

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 4, 2005**

City Manager Swanson announced the City Attorney was excused from the meeting.

OATH OF OFFICE

Municipal Court Judge Ron Gray administered the oaths of office to Councilors Carlotta Collette and Joe Loomis.

CALL TO ORDER

The 1949th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 7:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Carlotta Collette
Susan Stone

Joe Loomis
Deborah Barnes

Staff present:

Mike Swanson,
City Manager

JoAnn Herrigel,
Community Services Director

Alice Rouyer,
Community Development/
Public Works Director

Paul Shirey,
Engineering Director

John Gessner,
Planning Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Ms. Rouyer recognized several members of staff for starting several innovative programs:

- First Annual Saturday Leaf Drop-Off Program
Storm/Wastewater Crew: Kenny Hill, Shane Hart, Ellie Grassl, Dave Butcher, Shawn Shultz, and Gary Hathaway
Community Services Department: JoAnn Herrigel, Jason Wachs, and Grady Wheeler
- John Gessner for Neighborhood District Association Leadership Land Use Training Series
- Lindsey Nesbitt who managed the development review for the North Main Project
- Bonnie Lanz for forming the Oregon Permit Technicians Organization.

The City Council recognized Ms. Rouyer for her innovative and dedicated service to the vision of the community since June 1999.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda that included:

- A. **Resolution 1-2005: A Resolution of the City Council of the City of Milwaukie, Oregon Designating the Clackamas Review, The Oregonian, and the Daily Journal of Commerce as the Papers of Record for the City of Milwaukie;**
- B. **North Main Public Infrastructure Engineering Design Services Contract Award;**
- C. **Declare Library Board Vacancy;**
- D. **Resolution 2-2005: A Resolution of the City Council of the City of Milwaukie, Oregon, Transferring Appropriation Authority; and**
- E. **City Council Minutes of December 21, 2004.**

The motion to adopt the Consent Agenda passed unanimously.

AUDIENCE PARTICIPATION

Rosemary Crites, 4917 SE Aldercrest Road. Ms. Crites provided photos of parking available on Main Street at 12:30 this afternoon. There were two spaces open. It was an issue that would be more critical as time went by, and understood the Council's commitment to developing the town. She stated she was a real estate broker dealing in commercial real estate. She was involved with the leasing of the McLoughlin Building on the corner of McLoughlin Boulevard and Scott Street. Ms. Crites provided drawings of the proposed exterior renovations that would be stucco with larger windows and awnings.

Main Street has become an employee parking lot, and people simply move their cars every two hours. The building can be redeveloped but there was not enough parking. She was concerned about Kemper's project and discussed the type of retail she would like to see in Milwaukie. She discussed the feasibility of opening a Chico's in Milwaukie. The clientele would be from Eastmoreland to Oregon City, and she felt Chico's could do a great business in Milwaukie. However, a customer from Eastmoreland was not going to come to Milwaukie and drive around and around the block to find a place to park. The parking supply was not great enough to take care of retail because on-street parking was being used by employees. She suggested looking at the Odd Fellows site near Hwy 224. It would be a perfect place for a 3- or 4-story parking structure to take the pressure off of downtown. A structure like that would cost about \$ 3 million. She believed the Kemper and Parecki projects would be success bringing in more developers. They will take down a block at a time. She recommended going to the developer to get money to put aside for building a parking garage. She did not know what to do with the customers.

Mayor Bernard completed agreed with her comments about employee parking on the streets. They hoped there would be a parking plan before the City Council in May to

help deal with that issue. The downtown plan did offer a lot of parking potential, and moving the transit center from downtown streets would certainly improve parking. He hoped the Main Street lot would be used for customer parking rather than transit parking. The City could lease some of the Odd Fellows parking lot for transit riders.

Ms. Crites said the pressure needed to be removed and discussed a permit lot at Odd Fellows. She was not sure what to do about transit parkers. It will be difficult to bring retail into downtown without parking.

Mayor Bernard discussed customer parking and encouraging downtown businesses to look at things differently. Some people refused to walk 50 yards from their cars their place of employment. Customers need to have parking.

Ms. Crites suggested talking to the major Main Street employers about providing parking that was not on Main Street.

Ray Bryan, 11416 SE 27th Avenue, Milwaukie. He welcomed Councilor Collette to the City Council and expressed his admiration for her commitment to her neighborhood and its livability. He appreciated and envied her ability to speak and communicate. He thanked Ms. Rouyer for her poise and preparedness, which were unsurpassed. He thanked her for the good things she accomplished, and she would be missed. As a member of the Historic Milwaukie Neighborhood District Association (NDA) he felt it was necessary to respond to comments that were made two meetings ago. The unanimous opposition to the Kellogg Lake transit center by the Historic Milwaukie NDA may have been misinterpreted as opposition to change. He did not know anyone in the NDA that was opposed to change. However, change did not have to happen at the expense of the quality of life and the value of homes. The NDA continued to oppose the Kellogg Lake transit center location because it was bad for the neighborhood, bad for the environment, bad for the downtown, and violated the 14 Points that re-opened Milwaukie's door to light rail. He supported change that was good for Milwaukie and recently went door-to-door on 27th Avenue asking his neighbors to lobby Metro in support of the applications for transportation grants. He looked forward to working with this City Council in any way he could to help improvement the City. He was proud to be a friend and neighbor of Ed Zumwalt. His dedication and love for the neighborhood, library, riverfront, and City was second to none. He believed Ed was doing what any other neighborhood leader would do under the circumstances. Finally, he hoped none of this would become such a personal issue that people overlooked what they had in common and lose the ability to make wise decisions for the long-term interests of Milwaukie.

