

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
MAY 15, 2012

Council President Chaimov called the work session to order at 5:08 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller. Mayor Ferguson arrived at approximately 5:30 p.m.

Staff Present: City Manager Bill Monahan, Assistant Finance Director Rina Byrne, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Public Affairs Coordinator Grady Wheeler, Finance Director Casey Camors, Accountant Judy Serio, Code Compliance Coordinator Tim Salyers, and City Attorney Tim Ramis

City Manager's Report

Mr. Monahan reviewed the evening's agenda and future agendas that included a report from the rate consultant. He discussed the upcoming Clackamas Cities Association Monthly meeting hosted by Milwaukie on May 17. The TriMet agreement was pulled from the agenda to allow for further refinement and a discussion with the Budget Committee. He recommended scheduling a special session May 29 at 7 p.m. to consider the payment agreement.

Mr. Monahan announced staff would conduct a travel survey of those attending municipal court on May 30 to gather data related to the proposed court relocation project.

Councilor Hedges discussed the feasibility of an interim wastewater rate while future rates were being determined. **Mr. Monahan** said he would have Ms. Camors run the numbers and understood it was best to do the rate analysis sooner than later.

Community Development and Planning Active Projects

Mr. Asher reported on the South Downtown implementation and design team's scoping of the Adams Street Connector and its role in the South Downtown Project. The City had \$450,000 in Metro funding for the project, and staff hoped to pair it with the light rail project. Staff was presenting the Kellogg for Coho Initiative to the parties responsible for releasing contaminants into the Portland Harbor, and he felt progress was being made. Cost estimates and preliminary pro forma were being prepared on the station building as conceptualized during the light rail design process.

Ms. Mangle reported on the permits currently being reviewed by the Planning Department including an application from Blount for a parking lot expansion into a Natural Resource Area. The Tacoma Station Area Plan was underway, and staff was drafting the public involvement plan that included a Stakeholder Advisory Group (SAG). She updated the City Council on the work staff was doing with Metro on its population and employment forecast.

Public Area Requirements Grant Program

Mr. Asher discussed the background of this request and previous City Council actions. Dark Horse Comics had asked what would be required to be eligible for the funds

City Council Work Session – May 15, 2012

Minutes

Page 1

remaining in the grant program. He referred to earlier resolutions and how those might apply. He would recommend extending the program for another year.

Councilor Miller did not have a problem with extending the program but felt there should be some trigger, such as the date the permits were pulled, as to when the funds were awarded.

Neil Hankerson, Dark Horse Comics, said the project was moving forward now that it was determined an elevator was not required. Knowing the availability of the grant funds would help in budgeting. He anticipated having architectural drawings by the end of the week.

It was agreed to let the current program run out and put steps in place to modify the program at a June meeting to be effective July 1, 2012 with the remaining amount.

Business Registration Fee on Duplexes

Ms. Byrne discussed code language and duplex owners' paying for a business license. She understood the intent was to exempt a two-unit arrangement. Utility records were reviewed, and staff estimated the cost would be about \$15,000.

Councilor Miller discussed business registration fees based on income.

Councilor Chaimov noted a number of people were reluctant to show their receipts for reduced business registration fees.

The group discussed property rentals and multi-family complexes.

Mayor Ferguson was inclined to exclude the first unit. Two units or more seemed more like a business opportunity.

Councilor Hedges observed it was not fair that larger complexes paid less because they were on one site.

Councilor Chaimov suggested making the first rental free of unit free and after that counted as a business. He felt there should be a means for a more proportional impact.

Mr. Monahan understood staff was being empowered to take immediate action to correct the current fee structure and doing some forgiveness. After that staff would make a recommendation having to do with the units of business which may impact some adversely.

Wastewater Action if Terms Approved

The group discussed establishing an interim measure to prevent dipping into the reserves to pay treatment fees, and Councilors agreed to consider options. Mr. Monahan would put this on a future Council agenda and perhaps include the interim rate with the budget adoption on June 5.

Clackamas County Commissioner Paul Savas and County Counsel Chris Storey were present; however, the City Council had no questions for them.

Respectfully submitted,



Pat DuVal, Recorder



MILWAUKIE

Dogwood City of the West



Memorandum

To: City Council

From: Kenny Asher, Community Development/Public Works Director
Katie Mangle, Planning Director

CC: Bill Monahan, City Manager
JoAnn Herrigel, Community Services Director

Date: May 15, 2012

Re: CD & Planning Active Projects: City Council Update

Community Development

- Dark Horse Relocation/Real Estate Study
- ODOT Yard/Minor League Baseball
- Light Rail Project Management
- **South Downtown Implementation**
- **Light Rail Station Building**
- Kellogg for Coho Initiative

Planning

- Neighborhood Main Streets
- Residential Development Standards
- Annexations
- **Land Use and Development Review**
- Downtown Facade Improvement Program
- **Tacoma Station Area Planning**
- Zoning Code Enforcement
- Parks Plans
- Transportation System Plan
- **Metro 2035 Population and Employment Forecast**

Community Development

South Downtown Implementation

A design team is scoping the Adams Street Connector project for cost and design parameters. With this information, staff will meet with TriMet and Metro to see if the project can be funded and built next summer (as a light rail project betterment). A follow up meeting will be held with the Farmers Market and other community members on the design possibilities for the connector.

Kellogg for Coho Initiative

Staff is presenting the KFCl tomorrow to the parties responsible for releasing contaminants into the Portland Harbor. Some of these parties may be interested in funding the project. Staff is also pursuing conservation banking opportunities for project funding. Immediate next steps include resolving the funding issues with the MTIP award, additional sediment analysis, and final determination on fish passage requirements.

Light Rail Station Building

Cost estimates and preliminary a pro forma is being prepared on the station building as conceptualized during the light rail design process. This material will indicate how much of a funding gap is likely facing an interested developer. A prospectus is being prepared that will market the station building in the context of the multiple improvements that are happening in downtown Milwaukie.

Planning

Land Use and Development Review

The Planning department is currently reviewing and processing the following permits in addition to those related to the light rail project:

- Blount International parking lot expansion into a Natural Resources area – Type III
- Variance for a home addition on 39th Ave – Type II
- Restoration and development projects in North Clackamas Park – Type III
- Downtown storefront improvement project Design Review – Type I

Tacoma Station Area Plan

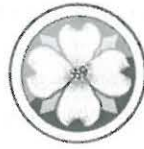
Staff is currently drafting the Public Involvement Plan for the Tacoma Station Area Plan project. One of the committees will be the Stakeholder Advisory Group (SAG). The SAG will consist of 8 to 14 members who have interest in the Project and Project Study Area including potentially affected citizen groups. At major milestones they will be asked to review the technical work and seek consensus-based recommendations that balance the various community interests and accomplish the objectives of this planning project. The City will seek out representation from the following before opening the SAG membership up to the community at large:

- North Clackamas Chamber of Commerce
- Affected property owners (hopefully, at least 5)
- Ardenwald and SMILE neighborhoods
- Planning Commission
- Baseball Task Force members

It is expected that the group will meet three times over the course of the project, in July, September, and December.

Metro 2035 Population and Employment Forecast

Planning staff have participated in Metro's Growth Distribution (Population and Employment forecast) project. Metro is required by state law to coordinate population forecasts for planning purposes so that forecasts used by local governments match regional forecast. Metro regularly updates these forecasts upon completion of major growth management actions. The last update was in 2005. Compared to previous updates, this process has involved more extensive review of data inputs and will seek action from MPAC and Council of the final TAZ distribution of population and employment. The process is estimating how much zoned capacity exists and forecasting how that might be utilized between now and 2025. The forecast for Milwaukie's housing and employment forecast will inform transportation and growth management modeling that will be used in local and regional long range planning.



MILWAUKIE
Dogwood City of the West

EXHIBIT

5/15/12 WS

Memorandum

To: City Manager Bill Monahan

From: Public Affairs Coordinator Grady Wheeler
Finance Director Casey Camors

Date: May 15, 2012

Re: Proposed Wastewater Agreement Questions & Staff Responses

Here is a series of questions posed by several citizens regarding the Proposed Wastewater Agreement and City staff's responses to those questions.

1. A copy of the actual agreement.

A copy of the term sheet was provided to the citizen requesting a copy.

2. Total number of accounts in Milwaukie broken out by residential and business and the total amounts paid by each category currently, and estimated under the new agreement.

In April 2012 the City billed 398 commercial business accounts and 6,294 residential accounts.

Amounts billed for wastewater consisted of \$111,128 for commercial accounts and \$290,135 in residential accounts for April of 2012.

Rates to be used to estimate amounts that would be billed to each category, commercial business and residential, have not yet been determined. Upon completion of the expert rate analysis, estimated rate differences will be available.

3. Any staff report or analysis showing the impacts of the new rate v the old rate on classes of customers, eg, residential v business, how many bills, or percentage of bills paying a higher rate based on flat rate costs v. winter rate average costs. For example I have had a historical winter average of 3 units and have 2 units for this winter. How many other ratepayers in Milwaukie are in my situation, eg, likely to pay substantially more, by numbers and percentages.

In the coming months the City will utilize the services of a rate analyst to determine what the impacts of accepting this rate will be on individual accounts. The rate analyst will be able to present a variety of methodologies that balance the impact of the change in rates. The analyst will also help the City revise the way it assesses wastewater charges focusing on more equitable options that are more in-line with how the County assesses its wastewater treatment charge.

4. Will the rates go up for businesses to the same degree as residents, or will they go down for that category of customer?

The rate analysis will determine these answers.

5. Have any of these issues been presented and discussed at the budget committee hearings, and if not will they? Feel free to send this email along to the current members.

Impacts of the CCSD #1 wastewater agreement have been discussed in general terms in a pair of study sessions with the Budget Committee. The understanding is that the City will likely need to prepare a supplemental budget to account for estimated increases to wastewater treatment and revenue, likely during fiscal year 2013.

6. Was any analysis conducted as to the counterproductive effects of flat rates working against water conservation issues? This, is, of course, a major policy concern in Oregon - why else would so much public money go into water-saving toilets, shower heads, etc.

Some of the methodologies the rate analyst is expected to offer will address water conservation issues.

7. Any other information that would help me understand what impact this agreement will actually have on Milwaukie residents, now and in the future.

The Citizen Utility Advisory Board will review the rate analyst's work and proposed options. The CUAB will be invited to meet with Council as it reviews the rate consultant's work - expected to take place in late July or August.

8. Any information that documents that what is being agreed to at this point is anything other than what the County was offering a couple of years ago. In other words did the long, quiet, not in the news, negotiation deliver Milwaukie residents any benefit at all, or did we end up with exactly what was put on the table by the county the last time?

This agreement contains provisions that ensure future improvements to the Kellogg Plant and a funding source to provide those improvements. CCSD#1 will contribute \$1 million as "seed" funding for a Good Neighbor Fund and will pay for an odor control study every 18 months, and if findings establish further improvements could be made, CCSD#1 will pay for them. CCSD#1 will also establish a fund and deposit monthly the equivalent of \$1 per EDU of the City's connections to be used for the purpose of mitigating the impact or improving the neighborhood relationship of the Kellogg Plant, which may include, for example, buffer acquisitions and/or landscaping within 200 yards of the plant property line, or neighborhood infrastructure projects.

9. Why is this agreement now being rushed through?

The agreement is being finalized after negotiations took place, beginning in February. The current contract expires, as well as the present rate, on June 30th and with this agreement in place future rate setting within Milwaukie can be determined.

10. The efforts undertaken to gain perspective from others (CUAB, etc.).

The CUAB met with the Mayor and Commissioner Paul Savas on several occasions to update the citizen members on the state of negotiations. Commissioner Savas and the Water Environment Services Finance Director also held a joint meeting with the City Council and the CUAB to explain the rate methodology.

11. What would Milwaukie be billed compared to other CCSD1 customers?

This comparison can't be made at this time because the City needs to determine how it will pass through the new treatment rate and how it might revise its rate-setting methodology.

However, the treatment cost will be equal for all CCSD1 customers. CCSD1 handles billing, maintenance, and other collection services throughout the District. The District is larger than the City in number of customers as well as area. Milwaukie rate payers will pay for line maintenance only within City limits.

12. What are potential yearly increases and is there a cap, either percentage or dollar?

The contract refers to the methodology report prepared by Donovan & Associates and states that for years 2-25 the City will pay CCSD #1's rate based on the methodology report that is issued annually. There is no minimum or maximum rate in the agreement except that Milwaukie will not be charged more than a member of the District would be charged.

13. How do these increases relate to all other utility increases being proposed to occur in the foreseeable future?

The rate increases currently proposed in this year's budget remain. This year, increased costs incurred by accepting this new CCSD1 wastewater treatment rate will be absorbed by the Wastewater Fund reserve until a new rate is formulated by the rate analyst, staff, and the Citizens Utility Advisory Board.

WORK SESSION

**MILWAUKIE CITY COUNCIL
WORK SESSION**

MAY 15, 2012

MILWAUKIE CITY HALL

Conference Room
10722 SE Main Street

A light dinner will be served

WORK SESSION – 5:00 P.M.

		<u>Presenter</u>	<u>Page #</u>
1.	5:00 p.m.	City Manager's Report	Bill Monahan
2.	5:30 p.m.	Public Area Requirements Grant Program	Kenny Asher 1
3.	5:45 p.m.	Business Registration Fee on Duplexes	Rina Byrne 33
4.	6:00 p.m.	Park and Recreation Board Update	JoAnn Herrigel 59
6.	6:45 p.m.	Adjournment	

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.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



Agenda Item: WS 2.
Meeting Date: 5/15/12

To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Pat DuVal, City Recorder
Subject: Background Information on Public Area Requirements Grant Program
Date: May 8, 2012

ACTION REQUESTED

Information only.

BACKGROUND

At the May 1, 2012, City Council work session Community Development/Public Works Director Kenny Asher provided a letter dated April 30, 2012, from Neil Hankerson, Dark Horse Comics, inquiring about the availability of the remaining funds in the Public Area Requirements Grant Program. At that time, the City Council members requested background information from previous meetings to further their discussion.

ATTACHMENTS

1. April 30, 2012, Correspondence from Neil Hankerson, Dark Horse Comics, to Kenny Asher
2. Resolution 57-2011 establishing a temporary economic development grant
3. Resolution 69-2011 renewing and extending the temporary economic development grant through June 30, 2012
4. City Council minutes (excerpts)
 - a. February 1, 2011 work session
 - b. March 15, 2011 work session
 - c. April 5, 2011 work session
 - d. April 5, 2011 regular session
 - e. April 19, 2011 work session
 - f. April 19, 2011 regular session
 - g. April 26, 2011 study session
 - h. May 3, 2011 regular session
 - i. June 28, 2011 study session
 - j. July 5, 2011 regular session
 - k. August 16, 2011 regular session
 - l. May 2, 2012 work session (draft)

Council Staff Report – Public Area Requirements Grant Program
Page 1 of 1

ATTACHMENT 1



DARK HORSE COMICS®

10956 SE Main Street, Milwaukie, Oregon 97222, USA | 503.652.8815 | f: 503.654.9440 | darkhorse.com

April 30, 2012

Kenny Asher
Planning Director
City of Milwaukie

Dear Kenny,

Approximately one year ago, the City Council extend the life of the public area improvement grant program until June 30, 2012. We having been fighting through some financing issues because the current Suburban Explorations loans were done through Lehman Bros. Those assets were sold when Lehman was dismantled. It has taken much more time than anticipated to fight through this situation. However, it is now all resolved.

But, we are not as far along as I thought we surely would have been at this time a year ago. As we complete our budget for the remodel, I need to know the status of the remaining \$6000 in the grant program. There is about a 50/50 chance of actually breaking ground by June 30. So, what must happen to use the grant? Do we need a completed project? Do we need to have broken ground? Or, would we just need to have filed for building permits? Your guidance will be most helpful for our project.

Thank you.

A handwritten signature in black ink, appearing to read "Neil Hankerson".

