

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION
MAY 3, 2005**

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

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson, Engineering Director Paul Shirey, Finance Director Stewart Taylor, Community Services Director JoAnn Herrigel, and Operations Director Kelly Somers.

Media: Dennis McCarthy

Advisory Board Interview

The Council interviewed **Sherri Dow** for re-appointment to her position on the Park and Recreation Board.

McLoughlin Boulevard Project Cost Overruns

Mr. Swanson provided a memo the previous day with a spreadsheet that described the issue. The McLoughlin Boulevard Project, which was poised to go to bid for the construction phase, ran into some cost overruns in the amount of \$556,000. Mr. Shirey applied for additional Oregon Transportation Investment Act (OTIA) funds, but according to the Oregon Department of Transportation (ODOT), Milwaukie would at most receive half of the overrun or about \$228,000.

This was complicated by the fact that the City of Milwaukie had to give notice to proceed today at noon today; otherwise, the project could be delayed for months. He believed there were commitments made regarding timing, so Mr. Swanson made the decision to give ODOT the City's Notice to Proceed. That at least preserved the City's ability to stay in the queue. He brought this to the City Council because he did need to have the authority to spend \$200,000, and if it was spent and not budgeted then the person who authorized it was responsible.

This was something of an emergency. He noted that dealing with ODOT was a challenge, and in this case "he who has the gold rules." There were risks involved. The City did not know if it would get the OTIA money. He could not say with 100% certainty that the construction costs would be as portrayed on the spreadsheet. One of the things the City had to contend with on this project was the economy and steel and concrete prices. Those were reasons why there were increases in the construction phase costs. If there were an increase, then the City would have to come up with the additional money. He did guarantee that if the City sat on it, it would be in the same position it was in the past. He chose to take the risk, but the Council could reverse his decision. It was important for Milwaukie to meet its commitment to undertake this project within the given

period of time. He guessed that waiting would probably further increase the City's exposure. His choice was to say, let's get on with it and get it done.

There were certain aspects of the cost overruns with which he was not pleased. He would never undertake the right-of-way acquisition process with ODOT again if he had another choice. ODOT was very expensive, and the next time Milwaukie went into a project of this scope, he recommended looking at another option.

Right now there were 2 questions. Did the Council wish to proceed with the project? It would cost more. The original match amount was \$217,463, and that had approximately doubled. If the Council did wish to proceed, did it wish to do so immediately? The City could wait and try to scrape together some funding, but he did not believe it was available. Milwaukie would be tempting fate.

The City was being reimbursed because the street fund had advanced the payment for the design contract. Those funds had not yet been appropriated, so there would be a supplemental budget in July. The street fund would have had \$228,000 next year or the following year, which it now will not have. It was not new money. It was money the City had hoped to use on other future projects. If the Council wished to proceed with the McLoughlin Boulevard Improvement Project, those funds would be used.

Mayor Bernard understood from Brion Barnett that 4-1/2 years ago this project was a complete rebuilding of the road, but further testing showed that would not have to be done. He was confused why the price was still so much higher than the original estimate. Who did the original estimate?

Mr. Shirey said OTAK developed the original estimate in the Transportation and Growth Management (TGM) grant process.

Councilor Stone had an overall question about accountability and why it fell on the City instead of the people who did the original estimates. David Evans and Associates (DEA) gave Milwaukie a bid, and now we find out the company underbid. Why did the City have to pay for that?

Mr. Shirey said DEA bid the design contract for \$600,000. During the course of project engineering (PE), additional challenges and issues came up that the City had not anticipated. The contract was increased by 5% or \$32,000. Given the relative scope of the effort, that amount was reasonable in his view. He thought the City had done a good job of managing the professional engineering process. The overrun from \$650,000 to \$750,000 represented 2 things. The City estimated it would pay ODOT \$25,000 for its services during PE but was billed \$60,000. Milwaukie spent \$42,000 on its labor costs. The City can reimburse itself for labor, but it was not budgeted. DEA was an additional \$32,000. The total contract with DEA was \$632,000 through the completion of the design; it did not include project management.

Councilor Barnes understood the City paid \$632,000 for project design.

Mr. Shirey said a jurisdiction would pay anyone that much to design this type of federal project. He understood it was hard for some to realize that was the case.