Dion Shepard, 2136 SE Lake Road, Milwaukie. In recent City Council meetings and articles in *The Pilot*, some members of the community claimed they were opposed to change and afraid of change. Simply because they sometimes had the courage to disagree. It took a lot more courage to disagree to members of the community than to just go along with whatever came along. She did not feel that was true. As a resident of Historic Milwaukie, she was looking forward to some of the changes that were

planned for the coming year. The widening of McLoughlin Boulevard. The North Main project. Even possibly the Oak Street project, although they did not know much about it and how it would change Milwaukie. These were some of the changes she envisioned when she moved to Milwaukie five years ago. It fit into the Downtown Riverfront Framework Plan, and she thought it was actually part of what would make Milwaukie a nicer community to live in. There were some projects such as the proposal to move the transit center to Kellogg Lake they could not in good conscience support. For all of the numerous reasons that were brought up in testimony from citizens both in the community and neighboring communities that were opposed to the proposal, the loss of significant waterfront property, environmental issues, the violation of the Downtown Riverfront Framework Plan, the loss of neighborhood livability, and increased traffic not just in her neighborhood but in other neighborhoods. All of those were issues that were critical. These were the most significant investments people were going to make – our families and our homes. Most of us would agree the transit center should move. In their opinion, the South Corridor Study evaluated a half dozen sites using documented criteria for site selection. The Southgate site was already paved and would have facilitated relocation without a lot of costs and environmental study costs. We have learned to cost to study Kellogg Lake was going to be close to \$3 million and further delay the transit center relocation. One of the things she found concerning was the fact it was going to cost close to \$3 million. She read that Bybee overpass cost \$4 million. We could have two pedestrian overpasses across McLoughlin Boulevard for what it would cost to study Kellogg Lake. Even then, we may not be able to move it there. There were other alternatives that should have been considered but were not. She thought Milwaukie had a lot to offer, and sometimes she thought many people in the community who have lived here a long time have not lived anywhere else. Sometimes one loses focus of what one had and takes it for granted. She thought Milwaukie had a lot to offer. It has a small town environment. Seven minutes from downtown Portland. It has lower taxes. Natural resources that many communities cannot have and could never have. We should be marketing that – not destroying that. The neighborhood was not opposed to change that was fair, well thought out, planned, and that did not compromise its values and livability.

Terrie Darling, 10987 SE 28th Avenue, Milwaukie. She welcomed Carlotta. She hated to ruin her first night by being a complainer. But, she was not really complaining. She was really happy about living in Milwaukie, and she loved all the people. She hated that people could not get along. It really bugged her. Her remarks were inspired by the last few Council meetings. She was very concerned about the relationships between the Council and the citizens and the staff and the citizens. First, at the November 16 work session Councilor Barnes brought news from the Economic Development Committee that some businesses were unhappy that Council and staff valued citizens more than businesses, and that Milwaukie would never prosper unless businesses' needs were given priority over citizens. Higher priority. To top that off, the city manager defended that statement by saying – this was paraphrased because she did not know exactly what he said – my staff advocated for moving the proposed transit center site catering to the needs of the North Industrial folks. She thought the Working Group process was democratic, but by his admission, our city manager invalidated the Working Group as a

democratic process. These comments infuriated her when she heard them. Citizen involvement was so precious, why did the leaders put citizens down? How can we assure future participation when situations like this occur on camera for the entire world to see? On December 7, Councilor Loomis – on camera again – put down a long time neighborhood leader for standing in the way of progress and growth. Then other Councilmembers got on the bandwagon commenting about that person. What was going on? Was she so naïve to believe in the democratic process? What was different in Milwaukie's government than from the rest of America? Public servants, elected or not, should never express their personal opinions about individuals in controversial issues closing the lines of communications with their constituency. People elect leaders to provide guidance and direction for the common good. When decisions have a negative effect on the community or benefit a small portion of that community, they invalidate the common good. They look for leaders who were strong, have backbone, and tenacious in fighting for what believe in. This was the situation in Historic Milwaukie Neighborhood. Contrary to what Council might think, our NDA leadership was representing the needs and providing directions to help them achieve their neighborhood goals. It was not the other way around. Their leader's reputation and integrity were impeccable.

Les Poole, 15115 SE Lee, Milwaukie. He was at the meeting to make a couple of comments, not to rehash the transit center. He wanted to comment on Measure 37 not so much for the Council as the public. There was a lot of confusion. As a land use aficionado, he wanted to go on record with an example. 2004 was a trying year for everyone, and Milwaukie made some great progress on some issues. Kudos to everyone on the North Main Project – job well done. Kudos for a lot of things that were happening, and hopefully the City would see the project to improve Lake Road to take place. The speed limit was 20 mph 24-hours a day, so why would someone pass on the right side. Hopefully, the City will see the money for that project. He had real concerns about the intersection of Aldercrest and Oatfield. He requested that someone on the Council or someone at the Milwaukie facility come up with an answer to the questions he presented.

