

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

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**Tuesday, November 23, 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 Thomas; Councilor Kight; Councilor Kyle, Councilor Daoust, and Councilor Ripma (7:06).

**ABSENT:** None.

**STAFF:** John Anderson, City Administrator; Jim Galloway, Public Works Director; Marnie Allen, City Attorney; Rich Faith, Community Development Director; Sarah Greif, Office Support Specialist; Kathy Leader, Finance Director; and Dave Nelson, Chief of Police.

**GUESTS:** See Attached List.

Mayor Thalhofer asked are there any agenda updates?

John Anderson, City Administrator replied we have a revised agenda this evening adding the work session topic to the regular meeting agenda.

**2. CONSENT AGENDA:**

**2.1 Accept Minutes:** November 9, 2004 Regular Meeting.

Mayor Thalhofer read the consent agenda.

**MOTION:** Councilor Daoust 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.

Robin Ceciliani, President of the Larch Mountain Country Artisans and a resident of Troutdale stated we are here tonight to express our desire to continue to use the Sam Cox Building at the Glenn Otto Park for our annual Heart of the Country Show and Sale. On June 18, 2004 I paid for and submitted the resident, non-profit organization, rental application for the Sam Cox Building as I have done in the past. When I submitted the rental form Rita Correy

informed me that all artisans belonging to our art show would need a temporary vendors license to have a display booth to sale their merchandise at the show. The forms and money was collected and ready to submit when I received a letter from Mr. Richard Faith. In his letter dated October 4, 2004, he informed me that our art show was not considered a community event as defined by the Development Code Section 10.015.09 adopted by the City Council on March 23, 2004. I contacted Mr. Faith on this matter to inform him that we were a non-profit group and a member of the West Columbia Gorge Chamber of Commerce. I also mentioned to Mr. Faith that proceeds from our show and sale go to benefit the restoration of the Vista House and the Hands on Art Program in Corbett Schools. I asked Mr. Faith what we could do to be considered a community event offering that the artisans would be happy to go in and support a hands on program in the Troutdale schools as well. Mr. Faith told me that he would take this information and get back to me in a week or so. After not hearing from Mr. Faith for several weeks I contacted him and he told me that he had talked to management and it was decided that we were not now and never could be a considered a community event. The recent turn of events has confused and saddened our group. We are confused because the new City of Troutdale has embraced the arts with beautiful galleries and shops and First Friday Art Walks and yet the 25 year old Heart of the Country tradition is being told to relocate because we are not recognize as a community event. Much of our art in the show represents some of the finest work done in our local area and the Columbia River Gorge. Recently we completed our 25<sup>th</sup> year of the Larch Mountain Heart of the Country Show and Sale held in the Glenn Otto Park. It was a great success and we had over 1,500 people. Many of our patrons return to our show year after year making a day of it browsing the downtown shops, having lunch, and shopping at the Outlet Mall. This is a community event. This has become a Troutdale tradition. Our choice and our desire is to stay at the Sam Cox Building and not relocate. I speak for myself and all of the artisans and we ask that this ordinance be amended and that we keep the Heart of the Country in Troutdale.

Dale Larson member of the Larch Mountain Country Artisans stated I have been with the group since 1991. Dale showed the Council some of the quality art that was displayed at the show.

Mayor Thalhoffer stated I am going to refer this issue back to the Community Development Department. We will put this item on a future agenda.

**4. PUBLIC HEARING / ORDINANCE (Introduced 11/9/04):** An Ordinance amending Section 12.05.080 of the Troutdale Municipal Code. (Assigning responsibility and liability to property owners for ice and snow control on sidewalks and driveway approaches, extending the cure period for repairs, and clarifying the requirement to construct.)

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:14pm.

