

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
SEPTEMBER 1, 2009**

CALL TO ORDER

Mayor Ferguson called the 2061st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Services Director JoAnn Herrigel, Community Development Coordinator Nicole West, Community Development and Public Works Director Kenny Asher

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Resolution Recognizing Capt Jim Colt on His Retirement

Mr. Swanson read Resolution No. 53-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Expressing Appreciation for the Years of Valuable Service to the City by Captain Jim Colt and Recognizing Him on His Retirement.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to approve Resolution 53-2009. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

B. North Clackamas Urban Watersheds Council

Ms. Herrigel and **Ms. West** reported on the removal or modification of the Kellogg Dam at Hwy 99E and the Kellogg for Coho Initiative. Ms. Herrigel briefly commented on recent endeavors to use Metropolitan Transportation Improvement Program (MTIP) funds for concept planning with the various partners. A watershed council, suggested by Kenny Asher, started meeting in January with incredible success. The group was formally recognized by the Board of County Commissioners (BCC) and is working on strategic planning and funding. The council was working on establishing itself as a 501C(3) and looking forward to hiring a part-time coordinator. The intent of this report was to bring attention to and gain support for the North Clackamas Urban Watersheds Council. She indicated the watersheds on a map.

Ms. West added these were some of the last unrepresented watersheds statewide and urged people to visit the Council website at www.ncuwc.org.

C. Wastewater Treatment Report

Mayor Ferguson reported the City Council met last week in executive session regarding wastewater negotiations and possible litigation. Several citizens had requested information on what was going on, and this was the first in a number of presentations. He and Councilor Barnes would make this presentation to the Citizens Utility Advisory Board (CUAB) at its meeting tomorrow night.

Mr. Asher reported Milwaukie was in multiple negotiations with Clackamas County Service District #1 (CCSD1) which was governed by the Board of County

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APPROVED MINUTES

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Commissioners (BCC). These talks included the wholesale contract, partnership agreement, Kellogg Treatment Plant improvements, and the Kellogg Treatment Plant study.

In 1970 the City agreed to share in the construction costs of the new treatment plant to replace the one in the north industrial district. Milwaukie agreed to pay for 40% of the new plant and for that contribution be allowed to use 40% of the capacity. In 1970 Milwaukie paid almost \$1.6 million for the use of the Plant, but it was not being used as envisioned. Milwaukie never grew to the point of using 40% of the capacity; instead it has steadily used about 25%. Today, however, the District used about 77% of the capacity because of growth. In addition to Kellogg, the District rents capacity from the TriCity Plant in Oregon City. The Kellogg Treatment Plant was at capacity with most of it being used by District customers. Expressed in today's dollars, Milwaukie had contributed about \$11.6 million over the years. In addition to paying for treatment, Milwaukie was also billed for keeping the Plant current. One question was: What did Milwaukie purchase for that contribution? Mr. Asher discussed the average monthly billing of which \$11, about one-half of the sewer bill, was for treatment. He summarized the wholesale contract negotiations that began November 2007 when the BCC changed its policy related to Milwaukie as a customer saying it needed to pay its fair share of current capital needs. He summarized the various rates that had been discussed with Water Environment Services (WES) and its capacity management program. This Council had not signed the contract to date. He noted the City had dropped its overpayment claim in April because it was getting in the way of moving forward with more substantive issues. The City offered \$13.50 for operations and maintenance and capital improvements at Kellogg and some portion of TriCity expansion. That offer was rejected. Mr. Asher summarized discussions including City representation and discussed the language contained in the recent termination letter. A July 2009 letter stated the new rate was \$25.31 per equivalent dwelling unit (EDU), and if the parties did not reach agreement by February 2010 the City would be required to find a new treatment provider in 5 years. Negotiations hurdles were: Did Milwaukie have any ownership rights? Should Milwaukie pay for capacity it did not and will not use? Should Milwaukie pay to correct the District's capacity deficit? Should the new contract provide Milwaukie with expanded rights concerning the future use of Kellogg? These were all points of disagreement between Milwaukie and the District and stood in the way of progress. The City was in the process of gathering records from the District so it could better understand what was intended when the Plant was built in the 1970's. Negotiations would continue once the documents were provided. Mayor Ferguson and Councilor Barnes would provide an update to the CUAB.

Clackamas County was vigorously pursuing a partnership agreement. Mr. Asher discussed the January 2008 Blue Ribbon Committee study and May recommendation. Issues included capacity parity, efficiencies, equity, and governance. This led to the work on the partnership agreement, and a number of questions remained. The agreement morphed into a set of bylaws which the cities were considering. He commented on Milwaukie's remaining concerns including rates and the future of the Kellogg Treatment Plant.

Mr. Asher discussed the Kellogg Treatment Plant improvements to prevent overflows. The City and WES staff had a pre-application conference to discuss permit requirements in June 2008, and almost a year later the City received a letter stating that WES was going to proceed with the project without land use review because the project had been modified. The electrical permit was denied because the land use issues were still in the way, and staff felt it needed more information before granting the permit. The City received a large set of "courtesy" drawings whereupon staff reiterated and clarified its need for information to help assess necessary permitting. WES stated the

improvements were maintenance upgrades including the aeration blowers and piping for which only an electrical permit was needed. The permit was again denied due to lack of information.

