

CITY COUNCIL MEETING
August 23, 1976
7 p.m.

COUNCIL CHAMBERS

SPECIAL MEETING

A special meeting of the City Council of Milwaukie, Oregon, was held on the 23rd day of August, 1976. The following councilpersons were present:

- | | |
|-------------------|--------------------|
| C. Mervin Englund | Jerry Hutchison |
| Charles E. Swan | Mayor Bill E. Hupp |
| Joy Burgess | |

Also present:

- Harold L. Schilling, City Manager
- Myer Avedovech, City Attorney

PRESENTATION OF PROPOSALS RECEIVED ON CITY PARKING LOT

Presentation was given by Oregon Mutual Savings Bank, represented by Jack Goetze, President; Don Plympton, Vice President Mortgage Division; John Saxe, architect, and Ted Jensen, OMSB legal counsel. The presentation focused on advantages of attracting OMSB as a new corporate citizen to the community and presentation of the architectural plan for their proposed facility. The presentation concluded at 7:17 and was followed by questions from City Council. Presentation was given by First State Bank, represented by Bob Franz, President; Ned Takesumi, Property Manager; and Ray Bartel, architect. Presentation focused on advantage of expansion of First State Bank facility and presentation of architectural plan for their proposed facility. Presentation was followed by questions from Council, and concluded at 8 p.m.

PETITION RE DRAINAGE PROBLEMS AT SE HOWE AND 44TH AVENUE

Petition was presented, signed by 18 residents in the area, complaining of drainage problems at SE Howe and SE 44th Avenue, and asking the city to repair, correct or replace the rain drains before January 1, 1977. The matter was referred to staff.

CONTINUATION OF ITEMS NOT COVERED ON REGULAR AGENDA - 8/16/76

1. BOR GRANT APPLICATION.

Grant applications for Furnberg Park Phase II development and Scott Park Phase I development have been prepared by staff, and are being sent to Bureau of Outdoor Recreation. It was MOVED by Burgess, SECONDED by Swan, to approve item d of the Consent Calendar of the August 16 meeting. MOTION CARRIED unanimously and so ordered.

2. MEMO RE RECEPTIONIST POSITION.

Manager has sent memo, dated August 12, concerning request for cancellation of one Clerk Typist II position and establishment of Receptionist position. This is information only, as it will be a supplemental budget item.

3. STEARNS ADDITION.

Planning Director has sent memo, dated August 9, concerning appeal filed on Stearns Addition. Manager explained an issue needs policy resolution not only in the instant problem involving a situation where alignment of street necessitates the taking of a corner of a piece of property, but also in other areas where street fragments

DDJ309

pose problems. It was MOVED by Hutchison, SECONDED by Burgess, to hold the first meeting in September on September 20, and set hearing that night on the appeal on Stearns Addition. MOTION CARRIED unanimously and so ordered. There will only be one regular meeting in September.

4. REPORT AND RECOMMENDATION RE HUPP V. SCHUMACHER

City Attorney has written memorandum, dated August 20, reporting on progress of Hupp v. Schumacher (library suit) and recommending that after an order is signed by the judge, the city appeal the judge's opinion to the Oregon Court of Appeals. It was MOVED by Hutchison, SECONDED by Swan, to follow the City Attorney's recommendation as fast as possible, with what appears to be the strongest course of action. MOTION CARRIED unanimously and so ordered.

5. REFINEMENTS TO MICROPHONE SYSTEM

Manager explained that microphone wires at Council dais cannot be moved from their present position, and a recommended alternative is lavalier microphones, which would cost approximately \$230 for seven microphones and seven plug-in stations.

6. CONTRACT FOR CENTRAL DISPATCH SERVICES - CLACKAMAS FIRE DISTRICT NO. 1

Final draft of contract for Central Dispatch services with Clackamas Fire District No. 1 has been prepared, and Manager recommends approval. It was MOVED by Hutchison, SECONDED by Burgess, to approve signing of the Central Dispatch contract with Clackamas Fire District No. 1. It was MOVED by Burgess, SECONDED by Hutchison, to amend the motion to include specifying that space be provided for signatures of the other parties involved, and also a change on page 1, fourth line from the bottom, to read "which was" instead of "which is." On the amending motion, MOTION CARRIED unanimously. On the main motion, MOTION CARRIED unanimously.

7. LETTER FROM SENATOR BOE RE SENATE BILL 100

Council has received letter from Jason Boe, Oregon State Senate President, dated August 10, 1976, concerning any suggested amendments to Senate Bill 100. Staff was asked to look at desirable changes in provisions of Senate Bill 100, so those might be communicated to Senator Boe as requested.

8. STAFF MEETING WITH HIGHWAY DEPARTMENT RE HARRISON AND HWY. 224
Staff has scheduled meeting with the Highway Department on alignment of Harrison Street at the intersection of Highway 224, and also to explore questions of grade separation. The meeting will be at 1:30 p.m. August 25 in Council Chambers.