Mayor Bernard explained that intersection was not in the City.

Mr. Poole asked how many times that guardrail had been replaced. The expenditures going on there were incredible. It was not so much the guardrail as the accidents and the safety. They were looking at some development at North Clackamas Park. If the transit center ultimately ended up at Kellogg Lake, there would be some diversionary traffic that would traverse Lake Road and further burden that intersection. He had some real concerns, and Milwaukie would certainly be influencing that intersection. We will all be victims of that no matter where the intersection was. He had some concerns about the transit center, but he would save those for Metro. As everyone knew, there would be a process with public input and hearings in front of TriMet on that issue. The last thing he wanted to talk about was Measure 37. He discussed Kellogg Lake. If he wanted to build a house there and it was reasonable and doable, and the City or County or streamside protection ordinance from any government entity that was passed that

denied him the ability to build that home, he would qualify for a Measure 37 claim. But what if he decided to rezone the property to commercial for a coffee shop or a park-and-ride. Now he had to apply to rezone the property. He came to the City Council, and they asked him what he was doing. This won't work, and the application was denied for good reason. Did he have a Measure 37 claim? The answer was no. He did not lose any value. He may have been denied the opportunity to rezone his property or change the use or value. If he were stopped from putting a transit center on his property at Kellogg Lake, the Council had not stopped him from building a home there. What about the citizens living in the neighborhood? What if the City approved his transit center at Kellogg Lake, and across the lake there were several property owners who were looking at a possible loss in value. Would those property owners qualify for Measure 37 claims? Not in a million years because it was not their property. He knew the City Council probably recognized this, but he wanted to go on record and help clear the air. He was doing a lot of work in that area, and people were really confused. No one was going to put a Plaid Pantry next to a gravel pit overlooking a berry farm in spite of Measure 37. He appreciated the opportunity to speak. He looked forward to the next year. There were some comments about communication between the citizens, particularly Ed Zumwalt. He did one thing all of us would do if they were in his shoes. He stood up, he has been a man, and against all odds he tried to do the right thing. He understood the City Council was caught in the middle of all the politics. He understood the City Council would also try to stand up and do the right thing. Sometimes it is impossible to make people happy, and he understood that. He guaranteed if the transit center went in at Kellogg Lake there was nothing the City Council could do or talk about that would make anyone happy down there. Kellogg Lake aside, let's move forward on everything else.

PUBLIC HEARING

None.

OTHER BUSINESS

Advisory Board Appointments

Mayor Bernard, with the consent of Council, appointed **Dick Newman** to the Planning Commission, **Cheryl Ausmann-Moreno** to the Public Safety Advisory Committee as the Ardenwald representative, and **Randall Welch** to the Design and Landmarks Committee.

Councilor Loomis felt inspired to make a short comment in reference to the City Council meeting a couple of weeks ago. He apologized if he personally offended anyone, as that was not his intent. Sometimes as a Councilor, one was better off not saying anything. That particular evening, he should have followed that rule. Considering the comment about Mr. Swanson, that was off base. It's a new year, let's move on.

Mayor Bernard commented having disagreements on a decision was fine, but personal attacks were not. He thought it was the City Council's responsibility to protect itself and

staff. He felt it was his responsibility to address those concerns. No one knew if the transit center would end up there. There was a long way to go. It may be 2010 before the funding was even considered. People needed to calm down. He was involved with the I-205 light rail alignment, and it did not even look like it used to. One needed to start with a base somewhere. He and Mr. Zumwalt sat down a couple of days later and had a discussion. They felt good about one another and willing to work together to make something great for the community. This was not a personal thing. It should never be a personal thing. He argued with people all the time about parking on downtown streets in front of business. They still did it, but he did not hate them for it. He did not call them liars, cheaters, or crooks. Those were some of the words used. He was offended by that, and he was offended that night by some of those words. The City Council never attacked anyone personally during the process. He refused to be personally attacked. He was not being paid for this job; he was a volunteer. His goal was the same as Mr. Zumwalt's. He wanted what was best for the community and make the decisions he felt he could be comfortable with for the rest of his life. He has lived in Milwaukie his entire life, but he also traveled a lot. He had seen what other communities had done. One of the reasons he ran for Council was to make something happen. North Main was happening, and McLoughlin Boulevard was happening. He was excited about the McLoughlin Building project. We have to be open to the future and change and projects being different than they started out.

Adjournment

It was moved by Councilor Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 7:55 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
JANUARY 4, 2005

MILWAUKIE CITY HALL
10722 SE Main Street

1949TH MEETING

REGULAR SESSION – 7:00 p.m.

