

MINUTES

MILWAUKIE CITY COUNCIL DECEMBER 7, 2004

CALL TO ORDER

Mayor Bernard called the 1947th 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
Grady Wheeler,
Information Specialist
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard remembered former Mayor Bill Hupp and neighborhood activist and Budget Committee member Jean Michel.

Mayor Bernard welcomed Jeff Rouyer and Eric and Anna Marie.

Mayor Bernard announced a reception for Councilor Lancaster on December 21, 2004. He served on City Council for over six years, and that would be the final meeting of his term.

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 November 16, 2004;
- B. Printing Contract for City Newsletter;
- C. O.L.C.C. Application – Stargazer Gift Baskets, 9423 SE 32nd Avenue;
- D. Letter of Support for 2007 – 2008 Transportation Enhancement Projects;
and

E. Resolution 38-2004: A Resolution of the City Council of the City of Milwaukie, Oregon Recording the Certified Election Results for the November 2, 2004 General Election.

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie, Oregon. He read from a compilation of notes. This would be the last confrontational thing from them because they were going to try to be nice for two or three weeks. For ten years, the citizens from all the neighborhoods and walks of life fought against light rail and intrusions into the neighborhoods. It came crashing through the neighborhoods like Monroe Street. Fast forward to April Fools Day of last year. The city manager praised the Neighborhood District Association (NDA) leadership in helping to form the Locally Preferred Alternative (LPA). The Council praised the LPA and the 14 Points identifying as the main point that light rail stay out of residential neighborhoods and have as low impact as possible in neighborhoods. The latest decision on Kellogg wiped out ten years of work to protect the neighborhoods. You handed us over to Metro and TriMet with a big red ribbon. Merry Christmas. This was disturbing the entire neighborhood. Two weeks ago Councilor Barnes stated she talked to a local businessman who said if you listened to the citizens, you would never have any businesses in town. What gave that businessman the right to put down the citizenry of Milwaukie? Furthermore, why did the Councilperson buy that statement hook, line, and sinker? It's insulting. At the beginning of this latest working group, Mr. Roger Cornell and he greeted the North Industrial business people with open arms assuring them he would work closely with them to overcome their problem. Sort of a joke on us in retrospect. A little history, which Mr. Zumwalt was sure Mayor Bernard would remember. He used to attend meetings of the local downtown business group, and most of them did not give a hoot about the neighborhoods particularly Historic Milwaukie. Remember – running light rail right up Monroe. They said, oh, they will be well taken care of – you were going to wipe out the whole neighborhood. One hundred twenty-five feet south; one hundred twenty-five feet north of Monroe was going to be wiped out by mixed use. That sort of took care of the neighborhood. When the downtown plan was okayed in 2000 and when possible traffic problems in the neighborhood were mentioned, the statement was made by that organization, "who cares – just so we get the density we want." Remember that, Mayor. Our NDA and I'm sure all of the neighborhoods want and will work for a vibrant, alive busy town. We have said it many times and have proven it many times. We are not anti-business. It is some of the business people who want to go on without caring about the City as a whole. The latest push to rid them of the transit center was just another case in point. He would be the businessman who made that comment did not live anywhere near Milwaukie. It was very disheartening to have a Councilperson blindly side with a business against the citizens. It was very disconcerting to have a warehouse full of Tootsie Rolls be more worthy than the neighborhood. This was a sure sign the residents were going to take a beating from this Council.

Another point regarding the work session two weeks ago. In defending staff against lack of service complaints against them by business, the comment was that the staff had given 100% effort to make sure the transit center was moved from North Industrial to Kellogg Lake to retain the viability of the industrial area. What about the viability of the neighborhood? He was shocked, shocked to hear that. All the time, he was told this was a fair and biased group working for the best possible solution. Every time he asked a member of staff for their opinion, he was told he had to make his own decision. This was to come from the bottom up. Now he found there was a bias on the part of staff – who would have guessed? To answer charges from some Councilmembers and others, it has been – he was asked by two Councilmembers and some other people – why Roger Cornell and he went along with the whole working group and did not say a word and did not bring up anything against the transit center going to Kellogg Lake. That was not true. They did not meekly go along with that Working Group. From the time the matrix was brought forth until the end, he disagreed. He constantly asked staff to revisit the Downtown Plan in order to find the best and most efficient siting of the center but to no avail. He was thinking specifically about economic development because he did not think there would be any economic development at Kellogg Lake. We needed it further toward where the businesses and people were. Where would you build? In the Lake? He just did not understand and wished someone would explain it to him. Roger Cornell finally did revisit the Downtown Plan, and he made an excellent presentation to the Working Group. It was promptly ignored. He phoned the city manager to tell him the process was being orchestrated – also to no avail. He was asked to respect the process and go along with it. Roger and he were shouted down by two of Milwaukie's most honored citizens prompting Roger to say, "I'm going to shut up – this train has left the station." It was all so obvious. Why should we sit there and be insulted because they were outnumbered 35 to 3 because they were against the transit center going down to Kellogg Lake. In addition, he contacted each Councilperson by phone or in person and informed them of the stacked process. To no avail, obviously to three of you, roughly twice as many people testified against the center as for it. Didn't that tell us something? Seven hundred and forty signatures on petitions against. Didn't that tell us something? We now realized you would not pay attention to the citizens and made it easy for us to just pursue other avenues for our answers. The general feeling of the group was that our NDA was insulted, laughed at, and vilified. Pariahs in our own town. We do not feel as if we were part of the City or even being listened to by it. We were made the bad guy in this scenario just because we had guts enough to stick up for our rights. That was the feeling of the neighborhood. We don't like it – Merry Christmas. We don't feel we want that down at Kellogg Lake. If we can stop it in any way we can, we will.

Councilor Barnes asked what it would take to have a working relationship with Mr. Zumwalt in particular and with the neighborhood association in the future because this decision was made, and it was time to move on. She was not going to re-hash the transit center decision with Mr. Zumwalt tonight. That was over. She wanted to know what it would take as a leader for the neighborhood to take the decision that was made and go forward to work on things that could be done to make the City better.