9. MCGINNIS ENGINEERING REPORT RE CITY COUNCIL CHAMBERS

McGinnis Engineering has written report on air conditioning system for Council Chambers, dated August 13, stating the system does not provide for exhausting air from the Council Chambers. It was MOVED by Hutchison, SECONDED by Englund, to ask staff to meet with the architect, Jim Routson, and try to come to a solution to recommend. MOTION CARRIED unanimously and so ordered.

10. LETTER TO COUNTY RE SEWAGE TREATMENT PLANT

Council has received copy of letter Manager has written to County Utilities Director regarding odors from operation of sewage treatment plant.

REQUEST FROM COUNCILWOMAN BURGESS THAT COUNCIL DISCUSS CITY ASSUMING LEADERSHIP ROLE IN PROMOTING A VIABLE COUNTY-WIDE LIBRARY SYSTEM

There was discussion of the county library levy, and it was the consensus of the Council that the first priority should be defeat of the levy. If defeated, the Council expressed consensus that Milwaukie has a responsibility to explore and propose equitable approaches to delivering county-wide library services.

EXECUTIVE SESSION TO DISCUSS GUIDELINES FOR NEGOTIATION OF PROPOSALS FOR LEASING A PORTION OF CITY-OWNED PARKING LOT

ORS 192.660 (2) provides executive session may be held to conduct deliberations to negotiate a real property transaction. It was MOVED by Swan, SECONDED by Englund, to conduct the discussion in executive session. MOTION CARRIED with the following roll-call vote: AYES: Englund, Swan and Hutchison. NOES: Burgess and Hupp.

The executive session started at 10:19 p.m., and the meeting adjourned at 11:47 p.m.

Bill Hupp
Bill Hupp, Mayor

ATTEST:

Harold L. Schilling
Harold L. Schilling, Secretary pro tem

DDJ309

CITY COUNCIL AGENDA
 August 23, 1976
 7 p.m.

COUNCIL CHAMBERS

SPECIAL MEETING

- I. PRESENTATION OF PROPOSALS RECEIVED ON CITY PARKING LOT
 7 p.m. to 7:30 p.m. -- Oregon Mutual Savings Bank
 7:30 p.m. to 8 p.m. -- First State Bank
 8 p.m. -- *Executive Session to discuss guidelines and
 procedures for negotiations on proposals
- II. CONTINUATION OF ITEMS NOT COVERED ON REGULAR AGENDA -- 8/16
4. CONSENT CALENDAR
 d. BOR Grant application
11. CONSIDERATION
 b) Memo re Receptionist position
 c) Stearns Addition
12. OTHER BUSINESS
 a) Report and recommendation re Hupp v. Schumacher
 b) Reschedule first September Council meeting
 c) Refinements to microphone system
 d) Contract for Central Dispatch services - Clackamas
 Fire District No. 1
 e) Letter from Senator Boe re Senate Bill 100
 f) Staff meeting scheduled with Highway Department re
 Harrison Street at Highway 224 -- 8/25 -- 1:30 p.m.
 g) McGinnis Engineering report re City Council Chambers
 h) Letter to county re Sewage Treatment Plant
- III. REQUEST FROM COUNCILWOMAN BURGESS that Council discuss city
 assuming leadership role in promoting a viable county-wide
 library system.

* ORS 192.660 (2) ... Executive session may be held: (a) To
 conduct deliberations ... to negotiate a real property transaction.

MEMORANDUM

August 20, 1976

TO: CITY MANAGER

FROM: CITY ATTORNEY

SUBJECT: HUPP V. SCHUMACHER (LIBRARY SUIT)

I have reviewed the brief letter from Judge Gilroy. He states that the defendants' Demurrer on the Third ground shall be sustained: The Third ground was that we did not state sufficient facts for a cause of action in our Complaint. What the Judge is saying is that in his opinion the language of the Complaint was not sufficient for us to sue the county. This also implies that there may not be a legal basis upon which the city can sue the county.

My research, which as submitted to the Court, stated that there was sufficient basis for a cause of action on at least one of the Counts, that being the allegation, that the County action was unconstitutional.

The comments contained on the photo copy of the Judge's letter, which Ruth Green has shown you, were written either by Paula Hamilton, or Jerry Justice, Administrative Aide to the County Commissioners. Deputy District Attorney, Ross Cravens, (who is representing the County in this litigation) did not make those statements and said that he simply provided a copy of the letter to Paula Hamilton.

The options available to the city at this time are as follows:

1. Do nothing. Accept the Order and pay the bill.
2. File an Amended Declaratory Judgment and reword the complaint to see if sufficient facts can be stated.
3. Refuse to plead further and appeal the decision to The Oregon Court of Appeals.

My recommendation is that after an appropriate Order is signed by the judge, we refuse to re-plead and to appeal the judge's opinion to The Oregon Court of Appeals.