**Oath of Office for Councilor Carlotta Collette and Councilor Joe Loomis –
Administered by Municipal Court Judge Ron Gray**

- I. CALL TO ORDER**
Pledge of Allegiance
- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- 3. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. Designate Papers of Record for the City of Milwaukie -- Resolution**
 - B. North Main Public Infrastructure Engineering Design Services Contract Award**
 - C. Declare Library Board Vacancy**
 - D. Transfer of Appropriations -- Resolution**
 - E. City Council Minutes of December 21, 2004**
- 4. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- 5. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None scheduled.
- 6. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

Board and Commission Appointments (Mayor Bernard)

7. INFORMATION

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2)(i) – performance evaluations of public officers and employees.

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

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

RESOLUTION NO. 1-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE *CLACKAMAS REVIEW*, *THE OREGONIAN* AND *THE DAILY JOURNAL OF COMMERCE* AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

WHEREAS, ORS 192.620, Public Meetings Law Policy, requires an “Informed public aware of the deliberations and decisions of the governing bodies”; and

WHEREAS, ORS 193.010 defines a newspaper of general circulation, and ORS 193-020 defines a newspaper in which public notices may be published; and

WHEREAS, the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* meet the needs of the City and the requirements of State statutes,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the papers of record for the City of Milwaukie.

Introduced and adopted by the City Council on January 4, 2005.

This resolution is effective on January 4, 2005.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP



To: Mayor and City Council

**Through: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works
Director**

From: Jeffrey King, Project Manager

**Subject: North Main Public Infrastructure Engineering Design Services
Contract Award**

Date: December 15, 2004 for January 4, 2005 Council meeting.

Action Requested

Authorize the City Manager to sign a contract for public infrastructure engineering design services with Harper Houf Peterson Righellis, Inc. in the amount of \$89,890.00.

Background

This contract will enable the City to complete the engineering and design of the public area infrastructure requirements in support of the North Main Mixed Use Redevelopment. Under the terms of the Disposition and Development Agreement, the City has agreed to undertake and complete the off-site public infrastructure improvements. Guided by the Public Area Requirements and the Downtown and Riverfront Plan, the project will include new sidewalks, curbs and undergrounding of utilities on the east side of Main Street from the redevelopment project site to the intersection with Jackson Street and on the north side of Harrison Street. Other elements of the project is a new 21st Street extension and frontage improvements, curb extensions, scored crosswalks, ADA ramps, trees, stormwater green design, period lighting and streetscape furniture.

Staff recently advertised a Request For Proposals (RFP) to select a design and engineering team. The RFP addressed the following work items:

- Conduct surveys and identify existing utilities, rights-of-way and City design and construction drawings.
- Provide preliminary design drawings and details in conformance with City of Milwaukie Downtown Public Area Requirements, APWA, and the Oregon Standard Specification and Drawings.
- Prepare and submit final design plans and detail that conform to the City of Milwaukie standards.
- Prepare final estimates of construction cost based on the approved construction plans, specifications and details.
- Print and bind 20 sets of construction documents.

The City received five proposals. The proposals were evaluated on five criteria: experience and qualifications of the firm, qualifications of the project team, project understanding and approach, project schedule, and cost. The selection committee using a point system of 100 points selected Otak, Inc. and HHPR as finalists. Each was then provided with a set of questions to answer. The committee made a final selection of HHPR, Inc. Contractors who bid were:

Contractor

Lan Pacific
Otak, Inc.
KPFF
HarperHoufPetersonRighellis Inc. (HHPR)
Group Mackenzie

The key points that led to the selection of HHPR Inc. included:

- Strong approach to utility undergrounding and stormwater/green design elements –key items that need special attention.
- Direct involvement of firm senior principals.
- Within budget.
- Strong public involvement experience.
- Familiarity with Milwaukie-have completed nine previous projects with the City.
- On-going efficient coordination. HHPR is currently the civil engineer for Main Street Partners, LLC North Main Redevelopment Project.

Concurrence

The selection committee coordinated with the Engineering Department and Community Development Department on this project. They concur with this selection.

Fiscal Impact

The total cost for this project is \$89,890.00. Payment for the contract will come from three sources. They are: 1) \$25,000 from a Mount Hood Economic Alliance Grant 2) \$25,000 from City transportation SDC's and 3) the remainder from a Special Public Works Fund Loan.

Work Load Impacts

The Community Development Project Manager and Engineering staff will manage this project. This project is included in the work plan for this fiscal year.

Alternatives

1. Authorize the City Manager to approve the personal services contract.
2. Elect to defer the project to a later date.
3. Take no action.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Declare Vacancy on Library Board
Date: December 14, 2004

Action Requested

Declare Position #6 of the Ledding Library Board vacant and initiate the process of filling this position.

Background

In accordance with the Library Board bylaws, the Board may recommend that the City Council remove any member missing three consecutive meetings. Michael Welling, who occupies position #6, has not attended any of the regularly scheduled meetings of the Library Board since July 26, 2004. The Board attempted to reach Mr. Welling, but he did not respond.¹ It was the consensus of the Library Board to recommend that the City Council declare position #6 vacant and direct staff to recruit for a new member.²

Concurrence

Ledding Library Board and Library staff.

¹ Letter dated November 5, 2004 from Library Board Vice-Chair Pat Lent to Mr. Welling. (Attachment A).

