

MINUTES

MILWAUKIE CITY COUNCIL
FEBRUARY 3, 2004

CALL TO ORDER

Mayor Bernard called the 1927th meeting of the Milwaukie City Council to order at 6:30 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
Gary Firestone,
City Attorney
Alice Rouyer,
Community Development/Public
Works Director

Larry Kanzler,
Police Chief
Paul Shirey,
Engineering Director
Brion Barnett,
Civil Engineer

PLEDGE OF ALLEGIANCE

Announcements

On behalf of the Milwaukie City Council, **Mayor Bernard** offered condolences to the families of Dorothy Graf and Jean Johnson. Both were highly respected women in the community will be missed by all.

Councilor Stone said both women were members of the Ardenwald – Johnson Creek Neighborhood Association and brought a lot of energy, enthusiasm, and humor to the Association meetings. They will certainly be missed, and Stone will remember them fondly.

Councilor Loomis echoed Stone's thoughts. He suggested people stop by the Milwaukie Museum and talk to Madalaine Bohl about what the Graf and Johnson families have done for the community.

Mayor Bernard brought people's attention to the February *Pilot* newsletter and encouraged people to read it and noted the front-page article about Gary Prestling Jr.

CONSENT AGENDA

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

- A. City Council Minutes of January 20, 2003;
- B. Liquor License Application for Sunny Market, 5010 SE Monroe Street; and
- C. Resolution 4-2004: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 4311 SE Rio Vista and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200 (D).

Motion passed unanimously.

AUDIENCE PARTICIPATION**PUBLIC HEARING****Appeal of Variance Granted by the Public Safety Advisory Committee**

Mayor Bernard called the public hearing on the appeal of the Public Safety Advisory Committee variance to order at 6:35 p.m.

He announced the hearing would be continued to March 2, 2004 to give the property owner Mr. Perry Nordby adequate notification.

OTHER BUSINESS

Councilor Loomis thanked staff for its work on the Transit Center Open House. It was very informative.

Mayor Bernard added about 132 people attended and suggested future meetings be held in a larger facility.

Swanson said Grady Wheeler, Jason Wachs, and John Gessner did the bulk of the work on the open house.

Councilor Loomis briefly discussed the two transit center options at the Oregon Department of Transportation property on McLoughlin Boulevard and the City-owned property on the south side of Kellogg Lake.

Mayor Bernard suggested posting the options on the City website.

Swanson said the Working Group would meet and make a recommendation to the Planning Commission followed by the City Council hearing on April 20.

Councilor Loomis noticed that the clay planters in front of Sully's restaurant had been vandalized and suggested people express their appreciation to the business owners for their attempts to beautify the City. He noted the planters have already been replaced.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment under the authority of Oregon Revised Statutes 192.660(c) Performance Evaluations of Public Officers Employees and (h) Real Property Transactions.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 6:40 p.m.

Pat DuVal
Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL FEBRUARY 3, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1927TH MEETING

REGULAR SESSION - 6:30 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

III. 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. City Council Minutes of January 20, 2003

B. Liquor License Application for Sunny Market, 5010 SE Monroe Street

C. Abatement Lien 4311 SE Rio Vista -- Resolution

IV. 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.)*

V. 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.)*

Appeal of Vision Obstruction Variance Decision (Brion Barnett)

VI. 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.)*

None

VII. INFORMATION

None

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment of the regular session pursuant to ORS 192.660(1)(c), Performance Evaluations of Public Officers and Employees and 192.660(1)(h) real property transactions.

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.

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION JANUARY 20, 2004

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

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson, Community Development/Public Works Director Alice Rouyer, and Engineering Director Paul Shirey.

Proposed Resolution Opposing People's Utility District (PUD) in Clackamas County

City Manager Mike Swanson believes the PUD measure will be on the May 2004 ballot although the Clackamas County Commissioners have not set the election date. The Milwaukie City Council received two proposed resolutions regarding this measure. Two groups, one supporting the formation of a PUD and one opposing it, requested the City Council to adopt a resolution reflecting their positions. He suggested that rather than the Council's taking testimony on an issue that will be submitted to Clackamas County voters that the League of Women Voters (LWV) hold a forum. LWV representatives indicated they would be willing to conduct the forum and asked the City of Milwaukie to be listed as a sponsor. The North Clackamas Parks and Recreation District (NCPRD) and Milwaukie Center are willing to provide the meeting space. The forum date will be determined once the election date is confirmed. LWV will invite representatives of both positions and hopefully attract attendees from a broad segment of the public.

A December 31, 2003 *Oregonian* article indicated some City Councils in Clackamas County would be considering resolutions in support or in opposition to the measure, while other Councils are not. If the purpose is to provide information, it is a hit-and-miss proposition since not all Councils will have it on their agendas. If the hope is to provide clarity through Council recommendations either in support or opposition, he would guess there will be a lot of split votes, which does not offer a great deal of clarity. The LWV does a great job of announcing its forums and has a lot of experience in conducting neutral forums about contentious issues.

The LWV stands ready to sponsor and conduct a forum and asks that Milwaukie be sponsor. The Milwaukie Center has agreed to provide the meeting facility. The other option is to schedule a Council hearing on one or both of the proposed resolutions.

Tom Civiletti, Coordinator for Clackamas Public Power, 14614 SE Fair Oaks Avenue, Oak Grove, supported the proposal for a LWV forum on the PUD measure. It is a complex issue, and voters will be best served by getting as much information as

possible. It would be a mistake for the Milwaukie City Council to support the PGE resolution for several reasons. One overriding issue important to understand is that the formation of a PUD and a PUD's taking over the PGE system to deliver power are two distinct steps.

Statistics indicate a PUD should be less expensive to the rate payers, although that is not something he would guarantee. He can guarantee, however, that forming a PUD would be in the best interest of the County if only from the standpoint of an insurance policy. He discussed the Columbia River PUD and its formation several decades before it ever started delivering electrical power. Until the early 1980's, PGE was one of lowest cost electrical providers in the country. In the late 1980's when PGE costs rose, people in Columbia County decided it would be in their best interest to activate a PUD although not all cities opted to participate. This "Swiss cheese effect" is what PGE warns customers about. In the 1990's when PGE was purchased by Enron, there were further elections in Columbia County, and the cities voted to go with publicly-owned utilities. The cost for power from Columbia PUD is less expensive across the board than what is charged by PGE. Rather than looking at the warnings from PGE, one may look at the indication that customers end up paying less for electricity. This is not simply a matter of having a few dollars left at the end of the month. This is the price of operating a business in Clackamas County which has a great deal to do with the strength of the economy and the buying power of all of the people. Governments consume quite a bit of electricity, and a 5% decrease would be a significant savings. Clatskanie PUD rates, for example, are over 50% less than PGE's. This is not a trivial matter.

A decision should not be made based on one side's scare tactics. Civiletti does not feel the City Council has enough information to go on record at this time and encouraged learning more about the issue.

Annette Mattson, PGE, 121 SW Salmon Street, Portland 97204, provided copies of testimony presented at the Oregon Department of Energy's Wilsonville hearing including comments by PGE officers and estimates of how much it would cost customers for severance and the value of the system in Clackamas County. There is no guarantee that prices would be lower with a PUD. The most expensive electric company in the state is Western Electric Co-op formed in the past few years.

The PUD movement was excellent for the electrification of rural Oregon and Washington. The laws put into effect in the 1930's were for the electrification of rural areas and have not been updated. These laws were not designed for condemnation and hostile takeover of existing infrastructure and businesses. This is not simply a question of a study. There will be three questions on the ballot: the first asks the voters if they want to form a PUD, the second authorizes the levy, and the third will be to elect the board members of the new government utility agency. If customers do not like the PUD, it would have to be voted away in five years at the expense of the taxpayers.

Mattson discussed the funding. The levy amount is not significant for the homeowner or property owner in Clackamas County, and neither is the \$75,000 it would raise. A traffic signal study in Clackamas County costs \$20,000 to \$50,000, yet the proponents say

they can do a feasibility study on what it will cost to take over PGE in Clackamas County serving 157,000 customers for \$75,000. That is just the engineering study and does not include the cost for the start of business, which is significant. The value of this system is approximately \$500 million and equals a debt of approximately \$3,000 for every customer in Clackamas County. This does not include generation or other equipment other than poles and wire to operate the business. The cost of disconnecting infrastructure at the county line would be about \$40 million, and construction of such things as substations and feeder drops would be additional. It is not simply a matter of running the electricity through a meter.

The cities of Estacada and Boardman, the Canby Utility Board, and North Clackamas and Lake Oswego Chambers of Commerce have gone on record opposing the PUD. PGE will have its 115th anniversary in Clackamas County, and this is where the first long-distance transmission of electricity took place. To the 750 PGE employees living in this County, that is not insignificant. PGE pays about \$5 million a year in property taxes to Clackamas County as well as \$5 million to jurisdictions in franchise fees and privilege taxes. She believes this is a matter of significant public policy. The LWV forum is an excellent idea. People look to their elected officials to make policy decisions and provide guidance. She understands Milwaukie wants to redevelop its downtown, and reliable electric service is part of that. Electric service is not one of the issues that needs to be addressed in Clackamas County, and time, energy, and money could be better spent on real issues. She will send the Oregon Department of Energy electronically to Swanson as soon as it is available.

Barbara Kemper, Chief Petitioner to form the electric PUD, 17673 SE 130th Avenue, Clackamas. A small group of volunteers have been facing a large group of highly-paid PGE/Enron employees who have all manner of ways of getting information out to people. This is not a discussion of PGE anymore. At some point, PGE will be sold, and will not be the old homebody PGE any more. She believes there will be input from a number of people, not just one side, at a forum such as the one proposed with the LWV. She was one of a group of near victims of the PGE/Enron group that tried to scuttle the attempt to file this petition. PGE e-mailed the County Clerk telling her she could charge the group for filing the petition. She referred to ORS 260 that deals with responsibilities and obligations of elected officials and public employees to be impartial while on the job. Her goal in the pre-feasibility and feasibility study is for the best interest of citizens of the County to be served.