Neil Hankerson

ATTACHMENT 2

RESOLUTION NO. 57-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A TEMPORARY ECONOMIC DEVELOPMENT GRANT FOR OFFSETTING PART OF THE PUBLIC AREA REQUIREMENTS OF MILWAUKIE MUNICIPAL CODE SECTION 19.312.5 FOR THE PERIOD OF MAY 17, 2011 TO JULY 1, 2011.

WHEREAS, the City of Milwaukie requires under Section 19.312.5 of the Milwaukie Municipal Code that those who develop or redevelop property in the Milwaukie Downtown make certain public area requirement improvements within the public right-of-way; and

WHEREAS, the public area requirements were adopted to ensure the development of a consistent and high-quality public right-of-way that establishes a safe, comfortable, contiguous pedestrian-oriented environment with a unified urban design; and

WHEREAS, the redevelopment of the Milwaukie Downtown continues to be a high priority of the City; and

WHEREAS, during the last few years economic conditions have caused redevelopment to slow and some buildings in the Milwaukie Downtown are at less than full occupancy; and

WHEREAS, the imposition of public area requirements has been identified by some downtown property owners as an impediment to redevelopment efforts and the attraction of new businesses or the expansion of existing businesses; and

WHEREAS, to maintain its downtown redevelopment policies under current economic conditions Council is able to identify \$20,000 of grant money under the Economic Development line item of the General Fund—non-departmental budget that can be reserved for downtown livability; and

WHEREAS, Council determines the necessity to provide a short-term grant program of up to \$20,000 to pay for Public Area Requirements that stem from issuance of new certificates of occupancy when new first-floor retail tenants sign leases by July 1, 2011 to locate in the downtown area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, that:

Section 1. The City of Milwaukie hereby provides a total grant of \$20,000 to be allocated among property owners in the downtown district who are required to pay for the provision of Public Area Requirements under new certificates of occupancy triggered by new first-floor retail tenants signing leases by July 1, 2011 to locate in the downtown district.

Section 2. The City of Milwaukie will develop a program to carry out the grant established by Section 1 of this Resolution.

Section 3. That the amount of reserved money to be granted may be equal to \$20,000 or the amount of Public Area Requirements triggered by first floor retail tenants signing new leases by July 1, 2011, whichever is less.

Section 4. That the grant program established in Section 1 of this Resolution will end automatically on July 1, 2011, after the grant has been disbursed, and may not be renewed without Council approval.

Section 5. This resolution is effective immediately.

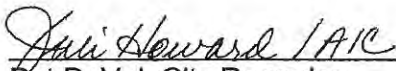
Introduced and adopted by the City Council on May 17, 2011.



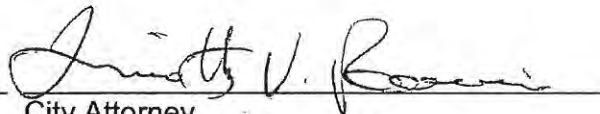
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

ATTACHMENT 3

RESOLUTION NO. 69-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RENEWING AND EXTENDING THE TEMPORARY ECONOMIC DEVELOPMENT GRANT PROGRAM CREATED BY RESOLUTION NO. 57- 2011 THROUGH JUNE 30, 2012.

WHEREAS, on May 17, 2011 the City Council of the City of Milwaukie approved Resolution No. 57-2011 creating a grant program to assist those property owners in the downtown district that made application to develop or redevelop property in the Milwaukie downtown and were required under Section 19.312.5 of the Milwaukie Municipal Code to make certain public area requirement improvements within the public right-of-way, and

WHEREAS, the grant program was of limited duration through July 1, 2011, and

WHEREAS, the original grant program funds have not been fully exhausted, with \$6,142.31 available from the original allocation of \$20,000 after the approval of one grant application, and

WHEREAS, the City Council has been advised that at least one additional property owner in the downtown district could have an interest in planning for first floor retail renovations and applying for a grant if the program is extended beyond July 1, 2011, and

WHEREAS, the redevelopment of the Milwaukie downtown continues to be a high priority of the City; and

WHEREAS, the City Council desires to provide opportunity for the full benefit of the original \$20,000 grant program to be available to downtown district property owners, and

WHEREAS, Section 4 of Resolution No. 57- 2011 provides that the City Council may renew the grant program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, that:

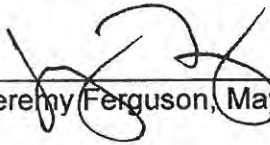
Section 1. That the City Council renews and extends the opportunity of Downtown property owners to apply for the remaining \$6,142.31 of the original grant funds created by resolution 57- 2011 under the terms as established by that Resolution.

Section 2. The grant program is available to property owners in the downtown district who are required to pay for the provision of Public Area Requirements under new certificates of occupancy triggered by new first-floor retail tenants signing leases by July 1, 2012 to locate in the downtown district.

Section 3. That the grant program extended by this Resolution will end automatically on July 1, 2012, after the grant has been disbursed, and may not be renewed without Council approval.

Section 4. This resolution is effective immediately.

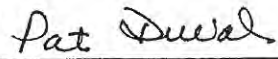
Introduced and adopted by the City Council on July 5, 2011.



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

Document1 (Last revised 09/18/07)

ATTACHMENT 4 a.

MINUTES MILWAUKIE CITY COUNCIL WORK SESSION FEBRUARY 1, 2011

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Council Chambers.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, Police Chief Bob Jordan, Community Development and Public Works Director Kenny Asher and Resource and Economic Development Specialist Alex Campbell

City Manager's Report

Mr. Monahan gave his report.

The City Council met in executive session pursuant to ORS 192.660(2)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations.

The Council work session resumed at 5:30 p.m.

Main Street Storefront Improvement Program Proposal – Possible Downtown Milwaukie Façade Improvement Program

Mr. Campbell explained the genesis for the idea came from Metro staff to support the City and to bolster the downtown Milwaukie retail core in downtown Milwaukie. They thought a storefront program was a way to get mileage out of a small investment.

The façade improvement program was 1:1 matching funds that a local government often made available through urban renewal. The funds would be available for improvements visible from the street and would encourage property owner investment with private and public benefits. There was also a cultural and community pride element. Typically grants were \$10,000-\$20,000.

Councilor Chaimov said he hoped the City would do this and suggested the Design and Landmarks Committee and the North Clackamas Chamber of Commerce might identify specific amenities. He commented on the constitutionality of adult business restrictions.

Councilor Hedges was opposed to giving taxpayer money to businesses and suggested using funds instead to help seniors maintain their homes.

Councilor Loomis liked the façade improvement idea and would like to see it expanded to help with the expense of public area improvements.

Councilor Miller thought it was a great idea to help people improve their businesses but had a problem using taxpayer money to help increase rents. A lot of people needed help and maybe it should extend outside the downtown area. He felt we needed members from the City Council, Planning Commission, and Design and Landmarks Committee to make the decisions. He had a greater concern about public area requirements.

Mayor Ferguson understood this program made money available for façade improvements, so the City should take advantage of opportunities for grants. He supported the program given what was required for public area improvements, and it was helpful offset the costs and enhance to vitality of Main Street.

Councilor Loomis asked what County programs assisted low income families.

CITY COUNCIL WORK SESSION – FEBRUARY 1, 2011

MINUTES

Page 1 of 3

Mr. Campbell replied there were some weatherization programs, and it might be a good time to revisit and publicize those programs.

Photo Radar Enforcement Update

Chief Jordan gave a brief background on the photo radar program. The main purpose of the program was to reduce motor vehicle accidents in the City and not to generate revenue. He reviewed crash statistics that showed a reduction in the number of accidents since photo radar was been instituted. He discussed the cost of the program and noted the City netted approximately \$130,000 annually. Over the past 2 years he had been at neighborhood meeting talking about photo radar, and his sense was the community was supportive of the program. He asked the Public Safety Advisory Committee (PSAC) to poll their respective neighborhoods. At its last meeting, PSAC members indicated unanimous support for the program and adopted a resolution to that effect. He discussed mitigation efforts, including increased signage, if the City Council continued with photo radar. He further suggested a video tutorial on the City's website. He also recommend taking money from the traffic citation fund and returning it to the community through PSAC and neighborhood traffic safety projects. Based on statistical information and general community support, he recommended continuing the program.

Mayor Ferguson asked if would be possible to come back in the near future and set up the photo radar van and signage to see what it looked like.

Chief Jordan replied he could bring the van, but the operation of machinery was not available. The City's contract with ACS had expired, and the van was not being deployed at this time.

Don Wiley, PSAC Chair, reported the Linwood Neighborhood District Association unanimously supported the photo radar program. The safety aspect was overwhelmingly important. He had no idea that photos were not taken of a vehicle unless it was going 11 mph over posted speed limit which he thought was an excessive speed. He believed the photo radar van added to the safety of the community.

Councilor Miller asked if photo red-light was used or was being explored.

Chief Jordan replied it was not being used and would be the City Council's decision.

Councilor Hedges understood statistically there was a reduction in the actual number of injury accidents and asked if there was any data on the severity of injuries.

Chief Jordan replied data on the severity of injury is beyond the scope of first responder although higher speeds likely result in a more severe injury. All of the City's fatal accidents occurred on highway and not in the neighborhoods.

Councilor Loomis asked if most of the citations were issued on highways and noted he did not see significant change in crash statistics on the highways.

Chief Jordan replied Milwaukie did not have photo radar in 2007. The van was typically deployed on the major highways, in school zones, busy neighborhood streets, and by certain neighborhood streets as requested by residents. He noted drivers were slowing speeds.

Councilor Loomis had seen the van a lot but had not noticed the signage.

Chief Jordan replied the sandwich board signs were placed to the front and to the rear of the van as required by State law. People were typically focused on the van rather than the sign.

Councilor Loomis suggested increased and better sign placement might be in order.

ATTACHMENT 4 b.

MINUTES MILWAUKIE CITY COUNCIL WORK SESSION MARCH 15, 2011

Council President Chaimov called the work session to order at 5:03 in the City Hall Council Chambers

Council Present: Council President Chaimov, Councilors Loomis, Miller and Hedges

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Finance Director Casey Camors, Light Rail Design Coordinator Wendy Hemmen, Assistant Finance Director Rina Byrne, Community Development and Public Works Director Kenny Asher and Engineering Director Gary Parkin

City Manager's Report

The NDA leadership agenda would be focused on Council goals.

The next Clackamas Cities Dinner is on 3/17/11.

Trolley Trail Groundbreaking – Councilor Loomis, Councilor Hedges, Councilor Miller, and Council President Chaimov present.

Purple glove video presentation would be on 4/5/11.

C4 Committee alternate – Councilor Hedges will have a resolution at next meeting.

The Quiet Zone memo was handed out to Council.

Mr. Rice handed out Public Area Requirements memo.

Councilor Chaimov asked if were we charging more or less than we thought we would.

Councilor Miller would draft resolution for April 5 meeting

Mr. Monahan reviewed HB 2075.

Councilor Miller proposed resolution to the City Council that would be looked at in more depth on March 29 and on agenda for April 5. It freed downtown business from public area requirements for the period of 4/6/11-10/31/12. He provided copies for City Council review. To take a stand on what we believe in was holding back development in downtown Milwaukie. It should be the responsibility of the City and not the business owners because downtown was used by all. He asked Council to give feedback to Mr. Monahan

Councilor Hedges said he supported it with one caveat, should be citywide and not just the downtown.

Councilor Chaimov said it would be helpful to know potential scope of downtown area improvements on March 29.

Mr. Monahan said he would ask Kenny to bring a couple examples of "what-ifs" that involved new retail or reuse of an office building.

Councilor Loomis needed more information in the study session and what happens to those who have paid already. Know all the pros and cons. He had felt a detriment, but needed more information on actual impact of doing this.

Mr. Monahan for future any suspending of PAR did not mean they would not be provided. The City would put PAR in place, but need a funding mechanism.

Mr. Monahan would propose a funding source in the resolution.

Audit information

Ms. Camors reviewed the overall audit and plans for the coming fiscal year. Financial statements fairly represented financial position for FY 2010. Statements issued were referred to as annual financial statements. In coming year they would like to prepare a CAFR which was a program set up by government finance officers with concentration on full disclosure and transparency.

The City's financial position did not change significantly, it was a 1% decline overall. There were two funds with expenditures in excess of budget and two deficit fund balances. She added city's run in to this fairly often and she was hoping to avoid that next year.

Ms. Byrne reviewed 2 letters she received from the auditors. First was a statement of auditing standards that included certain aspects that they were required to communicate to Council. It was used to draw attention to anything unusual and there were no significant comments. The other letter was the SAS 115 that identified internal control issues or material weakness, which was more serious than significant deficiencies. There were no reports of material weakness, but there some deficiencies. The first two referred to account reconciliations that either weren't done at all or weren't done in a timely manner. The third related to audit schedules that were not done timely. The Finance Department plans to have all those repaired timely for the FY 2011 audit. The fourth point was that bank reconciliation were prepared, but was not reviewed. They starting reviewing the reconciliations in January by someone other than the preparer. The fifth point related to cash being over or short at the front desk and suggested individual cash drawers to reconcile differences. There may still be some refinements to make in that process in the following months. The sixth point related to staff posting their own utility payments. They would look to make substantive changes on internal controls. Some of these findings may be found in the next year's letter because they were already half way through this year, but if they did there should be a remark made that changes were made.

Quiet zone update

Ms. Hemmen reported on two of the quiet zones they were trying to get in Milwaukie. The last discussion was January, 2010. The quiet zones involved the mainline and the Tillamook Branch. She discussed progress made on mainline and Tillamook and how it compare to the Tualatin quiet zone. The City was expecting FRA approval of the City's proposal for the mainline, which should be here this week. Will start this summer with construction of sidewalks on Harrison with CDBG funding in the amount of approximately \$100,000. They also have crossing orders from ODOT rail in place;

CITY COUNCIL WORK SESSION – MARCH 15, 2011

MINUTES

Page 2 of 6

ATTACHMENT 4 c.

Public Area Requirements

Mr. Asher provided background on the public area requirements (PAR). They have been working to implement current code as best they could for the last 5 years. He talked about the 4 areas of potential amendments.

Mr. Parkin described what PARs and noted they were more focused on the downtown area and the pedestrian zones. That included width of sidewalks, street trees, bike racks, bus stop improvements, water quality and ADA ramps. They referred to Code Section 19.400 Public Facility Improvements which was used for the entire City, not specific to the downtown area. He noted they follow the standards for capital improvement projects not just redevelopment.

Ms. Mangle said there are street standards for every street. Engineering looks at the level of intensification along with the code to determine proportional improvements that a project should contribute to the street frontage. The downtown should be a high quality pedestrian environment that encourages people to walk. The street standards make sense with the development plans adopted by the City Council.

Mr. Parkin said there were additional downtown standards that included underground utilities requirement which were expensive. He discussed the lighting and sidewalk scoring pattern and medallion requirements that are unique to the downtown area. It was more complicated to apply the standards, and there was a need driven by pedestrians. Traffic counts were relatively easy, but pedestrian traffic was not. He briefly commented on neighborhood standards and traffic plans.

Ms. Mangle said it is good to have a streetscape plan, but it did have its challenges. Staff had a lot of conversations with property owners. She talked about sub-standard lighting and lack of ADA standards in some areas. These were expensive upgrades to make and there is no public funding source. There have been concerns of unfairness specifically for smaller projects.

Mr. Asher discussed successful redevelopment in a pedestrian-friendly environment, but the costs may deter potential development. If the City can find a way to share the cost burden they would have more economic development and a better streetscape. The question was how to execute a streetscape liked by everyone, and he discussed the feasibility of urban renewal. Staff thinks the code can be improved, but the biggest issue with PARs was financial.

Mayor Ferguson said looking at the list of projects in the downtown not a lot of them had triggered PAR. He asked if staff had an idea of how many people abandoned their projects because of the PAR.

Mr. Asher said it was more of a factor of reputation than actual projects; except for the current prominent example staff had not received comments about the PARs being a disincentive. It could, however, be a factor in the future.