Respectfully submitted,



Myer Avedovech
MA:db

MEMORANDUM

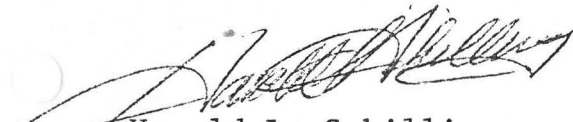
August 20, 1976

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY MANAGER

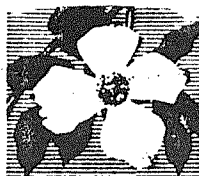
SUBJECT: August 23 agenda

Inasmuch as several items of importance were not considered at your last meeting, I discussed with the Mayor bringing the uncompleted portion of the agenda to the Council at your work session. We have notified the newspapers and accordingly a portion of your meeting will be considered a special session, and you may take action on the uncompleted agenda items. Several items, you will note, fall under "other business," and were not specifically identified within the agenda for August 16, but were matters that at the time I had need to bring to your attention and seek direction. Most of the things you will be looking at will be routine, and therefore I would see no great time problem in dispatching these items.



Harold L. Schilling
City Manager

CITY OF MILWAUKIE



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PUBLIC WORKS DEPARTMENT
in the City Hall • phone 659-5171

August 18, 1976

Mr. Rob Cameron, Location Engineer
P. O. Box 02157
Portland, Oregon 97202

Dear Rob:

We appreciate having the opportunity to sit down with you at 1:30 p.m. on August 25, here in City Hall, to discuss the improvement of Harrison Street. We will want to explore in a preliminary way the feasibility of alternative ways for handling traffic west of 32nd Avenue, where the hazards and congestion of the railroad/expressway crossings occur.

We also would like to come to an agreement on a general approach and program which would lead to design and construction of the most feasible project.

Sincerely yours,

CITY OF MILWAUKIE

A handwritten signature in cursive script, appearing to read "Cyrus R. Nims".

Cyrus R. Nims
Planning Director

CRN/bb

L. R. MCGINNIS, P.E.

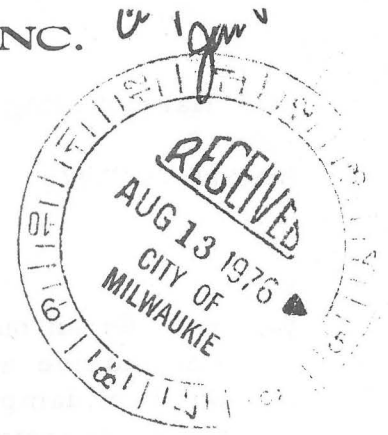
D. D. PICKETT

J. A. WRIGHT

MCGINNIS ENGINEERING, INC.

ENGINEERING CONSULTANTS

August 13, 1976



Mr. Hal Schilling
City Manager
City of Milwaukie
City Hall
Milwaukie, Oregon 97222

RE: AIR CONDITIONING SYSTEM FOR COUNCIL CHAMBERS

Dear Mr. Schilling:

We have reviewed the plans for the air conditioning system in the Council Chambers and made a job site observation of the system.

Our calculations indicate that the system is adequately sized to handle the cooling load when the room is fully occupied.

However, there are no provisions for exhausting air from the Council Chambers. EXH. FAN No. 1 shown on the Drawings is designed to exhaust air from the joist space only.

The system is not designed to give the results you desire of clearing the room of smoke. In order to obtain the desired results, we recommend the following changes be made to the system:

1. Provide a gravity ventilator to exhaust air from the roof joist space. This ventilator will replace the function of the exhaust fan.
2. Change the capacity of exhaust fan EX-1 to 500 CFM EXH. Connect the fan to a 24x24 exhaust register in the ceiling. Provide a wall switch with a pilot light to control to exhaust fan.

Mr. Hal Schilling

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August 13, 1976

3. Provide an outside air intake in the return air duct. The outside air intake shall have an automatic two position damper interlocked to open when the exhaust fan is energized.

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These features will allow the fan to be manually energized to clear the room of smoke and at the same time, bring in an equal amount of fresh make-up air.

However, the air conditioning unit does not have heating capability. If the unit is to be used for ventilation on a year around basis, electric strip heaters must be added to the unit. If electric heaters are not added, the supply air temperature will be too cold during the winter.

500 CFM is about the maximum air which can be exhausted from the space without affecting the capacity of the air conditioning unit. This amount of air will not quickly clear the room of smoke, but should be adequate for the results you desire. We would recommend that the exhaust fan and the supply fan run continuously when the Council is in session.

At the time of our job site observation, it was noted that Exhaust Fan EX-1 was not operational because electrical power had not been connected to the unit.

We did not review the system serving the engineering office. If you experience problems or have questions regarding this system, we will be happy to review it.

If you have any questions, please contact this office.

