

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION JANUARY 4, 2005

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Present: Councilors Barnes, Loomis, and Stone and Councilor-elect Collette.

Staff Present: City Manager Mike Swanson, Finance Director Stewart Taylor, and Community Development/Public Works Director Alice Rouyer.

Councilor Barnes announced Ms. Rouyer's going away party. She discussed the report of inclement weather and how that might affect the Saturday Morning Coffee. She announced she would interview several Happy Valley elected officials at the Chamber Leadership Forum.

Mayor Bernard attended the City of Damascus celebration.

Council Priorities

Mr. Swanson suggested the City Council set aside about 4 hours to discuss priorities in a public meeting. The group agreed to begin the process at the Council Coffee Hour on January 8, 2005 at 9:00 a.m. Mr. Swanson would facilitate the session.

The group discussed a team building session, and people agreed they wanted something casual. The group did not feel it needed facilitation, and Mr. Swanson would participate. Mr. Swanson understood it would be a time of getting to know one another and not a time to discuss City business. Teambuilding could be done outside Milwaukie as long as City business was not discussed. Mr. Swanson suggested a quarterly dinner and discussed the pros and cons of a facilitated retreat and public meetings laws restrictions. Councilor Loomis hoped to come out of the retreat knowing how to work better with Council and staff. The group agreed to pencil-in February 19 for the retreat and considered attending the Clackamas Cities monthly meeting as a group.

Council Communication Agreement

Mr. Swanson said this was an opportunity for Council to review the previous agreement. The group would discuss this at the Saturday session.

Measure 37 Language Authorizing Action by Neighboring Owners

Mr. Swanson reviewed a proposed amendment to Ordinance 1940 that would allow a claim by an adjoining property owner if a waiver had decreased the value of their property.

Councilor Stone had some wordsmithing on the last paragraph that read, "if a claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the

vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction." That was fine. "The nearby property owners, if successful..." Councilor Stone believed it should read, "If successful, the nearby property owners shall be entitled to an award of reasonable attorney fees paid by the Claimant." She believed it would be more clear.

The group agreed to consider the proposed ordinance at the January 18 regular session.

Proposed Fire District Annexation

Mr. Swanson said in order to have a measure on the May 17, 2005 ballot, the City would have to certify by March 15. He recommended a companion measure that basically said if the annexation vote were successful, then the City Council would be directed to levy \$2.40/\$1,000, which was the District's permanent rate, less of the City's permanent rate for a period of time. That could be voted on at the same election. The difficulty was that the City Council needed to pass the intent to annex substantially before March 15. The first step in the procedure was to make a request to the District Board.

Mr. Swanson recommended that the City Council consider the request to annex at its next meeting. Then the City Council could consider the companion measure. It was further complicated by the fact that Oregon City would go out at the same time, and he was working with City Manager Patterson to coordinate efforts. Nothing would be final until the City Council certified the measure.

Councilor Stone asked how the measure would be worded. The measure failed by a small margin, and she wondered if people understood it in terms of how it was written. She would be inclined to look at how it was written so people were clear about what it would cost them. She thought that was why it failed.

Mayor Bernard wanted an opportunity to campaign for the measure.

Mr. Swanson discussed the union's efforts, and the members were very interested in making the annexation a reality. Former Milwaukie fire fighters supported going to the next step. He would work with the city attorney; however, there were many limitations on the number of words that could be used. The companion measure would help clarify the issues. The laws make it very difficult to construct a measure that people can understand.

Mayor Bernard was asked about the name. People thought it was the County's fire district rather than a separate entity with its own governing board. The County Commissioners did not govern it. If the City did annex, residents could run for a seat on the governing board.

Mr. Swanson thought governance could be included in the explanatory statement.

Councilor Barnes added there could be supporting information in *The Pilot* and on cable TV. The City needed to explain in layman's terms why residents would

want to vote for this. It was not clear to residents what the benefits were of the annexation. Nor was it clear that their taxes would not increase.

Councilor Stone suggested including a table in the explanatory statement to indicate how the money would be spent.

Mayor Bernard recommended a brochure or door hanger.

Councilor Stone suggested a statement in the voters' pamphlet that included the table.

The group discussed various options for getting information to the public including *The Pilot* and Neighborhood District Association meetings.

Mr. Swanson announced that Mrs. Heckmann filed in the US District Court.

Councilor Loomis discussed the consent agenda, and Council agreed to let staff know prior to the meeting if an item was going to be pulled for discussion.