Mayor Bernard supported the LWV forum and asked the other Council members their opinions.

Councilor Stone felt the forum would be appropriate. This is a very controversial issue, and it is important to be objective and show both sides to make the best decision. People look to their city councils for guidance on policy decisions. She does not feel she can make an informed decision without delving into both sides of the issue.

Councilor Lancaster is a hardcore advocate for reduction of government in any form possible. He thinks it is appropriate for the City Council as a decision-making body to

facilitate information going to as broad a forum as possible so people may make their own decisions. The City Council needs this information also if it wishes to endorse a position.

Councilor Loomis said those were his feelings exactly. He had consistently asked to hear both sides so the City Council could make an informed decision. He supported the forum.

Councilor Barnes agreed with these comments. She has done some research of the issue but did learn more information at this meeting. As a reporter, she has worked with Salem Electric and seen both sides in action. The best bet is to inform the public, and she supported the forum.

Gary Duell, 11301 SE Charview Court, Happy Valley. He is a volunteer and is not a paid lobbyist. Generally, his group is vastly outnumbered, out-spent, and out-gunned. At the Department of Energy hearing there were six people representing the public and at least 30 PGE employees. The idea of a forum is great, but he is not sure where it will take people. What is needed is expert testimony, and that is the engineering study. He believes a forum will only result in more of the same. Councilor Lancaster said he wants to reduce government. PGE is propagating the myth that a PUD is a government entity. It is not; it is a corporation with an elected board.

There is a third direction he supports which is to study the feasibility of a PUD. Duell read the three main parts. Independent experts not paid by PGE should study the feasibility of forming the PUD prior to the election. If favorable, a Clackamas PUD should be formed to fund and implement a more comprehensive engineering report. If the report demonstrates a PUD will improve the financial well-being of Clackamas County residents, then the board or council would support the full implementation and operation of a Clackamas PUD. This is conditional. It is a plea for more information. There needs to be some neutral expert information that may or may not happen at the forum. PUD supporters are volunteers, and there are no cash incentives unlike the \$100 million that PGE top executives walked away with when the company was sold to Enron. It actually costs Duell money to be at these meetings, but he cares about the people of this County and resents large companies that try to subvert the democratic process. He asked the City Council to adopt the feasibility resolution and consider helping fund it. The cost of the pre-election feasibility study would be \$15,000.

A member of the audience asked who would do the study.

Duell replied a couple of engineering firms have been contacted, and they are not big lobbyists. He offered to provide the Mayor with a sample study.

Introduce Clackamas County Fire District Chief Norm Whiteley and Consideration of Annexation of City to Clackamas Fire District 1

Swanson introduced Norm Whiteley who was recently selected by the Fire District Board to take Randy Bruegman's position as Chief. By virtue of the contract, Whiteley serves as Milwaukie's chief.

Chief Whiteley introduced Marilyn Wall, member of the Fire District Board of Directors. The District has a long history with Milwaukie, and he served as Fire Marshal for the City in 1994. The District responds to about 1,800 calls in the City of Milwaukie annually, and serves as first response from four stations. The contract between the City and District was signed in 1997 and expires in 2008. One section of the contract did address the subject of the City's annexing to the District. The District charges other patrons about \$2.40 per \$1,000 assessed value. If the City were to annex to the District, it would have the opportunity to vote on issues and be eligible to run for a Board of Directors position. The District would benefit by being able to plan further into the future if annexation occurred.

Swanson said although Milwaukie citizens do not under the current contractual arrangement have the opportunity to vote for Director positions, the City appreciates Marilyn Wall and the others. He discussed the November 2002 election and the City's thoughts about putting an annexation measure on the ballot. After analyzing its financial problems, the City determined if it were to annex to the District through a rather complicated set of circumstances, the City would be relieved of some of its general fund responsibilities to the District. The District would essentially take over the taxing authority. At that time, one idea was to use those funds to help Milwaukie solve its financial problems. It would have been a completely above board and workable arrangement. However, as the concept was discussed with the public some concerns arose. Swanson and Mayor Bernard talked with a number of individuals and were essentially told if it was a lack of resources, then the City should ask for them directly rather than going through a complicated annexation process. Based on these comments, the City decided to go out for a local option levy and forego the annexation proposal.

The Fire District Board was very gracious and understood the City's issues in 2002, and it was the understanding that Milwaukie would consider annexation again in 2004. The contract has worked, and the City is paying roughly what City residents would pay if the District were taxing them directly. If the District were to become the taxing entity, \$2.40/\$1,000 would be freed up for City use. Swanson feels, however, he has been clear that the City's purpose for seeking the annexation should be to support the District's need for long-term planning capabilities, give Milwaukie residents the opportunity to vote on District bond measures and Board of Director positions and participate on various committees. Additionally, he would make a commitment that at least this City Council and city manager would not go after that \$2.40/\$1,000 to supplement the City's revenue. It is tempting, but if the City expects voters to support

the annexation, it cannot expect them to support a tax increase. The action must be tax neutral.

Staff has taken some very preliminary looks at the fiscal impact. The election would likely be September if the City Council directs staff to pursue the issue. Additionally, the City of Oregon City is looking at the feasibility of annexation to the District, so it would make sense for the District to put both annexation questions on one ballot. Fire is an expensive service, and it is becoming more economical to provide it over a larger base.

Swanson wanted to ensure that the City Council was on a similar path and that staff would begin developing a specific proposal for future Council consideration.

Mayor Bernard said the City's permanent tax rate is \$6.5379.

Swanson said the \$6.5379 is the City's permanent tax rate. The City Council's choice and commitment would be not to levy \$2.4012 of that permanent rate. Annexation would give the District the taxing authority, and the City would be expected to make the political commitment not to levy that portion of the permanent rate the City is currently paying the District.

Mayor Bernard supported the proposal.

Councilor Lancaster felt the City should proceed all the way to putting it on the ballot as a revenue neutral action.

Mayor Bernard agreed and noted there are several steps including approval by the Fire District Board of Directors. He believes that is where the City's interest lies.

Mayor Bernard adjourned the work session at 6:15 p.m.

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL JANUARY 20, 2004

CALL TO ORDER

Mayor Bernard called the 1926th meeting of the Milwaukie City Council to order at 6:30 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
Gary Firestone,
City Attorney
Alice Rouyer,
Community Development/Public
Works Director
Steve Smith,
Finance Director

Larry Kanzler,
Police Chief
Paul Shirey,
Engineering Director
Jay Ostlund,
Associate Engineer

PLEDGE OF ALLEGIANCE

SPECIAL REPORTS

Comprehensive Annual Financial Report (CAFR)

Finance Director Steve Smith introduced the City's auditor **Chuck Swank**, Grove, Mueller & Swank, P.C. **Swank** said effective this year, the City is under a new reporting mode, and he discussed the significant changes and sections of the CAFR. The item is the transmittal letter, which is a narrative description that no longer contains financial information. He noted the "*Certificate of Achievement for Excellence in Financial Report*" awarded to Milwaukie for the 13th consecutive year. Swank said the City should be proud because it means the City has taken the time to prepare a document that exceeds reporting standard requirements. The "*Independent Auditor's Report*" is important in that it says Milwaukie has passed the test. The next section, "*Management's Discussion and Analysis (MD&A)*" contains information on the City's financial activities on a comparative basis. This document explains what is going on in the City financially and differentiates between the governmental activities (police, library, human resources, etc.) and business-type activities (sewer, water, and storm sewer). Following are comparative balance sheets and statements of net assets, activity

statements for the year, and discussion at the fund level of governmental and business-type activities.

Swank reviewed the changes to the financial statements. The first is a "Statement of Net Assets" which separates the governmental activities from the business-type activities. This is unique in that it is a full accrual statement that puts all assets and all liabilities on one page. This brings in the infrastructure as well as the buildings and equipment and depreciates everything except land and land improvements. This is a new way to look at the City as a business.

The following statement is also on a full accrual basis showing both the governmental and business-type activities. It differentiates general revenues from dedicated revenues and shows all expenses that result in a net number for both types of activities. Not surprisingly, governmental activities lose money on a direct fee basis while the business-type activities are closer to breaking even. The result is a full net change in assets from one year to the next.

The next page shows the governmental activities separate from business-type activities on a modified accrual basis taking out the fixed assets, depreciation, and recognizing revenue and expenses on a near-cash basis. Following that is the balance sheet. The business-type activities are shown next on a full accrual basis, so there is no reconciliation. There are some differences to the budgetary accounting for the business-type operation, but there is no difference from what was done previously and shows on the statement of net assets.

The footnotes explain differences in the methods of accounting. Beyond that are the budgetary statements typically seen starting with the general fund. The major difference is that there are two forms of the budget produced: the original budget adopted July 1 of the beginning year, and the final budget showing any modifications made during that budget year.

The final section of the document contains the 10-year statistical information, which has not changed significantly.

Councilor Loomis appreciated Swank's explanation.

Swank said this type of conversion is not an easy task for a finance department. Simply gathering the information to move to a full accrual basis that includes infrastructure and fixed assets is no simple task.

Councilor Barnes found it interesting to read who the major taxpayers are in Milwaukie.

Public Safety Update

Police Chief Larry Kanzler provided a public safety update. The purpose of this update was to provide the City Council with an understanding of the department's workload increase and the effects of refocusing the geo-based policing model due to the budget reduction last year of one officer. 95% of the shifts are now at minimum staffing levels resulting in overtime expenses. Last year he predicted the Milwaukie Part 1 crime rate would increase about 17% if it followed the national average and the California trend. He was happy to report that prediction was not accurate.

Kanzler reviewed a series of graphs. The first showed the activity load for each of the neighborhoods in the City, and data indicates an increase. The second described the call load breakdown or units of work. Many times officers will do something in the field that generates activity without a crime having taken place, but it is still counted as a unit of work. The breakdown shows a total of 11,800 units of work in 2002 and 23,232 units of work in 2003. It shows that both calls for service and officer-initiated activity have increased. He noted that mobile data terminals (MDT) and computer-aided dispatch (CAD) more accurately capture data and identify these units of work. Similarly, there has been an increase in the number of reports written. The number of reports in 2002 was 4,599, 5,672 in 2003, and 6,746 projected for 2004. This steady increase results from additional activity.