CITY COUNCIL WORK SESSION – MAY 3, 2005

APPROVED MINUTES

Page 2 of 12

He assured the Council that that percentage of cost for design was in line for this type of project.

Councilor Collette said in the projects with which she had been involved, ODOT and the federal government typically picked up the overruns. She worked on projects all over the state, and she had never been on a project where the local government was responsible for paying cost overruns. McLoughlin Boulevard is a state highway. Why should the City of Milwaukie have to pay \$500,000 more unless it had to do the Special Transportation Area (STA) designation? Newberg and Dundee were not paying for the bypass. Medford did not pay for its interchange. Where did that come from?

Mr. Shirey replied that there were 2 funding sources – a Congestion Mitigation and Air Quality (CMAQ) grant for \$1.9 million that required a 10.27% match and the OTIA grant for \$2 million for which no match was required. The federal funding was partially responsible for the high cost of construction management. In response to the question of why Milwaukie was responsible for ODOT's overruns, he said staff had requested additional OTIA funding for which no match was required. They would consider a grant request for up to 50% of the overrun. He could not represent that that was fair, but it was the situation.

Councilor Collette said her question was answered to a degree that 10.27% was the federally required match.

Mr. Shirey said the City originally signed an agreement for \$217,000, now he was asking for that much again to cover the overruns.

Mr. Somers said in the beginning the state was just going to do an overlay, and then the City decided it wanted a boulevard effect. It escalated from there.

Councilor Collette asked if the local community was paying huge amounts for the rest of the McLoughlin Boulevard improvements.

Mr. Shirey said the proposed project south of Kellogg Creek was an overlay. That was strictly a state job with state funds, so there was no local component. It was what ODOT called a preservation project involving the existing travel lanes, curbs, and gutters, and some sidewalks. To his knowledge ODOT was not seeking funding from Clackamas County. Oregon City is beginning the process where Milwaukie was about 2-1/2 years ago with this project. He discussed construction bidding. The rule was that if the bids came in at over 110% of the engineer's estimate, ODOT would not award. That was how the amount came to \$473,369. The OTIA staff made a positive recommendation to the committee that made funding decisions and expected an approval.

Councilor Collette was very concerned. She liked this project and could not imagine backing out at this stage. She did not believe construction would come in at the bid amount. She thought cost overruns were likely as construction proceeded. She was concerned that the City signed something agreeing to pick up the cost overruns. That could get the City in a very deep hole.

Councilor Stone asked why the overrun costs could not be shared.

Councilor Collette understood the state might come through with half.

Mr. Swanson replied if there were anything in excess of that, the City would be on the hook. He understood the design engineer looked at the construction plans and was comfortable the City would be within the budgeted amount. He was relying on their judgment.

Councilor Stone asked which street projects would be forfeited.

Mr. Swanson said the revenue had not been recognized, so it would probably affect the projects next year and the year after. The street fund would have \$228,000 less.

Mr. Shirey explained this money was not earmarked for any capital improvement or maintenance projects.

Councilor Collette understood the projects in the current CIP were funded and that the reimbursement had not been thought through in terms of being applied to specific projects.

Mr. Swanson said staff was not certain what would be there so it was not budgeted as revenue or expenditure. There would be \$228,000 less. ODOT loved to move cars and trucks as quickly as possible and in high volumes. Boulevards did not do that; they tended to have a different impact. The boulevard was consistent with what the City was trying to do downtown. If he were in ODOT's shoes, his interest would not be in creating boulevard projects. That was in Milwaukie's interest. McLoughlin Boulevard was a state road, and if Milwaukie had not intervened ODOT would have done an overlay that moved cars and trucks. The City was trying to get a different character in the downtown, thus the boulevard project. It was the City's project on the ODOT right-of-way.

Councilor Stone asked if ODOT would go ahead with the overlay if Milwaukie did not move forward.

Mr. Swanson replied that was the project ODOT would do.

Councilor Stone asked if ODOT would be willing to delay if Milwaukie wanted to recoup some funds.

Mr. Swanson thought ODOT would be happy to delay the project if that was what Milwaukie wanted to do. He did not know if there would be any advantage in doing that because he thought the costs would probably go up.