Jim Galloway, Public Works Director stated this is a proposed change to the Municipal Code dealing with repair and maintenance of sidewalks in the city. This initially came up as a result of the inquiries that we received during the ice and snowstorm last January regarding the responsibility and liability for snow and ice control on sidewalks. We felt that it was somewhat unclear in the Code as to whether or not that was currently covered so we are

recommending adding some specific language in the Code that would show that we do hold the adjacent property owner responsible and liable for the removal of snow and ice on the adjacent sidewalk. At the same time that we were working on that item two other aspects of the ordinance appeared to be appropriate for change. One was to grant additional time for the sidewalk repairs. The Code currently calls for thirty days. The majority of folks that have been asked to repair sidewalks have asked for additional time. We are recommending that be increased from thirty to sixty days. We also wanted to clarify the use of the term "construction" in the ordinance to show that the ordinance is not requiring new sidewalks to be constructed where none exist now. At the last meeting there was some questions by the Council and some Council direction. You asked us to change the proposed ordinance to show that in addition to extending the period of time that folks have to make repairs from thirty to sixty days, to also allow for an additional thirty-day extension to that sixty-day period. We have added that language to the proposed ordinance. There was also an inquiry by one Councilor regarding the penalty provision as to whether it should remain or whether it could be removed and defer to a general penalty clause. The answer to that is yes and I have provided that information in my staff report. If you choose to go that way the suggestion is to delete the penalty portion in this section and it would then default to Section 12.01.080, which would still call for a penalty of up to \$1,000 per violation but it would eliminate the \$200 minimum. The third item that was asked by a Councilor was whether or not we advised property owners when we sent them a letter/notice of violation as to measures they should take to protect the users of the sidewalk before the repairs are made to the sidewalk. I erroneously said that I thought that the letter we send out did that, I discovered that it did not. I have provided, as exhibits to my staff report, the letter that we previously sent out that doesn't have that language and the revised letter that we will use from now on that does have a paragraph recommending that property owners put up cones or some other warning device to warn the public until such time as the sidewalk is repaired. I believe that responds to all of the questions that you had.

Councilor Kight asked I am looking at the photographs that you send to the property owners, at least in two out of the three photographs it is clear that the sidewalk has been raised as a result of street trees planted by the City of Troutdale. You have said that there is no responsibility on the part of the city where in fact you have created the problem of root systems raising the sidewalk and the property owner is responsible for incurring the cost of replacing it. Does the property owner then have the ability to remove the street tree if it is causing of the damage to the sidewalk?

Jim Galloway replied yes. There is a process to do that. In both sample letters I have provided to you, there is an indication to the property owner that if they think that the problem is caused by a tree they can coordinate with the Parks Superintendent who can give them a permit for tree removal.

Councilor Kight asked have you noticed that the parking strips are in fact too narrow to accommodate a lot of these street trees? Some of them are as narrow as 24" to 36". I don't know a lot of trees where the root system goes straight down. Have you noticed the same thing?

Jim Galloway replied I think there are probably some trees that would do better if they were in a wider planting strip. I think our standard calls for a 3 ½' wide planting strip?

Councilor Kight asked do you think that is adequate?

Jim Galloway replied I don't have an answer to that; I am not too familiar with the tree situation.

Councilor Kight stated I asked you at the last meeting and you responded that you thought it was fair that if we planted street trees there was no responsibility on the part of the City to replace the sidewalk when in fact we created the nuisance to begin with. Why do you feel that way?

Jim Galloway replied first of all I am not sure that your allegation that the City planted every tree that is causing a problem is correct. My understanding is that the City didn't get into the practice of planting those trees until sometime in the early 90's. I think the other issue is where do you draw the line. Trees do a number of things, most of them beneficial but there are some things that are also a bit of a detriment. I am not sure if you start saying that the City is responsible for every sidewalk that is involved, do we also need to go out and rake up all of the leaves that fall off of the trees? Where do you want to draw that line?

Councilor Kight stated I think you are mixing bananas and apples. You may be in fact right that the City did not plant the trees, but in fact wasn't it a condition of development for the developer to put street trees in?

Jim Galloway replied I believe that has been a city practice for quite some time.

Councilor Kight asked does the City select the trees for the planting in the curb area?

Rich Faith, Community Development Director replied we currently do, yes.

Councilor Kight asked prior to the City planting the trees, was that a condition of development?

Rich Faith replied yes, prior to the City planting the trees the developer was required to plant street trees.

Councilor Kight asked who ultimately made the decision, or do you have a list of acceptable street trees?

Rich Faith replied I don't know exactly because that was before my time here but I do know that the current practice that we now have in our code in which we require the developer to pay a street tree assessment so we can select, purchase and plant the tree was done primarily in response to the poor selection that was occurring when the developers had that responsibility.

Councilor Kight asked since the City has been doing it have you noticed any problems with sidewalks being cracked or raised?

Rich Faith replied well some of those earlier subdivisions as those trees have grown and matured, I would have to say yes there are incidents where sidewalks are being affected by a root system of the trees.