The MDTs bring the ability to investigate a crime out of the office and into the field. In just the past few weeks, officers have been able to write reports in the field. The quality of the investigations is far superior to what the department had been able to do before.

By mid-December 2003, the City of Portland saw a 12% increase in the precinct north of Milwaukie and 9% in the precinct east of Milwaukie. Milwaukie's crime rate was down 7% by the end of December. Kanzler attributes this to the shifting of resources to identified targets through the use of MDTs and CAD and determining which areas of the City generated the greatest call load and why. For example, one house on King Road generated 44 calls for service in a matter of a few months. After going through the nuisance process, the house has been cleaned up and sold, and there have been no calls in that neighborhood since November. Code Enforcement Officer Steve Campbell has been a significant help. By being resourceful and shifting personnel to problem areas, the department has been effective in restoring Milwaukie neighborhoods.

Councilor Stone asked what period of time is represented.

Kanzler said it is one year.

Councilor Stone asked for clarification of the call load statistic that Kanzler indicated might be skewed because the department did not have the capability of recording all the calls. It clearly looks like calls for service and officer initiated contacts more than doubled from 2002 to 2003 and that the total has doubled as well. She was surprised to see the crime rate is down even though the call volume is escalating.

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DRAFT MINUTES

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Kanzler said Part 1 crimes are homicide, rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson. The numbers also reflect non-criminal activities such as towing a car, assisting in a lock out or eviction, keeping the peace as in a disturbance call, or writing a citation. Although units of activity are up, the actual crime rate is down. Further, the clearance rate, actually catching the people who commit the crime, is about 75%. Portland, for example, is probably about 27% - 28%. Milwaukie has a very effective work force.

Mayor Bernard understands an officer may enter data into the MDT that he or she may not have been entering when they had to go back to the office to prepare reports.

Kanzler said that is correct. The officer can now generate a field interrogation report without having to go back to the office to run a check on a suspicious person, which at one time had to be done via voice transmission and now can all be done very efficiently on the MDT. He provided an index of Part 1 crimes and the percents of change. Last year identity theft and fraud was up 300% in the City of Milwaukie. An officer was moved from the County Drug Unit back to Milwaukie to work on identify theft. By reallocating one detective, identity theft has been reduced by 23% or from 75 cases to 61 cases. Identity theft is a major problem across the country and closely related to drug cases.

Kanzler then covered officer contacts with known gang members. In order to be a known gang member, an individual must meet statewide criteria. These contacts are classified as gang members by other agencies and have been found in our community.

Councilor Barnes noted some of the contacts are high school age, and the locations of the contacts are similar. Are certain areas being monitored more closely because of this?

Kanzler said the list ranges from motorcycle gangs to racially motivated groups. When they come into Milwaukie in groups, the department receives calls about their conduct. The transit center is an example of a location that sees more patrols to mitigate impacts on the transient and transit community. Milwaukie seems to be a gathering point, and he does not know why the City is a gang focal point. Typically gangs tend to go to a point of least resistance.

Councilor Barnes does not want gang members to be used as a recruitment tool in downtown Milwaukie when there is a high school nearby. She would like to see a continued focus on downtown because of its proximity to the high school.

Kanzler said this is one priority among several. Because of the complaints, the department did exercise some overtime in December to try to regain control of that area. When there is a problem, the department tries to respond but is limited by the number of officers available.

Mayor Bernard believes City Hall staff would agree the increased enforcement in December had positive results.

Kanzler added he got calls from the public thanking the department for the increased visibility of officers. The goal is for people using downtown and transit to feel comfortable to come and go as they wish. Resources have to be adjusted with limited assets. There are some very dedicated young men and women who work hard every day both in the police department and code enforcement.

Mayor Bernard commented that this points to the importance of the location of the next transit center and the ability for the law enforcement to access it easily.

Kanzler discussed the locations of motor vehicle accidents in Milwaukie. The greatest numbers occur at Hwy. 224/Harrison Street, 99E/Harrison Street, and McLoughlin Boulevard along the north industrial area. Thanks in great part to Milwaukie's State Rep. Carolyn Tomei, Milwaukie will have an option of installing photo radar to keep some of the speeds down on the Hwy. 224 and 99E collector streets. There is a direct correlation between speed and accidents.

Councilor Lancaster said Kanzler indicated staffing was at 95% minimum staffing levels. Is that a safe staffing level?

Kanzler said it is the safe staffing level, and the department will not go below a minimum level. He related a recent incident in which the City of Portland police department assisted with establishing the perimeter. Portland and Milwaukie work collaboratively whenever possible.

Councilor Lancaster has a lot of concerns about being at minimum staffing levels if sickness and/or injury happen simultaneously resulting in unsafe staffing levels. The point of least resistance comment about gang activity is a good one. He has real concerns about overall law enforcement staffing levels. As is typically done by Chief Kanzler, he is humble and passes all the credit on to his staff. This could not have been accomplished without Kanzler's shrewd, strategic efforts, resource allocation and, in Lancaster's opinion, pulling rabbits out of his hat at times. The City Council would not be seeing these remarkable crime reduction statistics on minimal staff if Kanzler were not doing an outstanding job.

Kanzler agreed the 19% difference between Portland and Milwaukie is dramatic.

Mayor Bernard looked back to last year's budget process, and Kanzler said he could do the job with less. He definitely proved that, and a lot of it has to do with technology improvements and the partnerships that have evolved with neighboring jurisdictions. He noted the City received over 200 applications for two vacant officer positions.

CONSENT AGENDA

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

- A. City Council Minutes of December 16, 2003;
- B. Resolution 1-2004: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the Clackamas Review, The Oregonian, and Daily Journal of Commerce as Papers of Record for the City of Milwaukie; and
- C. 2003 – 2004 Waterline Phase 1 Acceptance.

Motion passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Water Cost of Service Rate Adoption

Mayor Bernard called the public hearing on the proposed water rate increase to order at 7:15 p.m.

The purpose of the hearing was to consider public comment on the proposed increase.

Engineering Director Paul Shirey introduced **Associate Engineer and Project Manager Jay Ostlund**.

Swanson provided some introductory comments. This issue was brought before the City Council at an earlier work session, and the points were made about the need for an increase in the water rate. The City Council concurred with a request that evening that it would simultaneously consider the consideration the water rate and reconsideration the sewer rate. Staff has tried to put those issues on the same agenda but has had a lot of difficulty in doing so. Swanson wanted to make the point with City Council that each of the utilities stands separate, apart, and distinct in terms of its financial status.

Swanson respects the policy considerations originally brought forward by Councilor Loomis. However, the City cannot yet make a recommendation on the sewer rate because it will likely be impacted by the Wastewater Treatment Consolidation Study being conducted by Clackamas County Water Environment Services (WES). That study is looking at alternatives to traditional wastewater treatment on the east side of the Willamette River. The outcome of that study, which staff hopes will be done during the next couple of months, will probably have some impact on sewer rates. He suggested taking any testimony from attendees who wished to speak about the sewer rates. It has proven impossible to bring the water rates and the sewer rates to City

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Council on the same agenda, and the water rate issue has been on hold for 6 – 7 months. What the City Council will hear at this meeting is the water issue, but the sewer issue will not be forgotten.

Staff Report: **Associate Engineer Jay Ostlund** presented the staff report. He provided a brief history of the project that included meetings with the Citizens Utility Advisory Board (CUAB) on May 7 and June 4, 2003. The Board made a recommendation based on the information provided at these meetings, which was forwarded to a City Council work session with the formal session on September 16, 2003. The City Council asked staff to return at a later date. He introduced Steve Donovan of Donovan Enterprises, 7360 SW Hunzicker Road Suite 203, Tigard, Oregon 97223.

Donovan said the September presentation has been updated with new rate graphics that would help clarify some concerns about the entire utility bill that includes not only water but also sewer and storm. The new slide would compare Milwaukie's entire utility bill with those of other agencies.

His presentation covered the process and timelines, Milwaukie's existing rates and structures, key points affecting Milwaukie, the revenue requirement forecast and recommendation, proposed rates, and bi-monthly utility bills compared to those of neighboring communities.

The scope of the project was to provide a view of the water system. It was prophetic that the City's auditor talked about the business enterprises, as did Swanson. It is critical for the City Council to understand each utility is a standalone business with its own requirements. There is debt on the water system with covenants on the bonds that require a certain operating performance in order for the bondholders to be comfortable holding the debt. This study started April 2003, and the intent was to fast-track it for June, but, for various reasons, it has gone into the Stone Age.

Donovan went on to discuss the system and its structure. 88% of the City's customers are residential accounts. The current rates are a function of a fixed and a variable rate. The bi-monthly fixed rate is \$5.95 and the variable is \$1.35 per hundred cubic feet, or 748 gallons of water. In FY 2002 residential customers consumed 63% of the water with the balance going to commercial, industrial, and multi-family users. Their rates are \$1.35 per hundred cubic feet with the fixed rate based on meter size.

The fact that water rates have not increased since 1995 is the most significant key point. The second key point is the continuing water contamination litigation. Legal fees are anticipated to be about \$200,000 this fiscal year. Only about \$30,000 has been spent to date, but activities are anticipated to increase through the balance of this fiscal year. In addition, the City has not been funding depreciation or replacement expenses. The CUAB recommended that depreciation funding be phased-in in order to fund replacement. Finally, Milwaukie cannot count on growth to help it out of its financial needs. Over the past ten years, the growth in Milwaukie's customer base has been 0.29% per year. In the public works sense, this is effectively build out. In respect to

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paying legal fees, the CUAB's recommendation and the City's own past practice, is to continue funding them from the water reserve. The recommendation on depreciation is to phase it in over a period of time to mitigate what would otherwise be a rate spike. The proposal fully funds the revenue requirements and provides adequate resources to meet construction requirements. Further, it meets the CUAB's intent.