Mr. Miller asked how the City can maintain consistency in the downtown if each business was required to do its own public area requirements.

Mr. Parkin replied the requirements are very specific with consistent frontage development. It could be a problem when partial block faces were developed and fees in lieu of collected.

Mr. Asher added the cleanest way would be to do a block at a time, which was what a lot of other towns did. To maintain consistency it was really important to have PARs.

Councilor Miller commented on the funding the City provided for the North Main project. The proposed resolution suspended PARs 18 months. It gave the business

CITY COUNCIL WORK SESSION – APRIL 5, 2011

MINUTES

Page 3 of 4

owners a break and the City time to rewrite the PAR to better fit downtown standards. Gresham, Troutdale, Fairview, and Wood Village have done away with PARs and reduced building fees to attract new businesses into their towns. He was concerned Milwaukie would not be competitive.

Councilor Hedges commented on an instance where someone was being asked to make improvements that will make it look better, but were not necessary. In this economic climate he thought the PAR needed be looked at and some discretion allowed in certain instances when the changes are cosmetic and not safety related. Of greatest importance was a safe infrastructure. Where he comes from the public paid for the public areas. It seemed strange to him that he was responsible for the sidewalk repairs in front of his house. People have expressed a concern the City was helping the downtown and not giving residents the same advantage.

Councilor Loomis asked if there was a moratorium would the PAR still need to be done?

Ms. Mangle said it would shift responsibility from the property owner to the City.

Mr. Monahan said it would suspend the requirement of the property owner for 18 months, and the responsibility would rest with the City.

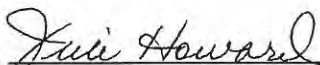
Councilor Loomis said he was hearing that this was about one business and asked if issues can be addressed on a case-by-case basis instead of opening it up to everyone. He had always felt the PAR had hindered businesses. He would not support the resolution as written, but he was more interested in addressing issues case-by-case.

Mr. Asher said that was more in line with fiscal policies and the cost and public benefit. The finance department would help determine the cost and risk.

Mr. Monahan said suggested the City might create an application process to suspend requirements on a case-by-case that the City Council could review.

Mayor Ferguson adjourned the work session at 6:55 p.m.

Respectfully submitted,



Juli Howard, Deputy City Recorder

ATTACHMENT 4 d.

single-use plastic bags. Council Hedges seconded the motion and changes. Motion passed with the following vote: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye" and Councilor Loomis abstaining. [4:0:1]

RESOLUTION NO. 45-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING LEGISLATION REGULATING THE USE OF SINGLE-USE PLASTIC BAGS.

Mayor Ferguson would like to see something in the future regarding the use of Styrofoam containers.

Mayor Ferguson recessed the meeting at 8:40 p.m. which he reconvened at 8:50 p.m.

C. Consider Suspension of Public Area Requirements

Mr. Monahan discussed the background on the proposed resolution that would suspend the application of public area requirements (PAR) from the date of enactment through October 31, 2012. During that period of time there would be a temporary suspension of the application of those requirements to those property owners who made improvements to their buildings with the requirement that the City put in those improvements at the end of that period of time. Further the City Council would review those public area requirements to determine future applicability.

Councilor Chaimov moved to postpone consideration of the resolution to the first meeting in July 2011. He thought all would agree that the PARs needed to be revisited and required more than what the City wanted to require of businesses in downtown Milwaukie. At the same time, the City did not have the money to put in the requirements currently required by the code. His intention was to work through the budget for the coming fiscal year to try to set aside funds to use on a case-by-case basis to assist businesses to achieve the requirements. Meanwhile the City Council would undertake an evaluation of the requirements and costs as part of the adopted fiscal policies. He hoped by doing this that the City Council would make decisions best for the City and come up with the money to do them.

Councilor Loomis would need more information before voting. Historically he felt the PARs were a hindrance to redevelopment but was concerned about approving an 18-month moratorium without knowing the financial impacts to City. He was open to a transparent discussion of the issue, and it seemed as if this matter at this point in time had to do with a particular property owner and his potential tenant. He would like a mechanism for each business to come to the City and be considered on a case-by-case basis.

Councilor Chaimov felt he and Councilor Loomis had the same goal.

Councilor Hedges supported what Councilor Miller was trying to achieve. He did not feel private money should be used to renovate public property. But that was the system we had although it needed to be changed. He was loathe to inflict a blank check upon the citizens of Milwaukie. He supported Councilor Miller's resolution with reservations and supported looking at the merits and demerits of each individual application. He was concerned some of the PARs were cosmetic and not safety related. He could see both sides of the argument, and both sides were correct. He would like the City to have some control to know how much money was likely to be committed before the commitment was made.

Ed Zumwalt, Milwaukie. Sometimes he wondered who ran this institution for the last 8 – 10 years. He understood the City Council directed the City Manager, and he directed his underlings. It seemed like staff wanted to push urban renewal which he was sure would end up on the ballot. Without a spark or jump start, we will be sitting here in Appalachia. This town was not open for business, and people did not want to spend an extra \$20,000 - \$30,000 on top of their other expenses on public area requirements. Small businesses deserved a break.

Councilor Chaimov did not see this issue as having anything to do with staff. The people of the community adopted a code that most, including staff, did not think now worked well. The City Council was trying to do as Mr. Zumwalt said which was to jump start the downtown in a way that did not open a gaping hole such as TriMet's renovating a building without any public requirements. To the extent it did not seem all Council members were supportive of Councilor Miller's proposal, they only differed in the method of getting where all wanted to be.

Mr. Zumwalt responded that it seemed strange to the average citizens. After hearing Mayors and City Managers say for 17 years that they wanted to heal the City, we were sitting in Appalachia. He urged giving businesses a break.

Kim Keehner, Enchante, Main Street. She felt the City Council needed to take a look at the big picture. The main stumbling block was Main Street retail zoning which was a great idea; however, property owners had been sitting on empty buildings trying to meet the City's requirements. These same property owners were looking for decent, viable tenants that would benefit community. The properties were empty and the owners were still paying property taxes yet the City wanted those same people to pay for PARs. The City will get its money back through increased property values and taxes both in the business and residential areas. She suggested looking at the amount of money the City would have to put into the PARs and consider how much revenue it would get back.

Ed Aaron, Main/Monroe Street Building owner. After he renovated the Jefferson Street building his tax bill increased 100%. He put hundreds of thousands of dollars into that building, and it did not cost the City anything. During that time he was charged both PAR and system development charge (SDC) fees. He discussed how traffic impacts were calculated. He differed with Mr. Asher's belief that the PARs were not a principal retardant to downtown redevelopment and commented on the \$12,000 in costs related to converting an office space to retail on 21st Avenue. The Main/Monroe Building has been empty for 4 years while he tried to attract a tenant. He was concerned the Planning Department was discouraging potential tenants from doing business with him. The Planning Department wants \$30,000 in PARs, but no tenant wanted to put down \$30,000 for what was once office space. The City Council had decided that the first floor had to be retail according to the Downtown Plan. It was legislated that it had to be retail; now he had to find a tenant to pay \$30,000 to be there.

Councilor Hedges did not disagree with Mr. Aaron's comments. No one, including the City, had the \$32,000 as Councilor Miller's resolution stated. That amount would have to come out of the budget from some other department. He would support Mr. Aaron's point of view if the City could suspend the PAR with no one picking up the bill.

Mr. Aaron listed the public area requirements for the property that included rebuilding the bulb out, redoing the sidewalks, installing two period streetlights in an area where there were no underground utilities, installing garbage cans, and planting street trees. Those alone were significant. The landowner or tenant had to make those improvements.

Councilor Hedges understood these were cosmetic and not necessary for safety; however, these were the current laws.

Mr. Aaron added the law was changed several years ago because it was a taking and unconstitutional. Now he was on the hook for PARs again.

Ed Parecki, Milwaukie business owner. He referred to the Downtown Plan and read a short list of elements adopted in August 2000. Since the Plan was adopted, there was spot zoning for North Main Village, a new TriMet center on Jackson, a new South Downtown Plan, and now light rail none of which were in the plan. The PARs were in the Plan and seemed to be the only thing the City did not wish to ignore. He did not understand the logic. He recommended throwing the Plan away because it was useless. Ignore the PARs for the next 2 year and let people install the elements they wished.

Pam Tatom, Main Street business owner. She understood how those who had been here for many years felt frustrated. This made no sense. She supported Councilor Miller's efforts to think outside box to help small businesses. She urged trying out the 18-month suspension of PARs.

David Aschenbrenner, Milwaukie. He suggested using the recently adopted fiscal policies to help solve this problem. He agreed these improvements were a burden to small businesses, but they would also be a burden if the City were to take them on. Councilor Miller's resolution was an unfunded mandate as there was nothing in the budget tied to it. He was concerned about the upcoming TriMet pubic improvements. He agreed with Councilors Chaimov and Hedges that the City should look more closely to come up with a funding mechanism and should be applied on a case-by-case basis. He agreed the plan needed more work. He suggested the City might look at what, including urban renewal, other communities were doing to redevelop their downtowns.

Lisa Batey, Milwaukie resident. Ms. Batey had submitted her written comments earlier to City Council. She would love to see every storefront full, and she saw no evidence Milwaukie's Main Street had more vacancies than anywhere else. She noted the downtown improved from what it had been 9 years ago and felt it was generally looking up. Mr. Parecki had been complaining about PARs since he began working on his McLoughlin Boulevard property 5 years ago but has never brought any suggestions or solutions forward on how to balance this concern. There may be other models that might work better for Milwaukie. She urged the City Council to consider Councilor Chaimov's motion for a continuance while looking for a limited budgetary solution for case-by-case help and revising the public area requirements altogether.

Mayor Ferguson stated both Mr. Aaron and Mr. Parecki had talked with him about other funding mechanisms and may revisit the issue with Mr. Monahan.

Arlene Stanley, Main Street business owner. She supported the moratorium suggestion for landowner or tenant improvements and urged that it not be put off for another year. She noted she had a bike rack if anyone needed one as apparently she had not really needed it after all. She did not agree that personal private investment should be used to make public improvements while paying all the other fees and taxes. She believed most of the improvements were cosmetic and that safety issues were enforced by the municipal code. She recommended putting a hold on the program for 18-months then the City would not have to make the improvements. If that brought people in, then the public improvements would be made so buildings would look as good as possible and attract people.

Mayor Ferguson noted the resolution as written would require the City to complete the public area requirements.

CITY COUNCIL REGULAR SESSION – APRIL 5, 2011

MINUTES

Page 7 of 10

Dion Shepard, Milwaukie resident. She understood the frustration because residents were frustrated as well. This had been going on for 5-6 years so perhaps a compromise was in order and not drag this out any longer. The PARs needed to be sorted out sooner than later.

Councilor Hedges had the impression that if the PARs were suspended for the next two years that the City had to fund any work to be done. He asked Mr. Ramis if that was correct or could the program be suspended with no party responsible for funding the improvements.

Mr. Ramis responded it would depend on the City Council's action. If the City Council adopted a resolution saying the property owners were not responsible, there was still the zoning code that said the improvements had to be made before an occupancy permit was issued. That would lead to the conclusion that if the property owner did not make the improvements, then the City had to. The alternative would be to eliminate the requirements from the zoning code, and Mr. Ramis outlined the required notification process and Planning Commission and City Council hearings. That would mean neither the City nor the property owner would have to make the improvements. The City Council may initiate that process.

Councilor Hedges understood the City Council would have to go through a legal process.

Councilor Miller proposed the resolution because he believed the City needed to change the way it did business in downtown Milwaukie. The PARs were impediments to business upgrades, and this was a small step to get the ball rolling toward a more vibrant City. He believed the regulations defeated the very things the City Council wished to accomplish. Other cities had reduced fees by 90% or eliminated them altogether. There have only been six projects since 2008, and the City has collected only a little more than \$1,500. The largest was Milwaukie High School at \$83,000 but those were fees in lieu of. The City always seemed to run into roadblocks in both commercial and residential areas. It was time to change that dynamic. The suspension was only for 18-months, and it was a good time to reassess all of the PARs. This was not the way Milwaukie should be doing business.

Mayor Ferguson felt the system was broken. He wished the City could address Mr. Aaron's specific issue right now and then consider Councilor Hedges' suggestion.

Councilor Chaimov explained that was what he was hoping to achieve by working through the budget process and finding the \$30,000. If it were found, it could be set aside, and the City Council could take up the resolution.

Councilor Miller said in 30-days potential tenants would be gone. Something needed to be done right now to change the dynamics of the downtown. He would be happy to work with Councilor Chaimov on a resolution but was concerned Council would still be debating the issue in the middle of July. The tenants would be gone by then. Something needed to be done now; then City Council could fix the total problem. The resolution was written so that the City did not have to put up a dime until 2013. The PARs could be waived when people came in for their building permits. After the review most of the requirements may no longer be valid. Five of the six PARs since 2008 have been waived.

Mr. Monahan said the resolution was structured such that there was a suspension rather than a waiver of the requirements and stated the City would undertake an evaluation over the next year about PAR applicability in the future in its present form. It intended that the provisions were meant between now and November 2012 then

applicable requirements would be the improvements the City would have to make before June 2013.

Councilor Chaimov understood but did not feel it was appropriate to go in that direction. He was simply not willing to enter into what seemed like a blank check for our taxpayers when there was no guarantee the PARs would be reduced. He was happy if the money were found to pay for improvements on a case-by-case basis.

Councilor Hedges feared TriMet might put in all their applications and Milwaukie would have to put out a lot of money because they caught us.

Mr. Monahan thought there was protection in Section 1 that read, "the obligation of property owners to develop public right-of-way under the public area requirements of Section 19.312.5 of the Milwaukie Municipal Code are suspended for all occupancy permits issued for property within the Milwaukie Downtown between April 6, 2011 and October 31, 2012." He did not think TriMet planned to do that.

Mayor Ferguson understood TriMet would probably not be here before October 2012.

Councilor Hedges asked if the resolution could be repealed quickly.

Mr. Ramis replied a resolution could be repealed by a simple majority vote but could not be accomplished retroactively.

Councilor Loomis did not feel he was in Appalachia as Mr. Zumwalt said. Mr. Aaron's building needed to get filled, and he felt \$32,000 was doable. He was not comfortable suspending everything but supported helping Mr. Aaron get a tenant through an open dialogue.

Mr. Monahan said staff would look at the budget and prepare a resolution for the May City Council meeting that might provide for a grant program of some kind.

Councilor Loomis supported that.

Mr. Aaron asked what made the City Council think businesses could find that amount if the City of Milwaukie could not given its annual budget. He suggested the City Council put a cap on the program. He was asking the City Council to get rid of requirements that were not really requirements.

Councilor Hedges represented more than just downtown Milwaukie and was concerned about the citizens ability to pay.

Councilor Loomis was comfortable with committing to find \$25,000 if there were a conversation and he had all the information. He wanted to see that building filled.

Mr. Monahan asked if City Council were looking for a program that addressed the needs of one property owner or the needs of the projected development in the downtown. Did City Council wish to continue the current level of development or try to stimulate the downtown during the next 18-months? If the City Council were looking for a fixed amount then staff would look for a way to fund it in the coming budget and outline a process based on Council direction.

Councilor Loomis would like to study this one situation and resolve it while looking at the whole picture and work to fix it. Do PARs mean that much to the City Council and all the residents? Who pays for it? He wanted the process to be transparent.

Councilor Hedges agreed with Councilor Loomis that the City would get the money back in property taxes while the PAR program was sorted out. He understood there were no other pending applications.

Councilor Chaimov withdrew his motion.

CITY COUNCIL REGULAR SESSION – APRIL 5, 2011

MINUTES

Page 9 of 10

Mr. Monahan understood he was directed to look at where he might find \$25,000 and getting Mr. Aaron through the gate of getting an occupancy permit.

Mr. Ramis advised the PARs were adopted by ordinance which could not be amended by resolution. The City Council could adopt a resolution suspending the fees for a period of time. The cost would not go away without a code amendment.

