

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION JULY 6, 2004

**Mayor Bernard** called the work session to order at 5:40 p.m. in the City Hall Conference Room.

Councilors present: Barnes and Loomis.

Staff present: City Attorney Gary Firestone, Community Development and Public Works Director Alice Rouyer, Police Chief Larry Kanzler, and Engineering Director Paul Shirey.

#### Proposed Waiver of Sewer Connections for Annexed Properties

**Engineering Director Paul Shirey** provided the staff report. The proposed code amendment would give the engineering director the discretion to waive sewer connection requirements for annexed properties under certain circumstances. The staff report outlined criteria staff felt were reasonable.

**Mayor Bernard** said this is one of the tools to get people to annex. For example, if a house were annexed that has been on a septic system for 10 years that property would have to connect if the septic fails. They would not be able to repair it.

**Shirey** said the City actually wants them to maintain it. There is a requirement to connect if the septic system fails or requires repairs in excess of a yet to be determined dollar amount. He is gathering information on what amounts are reasonable for maintenance costs and will come back to Council with the dollar threshold.

City Council indicated support of the code amendments as provided, which it will consider for adoption on August 17, 2004.

**Mayor Bernard** had a question on the Johnson Creek Boulevard right-of-way vacation. He understood the difference between the two surveys left some confusion about where the property line actually was. Some titles showed the property line existed in a different place depending on the survey. He recalled the unused property would go back to the property owner. At what point does the title get adjusted? Does someone survey the land and put the markers in.

**City Attorney Gary Firestone** responded in this situation dedications originally were in favor of Clackamas County, so the County has to vacate. Under state law, the City has to concur on County vacations within the City. When the County vacation becomes effective, which is when the City concurs, the vacation document itself is filed and acts in effect as a deed. There is no deed per se, but there is a recorded vacation that acts to transfer the property to the adjoining owners.

**Mayor Bernard** asked if there would be markers.

**Firestone** replied it is whatever the survey attached to the vacation says.

**Shirey** said the action requested of the City Council is to concur. The County took the vacation action, and once the City concurs, then it becomes legal. The property corners will be identified by the City of Portland who built the project and provided the survey services for the project. The back of the sidewalk is the property line and right-of-way line, and he understood there were some questions about corners.

**Firestone** said the vacated property is what is legally described in the vacation document. The County has the legal description as well as the map. The only options the City has is to either concur in the vacation which gives the indicated property back to the property owners, or not concur which means the property will remain in County ownership.

**Mayor Bernard** said one of the other issues is that some of those people have money coming.

**Firestone** said as soon as the vacation is recorded, they become owners of the property and that will be indicated in the County records for that property.

**Mayor Bernard** understood some of the people have money in escrow.

**Gene Hatlelid** thought there was a lot of misinformation the City Council is making decisions on. Gross misinformation.

**Mayor Bernard** feels comfortable with the vacation after reading the document. He understands and remembers the direction. He does not see a problem with vacating it. His concern was that the County has the description of the land and asked if the property owners did.

**Firestone** said it is in the property owners' petition for the vacation.

**G. Hatlelid** said that is misleading. That petition was signed only because that was the only way they could get the property that was left over back. Every one is implying the residents requested this to come back. The only reason anybody signed that was because it was the only way they could get the property not used back. We did not make this request. They were told if they wanted it back – that is misleading. We did not request this. The description in his case overlaps – this map shows one 1917 survey. It does show the other survey, and it does not show where the property deeds and titles overlap onto these things. We are talking about some 20 feet that our deed and title and survey went out into what is now part of that street. When you give this little section back in order for somebody to figure out the size of our lot, they are going to have to take whatever survey in our system. Then they are going to have to take the

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**Approved Minutes**

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1917 system and lay it in, and then subtract from that whatever you are giving back to us. What is left is going to be the land that we have.

**Mayor Bernard** said what is left is at the back of the sidewalk.

**G. Hatlelid** said our titles go into the middle of the street. That is the starting point for our title.

**Mayor Bernard** said that is not an issue the City Council deals with.

**G. Hatlelid** said it is because you said you were going to get our titles and stuff straightened out for us so we would have a description of our property.

**Mayor Bernard** said that is in fact what will happen.

**G. Hatlelid** said no – that is not what he said. He said they are going to describe this wedge of land they are going to give back.

**Firestone** said the effect of the dedication of the right-of-way with your vacation establishes where the property line is, which is more or less at the back of the sidewalk.

**G. Hatlelid** drew up a diagram of his property and survey markers. He wants clean deeds for this because it would cost them \$12,000 for a survey and get the deeds cleaned up. The property line has never been defined. The deeds do not say to the back of the sidewalk. They say 380' to a cast iron pipe that is not there.

**Mayor Bernard** said when it is vacated, the property will be part of his title.

**G. Hatlelid** said it would be an additional title.

**Mayor Bernard** has been involved with this for 3 years and was comfortable.

The group discussed Riverfest events.

The work session adjourned at 5:55 p.m.



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Pat DuVal, Recorder

# AGENDA

## MILWAUKIE CITY COUNCIL WORK SESSION JULY 6, 2004

### MILWAUKIE CITY HALL

Second Floor Conference Room  
10722 SE Main Street

### **WORK SESSION – 5:30 p.m.**

A light dinner will be served.

### Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Proposed Waiver of Sewer Connections for Annexed Properties	Paul Shirey
2.	6:20 p.m.	Adjourn	

### Public Notice

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

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To: Mayor and City Council

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

From: Paul Shirey, Engineering Director

Date: June 24, 2004, for July 6, 2004, Work Session

Subject: Proposed Waiver of Sewer Connections for Annexed Properties

**Action Requested**

Consider the proposed Municipal Code amendments that would authorize the Engineering Director to waive sewer connection requirements for annexed properties under certain circumstances and provide direction to staff.

**Background**

The Municipal Code requires all properties with septic systems to connect to City sewer within three years of sewer availability.<sup>1</sup> Staff believes that all current City properties are now connected to sewer. Therefore, this requirement would apply only in annexation cases that include unsewered properties.

Staff is concerned that property owners with homes served with sound and functioning septic systems would suffer economic burdens from enforcement of this provision to the extent that safe and sanitary disposal is already provided. Accordingly, Council direction is sought to grant the Engineering Director the discretion to waive the connection requirement in such cases and when certain conditions are met.

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<sup>1</sup> Milwaukie Municipal Code 13.12.020

Staff and the City Attorney have developed preliminary Code amendments as follows:

1. Waivers may be granted when:
  - The existing septic system received proper permits and is no more than 10 years old.
  - Prior to granting a waiver, the system shall be inspected to confirm that it is properly functioning.
2. Waivers shall not be granted when:
  - The septic system is located in a flood plain.
  - The value of any improvements to the structure exceeds 50 percent of its real market value.<sup>2</sup>
3. Connections shall be required when significant repairs to the septic system are required.

A pending annexation application that would benefit from these amendments is scheduled for Council consideration on July 20, 2004. If acceptable to the Council, staff would also schedule public hearing for consideration of a Code amendment that same date. However, with conceptual support on the proposed Code changes from the Council, a later hearing could be scheduled.

### **Concurrence**

The City Attorney, Planning Director, Community Development and Public Works Director, and Clackamas County Service District are in agreement with the proposal. However, the County has recommended the following minor changes:

- Designate the County, as agent of the Oregon Department of Environmental Quality, to determine septic system failure rather than the Building Official.<sup>3</sup>
- Allow maintenance of existing functioning systems to protect against failure.<sup>4</sup>

### **Fiscal Impact**

No fiscal impact is expected. Deferral of the sewer connection would be neutral with regards to revenues and expenditures.

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<sup>2</sup> Staff is considering conditions under which this limitation should be applied and will have additional recommendations in the final draft.

<sup>3</sup> MMC 13.12.020 (A)(3)

<sup>4</sup> MMC 13.12.020 (B)

**Workload Impacts**

Preparation of the ordinance would involve approximately 3 hours of combined staff and City Attorney time.

**Alternatives**

1. Support the recommended Code amendments.
2. Recommend changes to the proposed Code amendments.
3. Reject the proposed Code amendments.

**Section 13.12.020 Connection required.**

- A. All structures containing sanitary facilities which are located within two hundred feet of a sewer line shall be connected to the sewer system. Connection to the public sewer system for new buildings or structures is required prior to the issuance of a certificate of occupancy. Connection to the public sewer system for existing buildings or structures is required at the first occurring of:
1. April 1, 2001 for structures located within two hundred feet of a sewer line that was accepted by the city on or before April 1, 1998;
  2. Three years from the date that a sewer line is accepted by the city for sewer lines accepted after April 1, 1998;
  3. Failure of a private cesspool or sewage system when the city, through its building official, has declared the failure.
- B. No person shall maintain or construct any septic tank or other facility intended or used for the disposal of sewage.
- C. No person shall discharge any sewage into any stormdrain or natural drainage outlet.
- D. The city may adopt policies to assist the connection of property not connected to the sewer system on the effective date of the ordinance codified in this chapter. These policies may provide for an amortization period, city loans or any other assistance deemed necessary by the city.
- E. The requirement to connect under Section A.2 may be waived by the Engineering Director for buildings or structures that have fully functioning on-site sewage disposal systems under the following conditions:
1. The on-site sewage disposal system was constructed within 10 years of the date the sewer line is available to the property.
  2. Prior to granting the waiver, the on-site sewage disposal system shall be inspected to confirm that there are no apparent system malfunctions.
- F. Limitations on site improvements. For properties that have been granted a waiver, no portion of any drain field, including areas within required drain field setbacks, may be encroached upon including but not limited to the placement of structures, parking, or paving. Drain fields, including areas within required setbacks may not be otherwise altered in any way that would impair the continued and proper functioning of the system.
- G. Waivers authorized under 13.12.020(E) shall not be granted in the following cases:
1. When the on-site sewage disposal system is either partially or wholly located within the 100-year flood plain.
  2. When building modifications require the upgrade or modification of the on-site sewage disposal system.
  3. When the value of building improvements exceeds 50% of the market value of the building.
- H. Buildings or structures for which a waiver has been granted must connect to the public sewer system if the on-site sewage disposal system fails or requires repairs in excess of \$XXXX<sup>5</sup>.

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<sup>5</sup> Further discussion with the County and City Attorney is needed before recommending an actual value threshold.