Councilor Kyle asked isn't the Citizens Advisory Committee reviewing our tree policy?

Rich Faith replied both the Citizens Advisory Committee (CAC) and the Parks Advisory Committee (PAC) have jointly met to review this issue and come up with an alternative to how we currently do street trees. Each of the committees has completed their review of this and it is ready to bring forward to the Council in a work session.

Councilor Kyle stated I have asked previously about having a standard handout regarding trees so that everyone receives the same information and there is no interpretation from who ever it is that they talk to. I am thinking particularly of Ali Peret who talked to one person and received information and got a different story from someone else. I am wondering if there is a way that we can have standard tree information to handout to those people that are having tree problems?

Jim Galloway replied as far as the information that we would provide regarding the sidewalk problem and the possibility that a tree may be involved in the problem, we have our standard letter that I provided to you and it does advise them that if they believe that the problem is caused by a tree they should contact the Parks Supervisor. I think we are fairly consistent in that regard. I can't recall exactly what Mr. Peret's issue was that he said he was getting different responses from staff. We don't make tree decisions in our department and I would be surprised if we would give anything that would be conflicting with what the Parks Supervisor would give.

Councilor Kyle stated well that was part of the testimony that we heard and I just want to make sure that we are consistent with what ever it is we are doing.

Councilor Daoust stated there are numerous publications from horticulturists and arborists on which trees make good street trees and which ones don't. I assume that the committee has looked at all of that. When Val Lantz was here I know that she was really concerned about what the proper trees were to plant. Regarding the fine language, in the ordinance you have kept in the \$200 minimum fine amount and the \$1,000 violation fine but you do mention that we could delete that language if we want to refer to the general penalty in another section of the code. I assume your preference is to leave that in, but I would like to hear why.

Jim Galloway replied yes, the preference would probably be to leave the language as it is. The reason I didn't make a change was because I believe at the last meeting only one councilor raised that issue and I didn't know if there was a consensus to delete the language or not. I believe our original reason for establishing the \$200 minimum was to try and make sure that we didn't have a situation where someone who needed to repair a sidewalk delayed

in doing so for an exceptionally long period of time, finally gets cited into court and the day before they go to court they repair the sidewalk and they basically walk away from the problem. So we thought that the minimum fine would deter from that type of activity.

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

Dave Munson stated I belong to a volkswalk group that is an international club. Some of our walks are in Troutdale. When we walk and we find a bad sidewalk a complaint reaches the city. From that point the city has to certify that there is a problem and then the city contacts the homeowner. My problem is if the homeowner finds out who has turned in the complaint to the city there may be repercussions. My comfort level is to leave it as is where the City verifies where the problems are because they are ultimately the one that makes the choice of whether the sidewalk needs repair or not. The CAC is looking at the possibility of helping the homeowners finance the cost of the repair of the sidewalk or the tree removal and replacement according to what their income level is and what the needs are.

Councilor Ripma asked how do the sidewalks in Troutdale look?

Dave Munson replied not too bad overall.

Mayor Thalhoffer asked the funding assistance that you are referring to, is that city money?

Dave Munson replied we are looking to use the development fees. We are looking at a 30% canopy level and if they are unable to reach that, and if a homeowner refuses to have a tree in the parking strip or somewhere else on their property then they will be charged a fee for the canopy that is missing and then we can plant those trees in a city park or use some of those funds for the repair of sidewalks that homeowners can't afford.

Councilor Kyle stated I believe that if you file a complaint you should be willing to sign it.

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

No further public testimony received.

Mayor Thalhoffer closed the public hearing at 7:40pm.

**MOTION: Councilor Ripma moved to adopt the ordinance amending Section 12.05.080 of the Troutdale Municipal Code. Seconded by Councilor Gorsek.**

**Councilor Ripma stated this ordinance addresses the snow and ice issue that it is intended to deal with and the small changes that have been made providing an extension and so on take care of the other issues that I had with it. We will take care of the tree issues at a later date.**