The proposal recommends starting the 4% per year rate increases July 1 of FY 2005. Once depreciation is fully funded in the 7th year, the City will then effectively cover inflation. Litigation in the out years will be funded at about \$50,000.

Donovan said by comparison, Milwaukie's water rates are among the cheapest in the region. The next diagram showed the entire monthly utility bill including water, sewer, and storm. Oak Lodge Water and Oak Lodge Sewer customer rates are lower than Milwaukie's but not because of the water rates. The water is still effectively less expensive than all of the other communities. The cost of water is low, but the entire bill is more because of sewer fees.

Councilor Loomis asked if legal fees were funded through the water construction fund.

Donovan said that was correct. The water system has three funds: operating for the day-to-day operations and maintenance, water system development charge, and reserve for construction.

Councilor Loomis asked if there would be enough money if these legal fees were not being paid out of the water fund.

Donovan said there would still need to be a rate increase to fund the cost of operations.

Swanson added if there were a recovery pursuant to the lawsuit, the recovery would have to go back to the water fund. It is funding the lawsuit with the belief there will be recovery.

Mayor Bernard asked Donovan to clarify the implementation date of the new rate.

Donovan said it would begin July 1, 2004.

Councilor Loomis asked if the City has the capacity to bring on new customers.

Donovan said he would have to get that answer from engineering.

Councilor Loomis would like to keep Milwaukie's rates low for homeowners and in order to attract new business.

The group discussed the feasibility and capacity to meet the needs of a large semiconductor business like Intel.

Councilor Stone commented on Councilor Loomis's thoughts about having enough money if the department were not funding the groundwater contamination litigation and having enough money in reserves to account for depreciation and construction. Donovan's answer was "no". She wondered if, when the lawsuit is settled, the money recovered would go back into the fund and would it be in a surplus position at that point so the City could refund or rebate its customers?

Donovan said that would be a policy decision.

Correspondence: There was correspondence from David Burt regarding a house under construction at 11698 SE 31st Avenue. He feels the current volume charge plus the fixed charge is excessive for a vacant home.

Audience Testimony: None.

Additional Staff Comments: None.

Questions of Clarification: None.

Close Public Hearing: Mayor Bernard closed the public testimony portion of the hearing at 7:35 p.m.

Discussion among Council Members: **Mayor Bernard** thought at first he would not support this increase because it is all on one check even though the funds are separate. Because the Council is looking at a slight increase in the 2005 budget, there is an opportunity to look at another fund that does affect his checkbook. That fund is actually building a surplus. Council has talked about reserving that surplus for Milwaukie's participation in decommissioning the Kellogg Treatment Plant. If there were sufficient funds, he would be interested in reconsidering and possibly reducing those fees. He does not feel it is necessary to wait for the final analysis. The City does need to cover its expenses, which should be at zero. Mayor Bernard would support the water rate increase with an agreement that the other utility would be discussed before July 1.

Councilor Barnes said, with all due respect to Donovan, even though it shows on paper that Milwaukie's rates are lower, the cost of living and average income in Milwaukie is a great deal lower than these comparables. She does not believe after listening to and getting e-mail from the public that residents believe their bi-monthly bills are right or fair. She does not see sufficient reason to increase anything and does not intend to vote "yes". A 5% increase over the next six years is likely greater than the cost of living increases many residents will see from Social Security or the federal government. She will not support the proposed resolution.

Councilor Lancaster said the City Council has discussed this many times, and his position is unchanged. The City is in effect an enterprise and a business. While the City does not make profits per se, it is charged with the responsibility of making good business decisions that ensure residents stable utilities now and well into the future. It is irresponsible not to invest in the infrastructure that would ensure long-terms stability.

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The only way to do this is to charge appropriately to cover those costs. With respect to the sewer rate, also discussed before, the City received an unexpected \$1 million bill from Clackamas County. The only way to recoup that is through the utilities. He appreciated Councilor Barnes's comments, but Milwaukie has the second from the lowest rates in 9 neighboring communities. The City needs to do what it takes to maintain long-term stability. Although he does not want to raise taxes, he is in favor of the rate increase.

Councilor Stone is not in favor of increasing taxes either, and she would do anything possible to avoid it. The report speaks to a typical water rate increase that indicates the current bi-monthly base rate of \$5.95 would go to \$6.20 under the proposal. The charge per one hundred cubic feet would go from \$1.35 to \$1.41. How much would the typical monthly bill increase?

Ostlund said the bi-monthly bill would increase \$1 - \$2.

Councilor Stone said this would be less than a pack of cigarettes. She agreed with Councilor Lancaster in terms of the City's being irresponsible for not having a depreciation fund. She does not think the increase is that great. The CUAB put a lot of thought into considering all the options before making its recommendation. She felt the Board chose the best option. This is something the City needs to see happen. However, she would like to preface that by saying if the City does end this litigation, she would like the City Council to consider a policy change that would rebate the customers. She will vote in favor of the water rate increase.

Councilor Loomis agreed with Councilor Stone's comments. He would like any recovery in the litigation to go back to the ratepayers because the expense of installing the water treatment system was on their backs. During the ice storm, everyone saw the importance of maintaining the infrastructure. Money to maintain it is important and seems reasonable. He feels a majority of citizens in Milwaukie want to see Kellogg decommissioned, but he is not sure people want to pay for it through higher rates.

Mayor Bernard agreed while it is difficult to separate the utilities when it comes on one bill, he would be more comfortable if it could be tied to some economic growth. He feels the City Council should consider what is still owed on the County's \$1 million bill. That is a discussion he would like to take place before the study is done.

Decision:

It was moved by Councilor Lancaster and seconded by Mayor Bernard to adopt the resolution establishing new water rates.

Councilor Stone wanted to make a clarification in terms of adding something regarding rebating or refunding the surplus money from the litigation.

Swanson said if there is a settlement the City Council will have to approve it. If there is a judgment in the City's favor, Council will have various decisions to make. For example, the budget for the water fund right now contains an annual expenditure of about \$135,000 for principal and interest on the debt. He is not sure if the debt is refundable, but there may be an option and offer a rebate by lowering the budget and lowering rates. The City Council will have to take some action with regard to the lawsuit assuming it is in the City's favor. The lawsuit itself has had a short life. It was the previous City Council that decided to take action, although the problem itself has had a long life. The recovery will have to go to the water fund in some way and cannot be used for other purposes.

Mayor Bernard would certainly like to look at the amount left owing on the debt and see where the City stands in collection of fees as soon as possible. He does not believe the City Council should wait for completion of the study and doubts if it will have anything to do with City rates. There is a lot of discussion and a lot of partnerships that would have to be built up in the region to support the removal of the plant. It will take time, but he is sure the City will be successful in 2008.

Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Lancaster, Councilor Loomis, and Councilor Stone aye; Councilor Barnes nay.

RESOLUTION NO. 2-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING NEW WATER RATES AS PROVIDED BY MILWAUKIE MUNICIPAL CODE CHAPTER 13.04 AND 13.20; AMENDING RESOLUTION 17-1997.

OTHER BUSINESS

Regional Partners Economic Development -- Resolution

Project Manager Jeff King provided the staff report in which the City Council was requested to adopt a resolution supporting the goals and work plan of the Regional Economic Development Partners. The Portland area has been at a disadvantage because there was no organization that advocated for the region and helped set policies that would ensure collective economic prosperity. A task force that had been meeting for 10 years felt it was time to form an organization and bring together cities, counties, economic development groups, utilities, and other private sector entities. The mission is to promote the metropolitan region as a vital economic center and to recruit and retain businesses. There are currently about 26 members.

The intent of the resolution is to be as transparent as possible to let everyone know what it is trying to do and develop support and understanding not only among those in the Partnership but also across the region. Part of the Partners role is economic development planning, building strong public/private partnerships, developing options and recommendations, providing expertise and information on market development trends, and serving as a regional forum.

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The four key areas are advocating and promoting the development strategy and identify champions for the implementation of shared economic priorities; identifying and supporting policies that support industrial lands for industry and business needs; creating, funding and implementing a private sector led marketing campaign to promote the region/ and developing and growing industry clusters. Milwaukie has an opportunity to build an awareness of its needs and having a seat at the table during policy discussions about what may be happening outside of Milwaukie's boundaries but carries a regional impact.

The proposed resolution states Milwaukie's support for the organization's direction and work plan for the upcoming year.

Mayor Bernard was impressed with this group when it did a presentation at a Metro meeting and asked if Milwaukie City Council would receive a meeting schedule.

King said the Partners meet once a month on Tuesday afternoons, and he is a regular attendee. Each person has equal vote and equal input. If there is feedback and direction from City Council, it can be forwarded to the organization. If there are needs and industrial policies affecting Milwaukie, it can be brought to the Partners attention. The group has offered to make a presentation to the Milwaukie City Council and provide periodic reports as stated in the resolution.

Councilor Lancaster asked if a resolution were really necessary.

King responded "yes". It is evidence that the governing bodies have a general understanding of and support for the work plan. He believes it is an effort to build transparency and to highlight the importance of the regional economic situation.

Councilor Lancaster asked King if it was his opinion that the outreach efforts would be equally distributed throughout the region.

King believed they would. The group started with the larger communities, Portland, Gresham, and Beaverton, and the Portland Development Commission. They have put together a slide show and are working on a brochure and website, so they are making every effort in getting the information out. Milwaukie will have equal access to all of that information. The region will benefit in terms of overall prosperity, growth, and advocacy.

Councilor Lancaster said, to be very direct, it seems to him this whole development movement was primarily a result of the City of Portland's eroding economic base. He would be upset if this were actually a shell for the redevelopment of Portland since businesses were driven out by the excessive tax structure.

Mayor Bernard's impression at the Metro meeting was that the organization was really a way to get people to partner and deal with expansion. The mayors of Gresham and Beaverton realize it is Clackamas County's turn and needs a seat at the table. Success in Clackamas County is success for everyone. 60% of our jobs are exported to Beaverton and Portland, which burdens their infrastructures. A job base in Clackamas County is really needed by all parties.