Mr. Zumwalt said he always strived to make the City better. The neighborhood stood second to no one in doing things for the City. We worked hard for 21 months with Metro and TriMet.

Councilor Barnes wanted to know what could be done for the future. Let's not re-hash the transit center tonight. What can we do to bridge the problem that was obviously there, so that City staff, Council, Mr. Zumwalt, and the neighborhood association can have a working relationship again?

Mr. Zumwalt said with this hanging over us right now, and all the feedback he got from his neighbors, it was going to take something out of the ordinary. How can you sit and say that one businessman said if you listen to the citizens you wouldn't have any businesses? He would do anything to make this a viable, vibrant town.

Councilor Barnes suggested setting up a time to determine what was equally happy for both sides. Would you be willing to do that?

Mr. Zumwalt said he was. But he sat down with Ms. Barnes, and he thought there would be a good chance of working out a situation for the transit center. He was asked to completely betray his neighbors and friends. He did not have the authority to do that. How can you work out something that was a pig in the poke? He was told that Metro would sign this. TriMet would sign this. ODOT would sign this. Everything would be hunky-dory. What?

Councilor Barnes did not wish to re-hash the transit center. She asked if representatives could sit down and come up with something in order to move forward.

Mr. Zumwalt said if Councilor Barnes thought he enjoyed this, she was sadly mistaken.

Councilor Barnes understood that. Can we – whomever Mr. Zumwalt wished to bring from his neighborhood association, City staff, and she and any other Councilmembers – sit down and see if we can come up with something.

Mr. Zumwalt said the last Working Group with Metro and TriMet – he did not want another dog and pony show. He thought they should be treated with respect. He thought someone kicked the football and went around end this last time. Okay, you don't want to re-hash it. He did not just parachute in here from Mars. He had been in on things like this before, and Milwaukie was known for a long, long time as the City of the done deal. We overcame that, but now we were back to it.

Councilor Barnes asked Mr. Zumwalt to let her know when he was available, and a time would be set up.

Mr. Zumwalt said he was not just being meeting with her. He wanted some other people involved.

Councilor Barnes said the meeting would include Council, staff, and NDA representatives. Let us know.

Mr. Zumwalt told her to set it up, and they would be there.

Councilor Barnes asked for some dates he would be available.

Mr. Zumwalt wanted everyone to remember no dog and pony show. Everyone lays it out.

PUBLIC HEARING

Clackamas Education Service District Conditions of Approval for Meetings, File CS0-00-06

Mayor Bernard called the public hearing on Clackamas Education Service District's request to amend the conditions of approval to order at 6:50 p.m.

The purpose of the hearing was to consider public comment on the proposed amendment of CSO-99-08 to allow increased meetings on a permanent basis

The applicant had the burden of proving that the amendment was consistent with the Zoning Ordinance Section 321 – Community Service Overlay, Section 1011.3 – Minor Quasi-Judicial Review, and applicable Municipal Code provision.

Testimony and evidence was directed toward the applicable substantive criteria just described or other criteria in the plan or land use regulation which one believed to apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue would preclude appeal to LUBA based on that issue. Failure to raise constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow a response would preclude action for damages in circuit court.

Mayor Bernard reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: **Mayor Bernard** and **Councilors Barnes** and **Loomis** had visited the site.

Councilor Barnes announced she was paid by the Education Service District as a teacher in the North Clackamas School District.

Mr. Firestone said a conflict would only arise if Councilor Barnes's vote on the matter would result in a financial benefit to her. He understood she would be paid regardless of her vote on this matter so would not constitute a conflict.

Mayor Bernard said the property was adjacent to his backyard, and a member of the public raised that as an issue at the last hearing. He did not believe extended hours of the parking lot adjacent to his back yard would represent a financial detriment or benefit. He believed he could decide this issue fairly based on the facts presented.

Jurisdictional Issues: None.

Staff Report: **Mr. Firestone** provided the staff report. Some time ago the Clackamas Education Service District (ESD) sought an approval for a community service overlay, and a condition of approval was imposed limiting the times, hours, and numbers of meetings. There was a public demand for additional meetings at the facility, and some came from outside organization such as the Lake Road Neighborhood Association. Based on that, Clackamas ESD sought a modification of the original condition of approval on a temporary basis to allow additional meetings, hours, and numbers. That approval was granted, so there was a temporary condition. During the time the temporary condition was in effect, there were no complaints made, concerns raised, or comments received about the expanded meetings and hours. ESD sought to make the temporary provision permanent to allow the additional meetings, hours of operation, and numbers of people. Based on the lack of adverse comments, staff recommended approval of the application.

Correspondence: None.

Public Testimony: None.

Mayor Bernard closed the public testimony portion of the hearing at 6:55 pm.

Mayor Bernard found that ESD had done a very thorough job of maintenance and security. The lights were off at the designated times, and he felt the operation was very safe and beneficial to his neighborhood. He noted there were neighbor concerns expressed at the last hearing, but that person was not at this meeting. He was comfortable that this was a good recommendation.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve Clackamas Education Service District's request to allow increased meetings on a permanent basis. Motion passed unanimously. [5:0]

OTHER BUSINESS

A. Agreement between City and Milwaukie Pioneer Cemetery Association Regarding the Leona Knutson Trust Fund

Mayor Bernard announced this item was postponed to December 21, 2004.

B. Status Report on Economic Development Grant Projects and Regional Partners

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Mr. King provided an update on the economic development grant program and the Regional Partners. There was an initial feasibility study on the 6-acre parcel at International Way and Harmony Road to look at access issues, and solutions were being hammered out for that intersection. This was approximately an 80,000 square foot project that would create about 100-plus jobs in a combination of small industrial and service operations. Several businesses had already signed letters of intent with the developer Pannatoni. The enterprise zone marketing flyer was being distributed, and the City was launching a website that focused on economic opportunities in Milwaukie. The other areas of focus were business outreach and visitation. A number of businesses were looking at growing or expanding, and the Committee was offering to follow up on their needs. He discussed current efforts that included discussions with OLCC.