It was moved by Councilor Chaimov and seconded Mayor Ferguson by to extend the meeting beyond 10 p.m. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.' [5:0]

Councilor Loomis was designated by the City Council as its representative to meet with staff and Mr. Aaron and to report back at the April 19 City Council meeting.

Councilor Miller urged resolving this issue as soon as possible so other business owners did not find themselves in a similar situation.

D. Council Goals

Mr. Monahan provided background on the twenty proposed goals and the process.

It was moved by Councilor Chaimov and seconded by Mayor Ferguson to adopt the City Council goals. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.' [5:0]

Mayor Ferguson discussed Planning Commission appointments and asked that there be a discussion of appointments in general.

E. Council reports

The Mayor and Councilors reported on meetings they had attended on behalf of the City. Mayor Ferguson announced upcoming community events.

ADJOURNMENT

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

Mayor Ferguson adjourned the meeting at 10:23 p.m. without a motion.

Respectfully submitted,

Pat DuVal
Recorder

ATTACHMENT 4 e.

MILWAUKIE CITY COUNCIL WORK SESSION APRIL 19, 2011

Mayor Ferguson called the work session to order at 5:03 in the City Hall Conference Room

Council Present: Mayor Ferguson and Councilors Chaimov, Hedges, and Miller.

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development and Public Works Director Kenny, Economic Development Specialist Alex Campbell, Engineering Director Gary Parkin, and Civil Engineer Jason Rice.

Regional Flexible Funds Allocation Process

Mr. Campbell explained regional flexible funds. The region had chosen through the Joint Policy Advisory Committee on Transportation (JPACT) to focus 80% of the funds on two project areas: Active Transportation/Complete Streets and Freight. He discussed the different projects under consideration and noted there was approximately \$3 million in funding. The City's areas of interest were improving the bike and pedestrian connection between Milwaukie's Riverfront Park and the Springwater Corridor and improving multi-modal connections between the Milwaukie Town Center and the Clackamas Town Center. The 17th Avenue/Trolley Trail connector probably had more support as regional priority.

Mayor Ferguson and Councilors supported the 17th Avenue/Milwaukie Riverfront Park proposal as they felt it had more regional significance.

Wastewater Master Plan Update

Mr. Parkin and **Mr. Rice** provided an overview of the City's wastewater system, proposed projects, and the Plan adoption schedule.

Mr. Rice pointed out the features of the system. Some clay pipes, the oldest in the system, still remained and were difficult to maintain. Most of system was concrete pipe with the majority installed in the 1970's. Other areas had PVC and lined pipe including the newest installation in the NE Sewer Extension Project area. Certain improvements were being driven by the light rail project, and City staff was working with TriMet to replace old clay lines. He gave an overview of the projects in the capital maintenance program.

Mr. Parkin reviewed the proposed wastewater budget which included a 7% rate increase.

Mr. Rice commented on the difficulty of preparing a budget without an adopted master plan. He reviewed the schedule that included going to the Planning Commission for comments on the draft document with City Council adoption on June 21. Replacement of the clay lines was the number one priority followed by the concrete pipes. He discussed issues related to the pump stations.

Mr. Parkin added the Master Plan determined that the capacity at each of the pump stations was adequate to build-out, and staff was keeping maintenance logs. They do not have an electrical study or know how much power was used as part of asset management. He briefly discussed improvements related to the light rail project.

The group discussed the need for back-up lift stations.

Mr. Monahan reviewed regular session business items. Mr. Parkin would give an update on public area requirements; the photo radar contract was pulled; and the City

CITY COUNCIL WORK SESSION – APRIL 19, 2011
MINUTES

Page 1 of 3

had not received sufficient nominations for the Library Expansion Task Force. He reviewed prioritization process of the City Council goals.

Mayor Ferguson reviewed the board and commission appointment process. He recommended that he and another Councilor plus the staff liaison conduct the interviews.

Councilor Loomis wanted to be able to review the applicants' background information and urged that all City Council members be on board before an appointment resolution appeared on the consent agenda.

Mr. Parkin provided an update on the meeting with Ed Aaron, Mr. Monahan, and Councilor Loomis. There was some confusion between the old and current code, so no agreement was reached. He discussed the interpretation of 10% of permit value by the Planning Director which still appeared to be valid. Mr. Aaron had been given a list of Identified improvements.

Mr. Monahan understood Mr. Aaron needed the information by the middle of June. He discussed earlier public area requirements based on proportionality which was the concept used at that time.

Councilor Miller felt until the City came to some solid ways to let businesses know how much they would have to pay, the Council should adopt the proposed resolution.

Neighborhood Leadership

In attendance: Mary Weaver, Matt Rinker, Linda Hedges, Beth Kelland, Pepi Anderson, Debby Patten, Brian Dorr, and Dion Shepard.

Ms. Weaver discussed the closure of Hector Campbell Elementary School and how that had impacted the neighborhood Walk Safely Milwaukie Project. The neighborhood realized the lapses of communication with the School District and had made its concerns known. She had since spoken with Dr. Mills and Joe Krumm and looked forward to improved communication. The School Board will meet on Thursday and make boundary decisions. Generally speaking, the Neighborhood was pleased with the District's acceptance of its communication and willingness to hear concerns.

Mayor Ferguson and Mr. Monahan met with Dr. Mills and hoped to have a joint work session with the District Board to open up lines of communication. The City needed to let the Board know citizens wanted the property used in a productive way.

Mr. Monahan talked about truancy court and the school resource officer. He planned to invite Milwaukie High School Principal Mark Pinder to a City Council session to discuss the effectiveness of these joint efforts.

Ms. Hedges talked about light rail bridge design and noise issues.

Ms. Shepard discussed the recent Island Station Neighborhood light rail meeting and noise impacts. She had concerns regarding significant traffic changes if the park-and-ride size was reduced. She asked City Council for its support on noise concerns and asked for a pre- and post-noise analysis.

Councilor Chaimov said the main reasons for the meeting was to identify problems with the elevated structure, noise, and lights. There were no answers as yet to issues raised but assumed there would be some venue for coming up with solutions. He would bring up the issues at the next Steering Committee meeting.

Mr. Rinker said Ardenwald was fatigued by the light rail process but still not satisfied.

ATTACHMENT 4 f.

State. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.' [5:0]

RESOLUTION NO. 47-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON ACTING THROUGH ITS OFFICE OF THE SECRETARY OF STATE AND THE CITY OF MILWAUKIE.

B. Photo Radar Contract Authorization – Resolution

This item would be considered at May 3, 2011 regular City Council session.

C. Construction of International and Monroe Sewer Replacement Project – Resolution

Mr. Parkin provided the staff report in which the City Council was requested to sign a contract for the construction of the International and Monroe Sewer replacement projects with Columbia Earthworks in the amount of \$107,095. These were identified as low spots in the lines and potential problem areas. Work would be done May and June.

It was moved by Councilor Hedges and seconded by Councilor Miller to adopt the resolution approving the award of contract for the construction of International Way and Monroe Street Sewer Replacement Project. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting 'aye.' [5:0]

RESOLUTION NO. 48-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE INTERNATIONAL WAY AND MONROE STREET SEWER REPLACEMENT PROJECT.

D. Consider Suspension of Public Area Requirements

Mr. Monahan reported at the previous meeting the City Council reviewed a resolution proposed by Councilor Miller and heard public comment on the matter related to Ed Aaron's Main/Monroe Building. Council directed that Councilor Loomis, Gary Parkin, and he meet with Mr. Aaron to discuss the public area requirements for his property. The meeting was held, and at the end of that discussion Mr. Parkin took documentation back to his office for review and evaluation. Tonight Mr. Monahan reported the discussion went well, and he recommended an additional meeting prior to making a recommendation to the City Council.

Councilor Loomis reported the conversation was a good one and that Mr. Aaron provided some information Mr. Monahan had not seen before. There were two figures on the table, so the City representatives felt the new information needed to be reviewed. Mr. Aaron agreed that he had until mid-June before progress would be impacted. He recommended another meeting with Mr. Aaron to come up with a resolution and tenant.

Mr. Aaron agreed last week's meeting was positive and hoped to get an update from Mr. Parkin about the work session briefing.

Mr. Monahan recommended further discussion with action on the proposal at the May 3, 2011 City Council regular session.

Councilor Miller was concerned that the City Council had spent six weeks discussing this resolution. Although he was pleased to work out this situation, he did not believe it solved the problem for other businesses in downtown Milwaukie. He felt the City needed to take a break from public area requirements and not continue to do what it had been doing because it was not working. He urged looking for a more positive outcome for the citizens and businesses in Milwaukie.

It was moved by Councilor Miller to adopt the resolution suspending the application of public area requirements of Milwaukie Municipal Code Section 19.312.5 for the period from April 6, 2011 through October 31, 2012

Councilor Loomis appreciated Councilor Miller's passion and people's commitment to making this situation work. He hoped to move forward with the discussion and come to a resolution.

Councilor Hedges would support a proposal if the City's exposure were limited to \$50,000, for example.

Councilor Chaimov agreed the problem needed to be fixed but thought it needed to go through the budget process if the City were paying for public area requirements.

Mr. Monahan advised since there was no second no action had been taken on the resolution.

Councilor Miller stressed this was an important issue for downtown businesses. He would accept this particular delay, but at some point the City Council needed to make a decision. The public area requirements were a cost that needed to be considered by property owners and those interested in doing business in downtown Milwaukie.

The group agreed to add public area requirements to the April 26, 2011 study session agenda for a full discussion of public area requirements.

Mr. Aaron explained originally if one renovated a property the permit fee would be 10% or the entire cost of the public area requirements. The building had an assessed value, and if the renovation costs were less than 50% of that assessed value, then one was charged 10% of the renovation costs. That did not tie impacts of the renovation to the actual costs incurred. His project was assessed under that law, but it was not applicable to his project. He had made his case to the previous Council but was turned down. Six months later the law was changed such that impacts had to be taken into account. Only when changes of use take place can public area requirements, and system development charges for that matter, be imposed.

E. Library Expansion Task Force Update

Mr. Monahan updated the City Council on recruitment efforts for the Library Expansion Task Force. Due to the limited response he requested that the deadline be extended to April 25 with a resolution making appointments scheduled for the May 3, 2011 City Council regular session agenda.

F. Council Reports

The Mayor and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events.

Mayor Ferguson announced the Council would meet in executive session pursuant to ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions immediately following adjournment of the regular session. The City Council would not return to open session.

ATTACHMENT 4 g.

CITY OF MILWAUKIE CITY COUNCIL STUDY SESSION APRIL 26, 2011

Council President Chaimov called the Milwaukie City Council study session to order at 5:09 p.m. in the City Hall Conference Room.

Present: Mayor Ferguson (arrived 5:52 p.m.), Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Civil Engineer Brad Albert, Planning Director Katie Mangle, Senior Planner Susan Shanks, Engineering Director Gary Parkin, Stormwater/Wastewater Operations Supervisor Ronelle Sears, and Water/Streets Operations Supervisor Mike Clark

Public Area Requirements

Mr. Asher reviewed the process for determining transportation facility improvements.

Mr. Parkin handed out copies of Title 19 and discussed how frontage improvements in residential zones were based on the square footage of the project and on impacts in the downtown area.

Mr. Albert described his role in the development review process to determine if existing improvements were adequate or if the project needed to mitigate impacts. He compared the existing use to the proposed use to determine if trip generation were intensified and how to best mitigate related impacts.

Councilor Miller expressed concern with the basis for making these decisions and the potential financial impacts on the businesses.

Mr. Albert replied he used the best information available when he considered changes of use which might intensify vehicular impacts. He provided this information to the property/business owners during a pre-application conference.

Ms. Shanks described the 2009 code revision which changed from being a value-driven decision to being based on impacts.

Ms. Mangle discussed the Main/Monroe project started by Mr. Parecki and subsequent code amendments that resulted in a reduced project list.

Ms. Shanks reviewed the process and determinations in more detail by going through the sequence.

Councilor Hedges had a problem with fees in lieu of (FILO) improvements as a way to get around something that could impact safety.

Ms. Shanks replied cannot do FILO in cases where safety was an issue.

Councilor Hedges commented on the fairness of asking for bulb-outs, trees, and things of that nature during the current economic downturn. Matters like unsafe sidewalks definitely needed to be addressed. If the City codes were too stringent for today's situation, he agreed with Councilor Miller to put the PARs aside for a brief period.

Councilor Miller felt people should be able to improve their buildings and that PARs were a detriment to development in downtown Milwaukie. A moratorium might be in order while the City put together a fair, consistent plan. He felt kick-starting the downtown economy should be on the City and not the business owners.

Infrastructure Master Plans and Capital Investment Planning

Mr. Asher provided context for the projects that focused on areas where business was transacted and best served the City Council's goals. These would be the downtown area, 32nd Avenue, and the Murphy and McFarland sites. The three touchpoints were the City Council goals, Comprehensive Plan, and the Milwaukie Vision Statement.

The group discussed housing density and diversity, jobs, and the importance of fitting with the existing lifestyle and character of the neighborhoods.

Mr. Campbell gave a brief Economics 101.

The group discussed urban renewal, and **Councilor Miller** expressed his reluctance to place an extra burden on taxpayers.

Mr. Seals gave a brief overview of recent legislation setting certain limitations.

Councilor Loomis was not embedded in voting against urban renewal but did have questions.

Councilor Hedges urged re-use of the old buildings in the downtown area and commented on Safeway's veto power on businesses going into the King Road site.

Mr. Asher reviewed the work plan element and discussed Metro's construction excise tax (CET) program and pending litigation. He suggested using Metro funds for planning. The group discussed possible budget implications of the CET grant program.

Mr. Monahan discussed the proposed resolution before the City Council next week related to public area requirements. The group discussed those budget implications.

Communication Plan and Retreat

The City Council discussed how items were placed on the agenda and the need to be aware of possible budget implications when using staff time. The group discussed potential times for a retreat.

The study session ended at 8:20 p.m.

Respectfully submitted,



Pat DuVal, Recorder

ATTACHMENT 4 h.

It was moved by Councilor Miller and seconded by Councilor Loomis to adopt the resolution authorizing the City Manager to execute a contract for the construction of the Jefferson Street Wastewater Repair Project to Emery & Sons Construction in the amount of \$179,985. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting 'aye.' [5:0]

RESOLUTION NO. 51-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE JEFFERSON STREET WASTEWATER REPAIR PROJECT

C. Consider Suspension of Public Area Requirements

Councilor Loomis met with Mr. Aaron to discuss the issues related to public area requirements (PAR) and getting a tenant into his Main/Monroe building. The meeting included Mr. Monahan and Mr. Parkin, and there was some confusion at the end of the meeting about application of the requirements. He understood Mr. Aaron's frustration because of the application of the old code. Councilor Loomis recommended to City Council some form of grant that would provide up to \$20,000 to property owners in the downtown to pay for the provision of public area requirements necessitated by the issuance of new certificates of occupancy when the first floor tenants signed leases by July 1 to locate in the downtown area. He recommended a resolution be prepared to that effect for the May 17 meeting. With Councilor Miller's resolution, Councilor Loomis was concerned about the City's being responsible for paying for the PARs, and he urged the City Council do something as soon as possible.

Councilor Hedges did not feel he would be able to make a decision on this. If the photo radar program were eliminated, \$130,000 in revenue was effectively removed from the budget. Until that was clarified he was not comfortable voting on this matter.

Councilor Loomis clarified the City did not have extra money, but he felt responsible for helping Mr. Aaron get a tenant in that building. He noted the City had helped other developers in the past.

Councilor Miller proposed a resolution two months ago and was frustrated that it came up agenda after agenda. He still did not understand the PARs so he could explain to a property or business owner in downtown Milwaukie what they would have to do if they wished to improve their buildings. The City Council needed to do something. Although the resolution might not be the total answer, the requirements had to be reviewed and simplified to ensure everyone was being treated fairly. It was important to do whatever possible to help downtown businesses succeed.