Sincerely,

James A. Wright

James A. Wright

JAW:jkj

*Rough estimate for corrective work
\$750 without heaters (\$500 if had
been specified). Heaters would add
\$160 + \$100 installation + ? electrical.
Overall \$1000 - \$1500.*

L. R. McGINNIS, P.E.

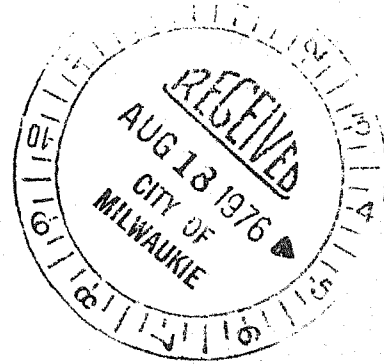
McGINNIS ENGINEERING, INC.

D. D. PICKETT

ENGINEERING CONSULTANTS

J. A. WRIGHT

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August 17, 1976

Mr. Hal Schilling
City Manager
City of Milwaukie
City Hall
Milwaukie, Oregon 97222

Dear Mr. Schilling:

Confirming our telephone conversation regarding the estimate for work described in my letter of August 13, 1976, we estimate the work will cost \$800.00.

If electric heaters are added to make the ventilation system useable year around, it will cost an additional \$275.00. This cost does not include electrical cost.

If you need additional help, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "James A. Wright".

James A. Wright

JAW:jkj

12 h

August 16, 1976

Mr. David J. Abraham
Utilities Director
Department of Public Works
902 Abernethy Road
Oregon City, Oregon 97045

Dear Dave:

I have had consistent, continuing complaints concerning odors associated with the operation of the Kellogg Sewage Treatment Plant. This morning and into early afternoon the odors were unbearable.

Please let me know what progress you are making in dealing with this serious problem.

Very truly yours,

Harold L. Schilling
City Manager

HLD:df

FROM THE MAYOR'S DESK

To Safety Comm

8-17-76

12305 SE 67TH CT.

MILWAUKIE, OREGON 97122

MAYOR BILL HUPP
CITY HALL
MILWAUKIE, ORE 97122

DEAR SIR:

WE LIVE ON A ONE BLOCK CUL-DE-SAC WITH A SLIGHT BEND SO THAT FROM HEMLOCK STREET IT IS IMPOSSIBLE TO TELL THAT IT IS A DEAD-END STREET.

WE HAVE CALLED THE CITY ENGINEERS THREE (3) TIMES TO TRY TO GET A DEAD-END, CHILDREN AT PLAY, SIGN POSTED ON THE CORNER. MOST OF THE OTHERS ALREADY HAVE THEM EVEN THOUGH A DRIVER CAN SEE THAT THEY ARE DEAD ENDS.

THERE ARE ABOUT 17 CHILDREN THAT PLAY AT THE END OF THIS STREET, INCLUDING ONE AND SOON TO BE TWO OF MY OWN. LAST SUNDAY WE COUNTED 11 CARS THAT CAME UP THIS STREET, SOME AT A HIGH RATE OF SPEED, ONLY TO FIND A DEAD-END, MAKE THE TURN AROUND AND SPEED AWAY.

IT IS OUR BELIEF AND THE BELIEF OF EVERY PERSON LIVING ON THIS STREET, THAT A SIGN WOULD CONSIDERABLY LESSEN THE TRAFFIC SITUATION.

WE WOULD LIKE TO GET THIS FIXED AS SOON AS POSSIBLE AND I CAN SEE THAT ^{BY} CALLING THE TRAFFIC ENGINEERS, ~~calling~~ ^{going through} THROUGH ALL THE B.S. AND RED TAPE, IT WILL NEVER GET DONE OR IF IT DOES IT WILL BE TOO LATE TO PREVENT A CHILD GETTING HURT.

I BELIEVE AS A TAXPAYER THAT THERE COULD CERTAINLY BE ENOUGH MONEY FOR 1 MORE SIGN.

THANK YOU FOR ANY CONSIDERATION WHICH YOU MAY GIVE

654-6053

Wm. R. Penn - -2035 67th

Sincerely yours, the request.

CITY OF MILWAUKIE

Inter-Department Memorandum

TO: HAL SCHILLING

Date: September 17, 1976

FROM: DON OBLANDER

SUBJECT: GARBAGE FEES AND RATES

You have received a summary of correspondence to date relative to the garbage franchise fees. I would like to go beyond that with my own feelings as to where we are at this point and which directions we should be considering for future movement.

First of all, I would like to cut through some of the emotionally charged statements which have been flying around. Following are the facts as I see them:

1. Franchise fees are not illegal. Mr. Harlan has stated repeatedly that Milwaukie cannot legally impose franchise fees as a revenue source. Yet I believe the recordings of our meetings will bear witness to his retraction to the effect of "Well, it is not really illegal, but I think it should be because" I will entertain (if not endorse) arguments listing the reasons opposing fee increases. However, I consider legality to be a nonissue.
2. The proposed fees are not excessive and/or unreasonable. Much precedent exists for the proposed level of fees, and, in fact, even higher fees. I will not accept such arguments unless (and until) I am presented evidence of the financial hardships the franchisees claim would result. Despite Mr. Harlan's repeated statements with respect to his thorough accumulation of financial data, I have yet to see anything of consequence.
3. The City has a moral commitment not to change the fee. First, our files include a signed copy of the contract from 1971 which indicates that the increase was made "in consideration" for a rate increase. While I don't know what kind of a deal was made way back then, I do know it wasn't out of the previously stated "goodness of the franchisees' hearts", no way.