² The authority is found in Charter Chapter VII – Powers and Duties of City Officers, “The mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body.” and Municipal Code Chapter 2.10.040 – Removal, “Members of a board or commission serve at the pleasure of the governing body. (Ord. 1793 § 3 (part), 1996). (Attachment B).

ATTACHMENT A

November 5, 2004

Michael Welling
2580 SE Courtney #8
Milwaukie, OR 97222-8152

Dear Michael,

I know you share our disappointment as library board members with the defeat of the county library levy. It's one more piece of bad news as we gear up for the next library budget cycle with the city.

We've missed seeing you and your enthusiasm at the last three board meetings. While we understand that your changed work schedule may have created conflicts with our meetings, it is important that we hear from you about your intentions in regard to future service on the board.

It is vital that we have solid leadership of the board and united action now that our funding situation has worsened. We're hoping you can rejoin us in our work for the library but fully understand that other demands may have to take precedence for you. In either case, we need to hear from you by Nov. 10 regarding your wishes. A brief e-mail to Cynthia at cynthias@lincc.or.us would be a good way to do this.

Looking forward to hearing from you soon.

Sincerely,

Pat Lent
Board Vice Chair

ATTACHMENT B

MILWAUKIE CHARTER CHAPTER VII

POWERS AND DUTIES OF CITY OFFICERS

Section 26. MAYOR. The mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body. The mayor shall sign all ordinances and written resolutions and orders approved by the council and shall have no veto power. The mayor shall sign all instruments and writings authorized by this charter, the laws of the state, or the council.

MILWAUKIE MUNICIPAL CODE CHAPTER 2.10

BOARDS AND COMMISSIONS GENERALLY

Section 2.10.040 Removal.

Members of a board or commission serve at the pleasure of the governing body. (Ord. 1793 § 3 (part), 1996)



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Resolution – Transfer of Appropriation

Date: December 10, 2004

Action Requested

Approve the resolution transferring appropriation authority for upgrade of the Government Access studio at City Hall.

Background

For the past few years, staff has had a line item of \$10,000 in the Capital Improvement budget for upgrading the audio and video equipment used to film and broadcast the City Council work and regular sessions. In the fall of 2004, Jamie Groce, Technical Manager of Multnomah Community Television, completed an evaluation of our existing system and provided the City with a proposal for a redesign and installation of equipment for our AV system at City Hall. Using the equipment Jamie has specified, the cost of the new equipment and associated installation will cost \$41,770. In addition to the equipment costs, staff anticipates a significant amount of electrical work to be necessary to accommodate the new equipment and to rearrange the cameras and microphones. For this reason, we are requesting that Council **add** the \$41,770 to the existing \$10,000 in the CIP budget for the Government Access Program.

The General Fund in the adopted budget does not have sufficient appropriation in capital outlay to complete the improvements to the access studio. There is, however, sufficient appropriation in material and supplies.

Oregon Local Budget Law allows a City Council, by resolution or ordinance, to transfer appropriation authority to meet needs that arise during the budget year. A transfer of appropriation is a decrease of one existing appropriation and a corresponding increase of another existing appropriation (ORS 294.450(1)&(3)).

The proposed resolution transfers appropriation authority in the General Fund from material and supplies to capital outlay for the upgrade of the Government access studio.

Concurrence

The City Manager, Community Services Director and Finance Director concur with the proposed resolution. The current operator of the Government Access program has reviewed this proposal and approves of the proposed changes.

Fiscal Impact

The resolution transfers \$ 41,770 from material and supplies to capital outlay in the General Fund. It does not change the total appropriation in the adopted budget.

Work Load Impacts

Staff from community services will work with Jamie Groce to monitor the installation of the equipment.

Alternatives

1. Approve the resolution as proposed.
2. Modify the resolution.
3. Do not approve the resolution.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
OREGON, TRANSFERRING APPROPRIATION AUTHORITY**

WHEREAS, the Government Access studio is in need of an equipment upgrade; and

WHEREAS, the quality of the broadcasts of City Council work sessions and regular sessions have been in need of enhancement for several years; and

WHEREAS, the General Fund in the adopted budget does not have sufficient appropriation in capital outlay to complete the improvements to the access studio; and

WHEREAS, Oregon Local Budget Law allows a City Council, by resolution or ordinance, to transfer appropriation authority to meet needs that arise during the budget year; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON:

The transfer of appropriation authority is approved as follows:

Transfer From:	Transfer to:
Material and Supplies	Capital Outlay
\$ 41,770	\$ 41,770

BE IT FURTHER RESOLVED that this resolution shall be effective immediately upon its passage.