Vincent Alvarez, Milwaukie, had heard previous discussions and understood the PAR was an attempt to get a similar vision going from block to block in the downtown. From his experience living in an historic area on the East Coast, he felt it was important to stop and re-evaluate the code to make it more flexible while still achieving a theme including period lighting. One can use many different aspects while ensuring safety matters yet alleviating the business owners of some of the charges.

Councilor Loomis believed that was the intent, but the City Council needed to figure out who pays for the improvements.

Mr. Ramis estimated it would take roughly 45-60 days to go through the code amendment process.

Mayor Ferguson was open to looking at Councilor Loomis's recommendation to help Mr. Aaron and then reviewing the code for future development. The draft resolution would have to be on the next agenda for City Council adoption.

Councilor Miller felt it was important to take a hard look at the code and understand what downtown businesses wanted.

Councilor Hedges would like the proposed resolution to state how the \$20,000 was to be funded.

D. Council Reports

Mayor Ferguson and Councilors summarized the meetings they had attended on behalf of the City and announced upcoming community events.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:25 p.m.

Respectfully submitted,

Pat DuVal

Pat DuVal, Recorder

ATTACHMENT 4 i.

MINUTES MILWAUKIE CITY COUNCIL STUDY SESSION June 28, 2011

Council President Chaimov called the study session to order at 5:03 p.m. in the City Hall Conference Room.

Council Present: Mayor Ferguson (arrived 5:41 p.m.), Council President Greg Chaimov, and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Planning Commissioners: Lisa Batey, Scott Churchill, Mark Gamba, Nick Harris, and Russ Stoll

Design and Landmarks Committee Member: Greg Hemer

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development and Public Works Director Kenny Asher, Planning Director Katie Mangle, Senior Planner Susan Shanks, Program Coordinator Beth Ragel, Associate Planner Ryan Marquardt, and City Attorney Damien Hall

Public Area Requirement (PAR) Grant Program Update

Mr. Monahan described the program to date and the proposal from Dark Horse Comics. There had been no other inquiries about the program that was due to expire on July 1, 2011.

Mr. Asher reported Dark Horse Comics was making an effort to reorganize and reuse its first and upper floor spaces and had asked if the PAR Grant Program might be extended making the remaining funds available for other interested businesses. Mr. Asher further asked for permission to continue the City's contract with Kevin Cavanaugh using funds in the economic development budget line item.

Councilors Chaimov and **Loomis** supported both concepts.

Mr. Asher further explained the contract was written to be exclusive with Dark Horse Comics. Cavanaugh was interested in building a new building in the downtown area with Dark Horse as its anchor tenant. The City would be involved only with the interim work and then get out of this business. He noted the current plan would free about 7,000 square feet of first floor retail in downtown.

Councilor Miller wanted to be sure the City was open to entertaining any other businesses coming forward for similar development services.

Mr. Monahan noted Mr. Cavanaugh had been introduced to all south downtown business and property owners, and Dark Horse was the only one to come forward.

Councilor Hedges thought there was community support for doing something with Dark Horse.

Neil Hankerson, Dark Horse Comics, felt the business was welcome in the community but that it clogged up Main Street. What did one do if so much property came on line at once? Mr. Cavanaugh had come up with some new ideas of what to do and ideas for extended financing to help Dark Horse and City both achieve their goals.

Mr. Asher observed the ancillary benefits would be talking with other businesses about locating in Milwaukie and learning from the experience.

Mr. Monahan would schedule the extension of the PAR Grant Program for the next City Council agenda.

Land Use 101

Ms. Mangle and **Ms. Shanks** described zoning in the State of Oregon and local jurisdictions and outlined land use review processes and appeal authorities. The group discussed questions that had come up during the recent code tune-up adoption.

The City Council discussed unrestricted appeals and the applicant's submitting new evidence that was not available for the Planning Commission hearing. Councilor Hedges feared people might not feel as if they were being heard. Councilor Miller was concerned about the cost of appeals. Councilor Loomis noted the Planning Commission had a better understanding of the process making it a more experienced decision-making body.

Residential Development Design Standards

Ms. Mangle provided a progress report on the residential design standards project and noted it was not about density or rezoning Milwaukie neighborhoods. When infill occurred it needed to carefully fit with the neighborhood character. There was a potential for already permitted multi-family housing units in certain areas near light rail. She discussed design in high- and low-density zones.

Ms. Ragel discussed the communication aspects of the project that included a steering committee, neighborhood focus groups, and developers. There will be ongoing updates in the *Pilot*, City website, brochures, and social media.

Ms. Shanks summarized key findings such as unattached accessory dwelling units and asked if the City Council had any strong feelings related to these findings.

The group discussed existing zoning in the Historic Milwaukie Neighborhood and feasibility of rezoning Waverly Heights. For example, some areas were currently zoned R-2 but had developed to R-7 standards. There were comments on the effects of property owners' combining lots for development.

A number of questions surfaced for discussion: How much should the City regulate the design and placement of housing? Should design standards apply to home additions? Should the process for allowing duplexes in R-7 and R-10 zones be relaxed? **Ms. Shanks** discussed the need for clear and objective standards, and **Ms. Mangle** commented on design review districts and noted the many different housing styles in Milwaukie.

Mayor Ferguson adjourned the study session at 7:49 p.m.

Respectfully submitted,



Pat DuVal, Recorder

ATTACHMENT 4 j.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Renewal and Extension of the Public Area Requirement Grant Program – Resolution

Mr. Monahan provided the staff report on the grant program initiated by City Council in May to stimulate economic activity in the downtown. One party took advantage of the program, and of the initial \$20,000 in grant funds a little over \$6,000 remained. At the June 28, 2011, City Council study session, a downtown property owner, Dark Horse Comics, expressed interest in applying for the additional grant funds but needed additional time to do so. Staff recommended that the program be renewed and extended through June 30, 2012.

It was moved by Councilor Miller and seconded by Councilor Loomis to adopt the resolution renewing and extending the temporary economic development grant program created by Resolution 57-2011 through June 30, 2012. Motion passed with the following vote: Councilors Miller, Hedges, Chaimov, and Loomis and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 69-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RENEWING AND EXTENDING THE TEMPORARY ECONOMIC DEVELOPMENT GRANT PROGRAM CREATED BY RESOLUTION 57-2011 THROUGH JUNE 30, 2012.

B. Council Reports

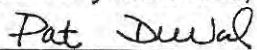
Mayor Ferguson and Councilors provided an update on meetings they attended on behalf of the City and announced upcoming community events.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 7:32 p.m.

Respectfully submitted,



Pat DuVal, Recorder

ATTACHMENT 4 k.

investment that helped shape the community. The program was most successful when a community had a vision, so this Plan was a great help.

Councilor Miller commented on public area requirements (PAR) issues and expressed concern with the MOU fee waiver language and the possibility of setting a precedent related to fees on building applications. He understood it would be a City Council decision in the future, but as one Councilor, he did not agree with doing that.

Mr. Asher replied the PAR grant program had been identified this year as being necessary and appropriate to provide relief in order to attract a tenant. The MOU only says that City Council would have the opportunity to evaluate the situation as it had on the Main/Monroe building.

Councilor Hedges asked what the chances were in the current economic climate that someone would want to build something like this.

Mr. Asher responded other things that were going on that all mattered and noted there was more interest from developers. Whether that project was affordable in this market was another question.

Ms. Detweiler felt the shell could be achieved under an owner occupant program that might serve small retail, a bike shop, and professional offices. She added the site was owned by Union Pacific along with some private ownership.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Miller to approve the consent agenda consisting of:

- A. Resolution No. 75-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 11932 SE 35th Avenue and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200(D);
- B. OLCC Application, Dotty's 10843 SE Oak Street, a new outlet;
- C. City Council Minutes of the June 28, 2011 Study Session; and
- D. Resolution 76-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Monty Schroeder to the Milwaukie Citizens Utility Advisory Board.

Motion passed with the following vote: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [4:0]

AUDIENCE PARTICIPATION

Diane Quick, Milwaukie. She addressed Lake Road construction and the number of cars, bicycles, and trucks going by. She requested a meter that measured speed be installed along with a stop sign on Somewhere. She thanked Ed Zumwalt and Dave Aschenbrenner for their work on Festival Daze and particularly their spouses.

Yvonne Lazarus, Clackamas County, told Mayor Ferguson he should recuse himself from decisions related to light rail.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

- A. Natural Resource Amendments to the Zoning Code and Comprehensive Plan – Ordinance, 2nd Reading and adoption and Resolution

Mr. Monahan provided background on the ordinance.

CITY COUNCIL REGULAR SESSION – AUGUST 16, 2011

MINUTES

Page 2 of 4

ATTACHMENT 4 I.

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

MAY 1, 2012

Mayor Ferguson called the work session to order at 5:03 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, Finance Director Casey Camors, Assistant Finance Director Rina Byrne, Community Services Director JoAnn Herrigel, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Public Affairs Coordinator Grady Wheeler, and City Attorney Tim Ramis

Assistant to the City Manager's Report

Mr. Monahan reviewed the evening's agenda and future agendas. He provided Ledding Library statistics including circulation, patron visits, and computer sessions for the year to date. He discussed the recovery of fees related to the recent Land Use Board of Appeals (LUBA) matter, and it was agreed to send LUBA the letter requesting return of the fee.

Mr. Monahan discussed the business registration fee on duplexes and their possible exclusion. **Councilor Hedges** requested background information on the 2008 ordinance adoption related to this matter.

Councilor Miller said he would like to look into basing business taxes on income. **Mayor Ferguson** recalled a number of business owners were reluctant to submit their financial information.

Councilor Chaimov recommended providing the minutes from those meetings.

Community Development and Planning Active Projects

Mr. Asher updated the City Council on the Dark Horse Comics relocation/real estate study and the interest in the remaining funds in the Public Area Requirements (PAR) grant program. The company was moving forward quickly with the remodel of its annex building at the corner of Main and Jefferson Streets creating 4 or 5 street-level retail spaces. **Mr. Monahan** explained the public area requirements program and the City's future responsibility.

Councilor Hedges was reluctant to spend City money in this manner as long as police training was not fully funded.

Councilor Loomis was in favor of moving forward.

Mr. Monahan suggested addressing the matter at the May 15 work session after staff provided background information on the implementation of the grant program

Mr. Asher reported another Oregon Department of Transportation (ODOT) grant opportunity had come up to fund bike/pedestrian crossing over McLoughlin Boulevard. The City was working with TriMet and may look at scaling back the project to be more competitive in this round. In response to a question from Councilor Miller, Mr. Asher said there would be a match from the general fund if the City were successful this time.

City Council Work Session – May 1, 2012

Draft Minutes

Page 1

Mr. Asher discussed design work on the Adams Street connector between the light rail station sidewalk and Main Street. He discussed the agreement with Metro to utilize Metropolitan Transportation Improvement Program (MTIP) funds to hire a design team and make needed street improvements. Milwaukie would likely partner with TriMet to make this part of the light rail contract in order to reduce costs.

Mr. Asher reported on the Kellogg for Coho Initiative. He and representatives from four other potential mitigation projects would make presentations to responsible parties in the Portland Superfund process. Kellogg for Coho is considered to be one of the projects most likely to receive funding.

Ms. Mangle briefly reported on current permit reviews related to the Portland Milwaukie Light Rail Project, the upcoming Neighborhood Main Streets Project Open House, and Planning Commission activities.

Mayor Ferguson recessed the work session at 5:30 p.m. so the City Council could meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Ferguson reconvened the work session at 5:50 p.m.

Garbage Rate Discussion

Ms. Herrigel discussed the process and introduced Rick Winterhalter from Clackamas County. Financial information was coming in, and things were looking relatively healthy including the recycling revenue. Trends indicated the rate of return at about 10% and within the 8% to 12% range identified in the franchise agreement.

Mr. Winterhalter discussed how Metro calculated its fees commercial and provided an overview of composting efforts. He anticipated an increase of approximately \$0.26 per month on a 32-gallon container.

The group discussed yard debris service, and **Councilor Miller** asked if people could opt out. **Ms. Herrigel** explained it would be difficult from both billing and pick up perspectives.

Councilor Hedges asked why Milwaukie had seven haulers and why rates differed between cities.

Mr. Winterhalter explained the haulers had efficient routes that overlapped jurisdictional lines. In terms of rates, franchise fees can be applied differently based on policy decisions in cities.

Councilor Loomis asked if there were any additional charges for Milwaukie's annual spring clean-up event.

Mr. Winterhalter responded the amount was nothing significant.

Ms. Herrigel discussed the Riverfront Park and relocation of the power poles. She pointed out the current location of the poles and the number of lines. The top seven lines would remain, but the bottom three could be undergrounded which would cost about \$180,000. PGE asked if the City wanted the poles moved or its money, \$100,000, back. The Riverfront Task Force thought the City should get its money back, put the money into the capital campaign, and look for an additional \$80,000 to underground the lines as the first project. The Task Force recommended that the poles be moved in the next phase of the project. She discussed the gentle slope of the Park design that necessitated the movement of the poles.



Agenda Item: WS 3.
Meeting Date: 5/15/12

To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Rina Byrne, Assistant Finance Director
Subject: Business registration requirements for rental properties
Date: May 15, 2012

ACTION REQUESTED

Clarification on interpretation of City Code 5.08.110 and 5.08.040:

1. Are duplexes subject to business registration if the owner has a single duplex or is a single duplex included in the exemption for “two single family residences”?
2. Are duplexes that are owner occupied subject to registration i.e. if one unit is owner occupied and the other is rented?
3. Is the registration fee for rentals per tax lot or per owner? Does an owner with three properties pay three business registrations or one?

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

On November 18, 2008 Council amended several sections of municipal code, including the section related to business registrations. Proposed modifications clarified multiple business locations, eliminated the reduced rate for businesses with gross revenues of less than \$10,000 and excluded residential homeowners who rented one or two homes. An amendment was made to the multiple business section (5.08.040) as follows:

5.08.040 Multiple businesses or premises.

If a person is engaged or doing business at more than one establishment, branch or location this specifically includes but is not limited to rental houses, apartment complexes, commercial business complexes and retail shopping centers, each such establishment, branch or location shall be deemed a separate business and each such business shall be subject to the business tax. An owner of one or two single family residences that are offered for rent is not doing, engaging in or transacting business and not subject to a business tax. If two (2) or more businesses are carried on at the same location each shall be required to pay a separate business tax, except in situations where it can be shown where the individual businesses are in fact one (1) business. In determining whether different activities at the same location are in fact one business, normal and ordinary customs and usages of business shall be considered. (Ord. 1349 § 4, 1976)

Discussion ensued regarding the number of homes that should be excluded and it was determined that two should be excluded. An amendment was also made to the exclusions section of the code (**5.08.110**) as follows:

J. An owner who offers for rent not more than two (2) single family residences.

BACKGROUND:

City code (**5.08.030**) provides that businesses in the City pay an annual business registration fee. Businesses are defined as enterprises of any nature undertaken for profit or benefit and include rental property, which is defined as follows:

“Rental property means buildings which are rented, leased or let for any purpose, including but not limited to dwelling or business purposes. Rental property includes...private residences...”

Section **5.08.040** addresses multiple business locations and includes the following:

“If a person is engaged or doing business at more than one (1) establishment, branch, or location this specifically includes, but is not limited to, rental houses, apartment complexes, commercial business complexes, and retail shopping centers, each such establishment, branch, or location shall be deemed a separate business and each such business shall be subject to the business tax.

An owner of one (1) or two (2) single-family residences that are offered for rent is not doing, engaging in, or transacting business and not subject to a business tax.”

Review of the taped Council meeting shows that Councilor Stone asked clarifying questions about the exclusion of two homes and how much an owner with more than two homes would pay. Mr. Palacios (Finance Director) replied that an owner would pay \$110 for any number of homes after the first two. This question was asked in the context of apartment owners paying a single registration.