At its January meeting, the Advisory Committee would consider Milwaukie's strengths and weaknesses, oversight of the development grant, increased dialogue, and recommendations to the Council. Mr. King discussed a business questionnaire and the building re-use assessment.

Mayor Bernard believed there was a lot of potential.

Mr. King provided an update on Regional Partners. The organization was beginning to gain some visibility and brought together a lot of partners. There were about 12 city members in the Metro area and Regional Partners was a centralized source for information. The group was trying to build visibility, and leaders and champions were a critical piece. He recommended maintaining the annual \$3,000 membership.

Councilor Barnes thought it was a good investment, and that Milwaukie should continue for another year.

Mr. King served as the Milwaukie representative, and the City Council may wish to select an alternate.

Mr. Swanson added the membership amount was in the adopted budget.

Mayor Bernard volunteered to serve as the alternate. He discussed the feasibility of renaming streets in the North Industrial area.

C. Notification of Private Vehicle Tows 10.54.020

Mayor Bernard commented that a business in Milwaukie was concerned that its employees were getting a lot of tickets and asked Chief Kanzler to discuss the issue.

Chief Kanzler said the system would be to abide by the law and not get tickets. The police department was obligated to follow the laws as identified by the legislature and intervened at certain times. In following up on neighborhood complaints about

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speeding, officers found that most of the people being stopped lived in the neighborhood. Most of the complaints he got were about speed and traffic congestion in the City. The department was doing everything it could to make the streets safe. He asked that residents demonstrate responsibility in their driving habits.

Chief Kanzler provided the staff report. The proposed ordinance would require that tow companies notify the Milwaukie Police Department prior to towing vehicles from private properties. Over a number of years, it has come to the point that people think their cars have been stolen, and report it to the police. Without knowing that a car was towed, the department treated it as a theft and spent time and resources on looking for it. He discussed several incidents that occurred recently. There was no compliance by the tow companies, and unless there was an ordinance the police department could not apply any sanctions. Adopting this ordinance would circumvent wasting officer time looking for a stolen vehicle when it was actually a private impound or repossession. The tow companies charged a storage fee even though a vehicle was hooked up to a tow truck. He recommended the City Council adopt a penalty clause so the department could cite the tow company up to \$50 per occurrence.

Councilor Barnes asked why not charge the companies more?

Chief Kanzler thought the majority of the tow companies like Olson Bros. abided by the laws and were reputable. He suggested it might be difficult to collect from those companies that were not reputable.

Councilor Stone suggested charging \$500. This would get people's attention. She recommended putting some meat in it, and charge the tow companies. She asked if state statute required tow companies to call within an hour.

Chief Kanzler said current statute was that tow companies were required to notify the law enforcement agency prior to towing a vehicle.

Councilor Stone thought raising the fee would get compliance. She added there should be some notification to the tow companies.

Chief Kanzler noted a sample letter in the staff report that would go to all tow companies explaining what would happen if they did not notify the police department. He asked the city attorney to comment on a higher fee.

Mr. Firestone said the ordinance could be amended. The ordinance did not go into effect for 30-days, so there was a grace period.

Councilor Lancaster said for some unscrupulous person towing anything he can get his hook on, \$50 was nothing based on the number of cars they could tow. He asked the city attorney what range was reasonable while getting their attention.

Mr. Firestone thought a Class A violation was \$500.

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Mayor Bernard added that most drivers were on commission, and one penalty of \$100 would send the message.

The consensus of Council was to charge \$500. **Mr. Firestone** said the reading of the ordinance could include that amendment in section 10.54.030.

It was moved by Councilor Lancaster and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance adding Municipal Code Chapter 10.54 – Towing of Vehicles from Private Property with the amendment to 10.54.030 (A) making the penalty \$500. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times with the amendment to subsection.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard 'aye'; no nays. [5:0]

ORDINANCE NO. 1942:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING CHAPTER 10.52, TOWING OF VEHICLES FROM PRIVATE PROPERTY.

D. Designation of Acting City Manager by Adding Municipal Code Chapter 2.07

Mr. Swanson provided the staff report. It was his practice over the past four years to appoint an acting city manager when he was out of town or unavailable. A couple of weeks ago, the City had a simulated emergency exercise, and it occurred to him that there might be a situation where he could not be at the emergency operations center (EOC). One of the powers of the city manager assumed was police power and the ability to establish a curfew. He began to question whether or not his designation of an acting city manager carried anything more than his good wishes. It did not carry the authority that appeared in the code in various places. He believed it was best for him to provide for the appointment of an acting city manager and delegate the city manager's powers to the designee. Mr. Swanson noted Milwaukie Charter Section 27(e) provided that the City Council would appoint a city manager pro-tem; however, he felt that was burdensome for short vacations or days out of the office. The proposed ordinance allowed the city manager to appoint an acting city manager and permitted that person to assume the powers of the city manager. The City Council's appointment of a pro tem would trump this action. The proposed ordinance was a housekeeping action, but he was concerned about it based on the recent emergency exercise.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance adding

Municipal Code Chapter 2.07 – Acting City Manager. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times by title only.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard ‘aye’; no nays. [5:0]

ORDINANCE NO. 1943:

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT AN ACTING CITY MANAGER AND DELEGATING NECESSARY AUTHORITY TO THE ACTING CITY MANAGER AND ADDING A NEW CHAPTER 2.07 TO THE MUNICIPAL CODE.

E. Amend Municipal Code Chapter 1.20 – Compensation for Reduction in Property Value

Mr. Firestone provided the staff report. Ordinance 1940 contained a provision that said if a claimant filed an invalid claim, he would pay the City's costs. If that was not paid, then the City could file a lien. The city attorney determined there was precedent that creating that lien would make the obligation to pay that cost a property tax subject to compression. Therefore, it would be better to collect the costs through a judgment. If it were a property tax, there was a risk that the City could not collect at all.