This at one time was a large project, but now it was only a piece of it. Staff needed to determine what this piece meant to the overall project. Mr. Asher agreed the Plant had maintenance issues and expressed concern about environmental impacts. The District had now decided it needed a strategic planning process for the Kellogg Treatment Plant which he felt was unrelated. All of these processes were overlaid which meant it made the process difficult for the City and its residents to track.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda as presented:

- A. City Council Regular Session Minutes of July 21, 2009; and
- B. Resolution 54-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Directing the City Manager to Sign a Contract Amendment with Tashman Johnson LLC to Provide Additional Services under the Existing Urban Renewal Feasibility Study Services Contract.

Motion passed with the following vote: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled

OTHER BUSINESS

A. Contract Amendment for David Evans & Associates for Riverfront Design

Ms. Herrigel provided the staff report requesting that the City Council adopt the resolution to extend the term of the contract to September 2010 and increase the contract amount by \$150,000. The design elements were fairly well defined, and staff had begun submitting permit applications as design work continued. To this point David Evans had been paid \$500,000, and she showed examples of what staff and the consultant had been working on to reach the 70% plan goal. So far the joint permitting application had been submitted to the Corps of Engineers and Division of State Lands (DSL). She discussed the review periods and local land use reviews. The remaining land use processes would be done soon and followed by a Design and Landmarks Committee review. Some site preparation would be done this winter with the relocation of the waterline generally between Harrison and Jefferson Streets. Along with that they hoped to build a welcome plaza to give the area a more manicured look. Staff would submit grant applications in order to begin construction of the plaza in 2011. She discussed the cost of comparable projects in the region. The estimated project cost including the bridge over Kellogg was approximately \$6 million. At this point there were no other funding sources, and there may be some matches. The North Clackamas Parks and Recreation District wants to get this project into its capital improvement plan, so funds may be available from that source.

Councilor Stone expressed her frustration that contractors continually came back asking for more money.

Ms. Herrigel responded that the contractor was not necessarily asking for more money but rather she was asking for more work. Although she worked to keep costs down, this was a very expensive process. She noted the Riverfront Board concurred with the proposed action.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution amending contract #2006-097 with David Evans & Associates for landscape design and engineering services for Milwaukie Riverfront Park. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 55-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CONTRACT #2006-097 WITH DAVID EVANS AND ASSOCIATES, INC. FOR LANDSCAPE DESIGN AND ENGINEERING SERVICES FOR MILWAUKIE RIVERFRONT PARK TO EXTEND THE TERM TO SEPTEMBER 2010 AND INCREASE THE COMPENSATION BY \$150,000, RESULTING IN A "NOT TO EXCEED" AMOUNT OF \$650,000.

B. Discussion of Parecki Issue with Regard to the Minutes of the City Council Regular Session of December 18, 2007

Mayor Ferguson stated that in June Mr. Parecki sent an email to City Council requesting that the transcript from the testimony missing from the December 18, 2007 minutes be added. He had spoken with individual Council members, and there were mixed feelings. There was no clear direction given to staff in June, and he wanted to do so at this meeting. He referred to his proposal which was his extrapolation from viewing the video: "Councilor Barnes and Mr. Parecki were discussing different funding streams with regard to the missing testimony of December 18, 2007. Councilor Barnes was referring to the assumption of the loan purchase of the Safeway property, and Mr. Parecki was referring to the \$738,000 Special Public Works Fund Loan to complete public area improvements at and in the vicinity of North Main Village. Councilor Barnes is correct in stating that Main Street Partners picked up the tab for \$650,000 which is the approximate balance due on the loan for purchase of the real property. Mr. Parecki is correct in stating that there is a Special Public Works Fund Loan taken out for \$738,000 that the City has 20 years to pay and that the City is paying it out of the general fund. The project funded with the Special Public Works Fund listed on Attachment A that described what that paid for." If the City Council voted to add this statement from December 18, 2007 this was what Mayor Ferguson proposed to add.

Councilor Chaimov did not feel it was appropriate to add this information to the minutes. Before the City Council adopted minutes he felt it was appropriate to accept almost any request for an addition or a change. Following the standard Mr. Parecki suggested from *Robert's Rules of Order* this proposal did not meet that standard. It was appropriate to add or change minutes when there was a material omission or error that rendered the minutes misleading or significantly incomplete. He understood that was something like not recording a vote or getting the vote wrong. A discussion between a constituent and a councilor talking about different things that did not involve a specific vote did not, to him, rise to the standard of the kind of change that was appropriate to add at this point.

Councilor Stone thought *Robert's Rules of Order* could be interpreted in that way. She was looking at this strictly that a citizen came forward who felt something was omitted.

Indeed it seemed like they were talking about two separate issues related to that same project. She was in favor of honoring the citizen request and adding what Mayor Ferguson proposed in terms of an explanation. All the Council was trying to do was to honor a citizen request. It would behoove the Council to put the explanation in.

Councilor Loomis had the perception that the minutes were official, but the video was the actual record.

Mayor Ferguson said he and Mr. Swanson had a meeting with Mr. Parecki. That was the direction of the conversation at the work session, but the City Council did not take a strong position. Mr. Swanson noted in the meeting that the written minutes were the official record.