**Councilor Gorsek stated I concur with Councilor Ripma.**

**Councilor Thomas asked the Council if they wanted to keep the \$200 minimum fine. Other than that I can support it.**

**Mayor Thalhoffer asked what is your argument regarding the \$200 minimum fine?**

**Councilor Thomas stated from what I heard from Mr. Galloway, it makes sense to leave the minimum fine in order to try and get compliance sooner rather than later. I spoke to the City Attorney about whether we could leave the \$200 fine here and let the general provision pick up the \$1,000 maximum and she recommended that would not be wise and would create a lot of confusion. So if we want to keep the \$200 minimum then I would not recommend changing the existing language.**

**Mayor Thalhoffer stated Mr. Galloway your illustration was that someone could fix the problem right before their court date to avoid the fine.**

**Jim Galloway replied that was the general idea. The \$200 minimum is not a change it has been in the code for a while. In trying to recall back when we came up with this \$200 minimum fine, it seems we were trying to get timely compliance and avoid a situation where someone would wait until the last minute to make the repairs. It could be several months before a court date is set and they could make the repairs at the last moment and come in and tell the Judge that it has been repaired and try to get the case dropped.**

**Mayor Thalhoffer asked if they have complied why wouldn't the case be dropped?**

**Jim Galloway replied the Code currently reads that you have thirty days to make the repair, which will possibly be changed to sixty days, but if someone drags this process out for six or eight months and in that six or eight months a pedestrian could be hurt. That is six or eight months that the City has exposure for potential a lawsuit if someone does get hurt. The idea was to get compliance within the timeframe that the code calls for.**

**Mayor Thalhoffer stated if a person is cited for not having a drivers license I understand that when they come to court they can show that they have a drivers license then there is no penalty. So this is a case where it has gone on for six or eight months and it just hasn't got on the court calendar yet or what?**

**Jim Galloway replied I think things can take that long. The one case that came to you in the form of I guess an appeal, the period of time from the first notice until compliance was in the ten or eleven month period.**

**Councilor Kight asked how long does someone have to wait to get a hearing?**

**Marnie Allen, City Attorney replied usually there are arraigned and come in and appear before the Judge for the first time on the charge of violating the ordinance within thirty**

days of the date they are served the citation because we do arraignments once a month.

Councilor Kight asked when is the hearing scheduled?

Marnie Allen replied if he pleads not guilty it can take anywhere from three to six months before we actually have a trial scheduled.

Councilor Kight asked why is that?

Marnie Allen replied we only do bench trials once a month and we have a large volume and we are not able to do the volume of violations and bench trials within a thirty-day period.

Councilor Kight stated so as far as the timeframe for the adjudication and the delay is because of the court load more than anything else which is the responsibility ultimately of the city, would that be an accurate statement?

Marnie Allen replied correct.

Councilor Kight asked what is your opinion as far as having the minimum fine, particularly when the individual is in fact in compliance and made the repairs?

Marnie Allen replied I think that is the policy decision for the Council. I think having a minimum mandatory fine puts some parameter on the Judge, ties his hands in some ways so that the City can recoup some of the cost it has incurred to get the case to the stage that it is at in court. There certainly are costs in terms of my time, city staff time and the courts time. So if an individual comes in and says I have now made the repair and realize it took me nine months to do it but I won't do it again and then there is no fine imposed the City is not recovering some of the cost that it took to get this person to comply. It is a policy question for the Council because I think the example that the Mayor brought up in terms of individuals that are cited for not having a valid drivers license, state law specifically says that if you had a valid drivers license when you received the citation, but maybe just didn't have it with you when you were pulled over, if you come in and show that license in court it is an affirmative defense and the citation has to be dismissed. If you didn't have a license at the time you were pulled over and were given a citation, it has not been my practice and I don't think it is the courts practice to routinely dismiss those citations if you got the license after the fact.

Councilor Kight asked are there other cases where in fact the Judge has not imposed a fine because the individual is in compliance?

Marnie Allen replied I would say that it is rare for the Judge not to impose some amount for a fine, he may suspend a portion of it but I can't think of a case where there has not been any consequence at all when someone has violated our ordinance.