It was moved by Mayor Bernard and seconded by Councilor Loomis for the first and second readings by title only and the adoption of an ordinance amending Ordinance No. 1940 relating to procedures for Measure 37 claims. Motion passed unanimously. [5:0]

The city manager read the ordinance for the first and second times by title only.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard ‘aye’; no nays. [5:0]

ORDINANCE NO. 1944:

AN ORDINANCE AMENDING ORDINANCE NO. 1940 RELATING TO PROCEDURES FOR MEASURE 37 CLAIMS.

OTHER

Mayor Bernard commented on Bob's Red Mill and the statement that the project would not have happened if the contractor had not come to the Mayor. That was not necessarily accurate. The project would never have happened if it were not for staff and the city manager. Being the Mayor with a business in downtown Milwaukie, people had an opportunity to talk to him and get his direction on whom to speak with in the City departments. He knew the gentleman who worked on the Bob's Red Mill project so it

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was a chance for this person to ask for help. Mayor Bernard directed him to the appropriate staff. He firmly believed that everyone shared in the success of the project.

Mayor Bernard addressed Mr. Zumwalt's comments. He considered Mr. Zumwalt a good friend, but he also totally disagreed with his comments. Mayor Bernard attended many of the meetings as well the 14-Point meetings. He saw neighborhoods working together. Staff stood back and let the community drive it. It looked like it was going well, but then suddenly at the end, comments were made that blew it all apart. He thought that was totally wrong and disagreed with Mr. Zumwalt's vision of what happened at those meetings. He thought the City did a great job as did all of those who participated. If there was a problem at the beginning, people needed to make their comments right away. The decision would be flexible as things developed. There needed to be a change of direction in this community, or the wonderful things the City had like the library would no longer exist. That can only be done by change. Change was difficult and painful, but it had to happen. There were lots of great things happening in Milwaukie. There were annexations, new jobs, and industrial lands coming into the city. There was finally some growth. The City was sitting down with the North Industrial area businesses to discuss reinvestment in the community. He totally disagreed with Mr. Zumwalt's comments. He assured the public that no comments that were made at the meeting were disregarded. No testimony was disregarded. He struggled with every comment including Mr. Cornell's. He was truly offended by his friend Mr. Zumwalt's comments. There was no conspiracy. This community needed to change, and change hurts. Mr. Zumwalt walked into his office almost daily, and he was still welcome. Someday they may come to an understanding that if there were no change, the library and planning department would be gone. Someday, it may only be the City Council sitting here waiting for someone to come along and do something for Milwaukie. He refused to be the Mayor that let nothing happen and let the community go away. He was also very offended by the comments made at Bill Hupp's funeral regarding this subject. He was very angry about that and did not know if the damage to the relationship would be repaired. Things have to change, and the City Council needed to take the pressure. He thanked Mr. Swanson and staff for putting up with what had been going on.

Councilor Loomis agreed with most of Mayor Bernard's comments. He disagreed that things needed to change -- things are going to change. What the Council was trying to do was direct change to the greatest benefit of the community. Change will happen. The process involved the citizens. He asked if he could be involved in the Working Group, and Mr. Swanson told him it was not a good idea. Mr. Zumwalt thought it was better if he stayed away and let the citizens work it out. He thought there were some positive things coming out of the process including contact with the North Industrial group. The only way the City would grow and prosper was for the businesses, neighborhoods, staff, and City Council to all work together. The only thing holding this up was Mr. Zumwalt. He needed to sit down and talk with his neighborhood and friends. Mr. Zumwalt has done a lot of great things for the City. Is this benefiting the City, or was it time to accept it and move on and make it work the best for everyone? Councilor Loomis thought it was that time. It was time to move forward.

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Mayor Bernard was proud of the support the City gave him in his election efforts. He carried all Milwaukie precincts as well as a majority of those surrounding Milwaukie. To him that said people thought he was doing a good job, and they supported him.

Councilor Stone addressed Mr. Zumwalt's and Mayor Bernard's comments. She did not think it was that people did not want to see change happen in this town. We do need some changes, and the City needed to be revitalized. She believed Mr. Zumwalt's issue along with what the City Council heard loud and clear in testimony by Historic Milwaukie was about livability and what this would do and how it would negatively impact livability. She did not believe anyone was opposed to change that would help Milwaukie grow. That was their main concern. The April 2003 decision by this City Council was to put the locally preferred option (LPA) at Southgate. The Historic Milwaukie Neighborhood was fine with that because the traffic pattern would not directly impact that neighborhood. It was not about not wanting change. It was about where it was occurring and how it would impact livability.

EXECUTIVE SESSION

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(e) – real property transactions.

ADJOURNMENT

It was moved by Councilor Barnes seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0].

Mayor Bernard adjourned the regular session at 7:40 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL DECEMBER 7, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1947TH MEETING

REGULAR SESSION - 6:30 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
3. **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 November 16, 2004**
 - B. **Printing Contract for City Newsletter**
 - C. **O.L.C.C. Application – Stargazer Gift Baskets – 9423 S.E. 32nd Avenue**
 - D. **Letter of Support for 2007-2008 Transportation Enhancement Projects**
 - E. **Certify November 2, 2004 Election Special Results – Resolution**
4. **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.)*
5. **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.)*

Clackamas Education Service District Conditions of Approval for Meetings, File CSO-00-06 (Gary Firestone)
6. **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.)*
 - A. **Agreement Between City and Milwaukie Pioneer Cemetery Association Regarding the Leona Knutson Trust Fund (Mike Swanson)**

OTHER BUSINESS, continued

- B. Status Report on Economic Development Grant Projects and Regional Partners (Jeff King)**
- C. Notification of Private Vehicle Tows 10.54.020 – Ordinance (Larry Kanzler)**
- D. Designation of Acting City Manager by Adding Municipal Code 2.07 – Ordinance (Mike Swanson)**
- E. Amend Municipal Code Chapter 1.20 – Compensation for Reduction in Property Value – Ordinance (Mike Swanson)**

7. INFORMATION

Center/Community Advisory Board Minutes, October 8, 2004

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

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 NOVEMBER 16, 2004

Council President Lancaster called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Present: Councilors Barnes, Loomis and Stone.