Mr. Swanson brought copy of what minutes looked like after they were approved by the Council. They were bound and paginated. He contended even though there was a video this in the end was the document the Council reviewed and approved. This was the form since Milwaukie first began business and was the permanent record of every meeting in the City.

Mr. Parecki did not wish to add any comments.

Mr. Swanson explained staff would not disassemble that volume and add to the December 18, 2007 minutes. If the Council adopted something it would appear as something added in the September 1, 2009 minutes. He suggested saying this was language included that referred to testimony taken December 18, 2007. It seemed to him that had been a situation in which both people were right. He noted some of the comments had been lost on the audio tape when it was changed.

It was moved by Mayor Ferguson and seconded by Councilor Loomis to make the notation for the minutes adding the minutes he drafted in his paragraph that were included in the packet that he previously read.

Councilor Stone asked if this was just going to be put in and not the statements from Mr. Parecki and Councilor Barnes.

Mayor Ferguson said his proposal was to add the paragraph and the attachment. Adding the statements was not in his motion.

Councilor Stone asked if it appeared in there would it be clearer with Mayor Ferguson's clarification.

Mayor Ferguson replied it was the essence of the discussion rather than the verbatim discussion. The Council did not typically have verbatim discussions in its minutes, and he believed this captured what Mr. Parecki wanted added.

Mr. Swanson did not believe this added a thing to the history of this City or the processes of this Council which was perhaps the point Councilor Chaimov was making. This was a tempest in a teapot, and this was a way to get it out of the way. Its addition will not mean a thing and did not add anything substantive to what the City Council had done. Adding it did not do a lot of harm.

Councilor Barnes asked if someone came forward and wanted specific words in the minutes in the future on any meeting did that mean the City Council would move forward?

Mayor Ferguson said if the scenario were repeated where there was a break in the tape or a substantial part of a testimony was left if a citizen stepped forward the City Council would have to look at it and treat them equally no matter who the citizen was.

Motion passed 3:2 with the following vote: Councilors Stone and Loomis and Mayor Ferguson voting "aye" and Councilors Barnes and Chaimov voting "no."

C. Discussion of Parecki Issue with Regard to Public Area Requirements

Mr. Swanson said this matter, over which there had been a number of discussion, had to do with Mr. Parecki's development in the downtown and questions regarding public improvements. Initially there was a long list of improvements totaling about \$150,000 based on code language at the time. When the proportionality analysis was applied to Mr. Parecki's property the requirements were reduced to about \$12,000 to \$15,000 in public improvements. He understood after talking with Mr. Parecki that the issue was that he did not believe they were appropriate or should be assessed. He used the example of the two new restaurants at North Main Village where he believed there was an advantage because the City had taken out a loan to do the public improvements. Mr. Swanson understood Mr. Parecki did not believe his development should be responsible for those. He discussed the transportation code amendments and the staff report which stated the existing code may be unconstitutional because they were not assessed proportionally. In the case of Mr. Parecki's property a proportionality test was applied for public area requirements.

Councilor Chaimov had asked a number of questions. The first had to do with process and steps the City would have to follow if someone wanted to change a decision that was part of an established process. Ms. Mangle had responded that Mr. Parecki's project was subject only to a staff level review of design review, public area requirements, and building codes. Mr. Parecki had not appealed any of these decisions and only appealed the director's interpretation of the code. One must perfect an appeal to have a decision changed, and that had not been done. If a decision was made that followed a process then in order to change that decision a subsequent process needed to be followed. There needed to be an appeal to this body that it did not wish to apply the particular standards. One exception in this case was that North Main Village needed to follow public area requirements. The City Council in a separate decision agreed the City would help fund the public area improvements in order to generate activity in the downtown. Nothing would prevent the City Council from doing that on another development as long as it applied the public area requirements.

City Attorney Monahan added the public area requirements pertained to both applications. The City made the determination on the North Main Village project that it wanted to contribute funds, but the public area requirements were applied in both cases. Staff did an individual rough proportionality analysis, but Mr. Parecki chose not to challenge it.

Mr. Swanson summarized Councilor Chaimov's second question. Was it appropriate to treat applicants in different ways? The answer was generally 'no.' Both North Main Village and Mr. Parecki were required to follow the code in regards to public area improvements. They were treated in a similar manner. In North Main Village the City applied for a state loan in the amount of \$738,000 to help fund the construction of those required improvements. That was not done in the case of Mr. Parecki's development. The law, however, was applied in a similar manner for both developments.

Councilor Chaimov said what was leading up to those questions was what the City Council had the authority to do. He understood the City Council did not have the authority to say that the public area improvements would not be completed on the Main/Monroe building. It could through some kind of appropriate process have the taxpayers fund those improvements instead of Mr. Parecki.

Mr. Swanson added when applying the code it must be done equally.

Councilor Loomis recalled on the North Main Village project there were negotiations and not simply that the City Council wanted to do it.

Mr. Swanson explained at some point the City Council was presented with the loan agreement, and in order to get the development the City had to contribute to the public area improvements. The payback appears in the general fund budget annually.

Councilor Loomis said it was not something he wanted to do, but the developer kept coming back. At some point the City had to help pay for it or the project died. He asked if that had been corrected in the code.

Mr. Swanson replied in talking with Mr. Parecki he got the sense he did not believe the code applied.