Second, the contract had specific provision for future changes in the fee. Thus, further evidence that the fee was not intended to be immutable.

Finally, even if the contract could have once been construed as being a long-term commitment, it has since been determined to have been illegal. Are we to be expected to agree to a moral commitment to an illegal contract? Again, no way.

SEPTEMBER 17, 1976

4. The franchisees have repeatedly maintained that the City has been deficient in franchise enforcement. In the spring of 1975, I was advised of encroachment by non-franchised collectors. I asked for details and took action to follow up shortly after receipt thereof. Unfortunately, I did not receive such data until mid summer 1976, well over a year later. I cannot speak for past years, but I will make every effort to alleviate current problems as soon as they are reported to me.
5. Constant delays have been claimed in approving rate hikes in past years. I understand that there were legal questions to be resolved in connection with at least one prior increase. I cannot speak for the other requests which happened long before I was here.

It has been charged that the franchisees are overdue for another increase. Mr. Harlan informed me of this about a year ago and stated that he was gathering supporting information. Ron Hyde recently expressed amazement and concern that the rate request had not been presented to the City long ago. If there is, in fact, a delay, it is not on the part of the City.

I would hope that the above comments remove some of the irrelevant issues which have been thrown up in opposition to franchise fee increases. Following are issues which I feel are relevant to the subject of franchise fee determination.

1. Garbage rates vs. tax rates vs. franchise fees. Schedule I is a rehash of information provided in an earlier memo. It analyzes other cities in the Metropolitan area, including Mr. Harlan's favorite examples as well as my own. Some interesting facts are apparent.

First of all, cities with the highest rates tend to have the highest franchise fees. Beaverton is an exception having the lowest rate and the highest fee.

Perhaps the most important observation is that the cities in Clackamas County do indeed charge less for a franchise fee than does Milwaukie. At the same time, their rates are lower than the \$3.75 rate the franchisees have specified as their minimum requirement. The average is only \$3.40. Very interesting! What we have facing us is a request which would enable the franchisees to charge the highest rates of these comparable cities while paying several thousand dollars per year less than those "high rate" cities pay. Incredible! Are the rate increases needed to cover costs or to augment the collectors retirement plans?

SEPTEMBER 17, 1976

The second point is that those cities which make the most effort to use non-property tax resources (such as franchise fees) possess the lowest tax rates. Beaverton, Gresham and Hillsboro collect higher franchise fees than Milwaukie ever has and all three have lower tax rates, one nearly \$2.00 less than Milwaukie's. Conversely, those which pay lower fees (Gladstone, Lake Oswego, Oregon City and West Linn) all have tax rates higher than our own, one over \$3.50 higher.

My concluding argument is that the required funding has to come from somewhere. If it does not come from other sources, it will come from property taxes. Low franchise fees are equatable to high tax rates and also to low garbage collection rates.

2. Increased fees will be passed through to consumers, won't they?

Not necessarily. An increase to \$10,000 would add a net cost to the franchisees of \$2,145 per year (\$10,000-\$6,255-\$1,600). This represents an increase of 2.1¢ per month per residential service. As a practical matter, the franchisees would prefer to bill even amounts. Thus, if the going rate were \$3.50, it would be a headache to bill \$3.52. Over the long term, all costs will be recovered from customers if the firm is to remain in business. However, if the franchisees were given a 25¢ per month increase and had to "eat" the 2.1¢ cost increase, they would still be ahead by \$23,276 per year. A 50¢ increase would net them \$48,675 in new revenue.

Let us face facts, the increase can be recovered within the rate request they would otherwise make. It would mean a reduction of the new profits by \$2,145 or an average of \$357.50 per business. New revenues would average \$8,470 if the full 50¢ were granted. Thus, new revenues would exceed new operations expenses by a ratio of nearly 24:1.

One other aspect of fees or taxes on businesses should be explored here. If it is determined by the Council that fees or taxes upon businesses are to be discouraged because they are ultimately passed on to and paid by the consumer, then a logical expansion should be pursued. Property taxes assessed upon businesses are passed to consumers through prices. A logical conclusion would be to refund all taxes to businesses in order to help them reduce their prices. In order to make the difference (since 1/3 of Milwaukie's assessed valuation is business) our tax rate for the current year would have to be increased from \$5.63 to \$8.45, or \$84.60 in total on the "average" \$30,000 house.

Frankly, there are some very good arguments to be made for removing all taxes from businesses. In my opinion, the economy might be a whole lot healthier if this were accomplished. But I'm a conservative Republican, so what do I know?

