

MEETING OF JUNE 11, 1962

COUNCIL CHAMBER

971st MEETING

The nine hundred seventy-first regular meeting of the Council of the City of Milwaukie was held on the eleventh day of June, 1962.

The meeting was called to order by Mayor Earl Clay.

Present: Mayor Earl Clay; Councilmen James Howard, and Theron Sedgwick; City Manager Leonard Mullan, City Attorney John O. Sheldahl and Clerk Ellen Martin. Absent: Councilmen Charles Renard and E.H.Aebi.

A letter, from Councilman E. H. Aebi, in which he tendered his resignation from the Council on account of ill health, was read. It was moved by Howard and seconded by Sedgwick that the resignation be accepted. Motion carried and so ordered.

The Mayor then appointed Mr. Paul E. Baer to fill the vacancy on the Council, to serve during the unexpired term of Mr. Aebi. Mr. Baer was then sworn in to office by Attorney Sheldahl and took his place at the Council table.

The minutes of the nine hundred seventieth regular meeting of the Council, held on the fourteenth day of May, 1962, were approved as written. The minutes of a special meeting of the Council, held on the nineteenth day of May, 1962 were approved as written. The minutes of a special meeting of the Council, held on the twenty-first day of May, 1962, were approved as written. The minutes of a special meeting of the Council, held on the fifth day of June, 1962, were approved as written.

Mr. Oscar Newman came before the Council and requested that Madison Street, from 30th Street to its westterminus at Henneman Acres, be improved by curbs and pavement. It was moved by Howard and seconded by Sedgwick that the City Manager have the engineer prepare the estimates and report the same back to the Council. Motion carried and so ordered.

At eight o'clock the Mayor opened the hearing on the proposed assessment for the Ardenwald "D" Sewer and Lift Station and called for objection to the same. There were several property owners present who made verbal objections. A petition, signed by six property owners, whose properties are along the north side of Johnson Creek Blvd., was read. The petition stated that the signers objected to the square foot assessment of their entire properties, on the grounds that all of the properties except the southerly 100 to 200 feet thereof, were inaccessible to the sewer and that they had been told by Mr. Earl Burdick, at the time they annexed to the city, that they would be assessed only for the south 100 feet of their properties.

Mr. James Hansen stated that he had been assessed for two laterals from the sewer to his property line but that only one lateral had been installed. Manager Mullan is to investigate this matter and excuse any unjust assessment.

There was considerable discussion on the question of the square foot assessment. It was moved by Sedgwick that this hearing be temporarily closed and be reopened later in the meeting. The motion was not seconded. During the discussion that followed, it was pointed out to the property owners along the north side of Johnson Creek Blvd. that there were many properties in the district which were more than 100 feet in depth and that these properties were also charged on a square foot basis for the lift station and pressure line.

It was moved by Sedgwick and seconded by Howard that the Council authorize the City Manager and the Treasurer to re-evaluate this assessment for the lift station and pressure line, on a basis of 200 feet depth for all properties in the district and report their findings to the Council. Motion carried and so ordered.

Mayor Clay opened the hearing on the annexation of properties as described in Ordinance No. 905 and called for any objection to the same. No person present made objection and no written objection had been received. The Mayor declared the hearing closed. Ordinance No. 908 was taken up and read for its first reading. It was moved by Howard and seconded by Sedgwick that Ordinance No. 908 be passed to its second reading. Motion carried and so ordered.

The Mayor opened the hearing on the annexation of the area as described in Ordinance No. 906 and called for any objections to the same. No person present made objection and no written objection had been received. The Mayor declared the hearing closed. Ordinance No. 909 was taken up and read for its first reading. It was moved by Howard and seconded by Sedgwick that Ordinance No. 909 be passed to its second reading. Motion carried and so ordered.

The Mayor opened the hearing on the annexation of property within an area as described in Ordinance No. 907 and called for objection to the same. There was no person present who made objection and no written objection had been received. The Mayor declared the hearing closed. Ordinance No. 910 was taken up and read for its first reading. It was moved by Howard and seconded by Sedgwick that Ordinance No. 910 be passed to its second reading. Motion carried and so ordered.

A letter, from the Milwaukie Planning Commission, recommending that the zone be changed from 3-R-1 to Commercial Zone on Lots 1, 2, 3, 4, and the north 25 feet of Lots 45, 46, 47, 48, Block 13, Minthorn Addition, was read. It was moved by Howard and seconded by Sedgwick that the recommendation of the Planning Commission be accepted. Motion carried and so ordered.