Councilor Stone recalled there was an issue about the code being constitutional. It seemed Ms. Mangle brought that up.

Mr. Swanson replied there were two issues. The transportation code was different from the downtown. The City applied the public area requirements in a constitutional manner by imposing a proportionality test on the public area improvements in concert with the Constitution.

City Attorney Monahan added it was an appropriate time to change the language in the code that talked about public improvements based on the value of the improvement. The language of that requirement seemed counter to being applied on a case-by-case basis, so it was corrected when the new transportation code language was adopted. When the Main/Monroe application came in staff did an individual proportionality analysis and required much less than a literal interpretation of the public area requirements would have required.

Mayor Ferguson understood the public area requirements were in line with the code. It was a question of whether Mr. Parecki or the taxpayers paid for the improvements.

Mr. Swanson read from Ms. Mangle's email on the matter. No matter who pays, the improvements must be done prior to occupancy. In the case of North Main Village the City chose to subsidize. In the case of Main/Monroe the City did not. Mr. Parecki continued through the land use and building permit processes. If the City wanted to subsidize Main/Monroe now it could do so, but it would not reduce the requirements related to the building permit. There were two issues: one was what was required and the other was how it was funded.

Councilor Stone understood the reason the amount was reduced was because Mr. Parecki eliminated an elevator from the project. It changed the math on the proportionality analysis.

Mr. Swanson replied that was part of the reason.

City Attorney Monahan added it was based on actual impacts identified in the proportionality analysis.

Mr. Parecki stated the point of the discussion was that the actual exterior renovation had no impact until he had a tenant. There has been zero impact to the City or transportation to date. He spent \$500,000 on the project. He had been trying to impress upon the City Council and Planning Commission that an exterior renovation did not create any impact. The proportionality analysis should take place when there was a tenant to determine roughly what kind of impact there would be. If the new code were applied to the project right now there would not be any requirements. He had never said he would not do any public area improvements. The City spent \$738,000 to entice North Main Village, so how hard would it be for the City to do a \$15,000 improvement? There was a long list of what it could be if bulb-outs, lights, trees, extending the sidewalk a foot, and things of that nature were included.

Councilor Barnes read the list: 5 trees, 2 lights, 2 benches or trashcans, a bulb-out, and some landscaping.

Councilor Chalmov asked how Mr. Parecki would go about making a request for the citizens of Milwaukie to pay for the improvements if he wished to do so.

Mr. Swanson replied he could make the request through the City Council to change the policy. There could also be a ballot measure. The downtown standards were adopted in 2000. At that time the opinion was clear, so the code was written so the burden was on the developers. Since Mr. Parecki had not appealed, the list cannot be changed at this point. If Mr. Parecki wished to ask the City Council to consider funding those items the City Council would direct staff to find the funds and report back. The City Council cannot change what was being required, but it could budget funds. The requirements could be changed only if Mr. Parecki reapplied and went through the process.

Councilor Stone thought Mr. Parecki brought up an interesting point about not knowing the actual impacts without knowing who the tenants would be.

Mr. Swanson replied an applicant sometimes has a target business and has an idea of the range of public improvements, but not all applications have a business scheduled to occupy the vacant space.

Councilor Stone asked if there was anything specific in the code that said the public improvements were based on the tenant.

Mr. Swanson replied Milwaukie's code was based on the dollar amount.

Councilor Stone asked if the same list would be required today after the code amendment. She said Mr. Parecki was shaking his head that it would not.

City Attorney Monahan said the code was revised and was based on potential uses.

Mr. Asher explained there were two major changes to this section of the code. One was more explicit language regarding the proportionality analysis and the other was changing the trigger from permit value to impact based. In the case of this project there was a lengthy debate regarding zoning to predetermine impact. The zoning code now demanded retail rather than office, and the trip generation code determined the impacts of this project. The same thing would be done today if the project came in under the current code. He agreed the project was not complete until there was a tenant. The public area requirements will show up when the tenant improvement permit comes in. Staff considered the list the bare minimum.

Councilor Chaimov suggested that Mr. Parecki make a request to Mr. Swanson for the residents to pay for the improvements, and if he thought it was appropriate recommend where the money would come from in the budget. The City Council could make a decision based on the City Manager's recommendation.

Councilor Loomis was not in favor of paying for it. If the code was changed, and he did not have to do those improvements he might look at it. Now the City would have to do it for everyone. He recognized the code was hindering development. He applauded Mr. Parecki for his work downtown. He was in favor of a credit on some future development and asked for information on what the impact of that would be.

Councilor Chaimov suggested if that would be of value to Mr. Parecki then perhaps a recommendation that could be applied universally could be forwarded to the City Council. If he had been on Council during the North Main Village discussion there would probably have been no subsidy for the public area improvements. He was disinclined to spend taxpayers' dollars on other public improvements. It was fair that Mr. Parecki be allowed to state his case that taxpayers should pay for improvements now or through a credit.

Mr. Asher discussed the urban renewal feasibility study and funding for public area improvements.

Councilor Barnes suggested waiting for the urban renewal information. She understood the tenants would be paying for the improvements and not Mr. Parecki.

Mayor Ferguson asked that Mr. Parecki send his letter to Mr. Swanson with a follow-up at a future meeting.