King added there is erosion across the board. Some of the vacancy rates on the west side are higher than Portland and Clackamas County. Specific strategies, such as uniform business license fees, are not going to be set. Once businesses are attracted, Milwaukie's lower fees would work to its benefit. It is not necessarily just a benefit to Portland since it is opened up to other participants.

Councilor Lancaster urged keeping an eye on the other members. There are certain regional partners who do not really care whose turn it is.

Councilor Stone shared Councilor Lancaster's concerns. She asked how long Milwaukie has been part of this coalition.

King said Milwaukie has been a member for a couple of months.

Councilor Stone understands then that Milwaukie is new at the table. It says they have been working informally for 10 years and have recently formed this private non-profit corporation. It is costing taxpayers \$30,000 for an annual membership in order to have a seat at the table.

Staff noted this was an error in the memo to Council. The membership is actually \$3,000 a year.

Councilor Stone said that makes more economic sense to her in that case. She does share Councilor Lancaster's concerns because the Partners represent several counties, of which some are more engaging than others.

Mayor Bernard asked if the group meets in a facility large enough for interested persons to attend.

King said the group is currently meeting at the Portland Development Commission. He noted Milwaukie needs to designate an alternate. The group is looking at developing broad policies that supports the region as a whole.

Mayor Bernard requested the City Council receive meeting notices.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution supporting the goals of the Regional Economic Development Partners. Motion passed unanimously.

RESOLUTION NO. 3-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING THE REGIONAL ECONOMIC DEVELOPMENT PARTNERS.

Economic Development Grant Project

Project Manager Jeff King said last year Milwaukie received a \$25,000 grant from the Mt. Hood Economic Alliance to carry out some specific economic development strategies. The six items fall into 3 areas: marketing, site development and redevelopment, and coordination, communication and capacity building. The first task is to create an inventory and profile of available industrial and commercial sites the larger of which will be posted on a website. The second is to develop economic development marketing tools including a brochure and web page. The third item is to begin business outreach and visitation programs to build a relationship with the business community. The initial step is to create a team of staff, elected officials, and the chamber of commerce and conduct site visits and surveys. King asked if City Council supported this concept.

Councilor Lancaster and **Councilor Barnes** supported this concept to ensure businesses understand the City is supportive of their efforts.

King said relationships are important and can make a great deal of difference. He will develop a roster of businesses and provide the City Council with dates and information. Staff will look at a low cost method to develop a short-term advisory committee to assist with the grant and relationship building with the business community. He asked the City Council if it wished to proceed in that direction.

Mayor Bernard and **Councilor Barnes** said the Council had seen the list and were satisfied.

King will develop a charge statement for the advisory committee for Council consideration.

Councilor Loomis added he thinks it is important to go to businesses and tour facilities so the City is aware of their needs.

King moved on to industrial land infill and noted Milwaukie will look at the remaining 6.5 acres of developable industrial land. He met with a developer interested in purchasing that parcel. The fifth item, North Industrial Area Traffic Study, is complete and will feed into long-term planning. The final item is looking at reuse of buildings such as Hanna South, Oregon Transfer, Helico, and the Mailwell buildings to determine the feasibility of adaptive reuse through upgrades and retrofits to make that area more competitive.

Mayor Bernard believes this is one of the most important pieces of the whole puzzle. He cannot believe it is cheaper to build roads to Damascus for businesses rather than remodeling existing buildings. That is one of his problems with the urban growth expansion for industrial lands. It important to get people to reinvest in these properties since the infrastructure is already there.

King said there is a lot of potential in the long-term.

Other

Mayor Bernard saw a lot of interest in looking at the sewer rate issues and getting information on how the Milwaukie still owes Clackamas County. He asked if there was consensus on Council to do that.

Councilor Stone asked when the study would be complete.

Swanson understands it is supposed to be ready by late February but is tired of quoting dates. He will provide information on Council's sewer-related questions.

Mayor Bernard feels this is important before getting into the next budget cycle.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment under the authority of Oregon Revised Statutes 192.660(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions and (h) to discuss current or anticipated litigation with legal counsel.

ADJOURNMENT

It was moved by Councilor Lancaster and seconded by Councilor Stone to adjourn the meeting

Mayor Bernard adjourned the regular session at 8:25 p.m.

Pat DuVal, Recorder



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: January 16, 2004
Subject: **O.L.C.C. Application – Sunny Corner Market – 5010 S.E. Monroe St.**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Sunny Corner Market – 5010 S.E. Monroe Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor and City Council

Through: Jo Ann Herrigel, Community Services Director
Mike Swanson, City Manager

From: Steve Campbell, Code Compliance Coordinator

Subject: Abatement Lien 4311 SE Rio Vista St.

Date: January 23, 2004

Action Requested

That the City Council, by resolution, enter the costs of the abatement of the nuisance of the property located at 4311 SE Rio Vista St. in the amount of \$520.00 in the docket of city liens.

Background

On November 26, 2003, the City hired a contractor to abate a nuisance at the property located at 4311 SE Rio Vista St. The costs of the abatement, including the clean up, administrative services, and legal fees are \$520.00. Notice of the costs was sent to the property owners. Pursuant to Milwaukie Municipal Code Section 8.04.200, they are given ten days to file a notice of objection to the assessments with the City Recorder and thirty days to pay the assessment.

Upon expiration of the thirty days, and without notice of objection having been filed, Milwaukie Municipal Code Section 8.04.200 provides as follows:

“If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the cost as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.”

This becomes a lien upon the property, which clouds title if any sale is proposed. Eventually, satisfaction of the lien becomes advisable. Pursuant to Milwaukie Municipal Code Section 8.04.200, the lien bears interest at the rate of six (6) percent per annum.

Concurrence

The City Manager and City Attorney concur in recommending this action be taken.

Fiscal Impact

None

Alternatives

The City could continue to seek payment by demand letters, which do not have the same force as the lien.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ASSESSING THE COSTS OF ABATEMENT OF THE NUISANCE LOCATED AT 4311 SE RIO VISTA AND ENTERING THE SAME ON THE DOCKET OF CITY LIENS PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200 (D)

WHEREAS, notice of a nuisance was issued and posted on the property located at 4311 SE Rio Vista St., Milwaukie, Oregon on October 29, 2003; and

WHEREAS, the property owner or person in charge of the property did not abate the property or file a protest to the notice of a nuisance within ten days of the posting; and

WHEREAS, the City abated the nuisance after first obtaining a warrant to enter the property to do so; and

WHEREAS, the City has maintained an accurate accounting of the costs of abatement, including administrative overhead; and

WHEREAS, on December 24, 2003 the City forwarded to the owner, or person in charge, a notice of the abatement costs in compliance with Milwaukie Municipal Code Section 8.04.200 (A) et seq; and

WHEREAS, there has been no objection filed to the abatement costs within (10) days after the date of the notice nor have the costs of the abatement been paid within thirty (30) days from the date of the notice.

NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL, CITY OF MILWAUKIE, STATE OF OREGON, THAT, PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200 (C):

Section 1. The assessment of the costs for the abatement of the said nuisance, including administrative overhead, is in the amount of \$520.00

Section 2. The above assessment of costs shall be entered in the docket of city liens.

Section 3. This resolution is effective immediately upon adoption.

IT IS FURTHER RESOLVED THAT the City may also record the lien as a lien in the County lien records.

Introduced and adopted by the City Council on _____.

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/Public Works Director

From: Paul Shirey, Director of Engineering
Brion Barnett, Civil Engineer

Subject: Appeal of variance granted by the Public Safety Advisory Committee

Date: January 20, 2004 for the February 3 meeting

Action Requested

Approve an appeal overturning a vision obstruction variance granted by the Public Safety Advisory Committee (PSAC).

Background

A 37th Avenue resident appealed the PSAC's variance decision related to a vision obstruction located on the property at 9925 SE 37th Avenue (southwest corner of the intersection of 37th Avenue and Harvey Street). An existing hedge on the property restricts the vision of motorists on 37th Avenue looking west along Harvey Street (see Attachments "A" and "B" – Existing Conditions). The appeal argued that the variance was granted for aesthetic purposes, and did not consider the safety of vehicles and pedestrians.

The timeline of events leading to the appeal follows:

- May 2003 - Staff received a complaint about a vision obstruction and verified that the obstruction existed and violated Municipal Code Section 12.24 (Attachment "C" – City Code).
- May 2003 - Staff sent a notice to the property owner requesting that the owner correct the vision obstruction (Attachment "D" – Notice of Vision Obstruction).

- July 2003 - Staff verified that the vision obstruction was still present and issued a citation to appear in court (Attachment “E” – Citation).
- July 2003 - The property owner filed for a variance per Municipal Code Section 12.24.050 and the PSAC approved the variance request (Attachment “F” – Variance Agreement).
- Aug. 2003 - Juli Howard appealed the variance decision to City Council (Attachment “G” – Appeal of Variance).

Analysis

Municipal Code Section 12.24 (Clear Vision at Intersections) is intended to protect the safety and welfare of the public in their use of City streets. Clear vision obstructions exist throughout the City. However, due to resource limitations, staff relies on the public to report vision obstructions. Staff then evaluates each complaint on a case-by-case basis. Section 12.24.030C describes the requirements of the “clear vision” area as follows:

“A clear vision area shall contain no planting, fence, wall, structure or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight more than ten percent is allowed to a maximum height of six feet.”

Section 12.24.040A details how to compute the specific area as follows:

“The clear vision area for all street intersections, all street and railroad intersections, and all street and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line, and the edge of a driveway.”