Introduced and adopted by the City Council on January 4, 2005

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:

Pat DuVal, City Recorder

Ramis, Crew, Corrigan & Bachrach, LLP

MINUTES

MILWAUKIE CITY COUNCIL DECEMBER 21, 2004

CALL TO ORDER

Mayor Bernard called the 1948th meeting of the Milwaukie City Council to order at 6:35 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster
Councilor Joe Loomis

Councilor Deborah Barnes
Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Dom Colletta,
City Attorney
Alice Rouyer,
Community Development/
Public Works Director

Larry Kanzler,
Police Chief
Grady Wheeler,
Information Specialist
Paul Shirey,
Engineering Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Centers Implementation Program

Metro Councilor Brian Newman began by expressing his appreciation to Councilor Lancaster for his term on the Milwaukie City Council. Mr. Newman noted that during his term on the Milwaukie City Council, the group worked on two related issues: jump-starting private development in the downtown and balancing the books annually to do more with less. When he was elected to the Metro Council, he was excited to discover there was a transit-oriented development program that provided financial assistance to catalyst projects to encourage private develop through public investment. The problem was that the program was limited to development around light rail stations, so only a limited number of communities qualified. Mr. Newman discussed the Centers Implementation Program that broadened Metro's financial involvement in places like downtown Milwaukie.

Metro received \$1 million in flexible transportation funds to distribute, and Milwaukie's North Main Project was the first to qualify for what he hoped would be the downtown catalyst project. Metro referred to this as the Milwaukie Model because the organization had learned a lot about creating development where there was no market. This project stood out because the City owned the site and could negotiate directly with the private developer and partner with Metro to get the project built. Milwaukie used all development tools at its disposal including state and affordable housing funds. Thomas Kemper was an enlightened developer who was willing to take a risk. Milwaukie had a

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first-rate staff, and the City Council stood by its vision to get the project implemented. All of those pieces came together in the North Main Project.

Mr. Newman delivered a check in the amount of \$455,000 from the Centers Implementation Program of which about \$430,000 was for the actual development project and \$25,000 for the rain garden which was an on-site green development practice that would be a model for treating surface runoff. Metro wanted Milwaukie to succeed and that was one reason it spent \$4 million on the Springwater Bridge Project that would link the Ardenwald and Sellwood Neighborhoods and close the gap in the trail. Metro invested \$4 million in state funds on the McLoughlin Boulevard Redevelopment Project to reconnect the downtown to its riverfront. Metro was also working with Mr. Swanson and Congressman Blumenauer to get a federal appropriation for the Lake Road Reconstruction Project. Metro was doing everything it could to be a true partner with Milwaukie.

Councilor Lancaster expressed his appreciation to Mr. Newman for his hard work in bringing this to the City of Milwaukie. This was a huge first step.

Service Award to Councilor Lancaster

Mayor Bernard presented Councilor Lancaster with a plaque expressing the City's appreciation for his six years of service on the Milwaukie City Council. He hoped that Councilor Lancaster's legacy would live on as the City Council continued its work.

Advisory Board Interviews

The City Council interviewed **Dick Newman** for the Planning Commission, **Cheryl Ausmann-Moreno** for the Public Safety Advisory Committee Ardenwald representative, and **Randall Welch** for the Planning Commission and Design and Landmarks Committee.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda that consisted of:

- A. **The City Council Minutes of December 7, 2004;**
- B. **Modify Consulting Contract for Stormwater Master Plan and Rate Study;**
and
- C. **Resolution No. 39-2004: A Resolution Requesting the Transfer of Jurisdiction by the Clackamas County Board of Commissioners of a Portion of Johnson Creek Boulevard, (L.W. Derry Road #964) to the City of Milwaukie.**

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION – None.

PUBLIC HEARING

Sale of Surplus Property -- Resolution

Mayor Bernard called the public hearing on the proposed sale of surplus property to order at 7:03 p.m.

The purpose of the hearing was to consider public comment on declaring the property located at 12125 SE 21ST Avenue surplus, selling it as two separate lots, and setting minimum terms for the sale.

No members of Council declared any conflicts of interest or ex parte contacts. There were no jurisdictional issues or challenges.

Staff Report: **Mr. Somers** requested that the City Council approve the resolution declaring this property surplus and briefly reviewed its history.

Councilor Lancaster stated there was discussion in the past about demolishing the structure and asked the estimated cost.

Mr. Somers recalled the cost was between \$6,000 and \$8,000.

Correspondence: None.

Public Testimony: None.

Questions from Council: **Councilor Lancaster** asked how the value of the property would be impacted if the structure was demolished.

Mr. Somers responded when the property was first up for sale about one year ago, the lots were appraised at approximately \$50,000 each. The property with the house was appraised at less because of the demolition. The current appraisal valued the lot with the house at \$150,000 and the empty lot at \$60,000. Many people in the Neighborhood saw something good with keeping the house, and there were numerous conversations with the Island Station Neighborhood Association.

Mayor Bernard closed the public testimony portion of the hearing at 7:08 pm.

Council Discussion: **Councilor Lancaster** asked those questions because there were many discussions around the history of that property and elements of the litigation that created the discussion about the demolition. This was the first time he had heard the Neighborhood desired to keep the structure. The dollar amount of the diminished value was fairly significant. He understood from earlier discussions that demolition would bring closure to the history of the property, and he was leaning that way.

Mayor Bernard was also leaning in that direction because of past discussions. He did not know how the new owner would be made aware of potential issues that might arise in the future.