Councilor Stone noted earlier in the meeting the Council spent \$150,000 of taxpayer money.

D. Council Reports

Councilor Chaimov had a discussion with Dick Jones regarding movement toward incorporation of the City of Oak Grove and watched the Elk Rock Island controlled burn.

Mayor Ferguson provided a number of announcements for upcoming City events.

ADJOURNMENT

It was moved by **Councilor Chaimov** and seconded by **Mayor Ferguson** to adjourn the meeting. Motion passed with the following vote: **Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson** voting "aye." [5:0]

Mayor Ferguson adjourned the regular session at 8:47 p.m.

Pat DuVal

Pat DuVal, Recorder

Councilor Barnes and Mr. Parecki were discussing different funding streams with regard to the missing testimony of December 18, 2007. Councilor Barnes was referring to the assumption of the loan to purchase the "Safeway property," and Mr. Parecki was referring to the \$738,000 Special Public Works Fund loan to complete public area improvements at and in the vicinity of North Main Village. Councilor Barnes is correct in stating that Main Street Partners "picked up the tab for \$650,000," which is the approximate balance due on the loan for purchase of the real property. Mr. Parecki is correct in stating that there is "a special public works fund loan taken out for \$738,000 that the City has 20 years to pay and that the City is paying it out of the general fund." The projects funded with the special public works fund loan are listed on Attachment A.

ATTACHMENT A

EXHIBIT B PROJECT DESCRIPTION

Recipient shall design and construct street, sidewalk, and utility improvements and related Project elements on Main Street from the north boundary of the former Safeway site to Jackson Street and on the north side of Harrison Street from Main Street to the 21st Avenue extension, including the following:

1. 13-foot wide scored concrete sidewalks and 12-inch curb on Main Street block faces, and 10-foot-wide, scored-concrete sidewalks and 12-inch curb on Harrison Street block face;
2. Utility (power and telephone) undergrounding on Main Street block faces (trenching and backfill);
3. Landscaped curb extensions at Harrison and Main Street, and at the new 21st Avenue extension and Harrison Street intersection;
4. 17-foot to 19-foot deep angled parking on a portion of Main Street block faces, 8-foot wide parallel parking spaces on a portion of Harrison Street block face, and dark gray scored parking zone on Main Street and Harrison Street;
5. Five-foot-wide bike lane on Harrison Street block face;
6. Traffic calming device such as roundabout, teardrops, or refuge at intersection at 21st Avenue and Harrison Street;
7. Canopy trees with radial tree grates on Main and Harrison Street block faces;
8. Street furnishings including Victorian-style benches made of wood with cast-iron frames, black "Hitchin' Post" bike racks, and black ornamental bollards (posts) at certain intersections;
9. Black twin ornamental streetlights on Main Street block faces, and black single ornamental streetlights on Harrison Street block face; and
10. Dark gray scored concrete crosswalks on Main Street and asphalt, or, tinted and/or scored concrete intersection on Main and Harrison Streets.

Recipient shall also remove and dispose of asphalt, curb, and concrete debris.

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL SEPTEMBER 1, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2061ST MEETING

REGULAR SESSION – 7:00 p.m.

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| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Resolution Recognizing Capt. Jim Colt on His Retirement | 2 |
| B. North Clackamas Urban Watersheds Council (JoAnn Herrigel & Nicole West) | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 3 |
| A. Minutes of the July 21, 2009 Regular Session | 4 |
| B. Urban Renewal Feasibility Study Contract Amendment – Resolution | 6 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |
| 5. PUBLIC HEARING <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i> | |
| A. None scheduled | |

6. OTHER BUSINESS *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **12**

- A. Contract Amendment for David Evans & Associates for Riverfront Design – Resolution** **13**
- B. Discussion of Parecki Issue with Regard to the Minutes of the City Council Regular Session of December 18, 2007 (Mayor Ferguson)**
- C. Discussion of Parecki Issue with Regard to Public Area Requirements (Mayor Ferguson)**
- D. Council Reports**

7. INFORMATION

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660.
- 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.
- 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.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS

RESOLUTION NO. 53-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON EXPRESSING APPRECIATION FOR THE YEARS OF VALUABLE SERVICE TO THE CITY BY CAPTAIN JIM COLT AND RECOGNIZING HIM ON HIS RETIREMENT

WHEREAS, following a distinguished career in the United States Air Force; and

WHEREAS, Captain Colt began his career with the Milwaukie Police Department in 1981 after having served five years in the United States Air Force; and

WHEREAS, Captain Colt first served within the Department in patrol for nine years (seven as a canine officer), followed by service as a detective, sergeant, and detective sergeant; and

WHEREAS, Captain Colt has also served within the Department as a firearms instructor and armorer; and

WHEREAS, Captain Colt completed the FBI National Academy in 1999; and

WHEREAS, Captain Colt was promoted to Captain in 2002; and

WHEREAS, Captain Colt's career with the Milwaukie Police Department is an example of the best that law enforcement professionals provide when serving a community and its citizens; and

WHEREAS, Captain Colt is retiring from the Milwaukie Police Department on August 31, 2009.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon that the Mayor and City Council express the deepest appreciation on their behalf and on behalf of the City's residents, businesses, and City staff for a job well done.