Section 12.24.040B grants discretion to the Director of Public Works (or their designee) to modify the clear vision area based on engineering judgment. Staff evaluated the intersection of 37th Avenue and Harvey and noted the following:

- Harvey Street is a two-lane roadway, is classified as a neighborhood street, and allows parking along only the north side of the road. Vehicles traveling along Harvey Street have the right of way and 37th Avenue is stop controlled.
- The last speed and traffic count on Harvey Street (Fall 1999) showed that the roadway carried 2,500 vehicles a day (including Tri-Met and school bus traffic) and the 85th-percentile speed was 29 miles per hour.
- Under existing conditions, a northbound vehicle on 37th Avenue can see approximately 85 feet to the west along Harvey Street. If the hedge was

- trimmed per the 20-foot radius standard (Section 12.24.040A), approximately 100 feet of clear vision would be available.
- A vehicle traveling eastbound on Harvey Street at 25 miles per hour (mph) needs approximately 155 feet to come to a stop (at 30 mph, 200 feet is needed). The distance needed to come to a stop is also known as the “stopping sight distance.”
 - If the driver of an eastbound vehicle on Harvey Street is 85-100 feet west of 37th Avenue, and they attempt to stop after seeing a vehicle on 37th Avenue proceed into the intersection, the vehicle on Harvey Street would travel 155-200 feet and potentially collide with the vehicle in the intersection.

Based on the preceding information, in the professional judgement of staff, adequate safety is not assured to mitigate against potential vehicle collisions. For this reason, staff supports the application of a stricter clear vision standard to better assure a higher degree of safety compared with the 20-foot radius standard (Section 12.24.040A).

The current standard used by the Engineering Department (and many other municipalities) is contained in the latest edition of “A Policy on Geometric Design of Highways and Streets,” American Association of State Highway and Transportation Officials (AASHTO). The case specific to this appeal is “Case B1 – Intersections with Stop Control on the Minor Road” (see Attachment “H” - AASHTO Standard).

In the case of this appeal, a vehicle that is stopped on 37th Avenue requires a clear line of sight to the west to make a decision to proceed onto Harvey Street. Applying the AASHTO standard, approximately 280 feet of clear vision (distance “b” in Figure 1) is needed to safely accelerate from a stop on the minor road (37th Avenue) and complete a turn onto the major road (Harvey Street).

The AASHTO clear vision requirement is based on the typical time gap a driver finds “acceptable” to make a safe turning maneuver from the decision point on Harvey Street. The 280-foot AASHTO standard assumes that an “acceptable” gap is one that does not require either vehicle to suddenly accelerate or brake to avoid a collision.

After careful consideration, staff is confident that vehicle collisions can still be mitigated if the available clear vision for a vehicle on 37th Avenue is at least equal to the stopping sight distance for a vehicle on Harvey Street. The stopping sight distance for eastbound vehicles along Harvey is approximately 200 feet (based on the 85th-percentile speed of 29 mph on Harvey Street).

Based on field measurements, if the entire extent of the hedge along the Harvey Street frontage is trimmed not to exceed 36-inches in height (referenced from the top of the curb along Harvey Street), approximately 210 feet of clear vision will be

available for a vehicle on 37th Avenue. Two hundred ten (210) feet of clear vision for a vehicle on 37th Avenue, exceeds the stopping site distance of 200 feet for a vehicle traveling 30 mph on Harvey Street, thus mitigating against potential vehicle collisions.

The standard clear vision area set forth in Milwaukie Municipal Code (Section 12.24.040A) and staff’s recommended clear vision area (Section 12.24.040B) are shown in Figure 1 for reference. Applying staff’s recommendation would require the entire hedge along Harvey Street to be trimmed not to exceed 36-inches in height (measured from the top of curb along Harvey Street).

The variance (Attachment “E”) granted by the PSAC is less restrictive than the 20-foot radius standard, staff’s recommendation, and the AASHTO standard. The PSAC variance differs from the other standards in a few key areas:

Standard	Vertical Limits	Horizontal Limits
<i>PSAC (least restrictive, lowest degree of safety)</i>	allows the hedge to be 40 to 50-inches in height, referenced from the existing ground.	extends a total of 28 feet, referenced from existing west curb line on 37 th Ave.
<i>Milw. Municipal Code, 20-foot radius (moderate degree of safety)</i>	allows 30-inches in height, referenced from the top of the curb.	references the existing property line on 37 th Ave., extends a few feet west/beyond PSAC limit.
<i>Staff Recommendation (higher degree of safety)</i>	allows 36-inches in height, referenced from the top of the curb.	references the northbound vehicle lane on 37 th Ave., extends 210 feet to the west.
<i>AASHTO (most restrictive, highest degree of safety)</i>	allows 36-inches in height, referenced from the top of the curb.	references the northbound vehicle lane on 37 th Ave., extends 280 feet to the west.

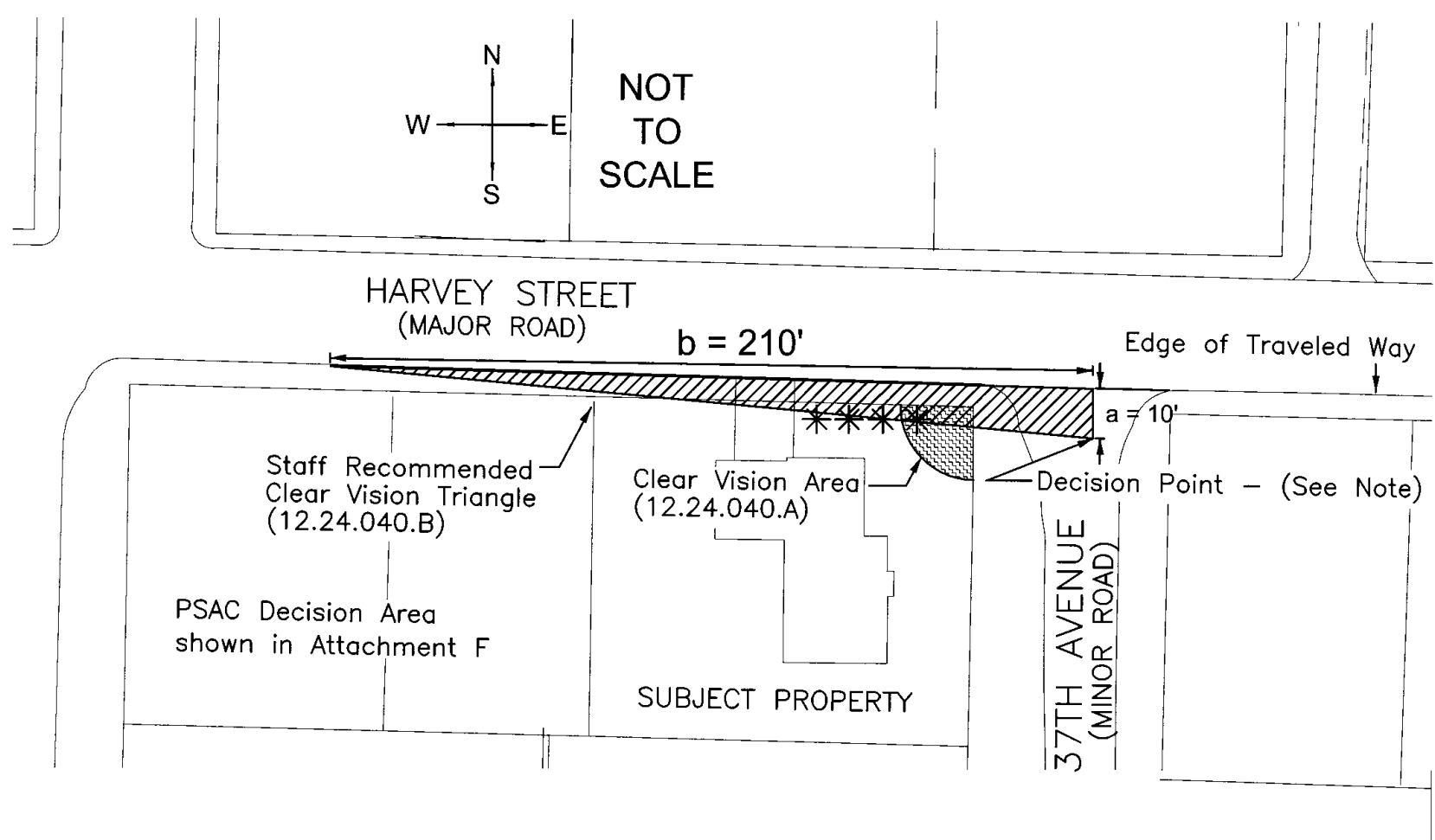


Figure 1 - Standard clear vision area (section 12.24.040A) and staffs recommended clear vision area (section 12.24.040B)

* Note - Space needed for a driver to negotiate a turning movement measured from edge of roadway

The appeal of the PSAC variance argued that the variance was granted for aesthetic purposes, and did not consider the safety of vehicles and pedestrians. Staff reviewed code section 12.24.050B, which details the specific provision for granting variances to the standard and is presented as follows:

“Vehicle and pedestrian safety shall be the primary factors in decisions when variances are considered. The type of intersections, site characteristics, types of vehicle controls, vehicle speed, traffic volume and other similar items are factors to be considered. The standards set forth in the Traffic Engineering Handbook on intersection sight distance and any other appropriate standards shall be considered. Aesthetics and length of time fences or vegetation have existed are not relevant factors.”

The arguments that form the basis for granting a variance are essentially the same as the arguments used in the appeal (safety is the primary factor, aesthetics are not a relevant factor). The PSAC variance decision does not refer to vehicle and/or pedestrian safety standards as the primary basis for the variance. The PSAC variance decision outlined in Attachment F states that the variance was granted as a “good faith effort to provide the applicant with the aesthetic appearance of his home, yet provide a safe access for vehicles traveling north.”

Staff believes that the PSAC did not go far enough in considering safety standards in their decision. Therefore, staff concurs with the appellant that the variance lacked relevant supporting information related to safety, and that aesthetics are not a relevant factor.