The Mayor opened the hearing on the assessment for the improvement of 26th Street south of Lake Road, by curbs, and called for any objection to the same. There was no property owner present who made objection and no written objection had been received. The Mayor declared the hearing closed. Ordinance No. 911 was taken up and read for its first reading. It was moved by Sedgwick and seconded by Howard that Ordinance No. 911 be passed to its second reading. Motion carried and so ordered.

The Mayor opened the hearing on the improvement of 46th Street from Railroad Avenue north to Martin Heights, and called for objection to the same. There was no property owner present who made objection and no written objection had been received. The Mayor declared the hearing closed. Ordinance No. 912 was taken up and read. It was moved by Sedgwick and seconded by Baer that Ordinance No. 912 be passed to its second reading. Motion carried and so ordered.

Ordinance No. 913 was taken up and read for its first reading. It was moved by Howard and seconded by Sedgwick that Ordinance No. 913 be passed to its second reading. Motion carried and so ordered.

City Manager Leonard Mullan then presented to the Council an Easement Deed from Clayco Incorporated, a corporation, to Southeast Johnson Creek Water Control District, a municipal corporation of the State of Oregon, in which the City of Milwaukie, Oregon, a municipal corporation, is requested to join for the purpose of subordinating its right under an agreement dated November 12, 1955, recorded November 17, 1955, in Book 504, page 76, Deed Records of Clackamas County, Oregon, to the lien of said easement deed. The form of said Easement Deed and the terms thereof relating to the City of Milwaukie were found to be satisfactory. Therefore, Councilman James Howard moved the adoption of the following Resolution.

RESOLUTION NUMBER 22-1962

WHEREAS, the City of Milwaukie, Oregon, has been requested to join in an Easement Deed from Clayco Incorporated, a corporation, to Southeast Johnson Creek Water Control District, a municipal corporation of the State of Oregon, for the purpose of subordinating its right under an agreement dated November 12, 1955, recorded November 17, 1955, in Book 504, page 76, Deed Records of Clackamas County, Oregon, to the lien of said Easement Deed; and

WHEREAS, the City Council of the City of Milwaukie is of the opinion and has determined that it would be for the best interests of the City to join in the execution of said Easement Deed for the purpose aforesaid; and

WHEREAS, the terms and conditions of said Easement Deed, in so far as they relate to the City of Milwaukie, are satisfactory, both as to form and the terms thereof; not therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, that the Mayor of the City of Milwaukie be, and he hereby is, authorized to sign and execute the said Easement Deed on behalf of the City of Milwaukie, Oregon, and that the City Recorder of said City be, and he hereby is, authorized to attest the signature of the Mayor and affix the official seal of the City to said Easement Deed.

The motion to adopt the foregoing Resolution was seconded by Councilman Theron Sedgwick, and, upon being put to a vote by the Mayor and Chairman, the Resolution was unanimously adopted.

Mr. George Ivers, who is building a convalescent hospital on Tax Lot 69 of the John D. Garrett D.L.C. at Stanley and Railroad Avenues came before the Council and requested that his property be taken out of the Clackamas Water District as it would be impossible for him to get water from that District and that Wichita Water District would supply him with water provided the property was not in another Water District. It was moved by Sedgwick and seconded by Howard that those properties along Railroad Avenue, which have been annexed to Milwaukie, and are presently in the Clackamas Water District, be removed from the Clackamas Water District and that the following Resolution be adopted.

RESOLUTION NUMBER 22X-1962

WHEREAS, the City of Milwaukie, by appropriate statutory procedure, has heretofore annexed the following described tract of real property, to-wit:

A TRACT (located on the Northwest corner of Railroad and Stanley Avenues in Milwaukie, Oregon) in the J. D. Garrett D.L.C. in Section 31, T. 1S., R. 2E., County of Clackamas and State of Oregon described as follows: Commencing at the Northeast corner of said D.L.C.: then West along the North line of said Claim 1074.25 feet to an iron pipe; thence South 2904 feet to a stake, which is the Northeast corner of Lot 10 in a private Plat on file with the State Land Board; thence West 290 feet to a point; thence South 916.8 feet to a point on the Southern Pacific Railroad right-of-way; thence Southeast along said right-of-way 320 feet; thence North 1052 feet to the point of beginning.