Mr. Swanson said the last time the property was declared surplus and offered up for sale, demolition was one of the terms of the sale. At that time, staff had talked with the Neighborhood Association, and with the events fresh in their minds, the people at the meeting were very interested in having the house demolished and starting anew. In the last effort, once the successful bidder entered into discussions with the City, he decided

he did not want to demolish the house although it was an explicit requirement of the sale. Because of that and a number of other reasons, the sale did not go through. Mr. Somers recently met with the Neighborhood Association, and Island Station Chair Lisa Batey was present if the City Council wanted a better idea of how the residents were feeling.

Lisa Batey, 11912 SE 19th Avenue, Island Station Neighborhood District Association Chair, responded to Council questions.

Councilor Lancaster asked if she and the Neighborhood felt they had a full understanding of the history of the property.

Ms. Batey had moved to the Neighborhood after the time the City took possession of the property. She has been active in the Neighborhood Association for 2-1/2 years and has heard this issue discussed several times since the first sale about 2 years ago. At the time of the previous events, there was concern about residue of drug activity and other things in the house. Since then, the Neighborhood was told that it was cleared up and environmental issues were resolved. Although the house was somewhat dilapidated, some people interested in the property were considering renovation. The Neighborhood revisited that question a couple of times over the past year, and there was no one in the Association actively pushing for demolition of the house at this point.

Councilor Lancaster directed his remarks to the city manager and counsel. He asked, given the other elements that were part of the litigation but not subject to public involvement, to what degree would the City have the ability to make those elements known.

Mr. Colletta was not directly involved in those discussions. He was involved in the original negotiations for the acquisition of the property and assisted the City with most of its property transactions. He could probably answer specific questions, but he was not present at the City Council discussions.

Mr. Swanson responded to a couple of issues. One was that he did not think the presence or non-presence of the house would make any difference in terms of the former residents. The first time he felt good about recommending demolition because there was a great deal of emotion in the Neighborhood about that property. The City just wanted to do what the Neighborhood Association wanted it to do. Initially, the City had some concerns about the possibility of more meth lab paraphernalia, but that did not bear out. There was a lot of oil and trash but not the kind of things that would make the City recommend demolition for safety or health reasons. Someone would certainly have a big cleanup job, however. At this point, he was comfortable in recommending that the house stand if that was the Neighborhood's desire. The City always tried to be sensitive because of the difficult times the Neighborhood went through. There was always the concern that the folks would come back, but he did not think the house or its non-presence would motivate them.

Mr. Colletta was familiar with the litigation that was filed with regard to the matter. Certainly the presence or absence of the house would not have affected it. It was strictly litigation based on allegations of acquisition of title that were, candidly, entirely without merit. The courts ultimately decided. An appeal was filed from that, but it was

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also determined in the City's favor. The City clearly had ownership of the property. One of the City's charges was to obtain the highest and best value for surplus property. Based on Mr. Somers' report, it would appear that now the property would have a higher valuation with the house present than without. That was a factor mitigating in favor of selling it in that manner. During the original round of negotiations, the one bidder on the house, despite the fact that the bid specifications were quite clear that the successful bidder would have to demolish the property, did not want to do it. He felt there was value in the property. There were a number of reasons why the City Council might wish to sell the property with the house in place. The City would have to make appropriate disclaimers and give people the opportunity to inspect the property and sell it on an unequivocal "as-is" basis. If the City did that and someone was interested in rehabilitating the property, then the City may actually gain more value.

Mr. Swanson added the party who filed the lawsuits was not the original owner. The owner, by quitclaim deed, deeded the property to Mr. Wiedner who filed a lot of litigation. The original owner was longer removed than the recent lawsuits. The chance was there, but the Milwaukie Police Department was well aware of the earlier problems and would respond if anything happened. He felt comfortable now in recommending the City let the house remain, and a great part of that had to do with the wishes of the Neighborhood.

Councilor Stone said certainly if the surplus value were significantly more with the house, she would like to see the City recoup that. If demolishing the house was the reason the deal fell through in the first place, did the original potential buyer have any legal recourse?

Mr. Colletta said the bidder had absolutely no recourse. He failed to perform the contract, which was very explicit that demolition was required. There were also performance timelines that were not met. There was no possibility that person could claim he had contracts or rights.

Mr. Somers reported that staff recently completed a lot line adjustment. The house extended 5 feet into the next lot, so the lot line was adjusted 10 feet to the north. Now it met setback requirements, so there were two legal lots. One had a house on it, and one did not. Both were 6,000 – 6,500 square feet and complied with zoning designations in that area.

Councilor Loomis supported the staff recommendation. The City would realize more money, the Neighborhood was in support, and there seemed to be no legal recourse for the earlier bidder.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the resolution declaring the property located at 12125 SE 21st Avenue as surplus, authorizing the sale of the property as two separate lots, and setting minimum terms for the sale. Motion passed unanimously. [5:0]

RESOLUTION NO. 40-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DELCARING PROPERTY LOCATED AT 12125 SE 21ST AVENUE TO BE SURPLUS, DIRECTING THE SALE OF THE PROPERTY, AND DETERMINING MINIMUM ACCEPTABLE TERMS.