Staff Present: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Alice Rouyer, Engineering Director Paul Shirey, and Civil Engineer Brenda Schleining.

Measure 37

Mr. Swanson provided the City Council with a draft ordinance that would establish a process for Measure 37 claims. The Measure would go into effect on December 2, 2004.

Mr. Firestone summarized the Measure that allowed people who owned property to submit a claim for compensation if a regulation restricted the use of property and had affected that property's value. The restriction would have to have been adopted some time after either the owner or a family member of the owner acquired the property. The City has three basic options for handling these claims:

1. Pay compensation. Compensation would be based on the difference of the property value at the time the claim was filed with and without the restriction.
2. Waive the regulation or restriction. If the City chose this option, it would allow the owner to build what he/she could have built at the time the current owner acquired the property. Even though the compensation option was based on a regulation that could have been adopted when the current owner's parents or grandparents owned the property, the waiver only addressed the current owner.
3. Deny the claim. The City would have to determine the claim was not legitimate.

The proposed ordinance attempted to provide detail to flesh out some of the missing parts of the Measure but did not add or change the Measure 37 provisions. The proposed ordinance outlined a process for the City to follow as expressly allowed by Measure 37. It did not impose additional obligations on the person making the claim.

The ordinance identified what the applicant had to provide in the written demand for compensation, as Measure 37 was silent on that issue. The proposed ordinance would require that the claim for compensation identify the property, identify the claimant, provide some basic information about when the claimant or family member acquired the property, identify the regulation that allegedly restricted the use of the property, and the amount claimed. This was information Mr. Firestone felt was legitimately needed for something to be considered a demand for compensation. The ordinance further provided a list of things that the claimant was encouraged to include in the written demand for compensation but was not required. These included a fuller description of how the restriction affected the value of the property, a statement describing what waiver was needed, a statement as to whether the claimant preferred compensation or a waiver, a list of all persons with an ownership interest, and an appraisal.

Mr. Firestone described the process once a claim was filed. The claimant or any other person may be involved, as it was a public process. The process required notice, a staff report, and Council decision. There were provisions in Measure 37 that talked about the governing body's making the decision. The Council may decide to change the process a little in the future by having staff or a hearings officer make an initial decision. Again, the three basic options were pay, waive, or deny. It provided some reasons for the claim to be denied and provided some specificity about the waivers. There was a provision that if many people showed up to object, the Council could ask if an affected party was willing to contribute toward the compensation to be paid. There was a provision relating to reimbursement of costs. He advised that the City not charge a fee to submit a claim, as he did not believe it would withstand a court challenge. He believed if the City determined the claim was invalid, it could ask for reimbursement of its costs. He recommended adopting a process before December 2, 2004.

Councilor Stone referred to 1.20.080(l), Council decision. Did that mean if the City did not have the money that it had the option of denying the claim?

Mr. Firestone explained that Measure 37 stated that payment would be made from a fund established for the purpose payment of claims. It also suggested that it could be paid from other funds but did not require it. If the City denied a claim, a claimant could file in circuit court, and at that point the claimant could only seek compensation, not a waiver. If the claimant filed in circuit court and the claim remained unpaid two years after accrual, then the owner could do whatever he/she wanted to do without the challenged restriction. Arguably at that time if the claimant gained the right to develop, then he/she no longer had the right to compensation. One option seemed to be to deny and let things run their course. At the end of that period of time, the developers would have the right to develop as if the questioned regulation were not in place. He would not advise this initially until there was clarification as to whether or not that was how the law would operate.

Councilor Stone understood the City was not obligated to waive if it did not pay.

Mr. Firestone said if the City neither paid nor waived, it would go to circuit court. If the City lost, it was unclear the extent of the obligation to pay any resulting judgment. There were various opinions at this time.

Councilor Barnes asked who paid for the appraisal.

Mr. Firestone said if the City obtained the appraisal, the City would pay for it. The only way he could see the City recovering that cost was if the claim was determined to be invalid.

Councilor Barnes asked if it would be advisable for jurisdictions to go together and have an appraiser on standby for a “group discount.”

Mr. Swanson said the City would look at that. If someone asked how many claims the City anticipated or in what amounts, he would honestly have to say he had no idea. He would discuss having someone on standby with other jurisdictions. He suggested looking at the original filing to determine if the amount was reasonable without an appraisal.

Mr. Firestone added there might be cases in which the City decided it did not need an appraisal because staff knew the claim was either very large or very small.

Councilor Barnes asked where the City would find the money to pay these claims.

Mr. Firestone said these funds should probably be budgeted. Some jurisdictions have discussed putting zero dollars in their budgets and not paying.

Mr. Swanson thought it was important to remember that Measure 37 was approved by the voters and was the law. It did not say the jurisdictions did anything wrong. It said the situation would be handled in a different way. He would not propose anything until the budget process, which would give time to determine how things would shake out. If the claims were large, the City could not afford it. The payments would come out of police and library.

Mr. Firestone commented that even though most of the publicity was related to compensation, the proponents saw it as a waiver to allow development.

Councilor Barnes asked if the City Council would have separate meetings to address claims.

Mr. Swanson thought the claims would be part of the regular agenda, but that was dependant upon a volume which was as yet unknown. He believed the

challenge would be the many discussions having to do with use, and those would be difficult at the counters.

Mr. Firestone expected a lot of litigation in that area. The sponsor took the position that any development regulation of any type was a use restriction. The measure referred to restrictions on use, which had a meaning in land use law and were different from development standards. It would require litigation to determine if use restriction meant any restriction in a zoning ordinance or just the ones that restricted residential, commercial, retail, community service use, etc. He commented on the Oregon Attorney General's opinion on Measure 7 that took the position that a development restriction was a use restriction even though in his view there was no basis for it in the law or the measure.

The group agreed to amend the meeting agenda to adopt the ordinance at this session.

Sewer Extension Strategy

This item was postponed to a future work session.

School Speed Zone Report

Ms. Schleining and **Mr. Shirey** provided an update on the new school zone laws that went into effect on July 1, 2004.

Ms. Schleining reviewed Milwaukie school zones and the three applications. She provided a diagram of the Hector Campbell Elementary School area as an example.