AND WHEREAS, the above described real properties lies within the boundaries of the Clackamas Water District, a water district in the County of Clackamas and State of Oregon, duly organized and existing under and by virtue of the laws of the State of Oregon.

NOW THEREFORE BE IT HEREBY RESOLVED BY THE CITY COUNCIL of the City of Milwaukie, Oregon, that it does hereby elect to cause the withdrawal from the said Clackamas Water District, all that part of said Water District hereinabove described and heretofore incorporated in and annexed to the City of Milwaukie, Oregon.

BE IT FURTHER RESOLVED by the City Council of the City of Milwaukie, that by virtue of the foregoing and by virtue of the provisions of Chapter 401, Oregon Laws, 1957, the 13th day of August, 1962 is hereby fixed as the date, the hour of 8:00 o'clock Pacific Daylight Time is hereby fixed as the time, and the Council Chamber of the City Hall, 926 Main Street, Milwaukie, Oregon, is hereby fixed as the place, for a public hearing to be held by the Council of the City of Milwaukie, Oregon, to hear objections to the withdrawal of the above described tracts of real property from the Clackamas Water District and to determine whether such withdrawal is for the best interests of the City of Milwaukie, Oregon, and

BE IT FURTHER RESOLVED THAT THE City Recorder of the City of Milwaukie, Oregon, be and he hereby is ordered and directed to cause a notice of the date, time and place and purpose of said hearing to be published once each week for two successive weeks prior to the date of such hearing, in the MILWAUKIE REVIEW, a newspaper of general circulation in said City, and that he further cause notices of the date, time, place and purpose of said hearing to be posted in four public places within the City of Milwaukie, Oregon, for a like period of time.

ADOPTED this 11th day of June, 1962.

Earl M. Clay  
Earl M. Clay, Mayor  
CITY OF MILWAUKIE, OREGON

ATTEST:

R. E. Osborne  
R. E. Osborne, Recorder of Milwaukie, Oregon

Motion carried and so ordered.

Ordinance Number 914 was taken up and read for its first reading. It was moved by Sedgwick and seconded by Howard that Ordinance No. 914 be passed to its second reading. Motion carried and so ordered.

Ordinance No. 915 was taken up and read for its first reading. It was moved by Howard and seconded by Baer that Ordinance No. 915 be passed to its second reading. Motion carried and so ordered.

The City Manager then presented to the City Council, a letter from Henry F. Mundt, addressed to the City Clerk of the City of Milwaukie, Oregon.

Such letter was ordered placed on file by the Mayor.

The letter constitutes a claim against the City in the sum of \$1,417.00 because of injuries and damages sustained by Henry F. Mundt as a result of an accident occurring on River Road and Second Avenue on January 22, 1962, when he collided with an automobile driven by Mr. Harlow Heim of Milwaukie.

Mr. Mundt claims that the City is liable to him in the amount above set forth because of its negligence in placing a traffic stop sign at the intersection in question in a position so low as to be hidden below the tops of the cars always parked at that intersection.

The Council considered the claim and sought and received the advise of the City Attorney as to its legal position in the matter.

It was thereupon moved by Councilman James Howard and seconded by Councilman Theron Sedgwick, that the said claim, without waiving any other grounds or defenses that it might have, be rejected by the City of Milwaukie, Oregon, upon the following general grounds and reasons, to-wit:

1. On the ground that for the reason that the stop sign in question was not placed or maintained as a result of any action taken by the legislative body of the City of Milwaukie, or its duly authorized officers or agents, either by ordinance, resolution, or otherwise.

2. On the ground and for the reason that the said claim was not made in accordance with the provisions of Chapter IX, Section 36, of the Charter of the City of Milwaukie, Oregon, which reads as follows:

"Section 36. DAMAGE SUITS. The City shall not in any event be liable to any person for any injury to person or property caused in any manner by any defect or dangerous place at or in any sidewalk, crosswalk, Street, Alley, Defective sewer, public grounds, public buildings, drain, gutter, ditch, or way, unless the City has had written notice of the defect or dangerous place and a reasonable time thereafter in which to repair or remove such defect or dangerous place before the happening of such accident or injury; and in no case shall more than \$100.00 be recovered as damaged from the city for any such accident or injury.

