayor Thalhoffer stated I would like to see us have a Work Session on that issue at some point.

Faith replied we can certainly begin to research that and come back with something or if you would prefer, we might want to talk about some of the issues to help frame it so we'll know how we want to attack it.

Mayor Thalhoffer asked does the Council have any objection to this?

Councilor Kight asked do we have any large parcels of land that can be applicable in this situation?

Faith stated I think that's one of the questions to be discussed and this can be structured so that any land division or subdivision of a certain size could trigger it and then a certain percentage of the land would have to be reserved for park or open space.

Councilor Kight stated I think it bears looking into.

Faith asked are you looking for only large pieces or are we interested in smaller sizes that demand time and attention and don't really give you much in return in terms of recreation and public benefit?

Councilor Ripma replied research the options and it will be part of the discussion.

Councilor Kight asked on your irrevocable letter of credit on page 7-23, is that usually issued by a bank, is that collateralized?

Jim Galloway replied we get an irrevocable letter of credit from the bank and I would have to assume there is the acting credit of the bank. How they are ensured they are paid from the person to whom they are doing that for, I don't know the answer to that.

Councilor Kight stated the reason I asked this question is this came up earlier with another developer and their complaint was it was putting a freeze on a piece of property that they wanted to develop. They were collateralizing it through a letter of credit in order to develop another piece of property.

Marnie Allen replied basically what the irrevocable letter of credit does is requires that the person have credit in the amount that the City requires available for the City to draw on at the bank. What the bank requires from the entity getting the letter of credit in terms of collateral probably could be a whole range of things. The City's assurance or guarantee isn't the

property or encumbrance on something else, it's equivalent of a home equity line of credit, basically.

Councilor Kight asked worst case scenario, are you saying if they defaulted on the development prior to putting in the utilities, the City go back to the bank that issues the letter of credit and say we're demanding the \$150,000 in order to complete the basic infrastructure for the development?

Allen replied right, whatever the cost is to finish the infrastructure up to the maximum amount of the letter of credit that we have. The nature of it being irrevocable is that the bank have that amount set aside as credit that we can draw upon until we release that letter of credit.

Councilor Kight asked could the bank then say I'm sorry but the developer has filed Chapter 13 and those assets are frozen and we don't have the ability to provide those resources for the City to complete the project?

Allen replied no, when the bank issues a letter of credit for our benefit, that letter of credit remains for us to draw upon regardless of what happens to the developer.

Councilor Ripma stated I am on the Energy Facility Siting Council for the State and this is how we secure the funds for cleaning up a power plant site if it's abandoned in the middle of construction or something. They are as good as gold. The State can draw on them and there is no risk. What they can cost the developer can be whatever the bank wants.

Mayor Thalhoffer closed the public hearing at 7:50pm.

## **6. COUNCIL CONCERNS AND INITIATIVES**

Councilor Thomas stated I would like to, as a Council, take a second look at the Port of Portland issue and also the issue with the Columbia Cascade Vision Plan. When we looked at it the first time it was in a hurry and I think there is more information available.

Councilor Ripma stated I envisioned this plan to bring proposals forward to the Council as they come along for consideration and this is a terrible time to reopen this issue.

Mayor Thalhoffer suggested if you have specific questions about either one of the actions we took, you could put them in writing and we could get people to attend a public meeting to answer those questions.

Councilor Gorsek stated his concerns regarding Council relations on this agenda item and also issues about the Mayor speaking on behalf of the entire City Council.

## **13. ADJOURNMENT**

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

Meeting was adjourned at 8:04 pm.

**Paul Thalhofer, Mayor**

**Approved May 11, 2004**

**ATTEST:**

**Sarah Greif, Office Support Specialist**