Councilor Stone discussed the advance warning school crosswalk sign and understood it was 20 mph at all times because of the crosswalk.

Ms. Schleining reviewed the Home Avenue crosswalk. There was advance warning, then "20 mph when children present", and "school crossing." The legal definition in this legislation for children present was that they were actually in the crosswalk and ready to cross the street. Regulations applied to school crosswalks that were marked and signed. She commented on the faded signs and thought the biggest issue was money for high-grade signs that were about \$80 each, and the street fund was struggling. It would be beneficial to have some long-range goal to get a little money to streets for traffic calming in the vicinity of schools.

Councilor Barnes asked if fine money could be used to buy new signs.

Mr. Swanson said it would probably be better to say signs would be paid for out of the general fund.

Councilor Stone thought it would be a good idea for all of the violation money to go into a big pot to pay for this.

Mr. Swanson said the problem was that court fines were general fund revenue. The problem would be to find cuts in the general fund to do this and would be a matter of prioritization.

Ms. Schleining said the City sign shop made some of the signs for the City but not all. One agency assessed speeders \$10 per citation that went to traffic calming. The signs were really old and speeding was an issue in the City. However, it did not seem to be a money priority. She discussed the signs needed for the City to be legally compliant.

Mr. Firestone added that it was within the City's discretion whether or not to post any of these signs. The restrictions applied only if posted. The City may only double fines in school zones and then only if it was posted.

Councilor Stone commented there was a "fines double" sign at the school crossing on 32nd Avenue.

Council President Lancaster thought the real danger was on busy streets like Railroad Avenue, Linwood Avenue, 32nd Avenue, and Lake Road. He thought it would make more sense to put the signs on the major thoroughfares. He suggested posting a sign that said fines tripled in school zones.

Councilor Stone said Portland was using signs in conjunction with the flashing yellow beacons.

Mr. Firestone said fine amounts were restricted by state statute.

Ms. Schleining discussed the limitations of traffic control devices and the fluorescent or lime green signs by the crosswalks.

Councilor Barnes suggested asking the Public Safety Advisory Committee for a recommendation.

Councilor Stone understood the intent of this senate bill was to make school zones safer areas for children.

Mr. Firestone commented Milwaukie was well ahead of other jurisdictions in compliance and that engineering had done a good job.

Other issues

Councilor Barnes reviewed the recent economic development meeting and recent League of Oregon Cities Conference. The conference was a good chance to meet elected officials from other cities as well as an opportunity to get to know Councilor-elect Collette. She suggested a representative from Milwaukie attend the Clackamas County Coordinating Committee meeting regarding Measure 37.

Councilor Barnes commented on the recent economic development meeting where the business owners shared a lot of good ideas. Their issue was that the City may be spending too much time listening only to the concerns of the residents and that it was equally important to listen to the concerns of businesses particularly those considering locating in the area. These comments were from the North Industrial area and Bob's Red Mill. Mr. Moore had some specific concerns, and others agreed. The City had an image that needed to be dealt with. The group suggested customer feedback forms for the planning department and that staff wear buttons that said something like, "You can do it – Ask me how." They felt this would offer for a more customer service friendly atmosphere and made the applicant feel empowered. The City needed to explain the competing needs of businesses and residents. These thoughts were expressed at two consecutive meetings.

Councilor-elect Carlotta Collette said that conversation was very much alongside the Measure 37 conversation. It did not happen so much because people wanted money but because they were tired of regulations and being treated like underlings when they went to any government try to realize their dreams. They were met with a list of restrictions they had to fulfill. The suggestion was to start looking at things creatively when applicants came in with their plans and begin by looking at what that person wanted to accomplish. This was the feeling of many and not just in Milwaukie.

Councilor Lancaster found that troubling in that he thought Milwaukie was making great strides in its attitude and presentation. This seemed like a reversal of previous comments.

Councilor Barnes said Mr. Moore made it clear that he had to go to the Mayor in order to get things taken care of, and if it had not been for the Mayor, they would not have been done. The business community should not have to call the Mayor to get things finished, and that was the consensus.

Mr. Swanson said they got it done, and he thought the comment was petty. He was involved in that project and solved the problem along with John Gessner. The problem had to do with a TriMet regulation. It was not a City regulation. He was at Bob's Red Mill two weeks ago, and the builder was there. He said this project would not have happened without the City. Mr. Swanson was often

struck by how he was never on the right side of an issue. He never heard from the happy people. He always heard from those who were upset. If that was how he judged things, then he would be wrong 100% of the time. As far as listening to the people and doing everything according to the people, the City goofed up this summer because staff supported 100% the option on the transit center. One of the reasons staff supported it was to protect the viability of the North Industrial Area. If the philosophy was to only listen to the people, staff goofed because a lot of those people will not talk to him anymore.

Council President Lancaster said the City had an entirely separate group convene over the transit center specifically addressing the concerns of the North Industrial folks. If they were making those kinds of concerned comments now, that was a problem.

Councilor Barnes clarified they said that was what had happened up until the transit center. They did not feel as if they were recognized.

Ms. Collette further clarified that Mr. Moore said he was here because he knew he could go to the Mayor and get something accomplished. He loved Milwaukie because of that, and it needed to be communicated that the City was a small enough town that businesses had access to the Mayor if there were problems. Ideally, that would happen at the staff level with their looking for creative ways to adapt the visions to the requirements.

Council President Lancaster said the original comment led him to believe one had to go to the Mayor to get the rules bent, and that was patently wrong.

Council President Lancaster adjourned the work session at 6:25 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL NOVEMBER 16, 2004

CALL TO ORDER

Council President Lancaster called the 1946th meeting of the Milwaukie City Council to order at 6:30 p.m. in the City Hall Council Chambers. The following Councilors were present:

Councilor Deborah Barnes
Councilor Joe Loomis

Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Paul Shirey,
Engineering Director
Alice Rouyer,
Community Development/
Public Works Director

Grady Wheeler,
Information Specialist
Kelly Somers,
Operations Director
Tom Larsen,
Building Official

PLEDGE OF ALLEGIANCE

Council President Lancaster announced the addition of an ordinance regarding Measure 37.