"No action shall be maintained against the city for damages growing out of such an accident or injury unless (1) the claimant first gives written notice to the Council within 30 days of the occurrence of the injury or damage, state (a) the time when, the specified place where, and the circumstances under which the same occurred; (b) that he will claim damages of the city for the accident, injury, or damage; and (c) the amount of compensation or other relief demanded; and unless (2) 30 days have elapsed since the presentation of such notice to the council".

3. On the ground and for the reason that, in the event, the City of Milwaukie, Oregon, is clothed with governmental immunity with respect to such a claim.

4. On the ground and for the reason that it would appear from the statements of the claimant that his own negligence was the proximate or proximate contributing cause of the accident in question; and

5. On the ground and for the reason that, in any event, neither the City, its legislative body, nor any of its officers or agents were in any respect guilty of any negligence whatsoever in the premises.

Upon being put to a vote by the Mayor and Chairman of the Council, the motion was unanimously adopted.

The Police Chief's monthly report was read and ordered filed.

The Health Department report was read and ordered filed.

A petition, signed by five property owners, requesting that estimates be made for the improvement of Madison Street from 30th Street to its westerly dead end at Henneman Acres, be made. It was moved by Sedgwick and seconded by Baer that the request be granted and that a resolution be prepared for the improvement. Motion carried and so ordered.

It was moved by Howard and seconded by Baier that the following bills be approved and that warrants be drawn for the payment of same.

Addressograph Multigraph Corp.	1.66
Air Mac Inc.	512.50
Brooks Products Inc.	24.90
Clackamas County	129.50
Daniel Bros.	18.00
Election Boards	1,120.00
Special Election Board	42.00
First Street Plumbing Shop (Canby)	13.50
Francks Color Center	28.95
Gerber Mfg. Co.	674.47
Dick Groener Agency	10.00
Heisler's Car Wash	5.00

Charlie Helwig Inc.	31.61
Instrument Sales & Service	9.50
Jack's Digger Service	197.75
Kimmel's Home Town Hardware	9.99
M & N Sheet Metal	49.80
Mail Well Envelope Co.	12.90
McCready Lumber Co.	8.03
R. S. Milln	112.50
Milwaukie Automotive Service	21.50
Milwaukie Electric	20.64
Milwaukie Hardware	22.24
Milwaukie Lumber Co.	45.62
Milwaukie Oil Co.	58.95
Milwaukie Publishers & Printers	278.29
Milwaukie Transfer & Storage	115.50
Milwaukie Fire Dept.	39.00
Milwaukie Volunteer Fire Dept.	4.00
Mitchell, Lewis & Staver	5.50
Neptune Meter Co.	680.47
Norris Pain & Varnish Co.	660.00
Ray Norris Heating & Sheet Metal	144.50
North Clackamas Chamber of Commerce	150.00
Northwest Industrial Laundry Co.	4.00
Northwest Natural Gas Co.	9.11
Olson Bros. Shell Service	346.54
Oregon City Laundry Co.	45.54
Oregon City Printing & Sta. Co.	26.13
Overall Laundry Co.	20.20
Pacific N.W. Bell	194.13
Paul's Richfield Service	13.85
Paulsen & Roles Laboratories	24.40
City of Portland	6.30
State of Oregon	2,075.00
Pioneer Mercantile Co.	50.17
Pennsalt Chemicals Corp.	112.50
Portland General Electric Co.	2,222.11
Portland Road & Driveway	5,568.43
Price Rite Grocery	1.23
Public Employees Retirement Board	21.00
Ralph's Spraying	35.00
Reddaway's Truck Line	2.30
Marion R. Snyder	25.59
Schuyler Southwell Agencies	17.50
Southern Pacific Co.	30.00
Jack Stennet	10.70
Texaco Inc.	430.68
Tire Sales & Service	6.50
Warren Northwest Inc.	1,678.50
Weiner's	20.00
West Chemical Products Inc.	24.75
Willameete Falls Comm. Hospital	6.00
Western Drug Label Co.	760.95
Water Department	271.03
Water Works Supply Co.	407.02
Woodbury & Co.	5.86
League of Oregon Cities	40.00
Fred Wildy	250.75

Motion carried and so ordered.

On motion duly made and carried, the meeting adjourned.

Ellen Martin  
Ellen Martin, Clerk