Council Staff Report – Business Registration – Rental Properties

Page 2 of 3

The City has read the code and enforced it as follows;

- (i) Owners of one or two single family homes have been excluded from registration.
(5.08.0110 J)
- (ii) Owners of duplexes and multifamily dwellings have been subject to registration.
(5.08.030)
- (iii) Owners have paid a separate registration based on the number of locations.
(5.080.040)

Consequently, owners with two units in a duplex are paying registration whilst owners with two houses do not. Additionally, owners are paying for each address, which appears to comply with section 5.08.040 but contradicts the assertion made by Mr. Palacios.

In April 2012 the finance department cross referenced the commercial and multifamily utility customers with the business registration database and noted approximately 60 duplexes that had not previously paid business registration tax. Notices were sent to these owners. We have received appeals from several citizens who believe that they should be excluded based on one of three arguments:

- (i) The owner lives on one side and is renting the other for below market rate, usually to a family member. The owner does not consider this to be a business within the meaning of the ordinance
- (ii) The owner lives on one side and is renting the other. The owner believes this falls within the exemption of one or two single family residences.
- (iii) There is inequity in excluding owners of two rental houses but not two rental units.

Attachments:

- 1) Minutes of November 18, 2008 Council meeting
- 2) Staff report from November 2008
- 3) City Code Section 5.08
- 4) Correspondence from January, 2008.

WORK LOAD IMPACTS:

The business registration database will be updated based on the outcome of the interpretation of this code section. Staff will be able to more efficiently answer questions about business registration.

ATTACHMENT 1

7315

CITY OF MILWAUKIE CITY COUNCIL MEETING November 18, 2008

CALL TO ORDER

Mayor Bernard called the 2042nd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Excused: Mayor Jim Bernard

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Finance Director Ignacio Palacios

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution recognizing Mary Rowe for her service to the City of Milwaukie as Human Resources Director. Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov, and Council President Loomis. [4:0]

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the consent agenda.

Resolution 85-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Awarding a Contract for \$59,400 to Structures in Landscape for Construction of Homewood Park, Located at 10821 SE Home Avenue in Milwaukie, and Authorizing the City Manager to Sign a Personal Services Agreement with the Firm

Motion passed with Councilors Stone, Barnes, Chaimov, and Council President Loomis voting 'aye.' [4:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

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

Mr. Swanson reported this was a monthly action regarding code amendments proposed in June 2006 by the Planning Commission. A number of code amendments and some Comprehensive Plan amendments were adopted. These two code amendments had been continued so they could be brought up monthly and acted upon fairly quickly by the City Council. One code amendment would add Section 19.321.3 that defined as unpermitted uses major utility facilities including wastewater treatment plants. Section 19.321.7 discussed nonconforming community service uses and

CITY COUNCIL REGULAR SESSION – NOVEMBER 18, 2008

APPROVED MINUTES

Page 1 of 5

declared that any of those unpermitted uses, for example the wastewater treatment plant mentioned in the preceding section, may remain in use through December 31, 2015, but may not be enlarged, upgraded, remodeled, or altered in any way except as needed to abate nuisances declared by the City or as needed to comply with federal or state statutes, regulations or permits. Those were not adopted at the time because parties were in the middle of the Citizens Advisory Committee (CAC), and it was thought best not to stick a stick in the hornets' nest and raise unnecessary issues. These have been continued in the past year on a monthly basis. Mr. Swanson recommended that the City Council continue consideration of both sections 19.321.3 and 19.321.7 to the second regular meeting in December.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the amendments to the Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular City Council meeting on December 16, 2008.

Councilor Barnes reported the small regional solutions group would meet this week. At the last meeting the CAC representative spent more time agreeing with Milwaukie than with West Linn. She felt the CAC actually understood Milwaukie's position on this issue and was giving some support. The West Linn City Manager had shown no interest in accommodating the City of Milwaukie, so the next big hurdle was explaining to Tri-City that this was a regional issue. Milwaukie still had a trump card it could play.

Motion passed with Councilors Stone and Chaimov and Council President Loomis voting 'aye' and Councilor Barnes voting 'no.' [3:1]

OTHER BUSINESS

A. Amend Milwaukie Municipal Code Chapter 2.04, City Council – Ordinance

Mr. Monahan reported this was first in a series of proposed code amendments that would come before the Council. The City last published its code in 1986 and was working on a project to republish in May 2009. This was Chapter 2.04, City Council that dealt with process issues of how the Council conducted meetings and recorded them. This was a housekeeping measure to modify the code to reflect current practices, changes in technology, and statutory changes. It dealt with the signing of documents, confidentiality, staff attendance at meetings, and minute keeping. There was also a section on modifying discussion of business which did not restrict the Council's ability to accept public testimony at any time. The Council still retained discretion in that matter. This section also addressed Government Ethics Laws which were modified in 2007 with a change in name from Oregon Government Standards and Practices Laws. The City Council would be seeing over the course of the next several months other proposed changes to ordinances to come up to speed with current practices and statutes.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2.04, City Council. Motion passed with Councilors Stone, Barnes, and Chaimov and Council President Loomis 'aye.' [4:0]

Mr. Swanson read the ordinance two times by title only.

The City Recorder polled the Council: Councilors Stone, Barnes, and Chaimov and Council President Loomis voting 'aye.' [4:0]

ORDINANCE NO. 1988:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.04, CITY COUNCIL

B. Amend Milwaukie Municipal Code Chapter 5.08, Business Taxes Generally – Ordinance

Mr. Palacios reported this was an administrative action to amend a section of the code that had not been reviewed since 1999. The action requested was to adopt the ordinance amending Milwaukie Municipal Code (MMC) 5.08, Business Taxes Generally. He requested amendments to Sections 5.08.30.A.1, 2, and 3 that would increase the annual fee base fee by \$10 and the mid-year fee by \$5. It would increase the FTE by \$2 and remove the reduced rate for businesses with gross revenues of less than \$10,000. Section 5.08.030.C added language that allowed business registration fees to become part of the annual fee resolution. Section 5.08.040 clarified multiple business locations and excluded residential homeowners from the business tax who rented one or two homes. The fiscal impact was approximately a 5% increase to allow for increased administrative costs. Clarification of the code would allow staff to more efficiently answer questions and provide guidance as needs arose.

Councilor Barnes discussed nonprofits such as the high school that sold fireworks on July 4.

Mr. Palacios explained nonprofits were excluded.

Councilor Stone was curious about the removal of the reduced rate for businesses with gross revenues less than \$10,000. What was the reduced rate?

Mr. Palacios replied the reduced rate was \$40 instead of \$100.

Councilor Stone asked how much was collected annually from the business tax.

Mr. Palacios replied the revenue budgeted for this year was approximately \$174,000.

Councilor Stone asked Mr. Palacios how he came up with the language in 5.08.040 about excluding residential homeowners from the business tax who rented one or two homes. How did you come up with that number rather than three or four for example?

Mr. Palacios said he and the City Attorney came up with this language based on the fact that those renting one or two homes were not in the business and just did it on the side. Typically they did this for extra income or because they were not able to sell their homes.

Councilor Stone said it had come to her attention from citizens who had houses for rent that a business tax for a multi-family apartment of 30-units for example was \$110. Someone who was renting a single-family residence was paying \$100 per each home. It did not seem equitable. That was their complaint too. How could someone who owned a 30-unit apartment complex only pay \$100?

Mr. Palacios explained this excluded individuals with only one or two homes from going through this process. The basis of a fee should be to recapture costs. Whether or not the individual had one unit or 30 units the administrative costs would be the same.

Councilor Stone thought the point was that one business was so small comparatively speaking. How did it work if someone had three homes?

Mr. Palacios replied Councilor Chaimov suggested language that would clarify that. Anyone over the two home limit would pay \$110.

Councilor Chaimov proposed an amendment and asked the best way to incorporate it.

Mr. Swanson replied the best way was to adopt the ordinance and have the City Manager read it twice with the amendment.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and the adoption of the ordinance

CITY COUNCIL REGULAR SESSION – NOVEMBER 18, 2008

APPROVED MINUTES

Page 3 of 5

amending Milwaukie Municipal Code Chapter 5.08, Business Taxes Generally with the amendment set forth as an additional agenda item 6.B subsection J. of code number 5.08.110 to read: "An owner who offers for rent not more than two single-family residences." Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov and Council President Loomis voting 'aye.' [4:0]

The City Manager read the ordinance two times by title with the amendment.

The City Recorder polled the Council: Councilors Stone, Barnes, and Chaimov and Council President Loomis voting 'aye.' [4:0]

ORDINANCE NO. 1989:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 5.08, BUSINESS TAXES GENERALLY

Mr. Parecki said it was a moot point to make any comments at this juncture since the Council already passed the resolution.

Mr. Swanson said if Mr. Parecki brought up points which the City Council felt should be incorporated that another ordinance could be prepared for the next Council hearing. It was not a moot point if it was something the Council wanted to adopt.

Mr. Parecki replied there may not be anything, but he found it curious he was not able to make any statements before the resolution passed. In the last three or four years he had been working with the City there had been an increase in the garbage tax, increase in the gas tax, an increase in electricity tax, a street improvement tax, and public area improvements which he considered a tax. Now we have a 10% increase in a business tax. The only comment he wanted to make to the Council was to think about all of these taxes and how it kept mounting up on small businesses. He felt the City staff should be working more on how to reduce expenses rather than how to raise income from the City dwellers and business owners and property owners and even apartment owners. He suggested shifting the focus from increasing income to decreasing expenses to work things out without burdening everyone at every juncture. A 10% increase was pretty huge especially with times the way they were. It was only \$10, but that was \$10. The percentage increase was huge. When you multiplied it by the number of employees it could make a difference. He had few employees who were full time, so it did not affect him directly. There were a lot of people it would affect. He did not think people were notified of this potential business tax increase and if they had any input. It just happened. Now we had to let people know it happened. There was not a good way to let people know it happened without giving them a chance to make comments or statements or send emails. He just found out about it last night when he happened to look at the agenda. It was not a good way to communicate with the audience.

Councilor Barnes understood Mr. Parecki had a downtown group he met with.

Mr. Parecki replied it was not his group but it did meet once a month.

Councilor Barnes asked if he had contact with them.

Mr. Parecki responded he did if he showed up for the meeting.

Councilor Barnes asked that he go to the meeting and get input from local businesses in the downtown area and reach out and find a new way to communicate with Mr. Parecki's group and this other group more effectively because he made a valuable point.

Mr. Parecki said he would do that, and although the meeting was a 7:30 a.m. he would be there to bring up this matter.

Councilor Stone thought he raised a good point about letting people know what was coming down the pike. It appears the City did not do that in this case. It was a tax. Especially since the last the last election we will be paying more for lots of things. It did make a big difference. She thanked Mr. Parecki for his comments, and the City will do a better job.

Councilor Loomis asked if there was a mechanism for notifying business owners.

Mr. Palacios said there was a roster and apologized as he was not aware it needed to be done.

Councilor Barnes added it was part of public relations to let the community know about upcoming decisions. She suggested an article in *The Pilot*.

Mr. Palacios commented this did take care of Councilor Stone's concerns with one or two rentals.

C. Oregonians for Working Families Earned Income Tax Credit (EITC) Proposal

Mr. Swanson would take this matter up with Mayor Bernard.

D. Council Reports

Councilor Barnes discussed the live election night coverage with Councilor Chaimov and Sabin Schellenberg students.

Councilor Chaimov attended the Ardenwald Neighborhood meeting.

Councilor Stone went to the Ardenwald Neighborhood meeting which was attended by at least 120 people including Rep. Carolyn Tomei, County Commissioner Lynn Peterson, County representatives, and Columbia Care. It was a well-run meeting but got tenuous at times. It was evident there was a lot of concern about the mental health facility being proposed to go in the Neighborhood, and she was sure we had not heard the last of it. She attended the Milwaukie Poetry Series reading and commended the Library Board for its effort.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov and Council President Loomis voting 'aye.' [4:0]

Council President Loomis adjourned the regular session at 7:33 p.m.

Pat DuVal

Pat DuVal, Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Ignacio Palacios, Finance Director
Subject: Amend Municipal Code Section 5.08 – Business Taxes Generally
Date: November 5, 2008 for November 18, 2008

Action Requested

Adopt the ordinance amending Milwaukie Municipal Code Section 5.08, Business Taxes Generally.

Background

The current Municipal Code that administers the City of Milwaukie Business Registration and sets the rates for fees for the issuance of the City's business registration has not been reviewed nor have rates been adjusted since 2002.

The Finance Department is requesting amendments to the following sections of the City of Milwaukie Municipal Code 5.08 – Business Taxes Generally:

1. 5.08.30.A.1, 2, 3 – an increase in the annual base fee of \$10, an increase of \$5 to the base fee for businesses beginning after July 1, and an increase of \$2 to the FTE requirement and the removal of the reduced rate for businesses with gross revenues less than \$10,000.
2. 5.08.030.C – language added that allows the business registration fees to be adjusted via resolution as part of the annual approval of the City's fees and charges schedule as needed.
3. 5.08.040 – language added that clarifies multiple business locations and excludes residential homeowners from the business tax who rent one or two homes.

Concurrence

Finance Director and the language and form has been reviewed and approved by the City Attorney.

Fiscal Impact

A minor increase to Business Registration revenues (~5%) to allow for increases in costs of administering the program.

Work Load Impacts

The clarification in the Municipal Code 5.08 – Business Taxes Generally administering business registrations should allow staff to efficiently answer questions and provide guidance to businesses and individuals as the need arises.

Alternatives

None.

Attachments

1. Revised Chapter 5.08 Business Taxes Generally
2. Ordinance

Chapter 5.08

BUSINESS TAXES GENERALLY

Sections:

- 5.08.010 Purpose.
- 5.08.020 Definitions.
- 5.08.030 Imposed.
- 5.08.040 Multiple businesses or premises.
- 5.08.050 Tax year and payments.
- 5.08.060 Delinquency charge.
- 5.08.070 Inspection of business records.
- 5.08.080 Transfer or relocation of business.
- 5.08.090 Issuance and display of receipt.
- 5.08.100 Administration.
- 5.08.110 Exclusions.
- 5.08.120 Violation—Penalties.

5.08.010 Purpose.

~~The business taxes imposed by this chapter are for revenue purposes only. The fees shall be in addition to and not in lieu of any other license, permit fee, charge or tax required under any other ordinance of the city. with iwht~~
The business taxes imposed by this chapter are for revenue purposes only. The fees shall be in addition to and not in lieu of any other license, permit fee, charge or tax required under any other ordinance of the city. (Ord. 1349 § 1, 1976)

5.08.020 Definitions.

The following words or phrases, except where the context clearly indicates a different meaning, shall be defined as provided in this section:

- A. "Business" means an enterprise, establishment, store, shop, activity, profession, management company or undertaking of any nature conducted directly or indirectly for private profit or benefit. Peddlers and solicitors are specifically included in this definition.
- B. "City" means the city of Milwaukie, Oregon.
- C. "City manager" means the city manager or designee.
- D. "Doing, engaging in or transacting business" means any act or series of acts performed in the course of the pursuit of a business activity.
- E. "Nonprofit organization" means a religious, philanthropic, patriotic and/or charitable organization. An organization shall be considered to be nonprofit if it meets the tests of a tax-exempt organization as specified by the Internal Revenue Service.
- F. "Person" means and an includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or firm or corporations or any officers, agents, employees or any kind of personal representatives thereof, in any

capacity, either on that person's own behalf or for any other person, under either personal appointment or pursuant to law.

G. "Rental property" means a building, portion of building, or group of buildings within the city which are rented, leased or let for any purpose, including but not limited to dwelling or business purposes. Rental property includes, but is not limited to, a hotel or motel, automobile or tourist court, rooming or lodging house, mobile home or trailer park, private residence, office or warehouse. (Ord. 1863 § 2, 1999; Ord. 1349 § 2, 1976)

5.08.030 Imposed.

A. No person shall maintain, operate, engage in, conduct, or carry on any business within the city without first having paid the business tax as established by this chapter.