3. An earlier projection shows an increase in fees from \$10,000 to roughly \$25,000 in 10 years. Is this realistic?

Yes, it is. Keep in mind that during the same time period, revenues are projected to increase from \$330,000 to \$825,000, with the vast majority of the increase coming from inflationary rate increases. Using the same assumptions used in those projections, monthly rates would double to \$6.50, with the balance of the revenue coming from new development within the City. I will concede that \$25,000 sounds like a lot, but stress the fact that the figure would only be reached after collection revenues had expanded proportionately. Even with a 3% of gross revenue fee, the franchisees maintain 97% of their revenue to cover expenses and profit.

4. A question arises in my mind as to Mr. Harlan's estimate of \$330,000 as the total revenue of the franchisees in light of Beaverton's figures. Based upon Beaverton's 3% fee, total revenue must be \$660 to \$670,000. Does it make sense that their operators should take in twice as much as ours in a City with only 30% more population than Milwaukie and a lower monthly rate?

Hard to tell, I have not been provided with anything more scientific than a year old estimate that revenues are only \$330,000. By now the franchisees should have had time to develop good figures as support for their rate request. If such data is available, it has not been forthcoming. I feel we should obtain such information prior to reaching any closure on the subject of franchise fees.

Summary

I have tried to shed some light on the problem facing the Council in setting franchise fees. Though I continue to feel the fee should be higher, I can live with other arrangements. For example, a rate increase of 15¢ instead of 50¢ would bring the franchisees up to the average of those cities they look to most fondly (Clackamas County cities). In addition, the fee to Milwaukie could be dropped to the average of those cities (\$2,022).. The City would loose over \$4,000 (\$8,000 form my proposals) but Milwaukie residents would save \$35,574 in rate increases which would not be enacted.

SEPTEMBER 17, 1976

In short, there are an infinite number of variations possible. I hope that the Council will take action to impart staff with some sense of direction in which to proceed. At one time I had a direction to develop alternative revenue sources. Now I am hearing other concerns. I'll take action as soon as I know the council's pleasure.



Don Oblander

DO:jk

September 17, 1976

ANALYSIS OF GARBAGE RATES, FRANCHISE FEES
AND PROPERTY TAX RATES

CITY	GARBAGE RATE (MONTHLY)	FRANCHISE FEE (TOTAL)	TAX RATE (PER \$1,000)	EFFECTIVE DATE OF LAST RATE HIKE
High rate cities (\$3.75)				
Gresham	\$3.75	\$12,112	\$3.66	1976
Hillsboro	3.75	9,881	5.23	1976
Lower rate cities (\$3.00 to \$3.60)				
Oregon City	3.60	750	9.22	1976
Lake Oswego	3.50	6,000	6.50	1976
Gladstone	3.50	360	6.13	1976
West Linn	3.00	978	6.00	1975
Praverton	3.00	20,000	4.752	1975
Milwaukie	3.25	?	5.63	1974 (October)

SCHEDULE I

CITY OF MILWAUKIE

Inter-Department Memorandum

Hal Schilling

Date: September 17, 1976

FROM: Don Oblander

SUBJECT: GARBAGE FRANCHISE ISSUES

Following is a brief summary of the action and correspondence to date:

(Prior to July 14, 1976) Despite several conversations and exchanges of ideas and information, no real progress had been made. Obstacles such as Mr. Harlan's delays (in obtaining data from his clients) and my own overriding priorities (such as the budget and bond sale) prevented any action.

(July 14, 1976) My first memo recommending action in the form of a 3% of gross revenue fee. A brief lull between the budget and the audit finally allowed time to pull the information at hand together. It was my hope that this recommendation would stimulate the franchisees enough to elicit a response.

(July 27, 1976) Response from Mr. Harlan indicated that the 1975 League of Oregon Cities survey used to support the July 14 memo was out of date. It stated that the proposed fee was excessive.

(July 28, 1976) Two letters from Harlan indicating:

1. Lack of enforcement of franchise violations (first notice to City of these problems).
2. Moral commitment to the prior formula (which was earlier held to be illegal)
3. Indicating that the prior fee was fair, simple and reasonable.

(July 30, 1976) Letter to Harlan referred to an agreement dated 4/1/71 which refuted the moral commitment issue, responded to charges that the City was doing an inadequate job of enforcement, and defended the position of considering the franchise fee as a revenue source.

(August 3, 1976) Proposed contract received from Harlan as a result of our earlier meeting at which a fee of \$10,000 with annual increases was agreed to be an equitable solution.

(August 10, 1976) My memorandum was written following our conversation which resulted in a rejection of the proposed contract. Some confusion arose since the final revisions of this memo were completed 8/13/76 and the original 8/10/76 date was not changed. This memo was highly critical of Mr. Harlan and his proposal. It presented six alternative franchise fee proposals, recommending that a 3% of gross revenue fee be adopted (or a method producing an equal amount of revenue to the City). Forecasts of revenue were made based upon various economic assumptions.