Recommended Findings and Conclusions in support of appeal

1. Under existing conditions, a northbound vehicle on 37th Avenue can see approximately 85 feet to the west along Harvey Street. The available clear vision along Harvey Street does not adequately insure for vehicle and pedestrian safety, and does not mitigate against potential vehicle collisions.
2. The PSAC variance does not refer to vehicle and/or pedestrian safety standards as the primary basis for the variance as required by Section 12.24.050B.
3. The PSAC variance provides the lowest degree of vehicle and pedestrian safety compared with the 20-foot radius standard (Section 12.24.040A), staff’s clear vision recommendation (Section 12.24.040B), and the AASHTO standard.
4. The AASHTO standard (280 feet of clear vision) provides the highest level of mitigation against vehicle collisions.
5. Vehicle collisions can still be mitigated if the available clear vision for a vehicle on 37th Avenue is at least equal to the stopping sight distance for a vehicle on Harvey Street.
6. The stopping sight distance for eastbound vehicles along Harvey is approximately 200 feet (based on the 85th-percentile speed of 29 mph on Harvey Street).

7. If the entire extent of the hedge along the Harvey Street frontage is trimmed not to exceed 36-inches in height (referenced from the top of the curb along Harvey Street), approximately 210 feet of clear vision will be available for a vehicle on 37th Avenue (assuming the driver is located 10 feet back from the traveled way on Harvey Street).
8. Two hundred ten (210) feet of clear vision for a vehicle on 37th Avenue exceeds the stopping site distance of 200 feet for a vehicle traveling 30 mph on Harvey Street, thus mitigating against potential vehicle collisions.
9. Staff finds that providing 210 feet of clear vision to be a suitable compromise that considers existing conditions on the subject property, without sacrificing vehicle and pedestrian safety.
- 10. Staff recommends that the variance be overturned to insure the safety and welfare of the public in their use of City streets. To mitigate against potential vehicle collisions, the clear vision standard should be applied as follows:**
The entire extent of the existing hedge along the Harvey Street frontage of the property at located at 9925 SE 37th Avenue shall be trimmed not to exceed 36-inches in height (measured from the top of curb along Harvey Street).

Alternatives

Council has the following alternatives:

- Concur with appeal, overturn the PSAC variance, and apply staff's recommendation for clear vision (mitigates against vehicle collisions).
- Concur with appeal, overturn the PSAC variance, and apply the 20-foot radius standard (section 12.24.040A, provides a moderate level of safety, does not mitigate against vehicle collisions).
- Uphold original variance granted by the Public Safety Advisory Committee (provides the lowest level of safety, does not mitigate against vehicle collisions).
- Grant a different variance.

Attachments

Attachment A - Existing Conditions

Attachment B - Existing Clear Vision Along Harvey Street West of 37th Avenue

Attachment C - City Code Section

Attachment D - Notice of Vision Obstruction

Attachment E - Citation

Attachment F - PSAC Variance Agreement

Attachment G - Appeal of Variance

Attachment H - AASHTO Standard

ATTACHMENT A – EXISTING CONDITIONS



** Looking southwesterly along Harvey Street at the property and bush obstruction located at 9925 SE Harvey Street

ATTACHMENT B – EXISTING CLEAR VISION ALONG HARVEY STREET WEST OF 37th AVENUE



** Looking westerly along Harvey Street from the northbound lane of 37th Avenue, at a point 15-feet south of the traveled way on Harvey Street.

Chapter 12.24

CLEAR VISION AT
INTERSECTIONS

Sections:

12.24.010	Purpose.
12.24.020	Definitions.
12.24.030	Requirements.
12.24.040	Computation.
12.24.050	Variance.
12.24.060	Enforcement.
12.24.070	Liability.
12.24.080	Violation of Section 12.24.030—Penalty.

12.24.010 Purpose.

The purpose of this chapter is to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of city streets. (Ord. 1679 § 1, 1990)

12.24.020 Definitions.

As used in this chapter:

A. "Fence" means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.

B. "Street" means the entire width between right-of-way lines of every way for vehicular and pedestrian traffic and includes the terms "road," "highway," "lane," "place," "avenue," "alley" and other similar designations.

C. "Clear vision area" means that area, as computed by Section 12.24.040, which allows the public using the city streets an unobstructed view of an intersection.

D. "Person" means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

E. "Driveway" or "accessway" means the point at which a motor vehicle gains ingress or egress to a property from a public road or highway. (Ord. 1679 § 2, 1990)

12.24.030 Requirements.

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 12.24.040.

C. A clear vision area shall contain no planting, fence, wall, structure or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight

12.24.030

more than ten percent is allowed to a maximum height of six feet. (Ord. 1679 § 3, 1990)

12.24.040 Computation.

A. The clear vision area for all street intersections, all street and railroad intersections, and all street and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line, and the edge of a driveway.

B. Modification of this computation may be made by the director of public works, or his designee, after considering the standards set forth in the Traffic Engineering Handbook on intersection site distance after taking into consideration the type of intersection, site characteristics, types of vehicle controls, vehicle speed and traffic volumes. (Ord. 1679 § 4, 1990)

12.24.050 Variance.

A. Variances from the provisions of this chapter may be granted by the traffic safety commission.

B. Vehicle and pedestrian safety shall be the primary factors in decisions when variances are considered. The type of intersections, site characteristics, types of vehicle controls, vehicle speed, traffic volume and other similar items are factors to be considered. The standards set forth in the Traffic Engineering Handbook on intersection sight distance and any other appropriate standards shall be considered. Aesthetics and length of time fences or vegetation have existed are not relevant factors.

C. A property owner or the owner's agent may initiate a request for a variance by filing an application with the city within ten working days of warning or citation for violation.

D. Any decision of the traffic safety commission may be appealed to the city council without fee within ten working days of receipt of the traffic safety commission's written decision.

E. Fees for the variance application to the traffic safety commission shall be set by resolution of city council. (Ord. 1679 § 5, 1990)

12.24.060 Enforcement.

The provisions of Chapter 1.08 shall be used to enforce this chapter. Enforcement procedures shall be suspended while an application or appeal for a variance is being considered. Enforcement procedures shall resume upon denial of a variance. (Ord. 1679 § 6, 1990)

12.24.070 Liability.

The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by Section 12.24.030. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this chapter. (Ord. 1679 § 7, 1990)

12.24.080 Violation of Section 12.24.030—Penalty.

Violation of Section 12.24.030 is punishable, upon conviction, by a fine of

12.24.080

not more than two hundred fifty dollars.
When the violation is a continuous one,
each day the violation continues to exist
shall be deemed a separate violation.
(Ord. 1679 § 8, 1990)

ATTACHMENT D – NOTICE OF VISION OBSTRUCTION



May 1, 2003

Perry A. Nordby
9925 SE 37th Avenue
Milwaukie, OR. 97222

SUBJECT: VISION OBSTRUCTION
SUBJECT ADDRESS: 9925 SE 37th

Dear Mr. Nordby:

It has come to our attention that there may be a code violation at the property you own at the above address. The hedge on the Harvey Street frontage of your property is overgrown and obstructing the clear vision for safe operations of traffic on the corner of 37th Avenue & Harvey Street.

It is the City's policy to provide you with the opportunity to correct these problems before we pursue formal enforcement actions. Please carefully note the following information regarding this matter:

These violations pertain to the City of Milwaukie Ordinances;

Section 12.24.030 Requirements.

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 12.24.040.

- Please correct the situation by May 16, 2003 by taking the following steps:

1. Properly cut or remove all vegetation that is overgrown and obstructs the clear vision area.
 2. Maintain the vegetation so it does not create an unsafe situation for pedestrians or vehicles.
 3. Cut back corner vegetation on the intersection of 37th Avenue and Harvey Street so that it does not cause a vision clearance problem for vehicles pulling out onto Harvey Street.
- This property will be reevaluated for your voluntary compliance by the above-mentioned date. At this time I would like to offer to you any assistance possible to help remedy this problem.

If you have any questions or if I can offer you any assistance regarding this matter, please contact this office at (503) 786-7605.

Thank you for your cooperation. We appreciate your help in keeping Milwaukie safe and livable.

Sincerely,

Jack R. Ostlund Jr., Associate Engineer

ATTACHMENT E - CITATION



October 17, 2003

Sent by Certified Mail

Perry Nordby
9925 SE 37th
Milwaukie, OR 97222-

UNIFORM CITATION & COMPLAINT OF ORDINANCE VIOLATION CITATION TO APPEAR IN COURT

Please find enclosed a Citation to Appear in Court for a nuisance at the following address:
9925 SE 37th MILWAUKIE, OR 97222

The citation is for the following nuisance:

Chapter 12.24 Clear Vision at Intersections Section 12.24.030

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

It is important to the City to be consistent and fair when enforcing its ordinances. At this point, the City must issue the enclosed Citation to Appear in Court. In the citation, you will find information regarding your scheduled court appearance and a description of the code violation.

If the court finds that a violation of the above-mentioned code was committed, the court may assess a penalty, as well as court costs. Each day's violations may be deemed as a separate offense with fines not to exceed \$500 per violation. You shall be required to pay these costs in addition to your costs for abatement.

The City of Milwaukie issues a Citation to Appear in Court as a last resort. We are optimistic that you will resolve this violation at the earliest possible time to avoid future citations.

Issued By:

A handwritten signature in black ink, appearing to read "Steve Campbell", is written over a horizontal line.

Steve Campbell
Code Compliance Coordinator

10722 SE Main Street
Milwaukie, Oregon 97222
503-786-7545
campbells@ci.milwaukie.or.us

ATTACHMENT F - PSAC VARIANCE AGREEMENT



August 1, 2003

Mr. Perry Nordby
9925 S.E. 37th Street
Milwaukie, OR 97222

SUBJECT: Variance Agreement - Vision Obstruction Finding of PSAC Site Inspection

Ref: Summons 96037

Dear Mr. Nordby:

This is to notify you that the Public Safety Advisory Committee conducted a site inspection of your property on Thursday, July 24, 2003 and found that you can qualify for a variance as authorized by Milwaukie City Code 12.24.050 "Variance." The variance will be granted provided you comply with the following standards and cut your hedge not to exceed the following specifications:

From the west curb line of SE 37th Street west along S.E. Harvey for a distance of twenty-six (26) feet your hedge shall not exceed forty-inches (40) in height as measured from the ground; then continuing west along S.E. Harvey an additional two-feet (2) the hedge shall not exceed fifty-inches (50) as measured from the ground. (See Attached Sketch)

This variance is being granted as a "good faith" effort to provide you with the esthetic appearance of your home, yet provide a safe access for vehicles traveling north on S.E. 37th as that traffic merges with traffic on Harvey Street. By signing this variance you agree to abide by the stipulations of the variance.