BE IT FURTHER RESOLVED that the Mayor and Council, City residents and businesses, and City staff wish Jim well in his future endeavors.

Introduced and adopted by the City Council on September 1, 2009.

Jeremy Ferguson, Mayor

Deborah Barnes, Councilor

Greg Chaimov, Councilor

Joe Loomis, Councilor

Susan Stone, Councilor

ATTEST:

Mike Swanson, City Manager

Pat DuVal, City Recorder

3.

CONSENT AGENDA

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 21, 2009**

CALL TO ORDER

Mayor Ferguson called the 2058th meeting of the Milwaukie City Council to order at 7:06 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone (arrived 7:18 p.m.).

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Code Compliance Assistant Sarah Lander

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mr. Swanson discussed downtown development and the significance of places such as the historic Main Street Soda Fountain.

Mayor Ferguson read a proclamation naming July 2009 as *National Ice Cream Month* after which representatives of the Soda Fountain handed out ice cream cones to the audience, Council, and staff.

CONSENT AGENDA

Councilor Chaimov asked for a brief explanation of the blanket purchase order resolution.

Mr. Swanson replied those were payments over the fiscal year that exceeded his expenditure authority and required City Council approval. Rather than coming to the City Council with each purchase order individually at the beginning of the fiscal year, those vendors were combined in a single resolution for Council consideration. Examples of vendors included PGE, Northwest Natural, Liberty Northwest, and the city attorney's office.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt consent agenda as presented:

- A. City Council Work Session Minutes of June 16, 2009;**
- B. Resolution 47-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Susanna Pail to the Public Safety Advisory Committee as the Lake Road Neighborhood District Association Representative;**
- C. Resolution 48-2009: A Resolution of the City Council of the City of Milwaukie, Acting as the Local Contract Review Board, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2009-2010; and**
- D. Resolution 49-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Determining the August 4, 2009 Work Session is Cancelled and the Regular Council Session Will Be Called to Order at 7:30 p.m. in the City Hall Council Chambers in Order that the Mayor and Councilors May Attend Neighborhood National Night Out Events in the Community.**

Motion passed with the following vote: Councilors Chaimov, Loomis, and Barnes and Mayor Ferguson voting “aye.” [4:0]

AUDIENCE PARTICIPATION

Richard Cayo, Milwaukie, read a letter into the record regarding three issues. First was the invasive ivy growing on the trees adjacent to his property, the safety of bicyclists crossing Johnson Creek Boulevard at 45th, and overgrown blackberries and brush at approximately 5300 SE Johnson Creek Boulevard.

Mayor Ferguson said he would have staff prepare a response to his letter as soon as possible.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson discussed the background of this proposed continuation.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing on amendments to Milwaukie Municipal Code Section 19.321.7 and 19.321.3 to August 18, 2009. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]

OTHER BUSINESS

Council Goal Setting

The Council announced its goal setting session for August 5, 2 p.m. at the Pond House.

Council Reports

Councilor Chaimov participated in the inaugural run of the Green Line and the Visionaries Voyage on the bike system.

Councilor Loomis reported the North Clackamas Parks and Recreation District hosted the Western National 12 Under Fastpitch Tournament with 58 teams.

Mayor Ferguson also attended the opening of the MAX Green Line.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson adjourned the regular session at 7:35 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

**Through: Mike Swanson, City Manager &
Kenneth Asher, Community Development & Public Works Director**

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Urban Renewal Feasibility Study Contract Amendment

Date: August 19, 2009 for September 1 Regular Session

Action Requested

Approve amendment to urban renewal feasibility study contract with Tashman Johnson LLC, increasing the “not to exceed” amount from \$30,000 to \$35,000 to allow for examination of impact of City standards on development feasibility.

History of Prior Actions and Discussions

April 2009: Tashman Johnson team briefed City Council on background issues related to urban renewal and feasibility study approach. Council directed staff to bring findings back to City Council before proceeding with public outreach efforts.

February 2009: Council approved original Tashman Johnson contract to examine feasibility of urban renewal.

October 2008: Council directed staff to move forward and develop an urban renewal work plan, including contracting outside technical expertise.

June 2008: Council directed staff to look into urban renewal to support critical public infrastructure investments in downtown.

December 2007: Council directed staff to consider steps to re-balance the relative financial burden of downtown PAR/streetscape improvements.

Background

Under direction from Council, staff has been working with a consultant team on a study of the feasibility of urban renewal and the potential of Tax Increment Financing to stimulate additional investment in Downtown Milwaukie.

Tashman Johnson was selected to perform a feasibility study, focused on two primary tasks:

1. Estimating and projecting the TIF-generation capacity of urban renewal focused on/around downtown Milwaukie; and
2. Reviewing planned City projects to help prioritize projects in terms of their capacity to stimulate new private investment.

To date, the Tashman Johnson team has completed the following tasks from the original scope of work:

1. Reviewed the staff-provided list of potential redevelopment sites, supplemented that list, interviewed available property owners, and developed likely redevelopment scenarios for these sites.
2. Developed a methodology for forecasting TIF revenues.
3. Projected TIF revenues for a possible urban renewal district.
4. Recommended a possible boundary, focusing the district on those areas most immediately and directly impacted by the urban renewal investments under consideration (i.e., the core of downtown, immediately surrounding neighborhoods, the Murphy/McFarland opportunity sites, and the commercial area immediately north of 224 between the Murphy and McFarland sites.