(August 13, 1976) Harlan responded with a letter highly critical of me, my recommendations and franchise fees in general.

(August 13, 1976) Following a meeting late 8/13/76, a joint statement was issued by Harlan and myself recognizing the waste of time and effort of attacking each other and stating an intention to limit our negotiations to the facts.

(August 16, 1976) I wrote a memo defending my position with respect to the 8/13/76 charges. In light of our agreement of 8/13/76, I placed the memo in the file, but did not circulate it.

(August 16, 1976) Harlan delivered two memos to the Council at their 8/16/76 meeting. One had to do with legal aspects of franchise fees, stating that Milwaukie cannot legally use said fees as a revenue source. It also stated the franchisees desire for a contract establishing fees.

The second related the history of garbage collection in Milwaukie and the present circumstances. It contained the implied threat that if we did not settle their way (by contract) that they would not pay prior years. It then stated that the proposed fee was unfair as it would be the highest in Clackamas County.

(August 19, 1976) Harlan requested a meeting with staff for the purpose of compromising on a fee and narrowing the alternatives to be available to the City Council.

(August 27, 1976) The City Attorney wrote a memo dismissing the franchisees' contention that a franchise fee could not be used as a revenue source. It spoke of the distinction between license and franchise fees and dealt with the precedents of other jurisdictions in establishing fees.

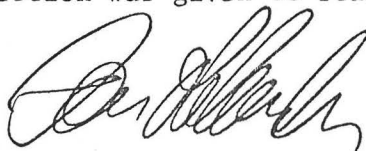
(August 27, 1976) My memo spoke of the precedents of 3 nearby cities which use a percentage method for franchise fees primarily as a revenue source. It then pointed out the relationship between high property tax rates and low utilization of alternative revenue sources, as well as a correlation between low garbage collection rates and low franchise fees. It concluded with a recommendation to establish a method which would produce an amount of revenue equivalent to the 3% of gross method.

(August 27, 1976) (Meeting at City Hall - Schilling, Harlan, Hyde, Oblander) Pros and cons of various proposals were discussed. After much discussion, it was stated by Harlan that a method based upon a \$10,000 fee, with cost of living adjustments and early payments, would be acceptable to the franchisees if resolved through a contract agreement. The City's position was that such an arrangement could be acceptable, but that our first recommendation would be 3% of gross.

(August 31, 1976) My memo spelled out the discussion at City Hall on 8/27/76 and indicated that I would be receptive to the method proposed at that meeting. Inasmuch as this was acceptable to Harlan four days earlier, I hoped it might lead to an equitable resolve, even though it was possibly not the most remunerative to the City. The percentage of gross method continued to be the first preference, but flexibility was indicated.

(August 31, 1976) Harlan's previous acceptance of the method proposed 8/27/76 and his 8/13/76 agreement to deal with only the relevant issues were both apparently forgotten and/or rejected in his memo to the City Council. In an appeal I felt was more emotional than factual, several separate arguments were made opposing any increase in fees. City staff (Avedovech, Oblander and Schilling in particular) were pointed out to be linked to the Third Reich, the subversion of the Oregon tax structure and the overthrow of the Republic. In my opinion, the memo consisted more of thrashing around in various directions hoping to pick up votes than of presenting a cohesive argument.

Following the franchisees' presentation, the meeting proceeded to other agenda items. No resolve was attempted and no direction was given to staff. The issue now sits in suspense.

A handwritten signature in black ink, appearing to be "D. Schilling", is located at the bottom right of the page.

MEMORANDUM TO MEMBERS OF MILWAUKIE CITY COUNCIL

Subject: FRANCHISE FEE FOR REFUSE COLLECTION

Date : August 16, 1976

Gentlemen and Mrs. Burgess:

I believe three of you are new to the Council since I last appeared before your body on a Solid Waste matter. Therefore, perhaps this short introduction will be helpful:

(1) It is reported that in the years up until the early 1940's Milwaukie had been receiving very poor garbage service so an invitation was extended to two reputable individuals to provide the service. All the present six firms franchised in the City are either original members of the two family firms that were invited in or their successors. I do not know too much more about the situation at that time.

(2) Apparently franchises were issued. For example, on May 11, 1959, the City entered into a twenty year agreement with George Deering doing business as Milwaukie Sanitary Service at an annual license fee of \$25.00 to be paid on the 11th day of May each year. Shortly after I left the City Council this was changed as follows:

(a) On March 9, 1970, the document that applied to franchises was amended by what was known as a Refuse Collection Agreement Addendum on motion of Councilman Fuller. The Collectors had met with the then City Manager and agreed that since the City promised more enforcement of its Solid Waste

Ordinance and since the City was also in need of money they would agree to pay \$2,250.00 per year, to be increased by the annual Consumer Price Index, and this formula was to apply through the balance of the Contract which Contract would expire in 1979. *I Believe unless Notice To Re open by Extra Party*

(b) Then in a further Refuse Collection Agreement Addendum dated April 1, 1971, at the time the Collectors were getting a rate increase, the main Franchisee was able to persuade the others to pay the City \$3,000.00 for the year beginning May 11, 1971, and then \$4,500.00 for the year beginning May 11, 1972. Again this was all by agreement or contract. Again the formula would still apply until the then Refuse Collection Contract expired on May 11, 1979, and the \$4,500.00 figure was to be increased by Consumer Price Index increases each year. The City again promised strict enforcement efforts on the Ordinance and a prosecution was in process against a major industry that was using a non-franchised hauler.