B. ~~The business tax rate is as follows~~ As of the effective date of this ordinance fees shall be:

1. All businesses shall pay an annual fee of one hundred-ten dollars (\$110)
2. The first year rate for businesses starting after July 1 will be fifty-five dollars (\$55)
3. An additional rate of \$5 will be assessed on each FTE employee
4. The fee for temporary businesses (with a duration of two (2) weeks or less) shall be twenty-five dollars (\$25).

C. Revisions to the ordinance fees shall be set as part of the City's Fee and Charges Resolution.

Base Rates:

Standard rate (applicable unless exempt or otherwise specified)	one hundred (\$100.00) dollars
Rate for taxpayers with gross income less than \$10,000	forty (\$40.00) dollars
First year rate for businesses starting after July 1	fifty (\$50.00) dollars
Temporary business (two (2) weeks or less)	twenty-five (\$25.00) dollars

Additional Rate:

Additional amount for	three (\$3.00) dollars
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each FTE	
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C. As used in subsection B of this section, "FTE" means "full-time equivalent employee." Each business taxpayer must pay the FTE amount in addition to the applicable base rate. ~~For example, a taxpayer with ten (10) full-time employees and two (2) half-time employees has eleven (11) FTEs and would pay thirty-three (\$33.00) dollars per year, in addition to the base rate.~~ The number of FTEs for which payment is required is based on the number of full-time equivalent employees as of January 1 for full-year taxpayers, and on the first day of business for other taxpayers. No additional payments or refunds are applied for changes in the number of employees during the tax year.

D. A penalty of ten percent (10%) of the base fee shall be paid for each calendar month, or fraction thereof, in which the tax is due and unpaid. (Ord. 1951 § 1, 2005: Ord. 1349 § 3, 1976)

5.08.040 Multiple businesses or premises.

If a person is engaged or doing business at more than one establishment, branch or location this specifically includes but is not limited to rental houses, apartment complexes, commercial business complexes and retail shopping centers, each such establishment, branch or location shall be deemed a separate business and each such business shall be subject to the business tax. An owner of one or two single family residences that are offered for rent is not doing, engaging in or transacting business and not subject to a business tax. If two (2) or more businesses are carried on at the same location each shall be required to pay a separate business tax, except in situations where it can be shown where the individual businesses are in fact one (1) business. In determining whether different activities at the same location are in fact one business, normal and ordinary customs and usages of business shall be considered. (Ord. 1349 § 4, 1976)

5.08.050 Tax year and payments.

- A. The tax year is from January 1 to December 31.
- B. The business tax shall be paid annually in advance of the business tax year. For businesses starting after January 1 of any year, the business tax must be paid within one (1) month of commencing business.
- C. Businesses shall be liable for the tax from the date they commence doing business within the city and not from the date of the tax is paid or the tax form submitted. (Ord. 1951 § 2, 2005: Ord. 1349 § 5, 1976)

5.08.060 Delinquency charge.

- A. The business license tax shall be deemed delinquent if not paid by February 1st of the applicable business tax year. If a person begins engaging in business after the start of the business tax year, the business tax shall be deemed delinquent if the tax is not paid within thirty (30) days after commencement of the business activity.
- B. Whenever the business tax is not paid on or before the delinquent date a delinquency charge equal to ten percent (10%)

of the original business tax due and payable shall be added for each thirty (30) day period or fraction thereof during which the business tax and any accumulated delinquency charges remain unpaid. The total amount of the delinquency charge for any tax year shall not exceed one hundred percent (100%) of the business tax due and payable for such year.

C. The date that the business tax is received by the city or the date of the postmark if remittance is made by mail shall be used in determining when the business tax is paid.

D. Notwithstanding the date of receipt of the business tax, the tax shall be held to be delinquent if a complete information form has not been filed with the city. Completeness of the form will be judged by the completeness of the information requested on the form.

E. The city manager or designee shall have the authority to waive a delinquency charge when, in the manager's judgment, circumstances are such that a delinquency charge should not be assessed. (Ord. 1863 § 3, 1999; Ord. 1379 § 1, 1977; Ord. 1349 § 6, 1976)

5.08.070 Inspection of business records.

The city manager is empowered to investigate and examine pertinent records of businesses as required to determine violations of this chapter. (Ord. 1349 § 7, 1976)

5.08.080 Transfer or relocation of business.

Upon sale or other transfer of a business, the new owner shall inform the city of the change in ownership and pay a change in business ownership fee but shall not have to pay an additional business tax. If a business is relocated within the city without a change in ownership, the owner shall inform the city of the new location and pay a business relocation fee but no additional business tax shall be required. The city council shall establish the amount of the change of business ownership fee and the business relocation fee by resolution. (Ord. 1909 § 1, 2002; Ord. 1379 § 2, 1977; Ord. 1349 § 8, 1976)

5.08.090 Issuance and display of receipt.

A. Upon payment of the business tax a person or business shall be issued a receipt by the city for such payment. The receipt shall be kept posted in a conspicuous place on the business premises at all times. If there is no regular place of business in the city, the receipt shall be in the possession of a representative of the business present within the city at all times during which the business is being transacted by an employee, agency or representative within the city.

B. Payment of the business tax by a person does not authorize any conduct that violates any applicable provision of local, state or federal law. Possession of a receipt for payment of the business tax shall not be asserted as a defense in any enforcement action other than an action related to payment of the business tax. (Ord. 1863 § 4, 1999; Ord. 1349 § 9, 1976)

5.08.100 Administration.

A. The city manager shall be responsible for the administration of this chapter. The manager may adopt reasonable rules and regulations relating to any matter pertaining to the administration of this chapter, as well as preparing, adopting and making available to the taxpayer all forms necessary for compliance with this chapter. The application form shall, at a minimum, require the following information:

1. Name and address of business;

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2. Whether the business is a home occupation, as defined by the city Zoning Ordinance;
3. Type of business (i.e., retail, office, warehouse, manufacturing);
4. Owner and/or manager of business;
5. Start date of business;
6. A description of any change in business use from previous year;
7. Business location square footage;
8. Number of employees at business;
9. Whether business uses or stores hazardous or combustible materials;
10. Emergency contact person's name, home phone number, cell phone number, pager number and any other after hours number available.

B. No person shall violate or fail to comply with any rule or regulation adopted by the city manager; refuse to allow the examination of books, papers and records; or wilfully make any false or misleading statements to the city manager regarding the computation of the amount of business tax due and payable under this chapter.

C. To the extent allowed by law, the city manager shall keep all information furnished or secured under the authority of this chapter in strict confidence. Such information shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration and enforcement of this chapter. (Ord. 1863 §§ 5, 6, 1999; Ord. 1349 § 10, 1976)

5.08.110 Exclusions.

The following situations are specifically excluded from the requirement of paying a business tax:

- A. Wholesalers selling or delivering goods to merchants of the city for the purpose of resale. This exclusion pertains only if the wholesaler does not maintain a place of business within the city and also does not engage in retail trade within the city;
- B. Nonprofit organizations;
- C. Persons engaged in delivery of goods or services from points outside the city, providing sales contacts and actual sales take place outside the city;
- D. Newspaper carriers;
- E. Representatives of public utilities;
- F. Garage sales, yard sales, and other similar activities. Such exclusion shall not apply, however, if either of the following conditions is met:
 1. More than two such sales take place within any one calendar year at the same location;
 2. The sale has a duration of more than seventy-two consecutive hours.
- G. The sale of personal assets such as a personal automobile, residence, appliance, or other articles. Such exclusion shall not apply when such sales are conducted on a regular and continuing basis. That will be assumed to be the case if an individual or family sells its personal residence more than twice or his personal automobile more than four times in any given calendar year. Other items shall be determined by the city manager on the basis of reasonableness on a case-by-case basis.
- H. Licensed real estate salespeople or associate real estate brokers who engage in professional real estate activity only as an agent of a real estate broker or real estate organization.
- I. Construction contractors or landscape contractors when their principal place of business is outside of the city and they have proof that they have obtained a

business license from the metropolitan service district. (Ord. 1924 § 1, 2003; Ord. 1863 § 7, 1999; Ord. 1349 § 11, 1976)

J. Rental of one or two single family residences owned by the same individuals.

5.08.120 Violation—Penalties.

A. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars. A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code.

B. Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense.

C. The conviction of any person for violation of this chapter shall not act or relieve such person from payment of any unpaid business tax including delinquent charges for which such person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city under other sections of this chapter.

D. In the event any provision of this chapter is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be personally subject to the penalties imposed by this section. (Ord. 1863 § 8, 1999; Ord. 1349 § 12, 1976)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 5.08, BUSINESS TAXES GENERALLY

WHEREAS, the City Council finds that the city’s business tax regulations periodically require review and updating; and

WHEREAS, the business tax regulations have not been updated since 1999; and

WHEREAS, the City Council finds that the business tax fees require adjustment; and

WHEREAS, the City Council finds that the code requires adjustment to clarify which businesses are required to pay a tax; and

WHEREAS, the City Council finds that the rental of one or two single family residences owned by the same individuals should be excluded from the requirements of paying a business tax;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.08.010, Purpose, of the Milwaukie Municipal Code is amended to read as follows:

5.08.010 Purpose. The business taxes imposed by this chapter are for revenue purposes only. The fees shall be in addition to and not in lieu of any other license, permit fee, charge or tax required under any other ordinance of the city

Section 2. Section 5.08.020, Definitions, of the Milwaukie Municipal Code is amended to read as follows:

5.08.020 Definitions. The following words or phrases, except where the context clearly indicates a different meaning, shall be defined as provided in this section:

A. “Business” means an enterprise, establishment, store, shop, activity, profession, management company or undertaking of any nature conducted directly or indirectly for private profit or benefit. Peddlers and solicitors are specifically included in this definition.

B. “City” means the city of Milwaukie, Oregon.

C. “City manager” means the city manager or designee.

D. “Doing, engaging in or transacting business” means any act or series of acts performed in the course of the pursuit of a business activity.

E. “Nonprofit organization” means a religious, philanthropic, patriotic and/or charitable organization. An organization shall be considered to be nonprofit if it meets the tests of a tax-exempt organization as specified by the Internal Revenue Service.

F. "Person" means and includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or or corporations or any officers, agents, employees or any kind of personal representatives thereof, in any capacity, either on that person's own behalf or for any other person, under either personal appointment or pursuant to law.

G. "Rental property" means a building, portion of building, or group of buildings within the city which are rented, leased or let for any purpose, including but not limited to dwelling or business purposes. Rental property includes, but is not limited to, a hotel or motel, automobile or tourist court, rooming or lodging house, mobile home or trailer park, private residence, office or warehouse.

Section 3. 5.08.030, Imposed, of the Milwaukie Municipal Code is amended to read as follows:

5.08.030 Imposed.

A No person shall maintain, operate, engage in, conduct, or carry on any business within the city without first having paid the business tax as established by this chapter.

B. As of the effective date of this ordinance fees shall be:

1. All businesses shall pay an annual fee of one hundred-ten dollars (\$110)
2. The first year rate for businesses starting after July 1 will be fifty-five dollars (\$55)
3. An additional rate of \$5 will be assessed on each FTE employee
4. The fee for temporary businesses (with a duration of two (2) weeks or less) shall be twenty-five dollars (\$25).

C. Revisions to the ordinance fees shall be set as part of the City's Fee and Charges Resolution.

D. As used in subsection B of this section, "FTE" means "full-time equivalent employee." Each business taxpayer must pay the FTE amount in addition to the applicable base rate. The number of FTEs for which payment is required is based on the number of full-time equivalent employees as of January 1 for full-year taxpayers, and on the first day of business for other taxpayers. No additional payments or refunds are applied for changes in the number of employees during the tax year.

E. A penalty of ten percent (10%) of the base fee shall be paid for each calendar month, or fraction thereof, in which the tax is due and unpaid.

Section 4. Section 5.08.040, Multiple businesses or premises, of the Milwaukie Municipal Code is amended to read as follows:

5.08.040 Multiple businesses or premises If a person is engaged or doing business at more than one establishment, branch or location this specifically includes but is not limited to rental houses, apartment complexes, commercial business complexes and retail shopping centers, each such establishment, branch or location shall be deemed a separate business and each such business shall be subject to the business tax. An owner of one or two single family residences that are offered for rent is not doing, engaging in or transacting business and not subject to a business tax. If two (2) or more businesses are carried on at the same location each shall be required to pay a separate business tax, except in situations where it can be shown where the individual businesses are in fact one (1) business. In determining whether different activities at the same location are in fact one business, normal and ordinary customs and usages of business shall be considered.

Section 5. 5.08.110, Exclusions, is amended by adding new subsection (J) as follows:

J. Rental of one or two single family residences owned by the same individuals.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

WSPage 23

ATTACHMENT 3

Milwaukie Municipal Code

[Up](#)

[Previous](#)

[Next](#)

[Main](#)

[Collapse](#)

[Search](#)

[Print](#)

[No Frames](#)

[TITLE 5 BUSINESS TAXES, LICENSES, AND REGULATIONS](#)

CHAPTER 5.08 BUSINESS TAXES GENERALLY

5.08.010 PURPOSE

The business taxes imposed by this chapter are for revenue purposes only. The fees shall be in addition to and not in lieu of any other license, permit fee, charge, or tax required under any other ordinance of the City. (Ord. 1989 § 1, 2008; Ord. 1349 § 1, 1976)

5.08.020 DEFINITIONS

The following words or phrases, except where the context clearly indicates a different meaning, shall be defined as provided in this section:

“Business” means an enterprise, establishment, store, shop, activity, profession, management companies, or undertaking of any nature conducted directly or indirectly for private profit or benefit. Peddlers and solicitors are specifically included in this definition.

“City” means the City of Milwaukie, Oregon.

“City Manager” means the City Manager or designee.

“Doing, engaging in or transacting business” means any act or series of acts performed in the course of the pursuit of a business activity.

“Nonprofit organization” means a religious, philanthropic, patriotic, and/or charitable organization. An organization shall be considered to be nonprofit if it meets the tests of a tax-exempt organization as specified by the Internal Revenue Service.

“Person” means and includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officers, agents, employees, or any kind of personal representatives thereof, in any capacity, either on that person’s own behalf or for any other person, under either personal appointment or pursuant to law.

“Rental property” means a building, portion of building, or group of buildings within the City which are rented, leased or let for any purpose, including but not limited to, dwelling or business purposes. Rental property includes, but is not limited to, a hotel or motel, automobile or tourist court, rooming or lodging house, mobile home or trailer park, private residence, office or warehouse. (Ord. 1989 § 2, 2008; Ord. 1863 § 2, 1999; Ord. 1349 § 2, 1976)

5.08.030 IMPOSED

- A. No person shall maintain, operate, engage in, conduct, or carry on any business within the City without first having paid the business tax as established by this chapter.
- B. As of the effective date of this ordinance codified in this section fees shall be:
 1. All businesses shall pay an annual fee of one hundred ten dollars (\$110.00).
 2. The first year rate for businesses starting after July 1st will be fifty-five dollars (\$55.00).
 3. An additional rate of five dollars (\$5.00) will be assessed on each FTE employee.
 4. The fee for temporary businesses (with a duration of two (2) weeks or less) shall be twenty-five dollars (\$25.00).
- C. Revisions to the fees shall be set as part of the City’s fee and charges resolution.

D. As used in subsection B of this section, "FTE" means "fulltime equivalent employee." Each business taxpayer must pay the FTE amount in addition to the applicable base rate. The number of FTEs for which payment is required is based on the number of full-time equivalent employees as of January 1st for full-year taxpayers, and on the first day of business for other taxpayers. No additional payments or refunds are applied for changes in the number of employees during the tax year.