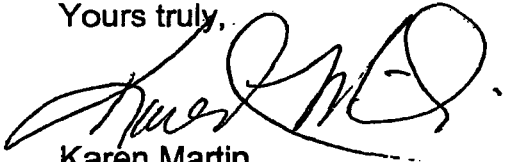
MILWAUKIE POLICE DEPARTMENT
3200 SE Harrison
Milwaukie, Oregon 97222
PHONE: 503-786-7400 • FAX: 503-786-7426

Should you fail to maintain sight clearances established by this variance you understand that the City can issue a summons to appear in court to force compliance.

I have indicated a place for you to affix your notarized signature. Records staff at the Milwaukie Police Department will notarize your signature, at no cost, if you contact them during normal business hours. If you stipulate to the conditions of the variance please affix your notarized signature and forward to the Police Department no later than August 20, 2003.

Thank you for bringing this matter to the attention of the Public Safety Advisory Committee and allowing the system to support your grievance.

Yours truly,



Karen Martin
Chair
Public Safety Advisory Committee

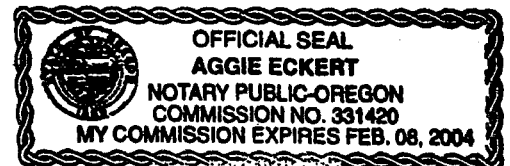
Cc: Steve Campbell, Code Enforcement – Neighborhood Services
Neighborhood Chairs
Judge Gray, Milwaukie Municipal Court

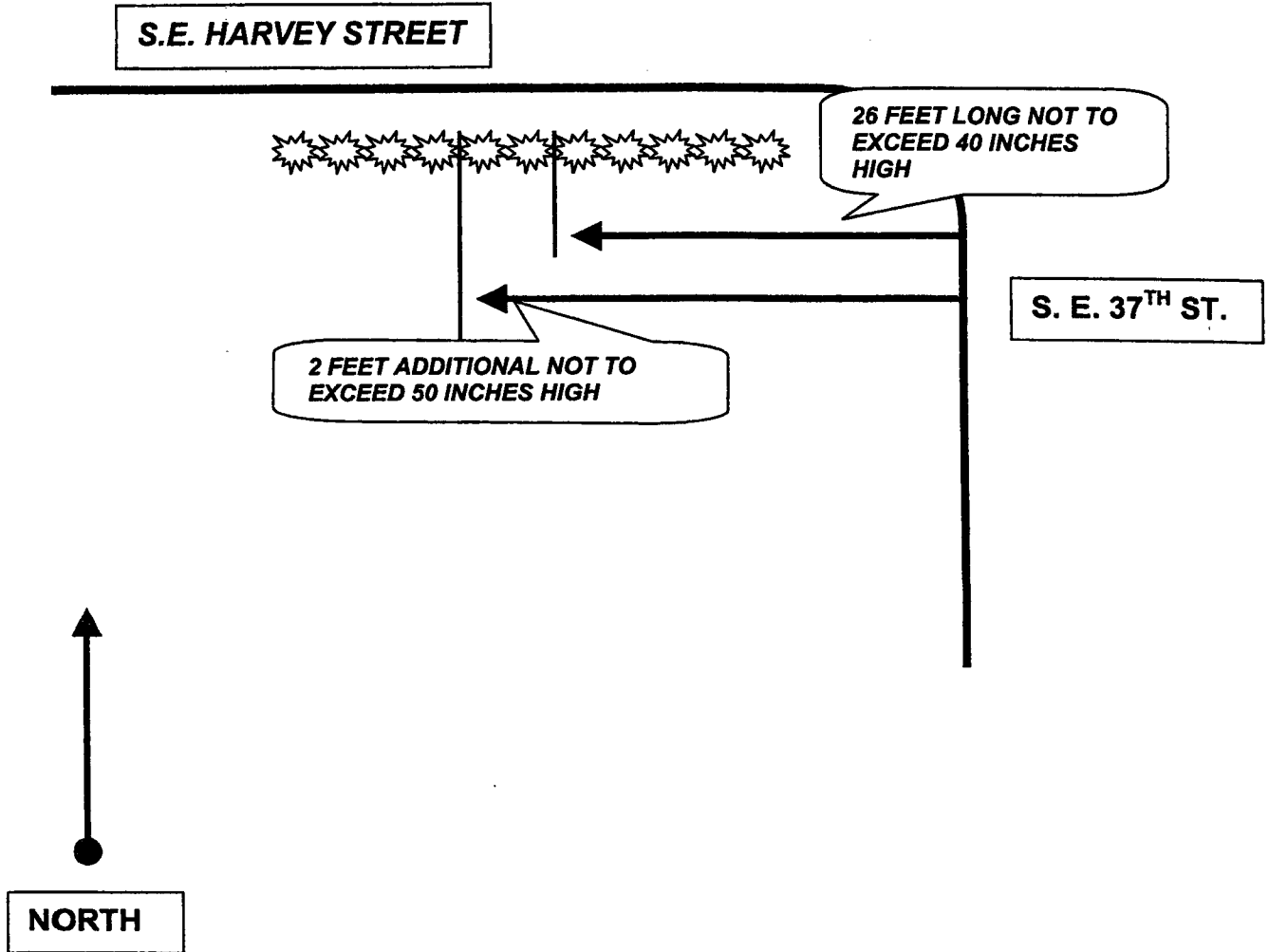
Variance Agreement and Acknowledgement signed this 6th day of August, 2003.

Perry Nordby, property owner 9925 S.E. 37th Avenue.

Notarized by Aggie Eckert, date: 8/8/03

My Notary expires 02/08/04





**Stipulated minimums for variance – August 1, 2003
Public Safety Advisory Committee – Karen Martin, Chair**

ATTACHMENT G - APPEAL OF VARIANCE

Rec'd 8/15/03 1:10 PM
DHO

8/14/03

TO: Mayor & City Councilors
FROM: Juli Howard
SUBJECT: Appeal of Public Safety Advisory Board Variance Decision

I am utilizing my right to appeal the variance granted to Mr. Nordby at 9925 SE 37th Ave.

I submitted a complaint with Code Enforcement regarding a vision obstruction at the above address. The corner, in which Mr. Nordby lives, is dangerous due to a hedge of arborvitae on Mr. Nordby's property. The hedge does not allow you to get a view down the left side of Harvey Street from 37th Ave. because the hedge is too close to the street as well as too tall.

I don't believe the variance given to Mr. Nordby provides citizens the safety at the corner that we all deserve. The variance was granted as a "good faith effort" as well as to "maintain the aesthetics appearance of his home."

If you refer to the Milwaukie Municipal Code Section 12.24.050 it states Vehicle and Pedestrian Safety shall be the primary factors in decisions when variances are considered. It also states that aesthetics and length of time fences and vegetation have existed are not relevant factors. Again, if you review the variance it clearly states the safety committee granted the variance for aesthetics purposes and basically disregarded the complainants concern about the safety of cars and pedestrians at the corner.

Tri-met and other cars use Harvey Street all day long and they usually are traveling faster than the posted speed limit. That makes it very dangerous for someone stopped on 37th Ave. if they cannot see on-coming traffic. I have almost been hit on two separate occasions.

I have lived on 37th Ave. for over 9 years and have thought this intersection was dangerous. I have submitted a complaint prior to the latest one when a citation was issued to Mr. Nordby. Then I found out that he appealed to the Safety Committee and they approved a variance. While I don't think Mr. Nordby should be fined I do feel the vision obstruction on his property should be moved in towards his property, reduced to 30" or removed to protect pedestrian and vehicle traffic.

According to the code I don't believe the Public Safety Advisory Committee had the authority to grant the variance. Furthermore, I hope you will overturn the committee's variance decision and either direct Mr. Nordby to move the hedge towards his property or cut the hedge to a minimum of 30", which is what the code states for a corner property.

I would not have filed this complaint if I did not feel it was a serious safety issue. I hope you will confer with the Engineering Department Staff and their Standards Handbook. If you follow those guidelines you will see the variance should never have been granted, and should be overturned.

I would encourage council to visit the site in your car and try and look to the left. You will then experience what I do on a daily basis when I am driving home.

I appreciate your attention to this matter.

Regards,

A handwritten signature in cursive script that reads "Juli Howard".

Juli Howard
9705 SE 37th Ave.
Milwaukie, OR 97222

ATTACHMENT H – AASHTO STANDARD

Intersections

Metric				US Customary			
Design speed (km/h)	Stopping sight distance (m)	Intersection sight distance for passenger cars		Design speed (mph)	Stopping sight distance (ft)	Intersection sight distance for passenger cars	
		Calculated (m)	Design (m)			Calculated (ft)	Design (ft)
20	20	41.7	45	15	80	165.4	170
30	35	62.6	65	20	115	220.5	225
40	50	83.4	85	25	155	275.6	280
50	65	104.3	105	30	200	330.8	335
60	85	125.1	130	35	250	385.9	390
70	105	146.0	150	40	305	441.0	445
80	130	166.8	170	45	360	496.1	500
90	160	187.7	190	50	425	551.3	555
100	185	208.5	210	55	495	606.4	610
110	220	229.4	230	60	570	661.5	665
120	250	250.2	255	65	645	716.6	720
130	285	271.1	275	70	730	771.8	775
				75	820	826.9	830
				80	910	882.0	885

Note: Intersection sight distance shown is for a stopped passenger car to turn left onto a two-lane highway with no median and grades 3 percent or less. For other conditions, the time gap must be adjusted and required sight distance recalculated.

Exhibit 9-55. Design Intersection Sight Distance—Case B1—Left Turn From Stop