(3) Then in the Spring of 1974 the Collectors wanted a rate increase and out of the blue the City decided that the Agreement of May 11, 1959, was invalid and thus any controls over rates or any requirement of a Franchise Fee was null and void. Nevertheless, the Collectors paid the \$5,310.00 the City had billed for as due on May 11, 1974.

(4) The whole matter of City Solid Waste policy was up in the air all during the summer of 1974 and finally Ordinance No. 1301 was adopted on October 7, 1974, and it included Section 21 which allows the City to set a Franchise Fee by resolution of the Council. In the negotiations concerning rates and new Franchises during 1974, industry tried to tie down an agreement on the Franchise Fee but the City never acted.

(5) Neither the Franchisees nor I heard anything further about a Franchise Fee so on April 30, 1975, I wrote the City Manager saying that I knew he had been very busy but that he had indicated that he wanted to discuss Franchise Fee with me and I was willing to do so. He responded that the matter had been turned over to the new City Finance Director Mr. Oblander, that he was researching the matter and "When his initial draft is done, I suggest that we sit down and discuss his recommendations." There were several meetings between Mr. Oblander and I and several letters back and forth and finally under date of July 14, 1976, Mr. Oblander wrote Mr. Schilling making his suggestions on the Franchise Fee. Before that action by Mr. Oblander I had written him under date of July 8, 1976, and told him that I was going to be out of town for a couple of weeks because my father was ill but that I would contact him in a couple of weeks as soon as I

returned. Instead Mr. Oblander went ahead and had the matter come on for discussion before the City Council on July 19, 1976, in my absence.

(6) Then as I reported to you in my Memorandum of August 13, 1976, there were further meetings between the parties. On July 27, the six Franchised firms and myself met with the City Manager and the City Finance Director. He suggested that Mr. Oblander and I have further talks on the matter and he and I met on July 29. Under date of July 30, 1976, Mr. Oblander reported by Memorandum to Mr. Schilling that:

"Since the City Council meeting of July 19, I have met with Dale Harlan twice and feel that much progress has been made toward a mutually acceptable Franchise Fee structure. It is our feeling that a resolution with complete recommendations will be ready for the August 16, 1976, Council meeting."

In accordance with the meeting of July 29 with Mr. Oblander I prepared a draft of Proposed Contract Agreement between the City and the Franchisees which I thought would serve as a way to resolve the matter completely by Agreement in accordance with the recommendations Mr. Oblander and I had agreed to make to our respective parties as a result of our meeting of July 29.

Then Mr. Oblander wrote his Memorandum dated August 10, to the City Manager, which Memorandum has been forwarded to

You and I responded by my Memorandum of August 13, the day upon which I received Mr. Oblander's Memorandum.

That brings us up to the present.

It seems to me that we have several problems in connection with the Franchise Fee:

(1) Both the Oregon Constitution (Article I, Section 21) and the Federal Constitution prohibit ex-post facto laws and laws impairing contracts. It is for this reason that your haulers have tried to work out an Agreement with the City to take care of any past due Franchise Fees. Legally no fees are due because none have been approved by law. It seems to me that a Contract would be the most appropriate way of resolving that item.

(2) Then there is the Oregon Case Law and law of other jurisdiction saying that a Franchise or License Fee cannot exceed the basic cost of the service rendered by the City in connection with the License or Franchise Fee. I hope to talk with you more about that tonight and perhaps have a Memorandum.

(3) In addition to item (2), there is the question of what is basically a fair fee. I'll have more on that tonight. Mr. Oblander has cited the cities that have a gross receipts approach. None of the other cities in Clackamas County use that approach. Mr. Oblander's approach would result in a Franchise Fee for Milwaukie that I think would exceed the total of all Solid Waste Franchise Fees paid in all the other

cities of Clackamas County. In addition, the industry here, as it does many other places, provides free service to the City. Many other major Oregon cities do not look at the Franchise Fee for Solid Waste Service as a revenue measure and by law it is doubtful that they can do so. As a result some of the other cities and their Franchise Fees in 1974-75 were as follows:

Grants Pass	\$	180.00
Oregon City		500.00
Pendleton		250.00
The Dalles		500.00
Gladstone		360.00
Lincoln City		250.00
Portland		4,000.00
Canby		25.00

Respectfully submitted,



DALE M. HARLAN, Attorney for
MILWAUKIE SOLID WASTE COLLECTORS

DH:j