OTHER BUSINESS

A. Agreement between City and Milwaukie Pioneer Cemetery Association Regarding the Leona Knutson Trust Fund

Mr. Swanson cited two important facts. The Pioneer Cemetery was now under the control of the trustees as desired by the original grantors in 1864. The Cemetery was not being managed by either the Parks District of the District but rather by the Board of Trustees. The Board consisted of Dolly Macken-Hambright, Mark Neubauer, Madalaine Bohl, and Jim Wiley. There was one minor complicating matter after going through the steps necessary to get the Cemetery back under the grantor's original intent. In 1995, the City was left a bequest of \$36,795 from the Estate of Leona Knutson specifically for the care and upkeep of the Milwaukie Pioneer Cemetery. The City had administered that fund continuously since 1995, and tried to maintain the principal and distributed what it could above that amount to the City or Parks District. A lot of work was done to bring the Pioneer Cemetery under the control of the trustees, but the City still had the trust. He asked the city attorney if it could be assigned to the trustees, but there was a risk of opening the trust and losing it. The City chose instead to develop an agreement that would give the trustees a great deal of power in influencing the City's administration of the trust. The only use of the money would be direct costs for care and upkeep. Expenditures of the trust funds would only be by a majority of the vote of the duly appointed trustees, and the City would pay them. The Association had sole discretion to determine on what projects the funds would be spent. The City retained, because it was the trustee, the right to refuse payment if the requested expenditure was not for, as Ms. Knutson required, the care and upkeep of the Milwaukie Pioneer Cemetery. This was an attempt to put the trustees in the driver's seat, but the City was still in the role of trustee vis-à-vis the Knutson Trust.

It was moved by Councilor Stone and seconded by Councilor Loomis to authorize the Mayor to sign an agreement between the City and the Milwaukie Pioneer Cemetery Association regarding the Leona Knutson Trust Fund. Motion passed unanimously. [5:0]

B. Predevelopment Loan for North Main Redevelopment Project -- Resolution

Ms. Rouyer sought authorization for the city manager to execute documents on behalf of the City to enter into a predevelopment loan on the North Main Street Project. Secondly, she requested the City Council approve a resolution authorizing the City to receive and spend predevelopment loan proceeds. Mr. Kemper, the North Main Project developer, was looking to receive favorable terms from the state as part of a predevelopment loan program. He would receive approximately \$500,000 to cover

predevelopment costs such as those associated with design. This loan would be paid off not later than July 2005 at which time Mr. Kemper would take out the construction loan.

Mr. Colletta explained the City would be taking the second trust deed against an office building in Vancouver that was offered as collateral along with an assignment of rights to the developer fees payable under the agreement the developer had with the Housing Authority of Vancouver. The total value of the collateral was significantly in excess of \$500,000. The developer fees were payable over years, and even at a 20% of reduction for present value, Mr. Colletta thought it would be more than ample. This was a very short-term loan. The City had some assurances from the state that led him to the conclusion that there was little likelihood of the City's suffering an actual loss in this situation. From legal and business standpoints, there was minimal risk for the City. There was substantial benefit to the developer that would allow the project to proceed. The loan was being structured so that it would be paid off as soon as the developer took out his construction loan. Based on the agreed upon milestones, the construction loan should take place not later than July 2005.

It was moved by Councilor Loomis and seconded by Councilor Barnes to the authorize the city manager to sign a predevelopment loan agreement with Main Street Partners, LLC for the North Main Redevelopment Project. Motion passed unanimously. [5:0]

It was moved by Councilor Loomis and seconded by Councilor Lancaster to approve the resolution that authorized budgeting for a predevelopment loan for the North Main Redevelopment Project. Motion passed unanimously. [5:0]

RESOLUTION NO. 41-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, FOR THE PURPOSES OF BUDGETING FOR A PREDEVELOPMENT LOAN FOR THE NORTH MAIN REDEVELOPMENT PROJECT.

Other

Councilor Lancaster said over the years he threatened to offer up a resolution of some controversy that spoke to his proclivity for a limited government and increased efficiency. For a variety of reasons, he had never done that, and it occurred to him this was his last opportunity.

It was moved by Councilor Lancaster and seconded by Councilor Stone to pass no future ordinance without taking one off the books first.

Councilor Stone often thought that government had too many ordinances and laws. She wished to consider that.

Councilor Lancaster thought the city manager had done a lot of clean up work, but he was certain there was a long list of things that could come off the books.

Mr. Colletta understood the reasoning behind the motion, but it might not always be possible to do that. If in fact, the Council and staff continue their efforts to clean up the ordinances, the City might reach a point where the removal of an ordinance might be detrimental.

Mayor Bernard would accept that as a goal but doubted he would make it a law.

Mr. Colletta suggested adopting it as a policy goal to make the City ordinances clean, readable, and as forthright and minimal as possible. He believed that would be an excellent policy. He thought staff had gone a long way in achieving that goal.

Councilor Lancaster accepted that amendment as a going away present, and **Councilor Stone** as the seconder accepted it as a noble goal and something the City should strive for.

Motion passed unanimously. [5:0]

EXECUTIVE SESSION

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) – performance evaluation of public officers and employees.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0].

Mayor Bernard adjourned the regular session at 7:40 p.m.

Pat DuVal, Recorder