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Outstanding Milwaukie High School Student of the Month

The City Council recognized **Charlie Tang** as the November 2004 Milwaukie High School Student of the Month. Mr. Tang taught himself pre-calculus the summer before entering the ninth grade and has taken calculus classes at Portland State University. This year he was tutoring students, and his Senior Seminar Project was teaching other students how to tutor. Mr. Tang was the CEO of the Milwaukie High School Tech Cadre, and was a true facilitator with great vision and organizational and leadership skills.

Councilor Barnes recognized the families and teachers who supported Mr. Tang and other Milwaukie High School students.

CONSENT AGENDA

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

- A. City Council Minutes of October 19 and November 2, 2004;
- B. Public Works Operations Building HVAC Purchase and Installation; and
- C. Award Contract for Meek Street Stormwater Improvements Phase 1.

Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. Municipal Code Update Title 15 – Buildings and Construction

Council President Lancaster called the public hearing on the proposed code amendment to order at 6:35 p.m.

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

Staff Report

Mr. Larsen provided the staff report. The objective was to update code language to reference International Code Council (ICC) instead of ICBO and reflect the State's recent adoption of the Oregon Structural Specialty Code that was based on the International Building Code. The State adopted the Oregon Fire Code based on the International Fire Code. Many of the provisions currently in Section 15.12 were contained in the body of the code.

Correspondence: None.

Public Testimony: None.

Council President Lancaster closed the public testimony portion of the hearing at 6:40 p.m.

It was moved by Councilor Stone and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance amending Municipal Code Chapter 15 – Buildings and Construction. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance two times by title only.

The City Recorder polled the Council. Councilor Barnes, Loomis, and Stone and Council President Lancaster 'aye.' Motion passed unanimously among the members present. [4:0]

ORDINANCE NO. 1939:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE TITLE 15, BUILDINGS AND CONSTRUCTION.

Mr. Larson commented on future amendments anticipated for April having to do with low-rise buildings.

Measure 37 Implementation

Mr. Firestone said Measure 37 would take effect on December 2 and allowed local jurisdictions to adopt procedures for processing claims for compensation under that Measure. When a property owner submitted a claim, the City would have three options: pay compensation, waive the restriction, or deny the claim. Measure 37 allowed property owners to make a claim for compensation if a regulation adopted since they or a family member acquired the property restricted the use of the property and reduced the value of the property.

The proposed ordinance provided a procedure for the City to follow once a claim was made. It attempted to provide some definition for what constituted a written demand for compensation: identification of the property, identification of claimant, identification of the regulations at issue, and a stated claim for the amount of compensation sought. The proposed ordinance encouraged claimants to provide additional information such as the history of ownership, a list of all those who had an interest in the property, and an appraisal.

The process set out in the ordinance would have a notice, staff report, and any public hearing by the City Council. It provided the three options: pay, waive, or deny. He guessed that in the next few months most if not all jurisdictions would have some process formalized to handle Measure 37 claims. He advised that Milwaukie have an ordinance in place by December 2.

Council President Lancaster clarified this was discussed in detail at the work session. Whenever the Council adopted an emergency clause, there was an erroneous assumption in some people's minds. The ordinance would go into effect immediately and would be in place when Measure 37 took effect on December 2.

Mr. Firestone added emergencies could be declared when needed for the public interest. The public interest in this case clearly was served by having a proper process, so the City would not have to deal with claims on an ad hoc basis.

It was moved by Councilor Barnes and seconded by Councilor Loomis for the first reading in full of the ordinance specifying requirements for processing claims for compensation arising from implementation of Ballot Measure 37 and declaring an emergency. Motion passed unanimously among the members present.

Mr. Swanson read the ordinance in full.

It was moved by Councilor Loomis and seconded by Councilor Barnes for the second reading by title only of the ordinance specifying requirements for processing claims for compensation arising from implementation of Ballot Measure 37 and declaring an emergency. Motion passed unanimously among the members present.

Mr. Swanson read the ordinance for the second time by title only.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the ordinance specifying requirements for processing claims for compensation arising from implementation of Ballot Measure 37 and declaring an emergency.

The city recorder polled the Council: Councilors Barnes, Loomis, and Stone and Council President Lancaster 'aye.' Motion passed unanimously among the members present. [4:0]

ORDINANCE NO. 1940

AN ORDINANCE PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE MILWAUKIE MUNICIPAL CODE, AND DECLARING AN EMERGENCY.

B. Eliminate Application Process for Home Occupations, File ZA-04-03

Council President Lancaster called the public hearing on amendments to Municipal Code Chapter 19.424, home occupations, to order at 6:57 p.m.

Staff Report

Ms. Rouyer provided the staff report. The proposed ordinance would eliminate application requirements for home occupations, and the City Council had previously discussed this amendment in a work session. This was business-friendly ordinance that would eliminate arduous application and enforcement processes for staff and more importantly on business owners who operated out of their homes. Staff believed it could be as effective dealing with enforcement issues on a complaint basis as it was with the application process. Staff would annually provide a fact sheet on what was and was not allowed in operating home-based businesses.

The purpose of the hearing was to hear comments on the proposed ordinance that would eliminate application requirements for home occupations. This was a legislative decision by Council and was based on applicable Comprehensive Plan policies and provisions of implementing ordinances.

The City Council decision was the final decision of the City. All testimony and evidence was directed toward the applicable substantive criteria. Failure to address a criterion or raise an issue with sufficient detail would preclude an appeal based on that criterion or issue. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who submitted written comments or testified and signed the City Council attendance sign-up sheet.

Conflicts of Interest

Councilor Loomis announced that he had a home occupation and asked if that would be an issue.

Mr. Firestone said if a Councilor was in the same category as many other people, then that was not a conflict of interest. In this case the category was broad and in his understanding of the law, that was not a conflict of interest.

There were no other conflicts of interest declared, and there were no challenges to any member's ability to participate in the decision.

Correspondence: None.

