

## MINUTES

## MILWAUKIE CITY COUNCIL WORK SESSION

JULY 21, 2009

**Mayor Ferguson** called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff Present: City Manager Mike Swanson, Code Compliance Coordinator Tim Salyers, and Police Captain Steve Bartol

**Discussion of Milwaukie Municipal Code Chapter 8.04.160 – Notices and Advertisements**

**Mr. Swanson** introduced the topic having to do with notices and advertisements. This came up when Vance Voyles, owner of Zappo's Pizza, came to him with comments regarding the distribution of door hangers. The City of Troutdale allowed it through a permit process, which Mr. Swanson had concerns with allowing people to go on private property. The City of Lake Oswego prohibits door to door solicitation with signage. He spoke with the Police Department and Code Enforcement. They were not in favor as they often collect, and it gave the appearance that someone is not home and was a security issues. The Mayor asked for this to be scheduled for Council discussion to get direction from the Council. He received some emails, which he handed out to the Council.

**Mayor Ferguson** reviewed the emails he had received which were distributed.

**Mr. Swanson** added Councilor Chaimov had suggested an ordinance and public hearing. He asked if that was direction from the City Council. He noted the City used door hangers to notify residents of City projects and those scheduled to have their water shutoff. He spoke with the City Attorney and he thinks it is covered by the ordinance. The question was about advertising and what Council wanted to do about that.

**Councilor Barnes** wanted to hear from the police department and code enforcement to hear their concerns.

**Captain Bartol** said one reason not to loosen up on the ordinance was from the crime prevention aspect and having certain precautions in place when people were on vacation or away from their homes. Home owners have no control over a door hanger, and when left on the door they are a red flag that a resident is not home. Even if not on vacation it helped identify living patterns. They already get calls about aggressive door to door sales, and he suggested the City Council hear from the citizens on their feelings on that. The police department perspective was about crime prevention.

**Mr. Salyers** said sometimes the flyers left on doors blow away and litter the neighborhood. He researched our ordinance and the verbiage was similar to Bend, Beaverton, Gresham, Happy Valley and Estacada.

**Councilor Barnes** said if we change the ordinance it would not only impact Mr. Voyles but would also open it up to everyone. There was a potential for having more than one flyer on door steps.

**Mayor Ferguson** asked Mr. Salyers if he tracked complaints about door hangers.

**Mr. Salyers** those who know the code contact him such as the Hector Campbell Neighborhood. In the last year 4 or 5 complaints came from the Hector Campbell neighborhood. He thought there were more that occur than what he gets calls about.

**Captain Bartol** added if the City opens up door hangers advertisement it could open it up to other types of groups, including racial material, due to freedom of speech.

**Councilor Loomis** asked Mr. Salyers what he did when he got a complaint about a door hanger. He said he gets them all the time.

**Mr. Salyers** replied typically the flyers have a contact number on the door hanger and he calls the business and asks them to pick them up. If 2 complaints are received from the same business then a citation is issued.

**David Hedges**, Hector Campbell NDA and PSAC Chair. Door hangers were raised at PSAC meeting in September last year. The overwhelming view was this should be done and supported the current City code. It was a crime prevention problem and was a good way for people to see if a property was unattended. Either support current code or would like to see door hangers done away with completely. They had an issue with the City door hangers as well. There were plenty of other methods to advertise their pizza business, and PSAC asked the City Council not to consider amending the code.

**Mr. Voyles**, Zappo's Pizza responded to comments. He said he could have brought people with him representing several organizations that have positive ideas about door hangers. They had no reports that their flyers have contributed to crime. They conduct distribution in a conscientious manner, and he would be surprised if there was any substantial information that showed they contributed to crime. The broad statement that allowing flyer advertisements could lead to racial material being distributed he thought was interesting and had never heard of that before. Flyering takes place in the community and is not regulated. Many residents would tell you that they receive flyers and would continue to regardless of the outcome of this meeting. Zappo's had chosen to abide by the law, and will not flyer this area. He did not believe the City had the enforcement capacity to handle this. A more realistic approach would be to work with the businesses. He commented on the treatment of small businesses. He has stores in other jurisdictions and he advertises with door hangers there. The most effective advertisement is door hangers in terms of cost effectiveness and return on investment.

**Mayor Ferguson** asked if Mr. Voyles used flyers in other jurisdictions. He wanted to know if they knew how many coupon returns he received from that.

**Mr. Voyles** said no other advertisement methods have as good of a return of investment as flyers. They have done a lot of marketing research and flyers are one reason why they have been able to grow and have been able to compete. Customers count on receiving those coupons.

**Jeff Wright**, Marketing Consultant for Quizno's and Pizano's Pizza. Flyer distribution would happen regardless and the City needs to set parameters to

control them. They work in conjunction with community groups to hand out their mailers, such as Ardenwald Elementary. Coupons are instrumental for small businesses to attract customers. In all of his experience he had not seen any issues related to crime. He did see standards set to regulate flyers with guidelines through a permit system. No solicitation signs can be posted for those that do not want the flyers. The current code is written so it had to be broken. The City needs to put in a system that allows for permits, and creates a penalty for those that don't obtain a permit.