E. A penalty of ten percent (10%) of the base fee shall be paid for each calendar month, or fraction thereof, in which the tax is due and unpaid. (Ord. 1989 § 3, 2008; Ord. 1951 § 1, 2005; Ord. 1349 § 3, 1976)

5.08.040 MULTIPLE BUSINESSES OR PREMISES

If a person is engaged or doing business at more than one (1) establishment, branch, or location this specifically includes, but is not limited to, rental houses, apartment complexes, commercial business complexes, and retail shopping centers, each such establishment, branch, or location shall be deemed a separate business and each such business shall be subject to the business tax. An owner of one (1) or two (2) single-family residences that are offered for rent is not doing, engaging in, or transacting business and not subject to a business tax. If two (2) or more businesses are carried on at the same location each shall be required to pay a separate business tax, except in situations where it can be shown where the individual businesses are in fact one (1) business. In determining whether different activities at the same location are in fact one (1) business, normal and ordinary customs and usages of business shall be considered. (Ord. 1989 § 4, 2008; Ord. 1349 § 4, 1976)

5.08.050 TAX YEAR AND PAYMENTS

A. The tax year is from January 1st to December 31st.

B. The business tax shall be paid annually in advance of the business tax year. For businesses starting after January 1st of any year, the business tax must be paid within one (1) month of commencing business.

C. Businesses shall be liable for the tax from the date they commence doing business within the City and not from the date of the tax is paid or the tax form submitted. (Ord. 1951 § 2, 2005; Ord. 1349 § 5, 1976)

5.08.060 DELINQUENCY CHARGE

A. The business license tax shall be deemed delinquent if not paid by February 1st of the applicable business tax year. If a person begins engaging in business after the start of the business tax year, the business tax shall be deemed delinquent if the tax is not paid within thirty (30) days after commencement of the business activity.

B. Whenever the business tax is not paid on or before the delinquent date a delinquency charge equal to ten percent (10%) of the original business tax due and payable shall be added for each thirty (30) day period or fraction thereof during which the business tax and any accumulated delinquency charges remain unpaid. The total amount of the delinquency charge for any tax year shall not exceed one hundred percent (100%) of the business tax due and payable for such year.

C. The date that the business tax is received by the City or the date of the postmark if remittance is made by mail shall be used in determining when the business tax is paid.

D. Notwithstanding the date of receipt of the business tax, the tax shall be held to be delinquent if a complete information form has not been filed with the City. Completeness of the form will be judged by the completeness of the information requested on the form.

E. The City Manager or designee shall have the authority to waive a delinquency charge when,

in the Manager's judgment, circumstances are such that a delinquency charge should not be assessed. (Ord. 1863 § 3, 1999; Ord. 1379 § 1, 1977; Ord. 1349 § 6, 1976)

5.08.070 INSPECTION OF BUSINESS RECORDS

The City Manager is empowered to investigate and examine pertinent records of businesses as required to determine violations of this chapter. (Ord. 1349 § 7, 1976)

5.08.080 TRANSFER OR RELOCATION OF BUSINESS

Upon sale or other transfer of a business, the new owner shall inform the City of the change in ownership and pay a change in business ownership fee but shall not have to pay an additional business tax. If a business is relocated within the City without a change in ownership, the owner shall inform the City of the new location and pay a business relocation fee but no additional business tax shall be required. The City Council shall establish the amount of the change of business ownership fee and the business relocation fee by resolution. (Ord. 1909 § 1, 2002; Ord. 1379 § 2, 1977; Ord. 1349 § 8, 1976)

5.08.090 ISSUANCE AND DISPLAY OF RECEIPT

A. Upon payment of the business tax a person or business shall be issued a receipt by the City for such payment. The receipt shall be kept posted in a conspicuous place on the business premises at all times. If there is no regular place of business in the City, the receipt shall be in the possession of a representative of the business present within the City at all times during which the business is being transacted by an employee, agency or representative within the City.

B. Payment of the business tax by a person does not authorize any conduct that violates any applicable provision of local, State, or federal law. Possession of a receipt for payment of the business tax shall not be asserted as a defense in any enforcement action other than an action related to payment of the business tax. (Ord. 1863 § 4, 1999; Ord. 1349 § 9, 1976)

5.08.100 ADMINISTRATION

A. The City Manager shall be responsible for the administration of this chapter. The Manager may adopt reasonable rules and regulations relating to any matter pertaining to the administration of this chapter, as well as preparing, adopting and making available to the taxpayer all forms necessary for compliance with this chapter. The application form shall, at a minimum, require the following information:

1. Name and address of business;
2. Whether the business is a home occupation, as defined by the City Zoning Ordinance;
3. Type of business (i.e., retail, office, warehouse, manufacturing);
4. Owner and/or manager of business;
5. Start date of business;
6. A description of any change in business use from previous year;
7. Business location square footage;
8. Number of employees at business;
9. Whether business uses or stores hazardous or combustible materials;
10. Emergency contact person's name, home phone number, cell phone number, pager number, and any other after hours number available.

B. No person shall violate or fail to comply with any rule or regulation adopted by the City Manager; refuse to allow the examination of books, papers and records; or wilfully make any false

or misleading statements to the City Manager regarding the computation of the amount of business tax due and payable under this chapter.

C. To the extent allowed by law, the City Manager shall keep all information furnished or secured under the authority of this chapter in strict confidence. Such information shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration and enforcement of this chapter. (Ord. 1863 §§ 5, 6, 1999; Ord. 1349 § 10, 1976)

5.08.110 EXCLUSIONS

The following situations are specifically excluded from the requirement of paying a business tax:

- A. Wholesalers selling or delivering goods to merchants of the City for the purpose of resale. This exclusion pertains only if the wholesaler does not maintain a place of business within the City and also does not engage in retail trade within the City;
- B. Nonprofit organizations;
- C. Persons engaged in delivery of goods or services from points outside the City, providing sales contacts and actual sales take place outside the City;
- D. Newspaper carriers;
- E. Representatives of public utilities;
- F. Garage sales, yard sales, and other similar activities. Such exclusion shall not apply, however, if either of the following conditions is met:
 - 1. More than two (2) such sales take place within any one (1) calendar year at the same location;
 - 2. The sale has a duration of more than seventy-two (72) consecutive hours.
- G. The sale of personal assets such as a personal automobile, residence, appliance, or other articles. Such exclusion shall not apply when such sales are conducted on a regular and continuing basis. That will be assumed to be the case if an individual or family sells its personal residence more than twice or personal automobile more than four (4) times in any given calendar year. Other items shall be determined by the City Manager on the basis of reasonableness on a case-by-case basis.
- H. Licensed real estate salespeople or associate real estate brokers who engage in professional real estate activity only as an agent of a real estate broker or real estate organization.
- I. Construction contractors or landscape contractors when their principal place of business is outside of the City and they have proof that they have obtained a business license from the Metropolitan Service District.
- J. An owner who offers for rent not more than two (2) single-family residences. (Ord. 1989 § 5, 2008; Ord. 1924 § 1, 2003; Ord. 1863 § 7, 1999; Ord. 1349 § 11, 1976)

5.08.120 VIOLATION—PENALTIES

- A. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars (\$200.00). A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code.
- B. Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense.

C. The conviction of any person for violation of this chapter shall not act or relieve such person from payment of any unpaid business tax including delinquent charges for which such person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City under other sections of this chapter.

D. In the event any provision of this chapter is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be personally subject to the penalties imposed by this section. (Ord. 1863 § 8, 1999; Ord. 1349 § 12, 1976)

ATTACHMENT 4

mfs32

From: "Bill Monahan" <Bill.Monahan@jordanschrader.com>
To: "Mike Swanson" <mfs32@comcast.net>
Cc: "Jenny De Gregorio" <Jenny.DeGregorio@jordanschrader.com>
Sent: Friday, January 04, 2008 6:19 PM
Subject: Business License

Hi Mike,

I received your voice mail message regarding business tax. If I understand the question correctly, the issue is that a person who owns five individual houses in the city rents out the five houses and is charged 5 business tax fees, for a total of \$500. But, someone owning an apartment complex is charged one business tax, namely \$100. You asked that I look at the business tax section of the code and provide you with a memo.

I don't recall reviewing this section of the code before. I note that most of the language originated in 1976 with some changes made in 1999. I am not familiar with how the code has been interpreted to apply the business tax to owners of rental residential properties. That being said, I think that it is a stretch to charge an owner of rental houses for more than one business tax. That is, if the code requires that an owner of a single family residential property that is rented pay a business tax, I think the owner should pay one tax whether he or she owns 1,2,... individual locations.

The code defines "rental property" at 5.08.020 G. as a "building" or "group of buildings." The definition includes dwellings. But, I can find no other mention of "rental property" within Chapter 5.08. There is no statement that says that a rental property is to be considered to be a business and governed by the business tax.

Perhaps there was a change in 1999 and the code language that earlier said that the operator or a rental property or a series of rental properties was to be considered as one or more businesses. We don't have any language here to help.

I interpret the definition of "business" in 5.08.020 A. to include an enterprise that owns and rents single family houses. But, I would consider the owner of several houses in the city to be operating just one business, so subject to one tax of \$100. If there were code language that said that the tax is to be applied to each "rental property" then the city would be entitled to assess multiple taxes. Section 5.08.040, Multiple businesses or premises, speaks of a person being "engaged or doing business at more than one establishment, branch or location" with each being deemed a separate business, each subject to a separate tax. This is standard language from the business tax of several communities. But, there is no statement that says that each residential rental unit is a separate business, and no definition of a rental property as a business at all.

In conclusion, I think the code does not support collecting separate tax for each rental residential property. If the city had the authority in the code at one time, it apparently deleted it. The fact that "rental property" is defined but then not used later in this chapter of the code may indicate that earlier authority has been changed.

Please let me know if you require further analysis. If there is a more up to date version of the code language than that accessed off the web that differs from the version I reviewed, please let me know.

Bill

Bill Monahan
Jordan Schrader Ramis PC
Attorneys at Law
PO Box 230669
Portland OR 97281
Direct Line: 503-598-5519
Main Line: 503-598-7070
Fax: 503-598-7373

1/6/2008

Serio, Judith

From: Swanson, Mike
Sent: Tuesday, January 22, 2008 1:58 PM
To: Serio, Judith; Salyers, Tim
Cc: 'bill.monahan@jordanschrader.com'

Judy and Tim:

I will be at meetings all day Wednesday, Thursday, and Friday, and I wanted to leave you with some direction with regard to the business tax and individual rental homes.

My direction is that we continue to assess the tax on each individual home if it occupies a location separate from any other owned by the same person or firm. . One reason is that we are in the middle of the process, and it would place an administrative burden on staff to make a change. However, administrative convenience is not alone enough to justify this position. Fortunately, I believe that the Code supports this conclusion.

My reading of Chapter 5.08.040 leads me to the conclusion that the tax relies on location and not size of the enterprise. Thus, for purposes of Chapter 5.08, one apartment facility equals one rental home. In the same way, a small corner grocery store equals one Safeway. In each case the distinction arises from the number of employees, which are charged separately.

I will be preparing a work session on the business tax issue where I am sure one question will be the business tax and its applicability to rental homes. If the Council wishes to change this practice they can do so and apply it to the next year. I will be discussing this matter with you before I appear before the Council.

Mike Swanson



Agenda Item: WS 4.
Meeting Date: May 15, 2012

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Council meeting with Park and Recreation Board

Prepared By: JoAnn Herrigel, Community Services Director

Dept. Head Approval: JoAnn Herrigel, Community Services Director

City Manager Approval:

Reviewed by City Manager:

ISSUES BEFORE THE COUNCIL

At the May 15 Council Work Session members of the Park and Recreation Board will meet with Council for their annual check-in.

STAFF RECOMMENDATION

NA

KEY FACTS & INFORMATION SUMMARY

The Park and Recreation Board held 10 board meetings since their last meeting with Council in June 2011. All positions on the board are filled and all members are active and engaged. A summary of the Board's work over the past year and a proposed list of tasks for 2012-13 are attached for Council's information. Board members will discuss their work further on May 15.

OTHER ALTERNATIVES CONSIDERED

NA

CITY COUNCIL GOALS

NA

ATTACHMENT LIST

- 1) TASK SUMMARY AND PROPOSED WORK PLAN FOR 2012-13

FISCAL NOTES

None.

ATTACHMENT 1

Milwaukie Park Board Work Plan for 2011—12

(tasks completed shown in **bold**)

PARB held 10 meetings since their last check-in with Council in June 2011. No meetings were held in December or January.

- Monitor administration of intergovernmental agreement with NCPRD and provide guidance on amendments as necessary
 - **One amendment pending re: park utility payments.**
- Park board members to attend each of the seven NDAs to discuss Park Board work plan and answer questions about the Board and Parks issues
 - **No action.**
- Monitor and provide input into the Master Plan design and land use approval for the northern part of North Clackamas Park
 - **Met with NCPRD staff in March. Letter regarding plan to be conveyed to Planning Commission.**
- Provide staff with input and guidance regarding maintenance, design and development of Milwaukie Riverfront Park (Phase 1 to be constructed in 2011)
 - **Staff provided updates on Klein Point and PARB commented.**
- Monitor park maintenance levels and provide District maintenance staff with input on an on-going basis. This includes Board site visits to each City park and reports back on needs, raves and ideas.
 - **PARB members visited all City Parks in June and July and reported on issues and ideas at July meeting**
- Participate in and promote park-related events such as Arbor Day, park walks, Riverfest and Solstice event.
 - **Members participate in events and City meetings as available.**
- Provide staff with guidance on enforcement of the Parks rules at all City Parks
 - **Issue of off-leash dogs discussed and input provided to staff**
- Provide letters of support for grants for City Park projects
 - **Letters of support provided for Kellogg Lake Ped bridge, 17th Ave ped/bike trail and Mt Scott enhancements**
 - **Board members attended the discussions regarding MTIP selection of 17th Ave**

- Provide staff with input and guidance on Metro local share fund spending (76K remaining in 2011-12)
 - **School District property on Lake Rd evaluated for purchase and discussions indicated lack of interest by District**
 - **Bowman and Brae property purchase supported by PARB. Purchase complete in January 2012. Local Share funds now expended and IGA inactivated.**
- Monitor the development of Title 13 Code
 - **Planning staff attended winter meeting to provide guidance on impact of Title 13 code on City properties**
- Monitor the development of Community Gardens in the City
 - **Staff provides updates as available.**
- Participate in the review and updating of the NCPRD Master Plan and CIP
 - **Staff monitored District progress and provided board with updates. Master Plan process to begin in 2012-13.**

Additional Tasks:

- **Elected Mart Hughes Chair and Sheri Dow Vice Chair in August**
- **Provided input on proposed upgrades to Dogwood Park as part of South Downtown planning**
- **Met with Planning Director to develop referral process for development projects that impact City Parks**
- **Developed a list of the following park priorities:**

The group discussed the various park projects that remained to be completed in the City. They listed the projects in the following priority order:

- 1) Finish the land use approval process for north side of North Clackamas Park. Take advantage of any opportunities to implement this plan once approved.
- 2) Assist with the master planning, design and land use application process for Kronberg Park
- 3) Assist with any aspects of the CDBG grant for Balfour Park that are necessary
- 4) Assist with design, land use approvals and development of Wichita Park
- 5) Assist with design, land use approvals and development of the Lake Rd site at Bowman and Brae

For open space and natural areas, the group noted the following priorities:

- 1) Spring Park management plan and enhancement
- 2) North Clackamas Park
- 3) Kronberg Park

Park and Recreation Board
Tentative Work Plan for 2012-13

- Participate development of the NCPRD Master Plan and CIP update
- Monitor administration of intergovernmental agreement with NCPRD and provide guidance on amendments as necessary
- Park board members to attend each of the seven NDAs to discuss Park Board work plan and answer questions about the Board and Parks issues
- Provide staff with input and guidance regarding maintenance, design and development of Milwaukie Riverfront Park (Klein Point to be constructed in June/July 2012)
- Monitor park maintenance levels and provide District maintenance staff with input on an on-going basis. This includes Board site visits to each City park and reports back on needs, raves and ideas.
- Provide staff with guidance on enforcement of the Parks rules at all City Parks
- Provide letters of support for grants for City Park projects
- Monitor the development of Community Gardens in the City
- Review all development plans affecting City parks that are referred to the Board
- Monitor progress and provide input into City projects such as Kronberg Park design, Spring Park management plan, Milwaukie Baseball stadium, and Wichita Park design and development