Councilor Stone said at the last meeting Ed Zumwalt came forward and talked to the City Council about the transit center decision. Councilor Barnes engaged him in some questions. She had since heard from him that he would like to get together, and she was not sure what Councilor Barnes had done on her end.

Councilor Barnes had asked Mr. Zumwalt to contact her with a list of dates, but she had not heard from him.

Councilor Stone said Mr. Zumwalt was still interested. She wondered if the City Council might consider doing that. If the City Council met, then there would be a quorum. She asked Mr. Swanson how that would work.

Mr. Swanson said anytime there were three Council members together, there was a quorum. The City Council could not engage in a discussion of issues if the meeting was not advertised. The Saturday Coffee was advertised, so that forum could be used.

The City Council adjourned to meet in executive session pursuant to ORS 192.660(2)(i) – performance evaluations of public officers and employees.

Mayor Bernard adjourned the work session at 6:10 p.m.

Pat DuVal

Pat DuVal, City Recorder

AGENDA

MILWAUKIE CITY COUNCIL WORK SESSION JANUARY 4, 2005

MILWAUKIE CITY HALL

Second Floor Conference Room
10722 SE Main Street

WORK SESSION – 5:30 p.m.

A light dinner will be served.

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Council Priorities	Mike Swanson
2.	5:45 p.m.	Council Communication Agreement	Mike Swanson
3.	6:00 p.m.	Measure 37 Language Authorizing Action by Neighboring Owners	Mike Swanson
4.	6:15 p.m.	Proposed Fire District Annexation	Mike Swanson
5.	6:45 p.m.	Adjourn	

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the preceding items.
- Executive Session: The Milwaukie City Council may go into Executive Session pursuant to ORS 192.660. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.

- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: December 20, 2004 for January 4, 2005 Work Session
RE: Council Priorities

ACTION REQUESTED

The action requested is the selection of a date for a meeting of Council at which priorities may be established.

BACKGROUND

With a new Council in place, it is time to establish the priorities that the Council wishes to pursue. Please bring your calendars in order that we might schedule time to do so.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: December 20, 2004 for January 4, 2005 Work Session
RE: Council Communication Agreement

ACTION REQUESTED

The action requested is an agreement to consider changes to or approval of the existing Council Communication Agreement.

BACKGROUND

The Council Communication Agreement (attached) has been in existence in some form for at least six years. It was developed in an effort to establish rules of conduct between members of the City Council.

The Agreement was last revisited and changed better than a year ago, after which all five members signed it. With the addition of a new member it is now time to either confirm the provisions of the Agreement and sign a clean copy or agree to revisit it at the earliest date in order to consider changes that might be proposed. I have no changes to propose and recommend confirmation or adoption of a new agreement with changes at the earliest possible date.

MAYOR/COUNCIL COMMUNICATION AGREEMENT

Guaranteed access to clear and easily understood information is a value of the City of Milwaukie. These agreements are intended both to foster conduct that realizes that value, while ensuring a healthy debate about competing ideas. Finally, they seek closure and a community that moves forward together, secure in the knowledge that decisions were made openly and fairly.

The agreements have one common behavioral thread—mutual respect. Thus, if the list does not anticipate a situation, a response that is respectful of all concerned should suffice.

1. In all Council events, work sessions, and meetings:
 - I demonstrate respect for all who are involved;
 - I respect all thoughts and ideas;
 - I clarify facts and opinions to ensure understanding;
 - I do not personalize my comments;
 - I clearly state my own opinion as being mine;
 - I look for ways to praise efforts and accomplishments; and
 - I stay focused and participate.

2. In working with the Mayor and Councilors:
 - I provide them with reasonable notice of matters I am introducing at meetings;
 - I always represent the City's position before other jurisdictions unless none has been adopted, in which case I inform the Mayor and Council in a timely manner of the position(s) I have taken;
 - I work toward consensus;
 - Once the group has acted, I accept and respect the decision, and I do not publicly ridicule the Council, any individual member or participant, or the decision; and
 - I first address a concern about either a violation of these agreements or any other matter in a direct, appropriate, private, and timely manner.

3. In working to seek broad-based community support:
 - I communicate with the community to gather information; and
 - I engage the community in a shared dialogue.

4. In working with staff:
 - I communicate with staff to gather information; and
 - I exchange ideas with staff and give direction through the City Manager with the concurrence of the Mayor and Council.