**Councilor Kight stated so you are saying that at the very minimum they would have to write a check for \$200.**

**Marnie Allen replied if you leave the ordinance as it is currently written, even then the Judge could impose the minimum \$200 fine and suspend a portion of that, which is what happened in Mr. Peret's case.**

**Councilor Kight asked how often does this issue of non-compliance of a sidewalk repair come up?**

**Marnie Allen replied this is the only case that I have processed through the court in just over a year.**

**Councilor Kight asked so would you say that the bulk of the people that are notified make the appropriate repairs and don't become a part of the court system?**

**Marnie Allen replied yes.**

**Councilor Kight asked and your argument is that the \$200 would recoup part of the cost?**

**Marnie Allen replied that is one of the reasons to think about leaving it in place.**

**Councilor Kight asked but in fact the Judge could reduce the fine?**

**Marnie Allen replied he could suspend a portion of the \$200.**

**Councilor Kight asked so he still has that capability even though there is a minimum fine?**

**Marnie Allen replied yes. If you didn't want him to suspend any portion of it than you would amend the ordinance to say a minimum fine of \$200 of which no amount would be suspended.**

**Councilor Kight stated I do have some reservations about the minimum fine, especially with the cost involved.**

**Councilor Daoust stated I am okay with the \$200. I think it puts pressure on to fix the problem and I think it recoups some costs.**

**Councilor Gorsek stated I agree with Councilor Daoust.**

**Councilor Ripma stated I considered the issue of the \$200 fine but I think staff has explained it adequately and I agree with Councilor Daoust. I also think that the fact that most people do comply is a reason in favor of having the minimum fine. If most people do comply then why should an individual who doesn't comply and endangers**

the public and runs the City through the entire process not be subject to the fine? I favor the motion as it is.

Mayor Thalhoffer stated I have a little problem with it. If they finally comply but they haven't complied within the timeframe allowed, but they do comply, is the citation for not complying within the time period allowed?

Marnie Allen replied correct.

Mayor Thalhoffer stated I guess I can't argue with that.

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

**Motion Passed 7 – 0.**

**5. PUBLIC HEARING / ORDINANCE (Introduction and Adoption):** An Ordinance adopting a new chapter of the Troutdale Municipal Code, 2.70, Real Property Compensation under Chapter 197 of the Oregon Revised Statutes, and declaring an emergency.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:54pm.

Rich Faith, Community Development Director stated Measure 37 was adopted on November 2<sup>nd</sup> and takes effect on December 2, 2004. Ballot Measure 37 provides an opportunity for a landowner to file a claim if they believe that a land use regulation has restricted the use of their property and in so doing reduces the value of their property. If that is the case they can make a claim against the local government and the local government must compensate them for the reduced value or waive or modify the regulation that has affected that individuals property value. We don't know whether any Measure 37 claims will be filed with the City but in anticipation that some might be we feel it is necessary to have an ordinance in place that will outline the process that we will use to evaluate these types of claims. The ordinance before you this evening establishes a procedure that involves a notice to surrounding property owners of the subject property and a public hearing before the City Council. (Rich Faith pointed out some of the major features of the ordinance.) Section 030 – filing a claim; the two critical items that must accompany a claim in order for us to determine its validity would be a current title report demonstrating the ownership of the property and any restrictions on that property and secondly is an appraisal which would indicate what the amount of the alleged reduction of property value is and explains the rationale and factors that have led to that conclusion. Section 040 is the claim procedure which allows up to 180 days, which is the standard under Measure 37, for us to evaluate the claim and compensate or waive or modify the regulation. Once the claim has been filed and has been deemed complete, a public hearing will be scheduled before the Council within 60 days of the date the application is deemed complete. Once the hearing has been scheduled then notice of that hearing will be mailed to all property owners within 250' of the subject property. A notice of the hearing will also be posted on the property. Section 050 deals with the requirements of

the appraisal. This particular section will specify what must be contained in the appraisal report in order to determine the validity of the amount that the complainant is seeking. Section 070 deals with the authority to waive or modify the application of the regulation. This is the provision that grants the authority to the Council to waive or modify the regulation rather than pay monetary compensation. If the Council chooses this option, this clarifies that the waiver or modification issued to the claimant shall only apply to that specific property that is the subject of the claim. It also stipulates that the waiver or modification decision is personal to the claimant, meaning that if the owner sells the property the waiver or modification no longer applies to that property. The ordinance also sets the application fee at \$2,300. In addition, if the City has an independent appraisal performed to assist in evaluating the validity of the claim that is being filed, the claimant will be required to pay the City the cost we incur to have the independent appraisal done. The ordinance also stipulates that the claim application can only be filed for one piece of property. A property owner seeking Measure 37 compensation for multiple parcels that they might own would need to submit a separate application with a complete packet of information for each piece of property.

Councilor Ripma asked as I understand federal regulations are exempt?