Councilor Stone asked when the original estimates were done.

Mr. Swanson said the estimates were done about 4 or 5 years ago.

Councilor Stone understood, then, that the original estimates were fairly old.

Mr. Swanson commented that the economy had been relatively stagnant.

Mr. Shirey added that concrete and steel were both China-driven escalations and petroleum prices were high.

Mayor Bernard said this project had to be done; he saw no choice.

Mr. Shirey was informed by ODOT that Milwaukie's seeking a delay would not be well received. The agency was interested in moving dollars and getting projects done. The OTIA money was out of a bond fund, and ODOT had made representations as to how and when it would be spent.

Councilor Barnes understood from a discussion a couple of weeks ago that ODOT was responsible for King Road, which was already failing. She wanted some kind of addendum on this project that the work would be to the quality the City expected.

Mr. Shirey replied that ODOT would maintain the road, and the City would maintain the sidewalks and landscaping.

Councilor Stone understood that McLoughlin Boulevard was more than just an overlay and that King Road was simply a quick overlay.

Mr. Shirey replied that King Road was an overlay on a bad base.

Walt Bartell, David Evans and Associates, said some areas of McLoughlin Boulevard showed deep base failures that would be restored, but most of it would be overlay.

Mr. Shirey added in those areas where there was no deflection, the top layers of asphalt would be ground off and replaced for a good long life of about 20 years.

Councilor Barnes asked if there was any way to send the message that Milwaukie was not happy with the way this turned out.

Mayor Bernard had a meeting with the regional manager this week.

Councilor Barnes thought the state representatives needed to be contacted. ODOT was a state agency that was not overly cooperative. Why was the City of Milwaukie picking up the overruns? The state representatives needed to know that the City was having problems.

Councilor Stone shared Councilor Collette's concern that the cost would be higher than what was being discussed at this time. She did not want to get into that situation because Milwaukie had no extra money.

Mr. Shirey said Milwaukie was compensating DEA a fair amount of money for construction engineering and management. The company had an excellent track record on these types of projects and used all available means to ensure that cost estimates reflected the latest bids for similar work. He was fairly well assured the project could be managed within the available resources from this point on.

Mr. Bartell said once the project moved forward, there was a 3.5% contingency built into the authorization. That percentage covered slight adjustments in quantities. Under the terms and conditions of the contract, as the engineer and the City's representative, DEA had the authority under the terms of the contract to increase or decrease quantities. Normally, that would happen when DEA sensed there would be an overrun in any one quantity for any reason. It could be a change in the specific gravity of the aggregate. DEA had the ability to adjust

those quantities and work with the contractor to stay within the dollar amount that was authorized through the bidding process. There were some avenues DEA would explore while working closely with Mr. Shirey and his staff to manage the contractor's activity. There were controls. DEA measured the depth to ensure requirements were met and weighed the material to ensure the quantity placed was consistent with the design. Part of the service was to stake the quantities with the survey crew and measure it before the contractor began work. DEA could manage the budget very closely and anticipate changes in the costs.

Councilor Stone was concerned about the way it was going to be constructed. She understood the bulk of the boulevard would be an overlay and some sections would be dug down to gravel. It seemed those sections would last longer than the overlay.

Mr. Bartell explained where the street was being widened, the roadway was being shifted to the west by about 13 feet. There was 16 to 18 feet of new roadway construction on the west side. Once the curb came out, the roadway would be shifted in that direction. That new pavement structure has been designed to the same life as the overlay on the existing pavement. The deep base repair was being done in localized areas of the existing pavement to make sure that the entire pavement structure from curb-to-curb was the same regardless of the treatment.

Mr. Somers understood ODOT was responsible for maintenance of the pavement after completion, and the City was responsible for the sidewalks.

Mr. Bartell explained ODOT would be responsible for the curb-to-curb maintenance that included drainage, pavement markers, and the asphalt pavement.

Councilor Collette thought the City was between rock and a hard place. Milwaukie wanted and needed the project to go forward in order to do everything the Council wanted to accomplish downtown. DEA would have to let the City know immediately if the budget started to slide.

Mr. Bartell said there was a not-to-exceed dollar amount in the contract. There was a limit within the authorization that could not be exceeded without prior approval from the City Council and the Oregon Transportation Commission.

Councilor Stone asked for clarification of the OTIA funding source.

Mr. Shirey replied the City received \$2 million now and was hoping for and additional \$227,000. OTIA provided half of the overrun up to \$278,000. He anticipated a decision within about 2 weeks.

Councilor Stone understood Milwaukie would receive the OTIA funding plus the \$320,000 design reimbursement.

Councilor Collette expressed concerns about the likelihood of future overruns.

Mr. Bartell said DEA would do everything possible to ensure the project stayed within the budget. That was his commitment.

Mayor Bernard noted that the cost for Johnson Creek Boulevard was a little less than estimated.

Councilor Stone asked who could answer Councilor Collette's questions about local governments' not being responsible for overrun costs.

Mr. Bartell responded the projects Councilor Collette cited were ODOT projects, so it was making the match. Those were all state highway system projects, and that was why ODOT made the match. In some cases, if there were a local interest, ODOT had entered into intergovernmental agreements (IGA) to get local participation in the project and particularly in the case of projects of statewide significance. If local agencies contributed a match, then typically the projects ranked higher for funding. That was part of the ranking criteria ODOT used in the past, and Mr. Bartell was sure it still did. On any projects within the state highway system, ODOT made the bulk of the match. If it were a project off-system or a local agency project on a neighborhood street, then the local agency normally made the match.

Councilor Collette said this was part of the state highway system, so she assumed Milwaukie agreed to the match for the purpose of ranking higher for funding or wanted a more elaborate treatment than ODOT would have otherwise done. Were the overruns in the detailing what the City wanted?

Mr. Swanson replied the overruns were throughout the project.

Advisory Board Interview, continued

Council interviewed **Kelly Valentine** for a vacancy on the Design and Landmarks Committee and **Dick Newman** for reappointment to the Planning Commission.

Solid Waste Franchise Agreement Update

Ms. Herrigel discussed the ongoing negotiations with the franchised haulers. The current agreement was extended to winter 2005. In response to Council comments at an earlier session, she provided general information on the franchises.

There were 7 franchised haulers, and each provided service in a designated area of the City. The term for the current franchise was 10 years. Under the current franchise system, the haulers had a consistent customer base and provided recycling, yard debris, and garbage service in those given areas. No hauler from outside the City or other franchised haulers within the City could go into another area without violating City Code.

Because of the franchise agreements, Milwaukie had uniform rates throughout the community. The City set the rates based on the cost of providing the service. In return for the consistent customer base and use of City streets, the haulers provided Milwaukie with a 5% franchise fee that was about \$120,000 annually.

State authority allows the City to franchise its garbage collection, although there were other options for running a solid waste system. A franchisee may be removed with or without cause, but that had not occurred. Annually, she came to the Council to discuss rates based on information from the haulers and Metro on

the tipping fee. The haulers report how much money they made and how much they spent operating in the City. She worked with Clackamas County to determine if the haulers were making an adequate rate of return in the range of 8% to 12%. Based on this evaluation, she brought a recommendation to the Council in June about raising, lowering, or not changing the rates. For 16 years, the Council has authorized challenge grant funds from Metro for public education and outreach. This authorization included an IGA with Metro for the grant funds and an approved annual plan.

Ms. Herrigel was currently negotiating with the haulers to modify the code and the terms of the franchise itself. She provided background of what had been discussed since 2001 when the process started. She commented on the customer satisfaction survey results, which were much higher than the consulting firm had seen in local jurisdictions. The response rate was 30% or more. Not only was the satisfaction level very high for residential customers but also for commercial customers. Residential was 93% and commercial was 97%. With Council's agreement and the support of this satisfaction survey data, she began negotiations with the haulers in early 2003. That process was almost completed, so she provided information on those issues being covered with the haulers and asked for Council's input. These issues were:

- Term of franchise. The proposal was for 10 years with a review at year 5 and a 5-year renewal. This was consistent with other jurisdictions in the region.
- Administrative Rule Procedure. Rules clarified and appeals process added.
- Certificate of insurance. Reflected what was currently required of other franchises and contractors.
- Performance bond. Proposed to drop this requirement. Typically, a bond was used if the hauler or contractor defaulted in some way and there needed to be some way to continue to operate the system. \$5,000 would not really operate the system or any of the franchises. Insurance covered this in most jurisdictions.
- Pay station. This language was outdated.
- Down-to-Earth Day. This had not been in the agreement previously, and language was proposed to include it. No other City in the region held this type of event. The haulers provided all the equipment and manpower with the exception of the local volunteers. The haulers paid their workers, so it was a fairly large outlay of funds. Councilor Barnes asked if there could be 2 per year.
- Rate review. Language clarified.
- Franchise fee. Currently 5% and add language it would be that amount unless there was a need to modify that amount to offset disparity not corrected by rate process.

- Dead animals. People may direct their calls regarding dead animals in the street to Ms. Herrigel. No other city or county in the region had this service.

Councilor Stone asked Ms. Herrigel how Portland and Clackamas County handled performance bonds.

Ms. Herrigel would check on that. She did not believe Clackamas County required a performance bond.

Councilor Loomis asked why garbage service was franchised.

Ms. Herrigel replied it allowed the jurisdictions a lot more control so they could guide haulers' activities. Metro, as the regional government, had certain goals that had to be met. Franchises also helped prohibit rate discrimination, and all of the haulers charged one rate. It reduced truck traffic, and each hauler had a pre-established route resulting in reduced traffic, noise, and pollution in Milwaukie. It generated annual revenue for Milwaukie. The haulers had a certainty in their customer bases and some certainty in respect to infrastructure investments and technology.

Mr. Swanson believed the franchise language was in the recycling statute. Franchising provided some control, and the recycling program in Oregon was one of the strongest in the country. It was probably a compromise. In other states garbage pick up was a municipal exercise, but in Oregon it was private with municipal guidance.

Mayor Bernard announced replay of the Planning Commission hearing on the Parks District proposal for ballfields at North Clackamas Park.

Mr. Swanson said if the Council watched any of the replays, then members should make that announcement if the application came to the Council.

Councilor Stone had a question about the painting contract on the consent agenda. The action requested was to sign a contract and issue a purchase order to Craftsman Painting in the amount of \$40,000 per year for a maximum of five years not to exceed \$200,000. In the background section of the staff report, it was stated that staff anticipated approximately \$20,000 to \$40,000 per year in painting projects. She asked if the contract should state that range.

Mr. Somers used "not to exceed \$40,000" because it could vary from year to year. One year there might only be \$10,000 in projects. This contract was used at the recommendation of the city attorney and met the Local Contract Review Board's Purchasing Rules.

Councilor Collette discussed the draft letter to Metro regarding the streetcar study. She attended the meeting because she had gotten a call that Milwaukie would be engaged in the study. Outside the meeting she heard there would be a proposal. The eastside streetcar was proposed to go to OMSI or possibly further. The Lake Oswego streetcar would follow the line in the south waterfront development and bring it all the way to Lake Oswego. She had heard that there was an option that light rail and/or a commuter train would go across the

Forgotten Bridge into Milwaukie. That would be a much faster commute for people from Lake Oswego. She attended the meeting thinking that might be one of the alternatives to be studied. At this stage, it was in the alternatives analysis in terms of how to get people from Lake Oswego into downtown Portland. When it was not listed, she asked Metro Councilor Newman what could be done because it seemed like an option that should be on the table. Her main reason for wanting it on the table was that it would keep some impetus for Milwaukie light rail. She was concerned that all the studies – including South Corridor – would happen, and Milwaukie would not even be on the table. Councilor Newman said an easy way to do that was to write a letter from her and the Mayor saying they thought it should be one of the alternatives under review. She understood that writing the letter was viewed as a Council action. If the City Council did not wish to send a letter, she could do so as an individual as she believed it should be part of the study. She had lunch with Lake Oswego Mayor Hammerstad and Councilor Peterson, and they discussed the Foothills Development Project. She mentioned her proposal, and both felt it should be an alternative under review. The streetcar projects were not competing with light rail; they were a separate budget. The point was to have an alternative that would keep Milwaukie in people's eyesight and have a seat on the steering committee to continue the dialogue.

Mayor Bernard believed Councilor Collette should be on the steering committee if she wished. But, why would someone from Lake Oswego want to come to Milwaukie.

Councilor Collette said that was the concern – because they would not. Right now the only reason would be if light rail were faster. That would not be known unless it was studied. It was very likely that light rail to Milwaukie would be faster than streetcars because those were very slow. Metro and TriMet told her that most people did not take the streetcars when they wanted to get somewhere fast.

Mayor Bernard supported light rail because that particular line had been considered for commuter rail for many years. With commuter rail growing in Wilsonville and other communities, it was likely that could happen someday and connect to the light rail system. One could say the money came out of a different pot, but there was only so much available. Why would someone disregard Milwaukie light rail when \$4 million was about to be spent on analyzing it.

Councilor Collette said it was disregarded when the City came out with the proposal, and I-205 took priority. Downtown Portland was going to be done first. It was a South Corridor Study to come up with an alternative for transportation through Oregon City and Milwaukie. The alternative was no longer on the table for completion for years and years. One reason to be at the table was to keep Milwaukie in people's eyes as an equal player.

Councilor Stone supported Councilor Collette's being on the steering committee to keep Milwaukie in the loop. She was never a proponent for light rail because she felt it was a huge financial burden in terms of what it did or did not do for traffic. She, the City of Milwaukie, and Clackamas County were not convinced,

so she did not feel she could advocate for something her constituents voted down time and time again. She had no problem with getting information and being represented on the steering committee because it could involve Milwaukie at some point. She did not believe the letter was necessary at this time.

Councilor Collette did not believe a Milwaukie representative would be on the steering committee unless it had an alternative under analysis. There would not likely be an alternative unless the letter was sent. This was just a review of alternatives that included the streetcar from Lake Oswego to downtown Portland, a bus, and streetcars on the east side across the Sellwood Bridge. None of them looked at the quickest and most economical way to get people from Lake Oswego to downtown. The problem with commuter train, which she mentioned to Mayor Hammerstad and Councilor Peterson, was that it was twice in the morning and twice in the evening at peak travel times. People were looking at something much more regular. She understood the question of why someone from Lake Oswego would want to come to Milwaukie. Hopefully in 10 years there would be answers for that, and people would want to get off light rail in Milwaukie and do some shopping.

Councilor Stone suggested water taxis as an alternative.

Councilor Collette said the Forgotten Bridge had Metro Transportation Improvement Projects (MTIP) funding to look at it as a pedestrian/bike bridge. Lake Oswego was talking about running its sewer in a pipe over that bridge to the Tri-Cities Plant.

Councilor Barnes said unless there was an urgent call from Lake Oswego, she would rather work on things that had been voiced as concerns. She sometimes wondered why there were all these studies when people just wanted the elected officials to do something. She supported Councilor Collette's being on the steering committee.

Councilor Collette replied this was a study of alternative sites. She only mentioned the idea to Councilor Newman and Councilor Peterson. She thought it would have been on the table because she had heard others talk about it. This was not Lake Oswego's concern -- its concern was getting downtown. Her concern was keeping Milwaukie at all of the important tables when transit opportunities were discussed.

Mayor Bernard was a member of the South Corridor Study Group, which was going to resume meeting. He would be lucky to be alive when light rail comes to Milwaukie. Competition was tough. He thought Vancouver light rail would be next followed by a line to Clackamas Community College. Oak Lodge/Oak Grove spent 13 months on the Clearwater Project and decided to leave its community the way it was, and that was a waste of money.

Councilor Loomis was not interested at this time because of the other projects going on. The direction of light rail was set, and he did not believe this would have much effect either way.

The group concluded Councilor Collette should send a letter as a private citizen.

The work session ended at 7:00 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL WORK SESSION MAY 3, 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.	Advisory Board Interviews	
2.	6:00 p.m.	Solid Waste Franchise Agreement Update	JoAnn Herrigel
3.	6:20 p.m.	Adjourn	

EXECUTIVE SESSION: The Milwaukie City Council will go into Executive Session pursuant to ORS 192.660(2)(f) – to consider exempt public records.

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

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the preceding items.
- 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.

ADVISORY BOARD INTERVIEWS

Tuesday, May 3, 2005

APPLICANT

AREA OF INTEREST

Sherrí Dow *

Park & Recreation Board

Kelly Valentine

Design & Landmarks Committee

Dick Newman *

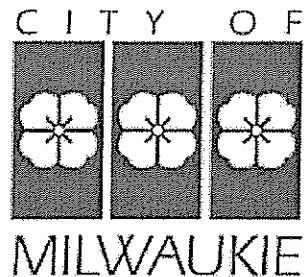
Planning Commission

Charmaine Coleman**

Design & Landmarks Committee

**Interview during Regular Session

* Applicant is seeking re-appointment to Board/Commission.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Proposed Terms for Garbage Franchise
Date: April 18, 2005

Action Requested

Provide staff with input on terms of the solid waste franchise.

Background

In 1993, the City Council passed ordinance 1752, regarding solid waste collection which, among other things :

- Provided for a system of solid waste management including providing recycling
- Allowed the granting of exclusive franchises for solid waste collection within geographic Districts approved by city Council for ten year term
- Provided for the adoption of rules and regulations, and
- Provided penalties for violations

In October of 1994, the City Council passed a resolution (11-1994) that granted exclusive franchises to seven garbage haulers for the provision of garbage and recycling collection services in Milwaukie. The end of the ten-year term of these franchises was October 1994.

Anticipating the end of these franchise terms, staff met with Council in May 2002 to discuss the various types of solid waste systems available to the City if we chose to pursue an alternative to franchising. At that time, City Council directed staff to pursue the existing franchise system for solid waste management. The Council suggested that if the franchise system was operating adequately and to the satisfaction of the City's garbage customers, then staff should renegotiate the franchises.

In order to gather data on customer satisfaction, in the summer of 2002, Milwaukie staff hired Davis, Hibbits & McCaig, a communication and survey firm, to conduct surveys of both the residential and commercial customers in Milwaukie. The residential survey was mailed to customers and received over a 30% return (3 % is considered good in surveys). The commercial survey was done by phone and reached 150 (of the total 400) current business customers. The results of these two surveys showed a 93% satisfaction rate for residential customers and a 97% satisfaction rate for commercial customers.

Armed with the support of City Council and the reportedly high satisfaction rates of garbage customers, staff began negotiating with the existing franchise holders in 2003. The negotiations have been very productive and agreement has been reached on major franchise terms with the haulers' representatives. Recently, staff asked for Council approval for a second extension to the franchise terms to allow staff to complete franchise negotiations and develop administrative rules for solid waste collection. Staff expects to bring ordinance changes, franchise renewals and administrative rules to Council for approval by December 2005.

At this time, staff would like to provide Council with a glimpse of the terms we have agreed upon with the garbage haulers. The existing code language regulating garbage collection in the City was written over a decade ago. In many ways, the language remains adequate – in others, it needs updating. Staff has been discussing both language and substantive Code changes with the haulers during the garbage franchise negotiations. The table on the following page lists the most important of the proposed terms on which we have reached agreement.

Issue	Current Code	Proposed Code	Comparison
Term of franchise	10 years	10 years with a review at year five and a five year renewal with staff recommendation, public notice and public hearing	Portland: 10 yrs w check at 5 yrs Beaverton: 7 yrs w check at 3.5 yrs Clackamas Cnty: 10 yrs w check at 5
Administrative Rule Procedure	Rules drafted and haulers given 30 days notice. No appeal process established.	Rules drafted and explicit advertisement and appeal process described	Same as proposed
Insurance requirements	Certificate of insurance "acceptable to the City"	Certificate of insurance at specific coverage level	Same as proposed
Performance Bond	\$5,000 Bond required	No bond required	Beaverton: \$25,000 Bond or Letter of credit West Linn: \$400,000 Bond or Letter of credit
Pay station	Required	Not required	Same as proposed
Down To Earth Day (City-wide Collection)	Not mentioned	One collection event required per year – no direct charge to City	No other city/county does this in region
Rate review	Language vague and no annual review required	<ul style="list-style-type: none"> • May review and set annually. • Cost of service based • Operating margin target = 10% • Acceptable range = 8 to 12% 	Generally, same as proposed
Franchise fee	Set by resolution of Council – no percentage established	Set at 5% unless there is a need to modify rate to offset disparity not corrected by rate process	Same as proposed
Dead Animals	Included in definition of solid waste	Included in definition of solid waste	No other city/county does this in region