James Bernard, Mayor

Larry Lancaster, Council President

Deborah Barnes, Councilor

Joe Loomis, Councilor

Susan Stone, Councilor



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: December 20, 2004 for January 4, 2005 Work Session
RE: Measure 37 Language Authorizing Action by Neighboring Owners

ACTION REQUESTED

The action requested is direction on whether to present language authorizing a civil action by neighboring property owners against a claimant who successfully prosecutes a Measure 37 claim and secures a waiver.

BACKGROUND

The Council adopted an ordinance implementing Ballot Measure 37 as an emergency measure at its November 23, 2004 Council meeting. The timing of the adoption—a mere three weeks after adoption of the Measure at the November 2004 General Election—was accelerated in order to meet the December 2, 2004 deadline for having a process in place. At the time of the adoption staff cautioned that additional provisions or amendments to the ordinance were probable, given the fast turnaround.

One issue that was not considered at the November 23, 2004 adoption was authorization of an action by a neighboring property owner should a property owner successfully pursue a Measure 37 claim and thereby reduce the value of adjoining property. Staff presented the following language at the December 7, 2004 Council work session and was directed to bring the issue to a future meeting:

If a Claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction. The nearby property owners, if successful, shall be entitled to an award of reasonable attorney fees. This section does not create a right of action against the City.

Should Council wish to consider adoption of an ordinance including the above language, it will be presented at the January 18, 2005 Council meeting.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: December 20, 2004 for January 4, 2005 Work Session
RE: Proposed Fire District Annexation

ACTION REQUESTED

The action requested is Council direction to staff to prepare and present at the January 18, 2005 Council meeting a resolution proposing annexation of the City to Clackamas County Fire District No. 1.

BACKGROUND

Attached is an April 21, 2004 staff memo to Council regarding a "Proposed Resolution Requesting Annexation to Clackamas County Fire District No. 1." The April staff memo describes much of the background relevant to this discussion.

The annexation question was submitted to the electors at a September 21, 2004 Special Election, and the proposal was defeated, with 1,565 (47.12%) "yes" votes and 1,756 (52.88%) "no" votes.

The Council had committed to reduce the City's levy of its permanent rate in order to achieve no net increase in taxes paid. Many respondents felt that the commitment was not clear enough, and, therefore, I am proposing a companion measure to take effect if the annexation was approved. The companion measure would direct a reduction in the levy of the permanent rate for a fixed period of time.

For two reasons it is not possible to set forth the terms of that companion measure at this time. First, the first step in the annexation process is approval of the annexation request by the District Board. Statutorily imposed deadlines require that the approval be granted substantially in advance of the deadline for actually filing the measure. Thus, there is a first step before a companion measure could be considered. Second, Oregon City is considering a similar annexation measure. They are also considering a companion measure regarding the levy of their permanent rate. Both cities have an interest in coordinating their companion measures in order to ensure that one does not appear so attractive

as to put the other at a disadvantage. That is not to say that both cities will adopt the same strategy, but at this stage of the process it is best not to get too far out in front.¹

¹ The District Board will actually set the election date, but it is understood that the question will be submitted at the May 17, 2005 Primary Election. The District Board must take action on the City's request to annex no later than February 15, 2005, and the City must then certify its ballot measure(s) for the May 17, 2005 Primary Election no later than March 17, 2005.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: April 21, 2004
RE: Proposed Resolution Requesting Annexation to Clackamas County Fire District No. 1

ACTION REQUESTED

Adoption of a resolution proposing annexation of the City of Milwaukie (“City”) to Clackamas County Fire District No. 1 (“District”).

BACKGROUND

Prior to 1998 the City provided fire suppression and emergency medical services to its citizens.¹ The Portland Fire Bureau and the District provided the same services to citizens in areas surrounding the City.

On December 15, 1997 the City and District entered into an agreement providing that the City purchase fire suppression and emergency medical services from the District.²

¹ In 1998 the City’s Fire Department employed twenty-five personnel, twenty-four of whom were assigned to fire suppression/emergency medical services and/or inspection. The Department also had one administrative position. The City transferred twenty-three incumbent fire suppression/inspection personnel to the District, and it retained the administrative position.

² From the City’s perspective the decision to “consolidate” resources with the District was motivated in large part by the savings. The following table illustrates the savings through FY 2003. For purposes of comparison a 3% rate of growth was assumed as the City’s budget increase were it to continue operations as a City department, and FY 1997 is the base year because it is the final full year the City operated the Department. A City administrative charge imposed from FY 1999 through FY 2001 is not included as it was discontinued. The assumption is that administrative overhead was included in the contract payment to the District from FY1999 on.