As background for reviewing project priorities, staff feels it is important to clarify to what extent key City standards, such as off-street parking requirements and Public Area Requirements, currently restrict opportunities for development or redevelopment in the downtown. This is crucial to determining how much of the PAR costs must be shouldered by urban renewal.

To answer these questions, City staff, in consultation with Tashman Johnson and their sub-consultant (SERA Architects), developed an additional scope of work, provided as amendment to the existing contract as an Exhibit to the attached Resolution. The evaluation will be carried out by developing possible development scenarios for four typical lots in the downtown and carrying out pro forma-level financial feasibility analysis of the proposed developments. The analysis will evaluate financial feasibility of the projects under existing development standards and under proposed changes.

In addition to providing background for urban renewal work, this exercise will assist with several on-going Planning Department projects. In particular, it will provide another perspective on the downtown aspects of the code audit and planned parking standard revisions as described in the 2007 TSP update.

This work was not within the original scope of the contract—though it is very closely related and relies on the same expertise sought in the original contract solicitation—and, therefore, requires an amendment to the contract. Tashman Johnson provided an estimate of \$5,000 for the additional work.

Concurrence

The Planning Director helped develop the scope of work for the additional services.

Fiscal Impact

Adequate funds for additional work are available under the General Fund “economic development” line item.

Work Load Impacts

Community Development and Planning staff will support this work within existing work plans. Findings of this additional task will be very useful to Planning staff in multiple areas.

Alternatives

Direct staff to forego this element of work.

Attachments

1. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING THE CITY MANAGER TO SIGN A CONTRACT AMENDMENT WITH TASHMAN JOHNSON LLC TO PROVIDE ADDITIONAL SERVICES UNDER THE EXISTING URBAN RENEWAL FEASIBILITY STUDY SERVICES CONTRACT.

WHEREAS, City of Milwaukie is interested in exploring the possibility of urban renewal to support projects defined in the Milwaukie Downtown and Riverfront Plan and additional supporting efforts, such as re-balancing the costs of downtown Public Area Requirements between the public and private developers; and

WHEREAS, The City issued a Request for Proposals for urban renewal feasibility study services and determined that TASHMAN JOHNSON LLC offered the best proposal to perform those services; and

WHEREAS, In consultation with the consultant team, City staff has determined that the City would be well-served by an additional element of work analyzing the financial significance of existing downtown development standards.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is directed to sign an amendment to the professional services contract with TASHMAN JOHNSON to provide urban renewal feasibility study services increasing the amount not-to-exceed by \$5,000, from \$30,000 to \$35,000, as shown in Exhibit A.

Introduced and adopted by the City Council on September 1, 2009.

This resolution is effective on September 2, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Addendum to Personal Services Contract between
City of Milwaukie
and
Tashman Johnson LLC
For
Contract #2009010
For Urban Renewal Feasibility Studies

This agreement hereby amends the above titled contract between the City of Milwaukie and **Tashman Johnson LLC**, the original compensation amount of which was up to **Thirty Thousand dollars (\$30,000)** for performance of services.

This amendment is as follows:

To change compensation amount by adding \$5,000.00, making contract amount of up to **Thirty-Five Thousand dollars (\$35,000)**.

To change scope of work to include Attachment A.

Except for the above, all other conditions remain in full force and effect.

In Witness to the above, the following duly authorized representatives of the parties referenced have executed this agreement:

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

EXHIBIT A

Attachment A

Key elements of additional work will be:

1. Examine four specific and representative types of redevelopment projects in terms of:
 - Site design, surface parking and access using the existing downtown parking standards
 - Building size using current zoning requirements
 - PAR costs
 - Pro forma financial feasibility
 - Each of the four would be examined for development under (1) existing parking requirements, and with no PAR subsidy and (2) under the parking requirements proposed in the 2007 TSP (1 space per residential unit and no other required parking), and assuming a 90% City match of PAR costs from urban renewal.
2. The four sites to be examined above are:
 - 10,000 square foot site within DS zone on Main Street
 - 20,000 square foot site within DR zone
 - 20,000 square foot site within the DO zone
 - Major renovation of 10818 SE Main
3. City Planning Staff will provide relevant development standards for each site
4. Initial findings shall be presented in a workshop format
5. Final findings shall be presented in a memo, including recommendations reflecting workshop discussions

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Contract Amendment for Riverfront Design and Permitting Services

Date: August 12, 2009

Action Requested

Adopt a resolution amending a contract with David Evans and Associates to extend the term to September 2010 and increase the compensation by an additional \$150,000, for use in the Riverfront design and permitting.

History of Prior Actions and Discussions

September 2006: Council approved a resolution awarding a contract to David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park, authorizing the City Manager to sign a Personal Services contract for these services and appropriating a \$100,000 payment from the North Clackamas Parks and Recreation District.

August 2007: Council amended a contract with David Evans and Associates to extend the term to September 2008, increasing the compensation to \$300,000, adding two additional tasks and appropriating \$100,000 in the Fiscal year 07-08 budget for use in the Riverfront design and permitting.

August 2008: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2009 and increase the compensation by an additional \$200,000 for use in the Riverfront design and permitting.