Rich Faith replied yes.

Councilor Ripma asked the exempt regulations in your definitions in Section 2.70.020 refers to federal law, it also goes into the selling of pornography or nude dancing and so on. Are we on solid ground having that as an exempt regulation?

Marnie Allen, City Attorney stated the definitions in our ordinance are the definitions in Measure 37 itself.

Councilor Ripma asked we call for notification of all parcels within 250', isn't that our standard?

Rich Faith replied yes, that is what we do with all land use applications.

Councilor Ripma stated I have heard of cities, because of the potential severe impact on surrounding properties if someone were to be exempted in a neighborhood, going with a larger area for the notification requirement. Is that problematic in Troutdale or did you consider that?

Rich Faith replied yes we did consider that. We are aware that some cities are going beyond that distance. I have seen 300' and 500'. We are not tied to the 250', it is just consistent with the required notification that we have for land use applications.

Councilor Ripma asked could that be amended down the road?

Marnie Allen replied it could, as could other provisions.

Councilor Ripma stated in Section 2.70.050, appraisal requirements, Subsection "A" says that the appraisal must note infrastructure limitations and value without an assumption that the infrastructure will be improved at government expense. Does that mean roads? What does that mean?

Rich Faith replied infrastructure refers to more than roads. It could be water, sewer or storm water. I think what that is saying is if you develop the property you can not assume that the government is going to be the one extending those services into the site.

Councilor Ripma asked if compensation is awarded and the city is to pay compensation to a property owner for the alleged loss of value, how long is that good for? Are they subject to the regulations from then forward?

Marnie Allen replied I don't think that the measure specifies that, but I think that is the position that local governments are taking. The claim for compensation is specific and applies to the individual and the owner at the time so once you are paid you have been compensated and you can no longer bring a future claim or if you sell the property the new owner of the property does not have a right to then file a claim.

Councilor Thomas asked in Section 2 of the ordinance, the \$2,300 application fee, is that going to be enough to cover our costs?

Rich Faith replied I struggled to recall how we came upon that figure four years ago and to the best of my recollection I think that it was the middle ground of what other jurisdictions were going to charge for Measure 7 claims four years ago.

Councilor Thomas asked will you look at this fee when you update the fee schedule?

Rich Faith replied I think if we have some actual claims that we have worked on and we can track our time and cost then we would be able to better judge whether this is a good fee or not.

Mayor Thalhoffer asked is Goal 5 considered a regional, state or federal regulation?

Rich Faith replied it is a little of all of those. Goal 5 probably touches on some federal requirements. Certainly Goal 6 and 7, which pertain to hazardous areas like flood prone and landslide areas, clearly have ties to federal regulations. Goal 6, some have argued that the endangered species act and other things of that nature drive some of the requirements that we have at the state and local levels. The state, in the adoption of the statewide land use planning program and our 21 land use goals, has to take some responsibility for the subsequent regulations that we all are adopting in order to comply with the state goals. Metro has had a hand to play in Goal 5 as well and is still grappling with whether they are going to adopt a voluntary program or voluntary with some regulations. Everyone kind of has a finger in the pie and I guess I really don't know if someone were to file a claim based on some Goal 5 regulation who is really the responsible entity for that regulation in the first place.

Mayor Thalhofler asked what if parcels are contiguous but are considered different parcels, do they have to pay a separate application fee for each parcel?

Rich Faith replied I think that is justified to require a application on each parcel because there could be so many variations and differences in parcels that would affect value, particularly if you owned a piece of property that was adjacent to the Beaver Creek Canyon with a steep slope and probably has very little to no development potential because of that and you owned another piece of property next to it that was a prime piece for development. If you lump them together it muddies that issue in terms of whether there was any reduction in value in that second piece. So if your intent is to file a claim for all the properties you own, I think you need to do appraisals that look at each of those properties independently to establish what the reduction in value would be.

Mayor Thalhofler asked if you have contiguous pieces of property couldn't you just pay one application fee?

Rich Faith replied I guess you could and that is a choice the Council could make. In our opinion we felt that we should treat each of these parcels separately and that each one constitutes an application that is subject to the application fee and all the materials that go with it.

Mayor Thalhofler asked don't you think that would be punitive in nature to have them come up with an application fee for each parcel if they are contiguous even though you might require two appraisals?

Rich Faith replied that could be a compromise that they would have to do separate appraisals but submit it under one application. That is a possibility if you wish to do that.

Councilor Kight stated once we have received an application and you have deemed it complete you have sixty days in which to set up a hearing before the Council. Is it my understanding that the Council is to adjudicate that particular item? We have to make a determination as to what the compensation is, if we are going to waive or modify the regulation. Who establishes the amount of the compensation?

Rich Faith replied the appraisal is intended to tell us what the differential in the value is.

Councilor Kight asked would the property owner have to agree to the decision that the Council makes or is this the final court of appeal?

Marnie Allen replied they can file a lawsuit in Circuit Court asking the Judge to order the City to compensate them for their claim. One of the challenging parts of Measure 37 is that the language in the measure itself says that cities can adopt a procedure but the procedure can't be used to deny a claim for compensation. So a property owner can file a claim asking for compensation, Rich could send them a notice saying that the application is incomplete and under the language in Measure 37 they may or may not reply to that. They may just wait 180

days and if we have not waived the regulation, modified it or paid the claim they can proceed directly to Circuit Court and the Judge can't dismiss that claim because they failed to follow our procedure.

Councilor Kight asked who eventually pays the claim, does City County Insurance Services pay or does this come out of the general fund?

Marnie Allen replied the city will pay the claim from the general fund. As this evolves you might look at other financing options.

Councilor Kight asked are you aware of any property owner that has approached you about making a claim against the city?

Rich Faith replied no one has directly come out and said that they intend to file a claim. We have had a couple of informal inquiries after the ballot measure was adopted.

Councilor Kight asked could there be a class action suit where there are several pieces of property and the property owners go together and form a class action suit?

Marnie Allen replied I am not sure that the nature of the claims that they would be making would fit the requirements for civil procedure for bringing a class action suit.

Councilor Kyle asked have there been any claims filed anywhere in the state yet?

Rich Faith replied they can't file a claim until after December 2<sup>nd</sup>.

Councilor Kyle stated I have a concern with the appraisal. When someone files an application maybe we should take a deposit for a separate appraisal and order one also as a point of comparison.

Marnie Allen stated the ordinance gives the city discretion to request an alternative appraisal and requires the applicant to pay for it.

Councilor Daoust asked on page 6, Section 2.70.060 claim evaluation, you list four recommendations to the Council and number four says, "evaluate further with the expectation that the City will acquire the property by condemnation". Is that Measure 37 language also?

Marnie Allen replied no. That is added as an option for the City Council. For example, lets say you receive a claim and the value of paying the claim for the restriction in use is \$40,000. So you pay to have our regulation continue to apply when the value of the property itself might only be \$60,000 or \$80,000. The City may decide if we are going to compensate, we are going to condemn and own the property.

Councilor Gorsek asked in terms of the notification area of 250', if we were to increase that to 300' would there be a substantial cost increase in terms of mailing notifications?

Rich Faith replied it would be additional cost but I wouldn't call it significant. In an urban setting if we are talking about 5,000 to 7,000 square foot lots, if you go out another 50' you might take in another 15 to 20 lots that would need to be notified.

Councilor Gorsek asked are those notices mailed?

Rich Faith replied yes. The applicant is required to provide us with the mailing labels and addresses of who will be notified and we are just paying for the postage. I wouldn't say that it is a real added burden.

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

No public testimony received.

Mayor Thalhoffer closed the public hearing at 8:34pm.

**MOTION: Councilor Thomas moved to adopt the ordinance establishing a new Chapter of the Troutdale Municipal Code, 2.70, Real Property Compensation under Chapter 197 of the Oregon Revised Statutes, and declaring an emergency. Seconded by Councilor Ripma.**

**FRIENDLY AMENDMENT: Councilor Kight moved for a Friendly Amendment to change the notification area from 250' to 300'. Councilor Thomas and Councilor Ripma accepted the Friendly Amendment.**

**Councilor Ripma stated I think it is imperative that we have an ordinance and a procedure for accepting these claims that might be made. We would be foolish not to go forward with this ordinance. There is only one thing that wasn't addressed that I heard and that was the Mayor's idea of combining claims and I thought about that also but I don't believe that it is punitive to require a separate application and fee for each parcel. One reason is that every parcel would have a different ownership history that is vital to the way that these claims are made and there is usually a reason why adjacent parcels are separate lots. Each case is unique. I favor the ordinance the way it is.**

**Mayor Thalhoffer stated I would favor increasing the notification area from the 300' to 500' but I am not going to offer an amendment to that. We can try the 300' and see how it works.**

**Councilor Daoust stated this is a logical procedure that provides the consistency that we need.**

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

**Motion Passed Unanimously.**

Mayor Thalhofer called for a 10-minute break at 8:40pm and reconvened the meeting at 8:49pm.

Councilor Kight left the meeting at 8:40pm.

**6. DISCUSSION AND APPOINTMENT: A Discussion regarding fire service and appointments to the Three City Ad Hoc Fire Service Study Committee.**

John Anderson, City Administrator stated this matter coming before Council is being presented to the three City Councils, Fairview, Troutdale and Wood Village. The three mayors and three city administrators are recommending that each city appoint some representatives to an Ad Hoc Committee. The purpose of the committee would be to prepare a recommendation about whether or not the three cities should prepare for a vote in May of 2005 for possible annexation to Fire District 10. Another option is looking at the September 2005 election. At this point the other two cities have already met. Fairview appointed Mayor Weatherby and Councilor Cornelius and Wood Village appointed Mayor Fuller and Peggy Minter. Item II in Exhibit A is the draft of the Three City Ad Hoc Fire Service Study Committee Charge that was prepared by the three City Administrators to provide structure for the committee. The primary goal tonight is to review the committee charge and to appoint Troutdale's representatives.

Mayor Thalhofer stated this is a non-city committee and as I understand it I have the ability to appoint members to that committee and I would ask for confirmation from the Council of my appointment. Is that correct?

Marnie Allen stated that is correct, under the current ordinance the Mayor has the authority to make appointments to non-city committees. The Council has the authority to create a committee. If it is a City Council created committee then the Council makes and confirms the appointments. If its not established as a city committee then just the Mayor would make the appointment.

**MOTION: Councilor Ripma moved to adopt the proposed Three City Ad Hoc Fire Service Study Committee Charge and direct the committee to utilize the supporting materials in Exhibit A of the staff report. Seconded by Councilor Daoust.**

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

**Motion Passed Unanimously.**



Mayor Thalhofer stated I would like to appoint Councilor Thomas and myself to the Ad Hoc Committee with Councilor Kyle serving as the alternate. All three of us have attended many fire study meetings so that was the reasoning behind my appointments.

**MOTION: Councilor Ripma moved to confirm the Mayor's appointments. Seconded by Councilor Gorsek.**

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

**Motion passed unanimously.**

## **7. STAFF COMMUNICATIONS**

John Anderson, City Administrator stated that we are talking with a property owner in Troutdale who is seeking to donate a ¼ acre lot to the City. It is a small parcel at the intersection of Historic Columbia River Highway and Woodard, between the road and the river. The cost of the lot would be just the closing costs, which are estimated to be less than \$700. There would be no strings attached so we could use it for additional parkland.

## **8. COUNCIL CONCERNS AND INITIATIVES:**

Councilor Thomas stated as a result of the last elections I'd like to talk about the possibility of making some changes to the political sign portion of the sign Ordinance and I'd like this to go forward before the Citizens Advisory Committee.

Council discussed what elements of the sign code were unclear and whether or not it needs to be revisited.

Council agreed to allow Councilor Thomas to take the issue to the Citizens Advisory Committee.

Mayor Thalhofer stated the lighting of the Christmas Tree will be on Friday, November 26<sup>th</sup> at 5:00pm.

Councilor Gorsek read a press release that came out today for the 5<sup>th</sup> Annual Toy & Food Drive from the Troutdale Police Department and the Troutdale Police Activities League which is partnering with Sno-Cap to provide 650 families with food and toys for the Holiday season. The Toy Drive kicks off this Saturday at KB Toys at the Outlet Mall from 11:00am to 3:00pm and will be going on for the next two Saturdays. The Food Drive will be on December 3<sup>rd</sup> from 3:00pm to 7:00pm and December 4<sup>th</sup> from 1:00pm to 5:00pm at the Troutdale Thriftway. You can get a list of suggested items from the Troutdale Police Department.

**9. ADJOURNMENT:**

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

Meeting adjourned at 9:13pm.

**Paul Thalhofer, Mayor**

**Approved January 11, 2005**

**ATTEST:**

**Debbie Stickney, City Recorder**