	FY 1997 Actual	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual
Personnel	\$1,730,051	0	0	0	0	0
Materials & Services	\$323,009	\$201	\$68	\$42	\$40	0
Admin	\$331,251	0	0	0	0	0
Facility	\$163,108	\$261,120	\$161,926	\$168,218	\$157,689	\$175,692
Vehicle	\$185,364	\$57,510	\$70,753	\$35,918	\$5,314	0
Dispatch	0	\$35,000	0	0	0	0
Capital	\$14,173	0	0	0	0	0
Contract	0	\$2,365,000	\$2,436,370	\$2,484,720	\$2,620,262	\$2,759,869
Total Cost	\$2,746,956	\$2,718,831	\$2,669,117	\$2,688,898	\$2,783,305	\$2,935,561

The agreement provided, among other things, for the transfer of City Fire Department personnel to the District “effective January 1, 1998,” an annual payment for services negotiated by the parties each year, and the retention of “costs of operation and maintenance of city facilities and equipment” by the City.³ The agreement is a contract for the purchase of services, and it does not eliminate the City’s identity as a fire service provider. The City pays the contract amount from the General Fund, whose revenues include property taxes generated by the City’s permanent rate (6.5379 per \$1,000 of valuation). The contract expires on June 30, 2008.

Since execution of the agreement the City and District have established contract payment amounts annually. The City receives the same services as residents of the District. The parties’ intention was to eventually establish an annual payment for services equal to the amount the District would realize were it to apply its permanent rate (2.4012 per \$1,000 of valuation) within the City.⁴ Equity demands this result inasmuch as City residents receive the same level of protection as District residents.

While the contract has served both parties well, it does present some drawbacks. For example, City residents are neither eligible to hold District elective office or to vote on District Board candidates or tax proposals. In addition, both the City and District are hampered in their long-term planning efforts because of the contract status. Both issues can be resolved by annexation of the City to the District. A successful annexation ensures Milwaukie residents the right to fully participate in District affairs, and the responsibility of both parties for emergency response will be permanently decided, thus affording them the ability to plan for the long-term.

The process for annexation is relatively simple. First, the Council forwards a proposal to annex to the District Board. That is the action being requested at this time. The District

Projected Cost if City-operated Department	N/A	\$2,914,246	\$3,001,673	\$3,091,723	\$3,184,475	\$3,280,009
Difference Between City-Owned Department and Contract	N/A	\$195,415	\$332,556	\$402,825	\$401,170	\$344,448

³ Since the transfer to the District, there have been seven promotions within the ranks of former City employees.

⁴ The following table illustrates the annual contract amounts and the effective rate paid by the City both for the contract amount and for the combined contract amount and facility costs:

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
City Value	\$1,043,702,190	\$1,087,994,810	\$1,126,363,831	\$1,164,528,391	\$1,201,307,346	\$1,233,327,802
Contract Amount	\$2,365,408	\$2,436,370	\$2,484,720	\$2,620,262	\$2,759,869	\$2,820,869
Effective Rate of Above	2.27	2.24	2.21	2.25	2.30	2.29
Facility Charge	\$261,120	\$161,925	\$168,218	\$189,227	\$175,692	\$154,656
Effective Rate With Facility Charge	2.52	2.39	2.36	2.41	2.44	2.41

Board considers the request, and, if approved, it notifies the City.⁵ The City then orders an election within the City on the date specified by the District Board. The question will appear on a September 21, 2004 ballot. In addition, the City of Oregon City has requested annexation to the District, and that question will be before Oregon City voters on September 21, 2004. If the annexation is approved it will become effective July 1, 2005.

One effect of a successful annexation will be to authorize the District to levy its permanent rate on properties within the City. A successful annexation does not reduce the City's permanent rate, which is one source of the funds used to pay the annual contract amount. However, the above issues that will be solved by a successful annexation are so compelling that the City should pledge during the term of this Council to ensure that the new taxing authority results in no net increase in the combined City/District levy of their permanent rates.

FISCAL IMPACT

The fiscal impact on the City's budget will be removal of the contract amount as an expense in the General Fund. If the above course of action is approved, the current Council will commit to set the levy of the City's permanent rate at an amount that will not result in a combined City/District permanent rate levy in excess of 6.5379 per \$1,000 of valuation. If the annexation is successful, the City and District will negotiate the terms of the District's rental of space at the City's Public Safety Building.

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⁵ Prior to the last legislative session the annexation question was submitted separately to both City and District electors. HB 2818 now provides that the District Board is not required to call an election within the District if the population of the city to be annexed is less than twenty percent of the population of the district and the entire boundary of the city is to be annexed. That is a District Board decision.