**Councilor Chaimov** said at the time proposed he did not have a sense of the community, but he had a much better sense now that regardless of benefits to the businesses involved most did not want the hangers. He would like to see Mr. Voyles work with PSAC and come up with a proposal that secured community support, which would be appropriate to look at this point. Some time spent to refine a proposal would probably be useful to all concerned.

**Councilor Barnes** said her concern continues to be about the comments made from police, code enforcement, and PSAC. People in Milwaukie were loyal and would come out and support a business when a business comes out for the activities and those who give to the community. When she gets something on her door she generally recycles it. She did not support any code amendments. She would like City Attorney Monahan to look into concerns with freedom of speech.

**Councilor Loomis** felt that it was happening all the time and should be regulated so those who do it can do it responsibly and are allowed to do so. He wants to find a way to help small businesses. Those who abide by the laws lose and those who do not win. People can put up signs at their home that don't want the flyers. The best crime prevention is good neighborhood communication and looking out for each other. It seemed that door hangers were an integral part of Mr. Voyles staying in business. He liked the suggestion of working with PSAC; we are here for compromise.

**Mayor Ferguson** said he could understand Mr. Voyles' perspective, but he was one of the first people to call when he got a door hanger. There are a lot of people in his neighborhood and they have had their homes broken into when they have been on vacation. He didn't want to make a change to the ordinance, but he sees Mr. Voyles' perspective of that it will continue to go on. He asked Mr. Hedges if PSAC would be willing to talk with Mr. Voyles.

**Mr. Voyles** said he was fine with that.

**Mr. Swanson** said to grant a permit would be to allow people to go on private property. Code enforcement is complaint driven. They won't be spending a lot of time on enforcement if they are not part of a complaint.

**Mayor Ferguson** announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h) consultation with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

**Mayor Ferguson** adjourned the work session at 6:11 p.m.

*Pat DuVal*

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Pat DuVal, City Recorder

# WORK SESSION

# AGENDA

## WORK SESSION MILWAUKIE CITY COUNCIL JULY 21, 2009

### MILWAUKIE CITY HALL

Second Floor Conference Room  
10722 SE Main Street

A light dinner will be served.

### **WORK SESSION – 5:30 p.m.**

#### Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:30 p.m.	Discussion of Milwaukie Municipal Code Chapter 8.04.160 – Notices and Advertisements	Mike Swanson	1
2.	6:00 p.m.	Adjourn work session		
3.	6:00 p.m.	<b>Executive Session</b> The Milwaukie City Council will go into Executive Session pursuant to ORS 192.660(2)(h) for consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.		

### Information

Executive Session: All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

### Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



**TO: Mayor and City Council**  
**FROM: Mike Swanson**  
**DATE: July 13, 2009**  
**RE: MMC Section 8.04.160**

### **ACTION REQUESTED**

Mr. Voyles would like the Council to consider taking action to permit the distribution of door hangers within the City. Staff requests direction on this issue.

### **BACKGROUND**

MMC Section 8.04.160(B), MMC provides as follows: "No person, either as principal or agent, may scatter, distribute or cause to be scattered or distributed on public or private property any placards or advertisements or other similar material." MMC Section 8.04.220 sets out the fine for violation of the section is five hundred dollars. Each day the violation occurs is considered as a separate violation.

Mr. Voyles owns Zappo's Pizza. His main source of advertising is the distribution of door hangers. He contends that his coverage of the area suffers in Milwaukie because it is the only jurisdiction that prohibits door hangers.

I first met Mr. Voyles during fall 2008 when he applied for an exception to the FOG ordinance. (I granted it.) At the same time he requested that I look at a change to the above cited ordinance that would permit door hangers. He cited the Troutdale ordinance that permitted the activity after being licensed by the city. I did not see that as a solution because I do not believe that a city can allow one to enter upon another's private property. However, I am aware that the City of Lake Oswego prohibits door-to-door solicitation if one posts a sign in the window to that effect. (The Lake Oswego ordinance specifies the size of the sign and lettering.) I asked staff if this would be an appropriate way in which to solve Mr. Voyles' concern. Both Code Enforcement and the Police Department expressed security concerns with permitting the activity inasmuch as the result is materials being placed at homes and not being removed. According to Tim Salyers, "[t]his is a crime prevention tool also, because notices left on houses scream 'I'm not home!'" We do receive complaints about materials being left at homes. It has been described as a "very hot topic" for at least one NDA.

I am afraid that I have caused some frustration on Mr. Voyles' part. I committed to look further into it, and I have not seen it as a priority. Thus, he has asked Council to consider a Code change.

I certainly sympathize with Mr. Voyles as this is his main marketing tool. However, the "security" issue together with the fact that such activity has caused concerns within the community leads me to believe that the staff's recommendation is correct.