Background

In 2006, the Riverfront Board delivered to City Council a concept plan for Milwaukie Riverfront Park. City Council endorsed this concept and requested that staff move forward with a design of the Park. In October of 2006, the City contracted with David

Evans and Associates (DEA) for development of design and engineering plans for Milwaukie Riverfront Park.

Current activities related to the Milwaukie Riverfront Park Design can be separated into three main areas: 1) Design 2) Land use approvals/permitting, and 3) Site Preparation. As with any large project, all activities are taking place concurrently with significant overlap and interaction between tasks.

Design

DEA has completed 70% designs for the Park. Further detail of the design is pending input from local, state and federal permit reviewers. Once permit conditions have been established the final design can be completed.

Land Use Approvals/Permitting

The land use approvals and permitting of Milwaukie Riverfront Park is complicated due to the fact that it is bordered by water on three sides. Ironically, the most attractive aspect of the park makes it cumbersome to design and permit. The majority of the proposed park enhancements fall within geographic areas that are regulated by either local land use code or state and federal laws. Any proposed site modifications or enhancements that fall under any of these codes or laws, therefore, must be approved before enhancements take place.

The original scope of work with David Evans for Milwaukie Riverfront Park design included developing final design and construction plans for the park. In 2007, staff and the design team determined that it was necessary to begin submitting permitting applications to various regulatory agencies in order to determine whether certain aspects of the plan were "approvable" before completing the final design. Thus, the project team put some elements of the final design "on hold" and began working on local land use and state and federal permit application preparation.

Three of the required seven land use applications have been submitted and approved. Land use approvals for this project include:

Completed:

- Request for an Amendment to the Milwaukie Comprehensive Plan Map from town Center to Public
- Request for an Amendment to the City of Milwaukie zoning map
- Request to De-List an Unrankable Historic Resource from Milwaukie Inventory of Historic Resources

The following land use applications have now been submitted to the Planning Department and are expected to be considered by Planning Commission in October:

- Willamette Greenway
- Water Quality Resource Zone
- Downtown Design Review
- Transportation Plan Review

In September 2009, the Design and Landmarks Commission (DLC) will review the park design and make recommendations to Planning Commission. The DLC recommendations will be forwarded to the Planning Commission for inclusion in their October review process.

This project also requires the submittal of a Joint Permit Application (JPA). This application is submitted to the US Army Corps of Engineers and the Oregon Division of State Lands. The City, with DEA's assistance, submitted this JPA in January 2008. In April 2009, the Department of State Lands notified the City of their approval of our Removal/Fill permit. The Corps of Engineers, after review of our submittals, has forwarded our information to other reviewing federal agencies and it is expected that notification of approval may be received in the summer of 2010.

Site Preparation

While awaiting design approvals, the City would like to begin doing some site preparation. For the most part, work on the Riverfront is not allowed before permits are complete. However, some actions may take place before those approvals are obtained. One such project is the relocation of a City water line that runs south from Johnson Creek along the upper ridge of the Riverfront. City staff hopes to begin construction of that project before the winter of 2009.

David Evans and Associates has been very responsive to the City's needs on this project and has modified their scope to accommodate not only our long term needs, but our short term needs, such as helping with grant submittal material and various unexpected land use and permitting requests on very short notice. However, due to the nature of this project and the regulatory requirements it faces, the permitting process has been, and will continue to be, time-consuming, and, as a result, expensive. In order to complete the required permitting and finish the Riverfront Park design, staff recommends that we extend the contract with DEA until September 2010 and increase the contract amount by an additional \$150,000 to cover continued permitting and design costs.

As is often the case with large public projects, there are many tasks related to the Riverfront Park development that are happening simultaneously. Unfortunately, none of them are very “real” from the public’s perspective. When asked what is happening on the Riverfront Project, staff is hard-pressed to come up with a concise answer that leaves the inquirer with a sense of true accomplishment on the Park’s behalf. As previously noted, the location of the Riverfront Park is what makes it beautiful, but it is also what complicates its design, permitting and construction.

Concurrence

The City Manager and the Community Development/Public Works Director support extension of the DEA contract.

Fiscal Impact

Adequate funding has been allocated in the FY 2010 budget to support this contract extension.

Work Load Impacts

None.

Alternatives

Deny adoption of this resolution, ceasing work by DEA on the Riverfront Design.

Attachments

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, amending contract # 2006 097 with David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park to extend the term to September 2010 and increase the compensation by \$150,000, resulting in a “not to exceed” amount of \$650,000.

WHEREAS, the City Council awarded a contract # 2006 097 to David Evans and Associates Inc. (DEA) in October, 2006 for design of Milwaukie Riverfront Park; and

WHEREAS, the design elements for the park have now been established and design is at 60% completion; and

WHEREAS, the City has requested that DEA complete land use and permitting applications for local, state and federal regulatory agencies on this project before completing the final design; and

WHEREAS, the permitting issues for this project have been complicated due to the site’s proximity to the Willamette River and Johnson and Kellogg Creeks; and

WHEREAS, in order to complete these additional tasks, the current agreement must be amended regarding term and compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT: contract # 2006 097 with David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park shall be amended to extending the term to September 2010 and increase the maximum compensation to \$650,000.

Introduced and adopted by the City Council on September 1, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney