

## MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION  
DECEMBER 6, 2005

**Mayor Bernard** called the work session to order at 5:32 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, and Loomis.

Staff Present: City Manager Mike Swanson; Community Development/Public Works Director Kenny Asher; Community Services Director JoAnn Herrigel; and Planning Director John Gessner.

**Proposed Terms for Garbage Franchise**

**Ms. Herrigel** would come before the City Council on December 20 with Code amendments that would make minor changes to the rules, adopt the administrative rules, and approve a resolution granting the franchises. She reviewed the major terms of the franchise, administrative rule procedures, insurance requirements, and performance bonds. The current Code language requiring a \$5,000 bond was removed, as it was not practicable. It would be impossible to operate a franchise for a day or two on \$5,000 if there were some issue, and few other agencies had that language in their rules. If one franchisee for some reason went into decline, another company would likely pick up that business. The proposed amendments added reference to Down to Earth Day and dead animals. The negotiations with David White went very well, and the extensions were mostly a case of the parties finding adequate time.

The types of changes to the administrative rules had to do with adoption of the rules, removal of archaic and redundant language, adoption of established practices, identification of a formal process for yard debris recycling, and an updated list of recyclables.

**Councilor Collette** understood the haulers would pick up dead animals.

**Ms. Herrigel** replied that was true in the City and as long as the animal was in the street. She notified the hauler for that area, and they would dispose of the animal properly according to the agreement. She cannot enforce anything outside the City.

**Councilor Barnes** expressed her appreciation to the haulers for Down-to-Earth Day.

**Zoning Ordinance Amendment regarding Limitations on Repeat Submission of Applications**

**Mr. Gessner** said the ordinance would provide clear direction that established conditions under which an applicant who received a denial from the City could resubmit that application for reconsideration. The primary policy choice was how

long someone should be required to wait if there were no changes to the application. The Planning Commission was comfortable that two years was the appropriate amount of time. The applicant would also have the opportunity to resubmit the application if there was a code change. The final element had to do with the Council being the final decision maker. It was felt that the applicant could resubmit if there were a substantial change in Council composition. The Planning Commission voted to recommend the proposed amendments to the City Council for adoption.

**Councilor Collette** asked what was meant by a substantial change in composition of the Council.

**Mr. Gessner** referred to section F. – a substantial change "...occurs if fewer than three Council members who voted to deny the original application remain on Council."

**Mayor Bernard** thought it seemed odd to create a political mechanism.

**Mr. Firestone** said many land use decisions made by the City Council were narrowly dictated by the Code. There were other situations in which there was enough discretion that decisions could go either way and became a policy decision. He felt it would be unfair for someone to get a denial in October of an election year on a policy decision that could have gone either way.

**Mr. Gessner** added there were no specific criteria for legislative changes. He asked Mr. Firestone if annexations should be exempt from this provision.

**Mr. Firestone** did not see any reasons for annexations to be treated differently, but the City Council could have a reason.

#### Councilor Updates

- **Councilor Barnes** and Kenny Asher met with School District officials to work on a Community Development Block Grant (CDBG) application for the property located at 2515 SE Harrison for Library annex.
- **Councilor Loomis** announced the Winter Solstice Event on December 10.

Mayor Bernard adjourned the work session at 6:00 p.m.

*Pat DuVal*

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Pat DuVal, Recorder

# AGENDA

## MILWAUKIE CITY COUNCIL WORK SESSION DECEMBER 6, 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.	Proposed Terms for Garbage Franchise	JoAnn Herrigel
2.	5:45 p.m.	Zoning Ordinance Amendment regarding Limitations on Repeat Submission of Applications	John Gessner
3.	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.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Proposed Terms for Garbage Franchise

Date: November 17, 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.
- 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 third extension to the franchise terms to allow staff to complete franchise negotiations and develop administrative rules for solid waste collection. Staff will bring an ordinance, franchise and administrative rules to Council for approval at its December 20, 2005 meeting.

**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. The administrative rules have not changed substantively, and so, are not summarized here.

### Proposed Code Language Changes

<b>Issue</b>	<b>Current Code</b>	<b>Proposed Code</b>	<b>Comparison</b>
<b>Term of franchise</b>	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
<b>Administrative Rule Procedure</b>	Rules drafted and haulers given 30 days notice. No appeal process established.	Rules drafted and explicit advertisement and appeal process described	Same as proposed
<b>Insurance requirements</b>	Certificate of insurance "acceptable to the City"	Certificate of insurance at specific coverage level	Same as proposed
<b>Performance Bond</b>	\$5,000 Bond required	No bond required	Portland – no longer required Clackamas Cnty – none required Beaverton – \$25,000 Bond required
<b>Pay station</b>	Required	Not required	Same as proposed
<b>Down To Earth Day (City-wide Collection)</b>	Not mentioned	One collection event required per year – no direct charge to City	No other city/county does this in region
<b>Rate review</b>	Language vague and no annual review required	<ul style="list-style-type: none"> <li>• May review and set annually.</li> <li>• Cost of service based</li> <li>• Operating margin target = 10%</li> <li>• Acceptable range = 8% to 12%</li> </ul>	Generally, same as proposed
<b>Franchise fee</b>	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
<b>Dead Animals</b>	Included in definition of solid waste	Included in definition of solid waste	No other city/county does this in region



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Kenny Asher, Community Development & Public Works Director**

**From: John Gessner, Planning Director**

**Date: November 22, 2005 for December 6, 2005 Council Worksession**

**Subject: Zoning Ordinance Amendment ZA-05-01**  
**Limitations on Repeat Submission of Applications**

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### **Action Requested**

Review the Planning Commission's recommendation and confirm the proposed Zoning Ordinance amendment for a public hearing to be held on December 20, 2006.

### **Background**

On November 22, 2005, the Planning Commission adopted a motion recommending the proposed Zoning Ordinance amendment for Council adoption. The purpose of the December 6, 2005 worksession on this matter is to confirm final language for the Council's December 20, 2005 adoption hearing.

The Planning Commission previously directed staff to prepare a code amendment that limits the resubmission of the same application when it has been denied and not appealed.<sup>1</sup> There are no such code provisions in effect today. The amendment improves applicant and neighborhood certainty about the land use process by making clear rules for resubmitting denied applications. The amendment also reduces city workload by prohibiting submission of applications that were already proven unacceptable under city code.

Key provisions of the code amendment include:

1. Planning Director determinations are final if not appealed.

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<sup>1</sup> Final Commission direction was given at its November 8, 2005 meeting.

2. Denied applications may be resubmitted only if one or more of the following conditions are met:
  - A. Two years have passed since the denial.
  - B. Substantial changes have been made to the application and those changes resolve all findings of the original denial.
  - C. Code changes adopted following the denial, resolve the reasons for original decision.
  - D. Proposals may be resubmitted when there is a substantial change in City Council compositions for denials on legislative and policy actions.

### **Policy & Code Explanation**

#### *2-year Wait*

On November 8, 2005, the Planning Commission found that a 2-year wait is a reasonable period to prohibit resubmission in cases where substantive changes were not made to the application. The Commission noted that the wait period would provide incentive to applicants to perfect their applications for review of the first submission.

#### *Code and Application Changes*

Provisions allowing application to be resubmitted when changes to the applicable code or the application ensure fairness to the applicant. Staff believes these provisions are appropriate and are consistent with the intent of the regulation.

#### *Changes in City Council Membership*

Actions including code amendments, Comprehensive Plan amendments, and zoning amendments are typically policy driven. In these cases the City Council is the final decision-maker. The City Attorney has recommended the code allow for reconsideration of such policy decisions upon a substantial change in the composition of the City Council, since individual Councilors contribute to city policy through individual voting.

### **Decision Making Process**

Zoning Ordinance amendments are legislative actions governed by Milwaukee Municipal Code Sections 900 and 1000. The Planning Commission makes recommendations to the City Council, which has the final decision-making authority.

### Compliance with Approval Criteria

The following is a summary describing how the proposal complies with substantive provisions of the Milwaukie Zoning Ordinance.<sup>2</sup>

#### *Zoning Ordinance Section 904.1 Requirements for Zoning Text Amendments*

1. Procedures outlined in Section 1003, which detail the manner in which applications must be made, have been followed.
2. Reasons for the request are detailed in this report.
3. The proposed amendments supplement existing authorities within Zoning Ordinance Section 1000 Administrative Provisions. There are no known inconsistencies with other existing code provisions.

#### *Zoning Ordinance Section 905 Approval Criteria for All Amendments*

1. Consistency with the Comprehensive Plan, the Urban Growth Management Functional Plan, and applicable regional policies is required. There are no known policies within the mentioned documents that are affected by the proposed amendment.
2. Proposed amendments must meet applicable state, federal, and regional policies. There are no known applicable state or federal policies. The amendment process is consistent with Statewide Planning Goals policies that govern public involvement.
3. Section 905(D) applies to code and zoning changes that affect the transportation system. Section 905(B) and 905(C) apply to area rezonings. The proposal does not affect these sections.

### **Concurrence**

The City Attorney concurs with the proposed ordinance for legal sufficiency.

### **Fiscal Impact**

No fiscal impacts have been identified.

### **Workload Impacts**

Not applicable.

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<sup>2</sup> Complete code criteria can be found in the Milwaukie Municipal Code Title 19 at <http://www.qcode.us/codes/milwaukie/>.

**Decision-Making Alternatives**

The Council has the following decision-making alternatives:

1. Approve the proposed ordinance and code amendment.
2. Direct staff to modify the proposal.
3. Reject the proposal.
4. Take no action.

**Attachment**

1. Proposed Adoption Ordinance

# ATTACHMENT 1

ORDINANCE NO. \_\_\_\_\_

## MILWAUKIE OREGON

### AN ORDINANCE OF THE CITY OF MILWAUKIE OREGON AMENDING THE MILWAUKIE ZONING ORDINANCE BY ADDING A NEW SECTION LIMITING THE RESUBMISSION OF ZONING INTERPRETATIONS AND LAND USE APPLICATION WHEN DENIED AND NOT APPEALED

**WHEREAS**, the City Council desires to amend Milwaukie Zoning Ordinance to improve administrative provisions that limit the resubmission of requests or applications when denied and not appealed to improve overall certainty about the land use and zoning process and to reduce the potential waste of city resources; and

**WHEREAS**, legal and other notices have been provided as required by law; and

**WHEREAS**, on November 22, 2005, the Milwaukie Planning Commission conducted a public hearing as required by Zoning Ordinance Section 1011.5 and adopted a motion in support of the amendment; and

**WHEREAS**, on December 20, 2005, the Milwaukie City Council conducted a public hearing as required by law, heard and considered all testimony, and found that the proposal is consistent with applicable section of Zoning Ordinance Sections 900 and 100 that govern text amendments to the Zoning Ordinance; and

**WHEREAS**, the Milwaukie City Council finds that the proposed amendment is in the public interest of the City of Milwaukie,

### **NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1:           The Milwaukie Zoning Ordinance is hereby amended by creating the new "Section 1004 Limitations" as shown in Attachment 1 effective February 19, 2006.

Read the first time on \_\_\_\_\_, 2005, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_, 2005.

Signed by the Mayor on \_\_\_\_\_, 2005.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan LLP

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

**Ordinance No. \_\_\_\_\_**

**Attachment 1**

***Milwaukie Zoning Ordinance  
Text Amendment  
File ZA-05-01***

**Section 19.1004 Limitations.**

- A. The purpose of this section is to promote efficient practices for the review of zoning and land use decisions while recognizing the appeal rights of property owners and applicants. Prohibitions on repeat submissions of denied applications fosters a greater sense of certainty on behalf of the community, property owners, and applicants in preparing and responding to city decisions on zoning and development proposals. Relief from provisions of this section may not be granted under Section 700.
- B. An interpretation or determination made by the Planning Director in accordance with Sections 19.809 Determination of Nonconforming Situations, 19.1001.1 Authority, and 1001.4 Planning Director Determinations is final if not appealed. The Planning Director's decision to reject a request for a repeat determination or interpretation is not subject to appeal.
- C. If an application for a land use approval has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:
  - 1. 2 years have passed since the denial became final;
  - 2. Substantial changes are made to the application;
  - 3. Standards and criteria relative to the findings of the original denial have changed and now support the application; and/or
  - 4. For legislative and major quasi-judicial decisions only, where the City Council was the final decision-maker and there has been a substantial change in the composition of the Council.
- D. For purposes of this section, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal.
- E. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.

- F. A substantial change in the composition of the City Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.
- G. An application that was denied solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this section.

*~end~*