Public Testimony: None.

Council Questions of Staff: None.

Council President Lancaster closed the public testimony portion of the hearing at 7:05 p.m.

Deliberation and Decision

Councilor Stone thought this was a good idea in terms of streamlining the process. She understood that this fee was adopted to help enforce people who had businesses in their homes that might not be doing everything on the up-and-up but that there had not really been problems with enforcement in terms of complaints.

Ms. Rouyer replied that the City only got a handful of complaints a year and staff responded to those issues.

Mr. Firestone understood the complaints arise whether or not the home occupation went through a process.

Councilor Stone asked if this fee was typically applied in other jurisdictions.

Mr. Firestone said the fee had to be tied to the cost of administration. The City determined how much time it took to process the applications, and it should balance. He believed it was within the range of any fee.

Councilor Stone understood that no revenue was generated in this process and was put in place as an enforcement tool. Do other cities have similar types of fees and charge more?

Ms. Rouyer responded home occupation regulations were in place to protect the neighborhoods from businesses that did not conform.

Mr. Firestone added a lot of other jurisdictions have a one-time application, and the fees tended to be higher.

Councilor Loomis said this action would not change any regulations, and the home occupations would still be required to adhere to those requirements.

It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings by title only and the adoption of an ordinance eliminating the application process for home occupations. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance two times by title only.

The City Recorder polled the Council: Councilors Barnes, Loomis, and Stone and Council President Lancaster 'aye.' Motion passed unanimously among the members present. [4:0]

ORDINANCE NO. 1941:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 19.424 HOME OCCUPATIONS.

OTHER BUSINESS

A. Council Meeting Dates

Mr. Swanson explained this matter came before the City Council after about one year of trying out a new schedule. In January 2004, the Council combined the work session and the regular session on one evening. The work sessions were bleeding into the regular session times, or some work session items were postponed. He recommended changing the start time of the regular session to 7:00 p.m. and continuing to hold work sessions at 5:30 p.m. The Charter required that the City Council hold at least two

CITY COUNCIL REGULAR SESSION – NOVEMBER 2, 2004

Draft Minutes

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regular meetings a month, and the code further defined the responsibilities and stated that the regular session should begin at 7:00 p.m. in the Council Chambers. The public has been notified of the 6:30 p.m. start time by annually adopting a blanket resolution. If adopted, the proposed resolution would become effective in January.

It was moved by Councilor Loomis and seconded by Councilor Stone to adopt the resolution setting Council meeting dates and times. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 37-2004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE, ESTABLISHING THE TIMES OF THE SAID MEETINGS, AND REPEALING RESOLUTION NO. 50-2003.

Transit Center Update

Mr. Swanson said this item would appear on the second meeting agenda of each month. In adoption of the recommendation for the transit center, one of the provisions in the resolution was a monthly report on the status of the project. He hoped by doing this, it would keep the issue before the City Council and keep TriMet's and Metro's feet to the fire.

He discussed several important issues. The Main Street alignment through the LPA process was originally recommended by the South Corridor Policy Committee, and the City Council action changed some of those recommendations. In some way the South Corridor Policy Committee, chaired by Metro Councilor Brian Newman, would probably have to revisit those issues. The Committee would not convene until January at the earliest. TriMet was trying to prepare for the park-and-ride at Southgate. He believed TriMet purchased the property through a negotiated settlement and was in discussion with the planning department on how best to configure Southgate for a park-and-ride. TriMet was also hoping to start the downtown improvements and help begin implementing some of the downtown elements. The parking was important because of the North Main development, as 120 spaces would be lost. The timing issue was very important. The other issue was money. The transit center phase 1 was in part going to be funded by 5309 Bus Funds, and everyone was wondering what would happen with that money in Washington, D.C. As far as light rail issue was concerned, they were now scrambling for money to do the Environmental Impact Statement (EIS). Presently, there was a request to the MTIP process, but even if the request was granted, they would still be about \$2 million short to finish phase 2 of the South Corridor light rail process. Money was an issue in both the transit center and light rail issues. Information may be sparse for some time. Money issues may not be determined in Congress until January.

Councilor Stone commented on behalf of the City Council and City regarding recent death of a very upstanding citizen, Jean Michel. She announced his Celebration of Life on December 5 at the Milwaukie Center.

Councilor Lancaster discussed the Council President election in January.

ADJOURNMENT

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

Council President Lancaster adjourned the regular session at 7:20 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager
JoAnn Herrigel, Community Services Director

From: Grady Wheeler, Information Coordinator

Subject: Printing contract for City newsletter

Date: November 22, 2004

Action Requested

Authorize staff to award Printing Today the contract to print the City's Newsletter, the *Milwaukie Pilot*, for a one-year term with the option of extending the contract on an annual basis, up to five years.

Background

With the City's current contract with Printing Today expiring in October of '04, staff conducted an open bidding process in soliciting interested contractors. The City placed a legal advertisement in the November 5, 2004 edition of *The Oregonian* that described the contract's requirements.

The three responding contractors were evaluated in four areas: vendor qualifications, quality of work, production turnaround and cost. The cost category was weighted most heavily, followed by production turnaround, quality of work and vendor qualifications.

The vendor's qualifications were ascertained through reference checks and were evaluated in terms of timeliness, reliability and level of customer service. The quality of work rating was determined after viewing the printer's samples in interviews, and the production turnaround and cost values were determined after

reviewing the printer's quotes on cost and turnaround as submitted in the Request for Proposals.

Concurrence

The Community Services Director concurs with this decision.

Fiscal Impact

Printing Today submitted the lowest bid at \$32,195. The money would be allocated from the Advertising and Publicity line item of the Community Services budget. Adequate funding is available in this fiscal year.

Work Load Impacts

NA

Alternatives

- Direct staff to reject this bid and review other submitted bids
- Reject all bids and advertise the job again



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: November 15, 2004
Subject: **O.L.C.C. Application – Stargazer Gift Baskets – 9423 S.E. 32nd Avenue**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Stargazer Gift Baskets – 9423 S.E. 32nd Avenue.

Background:

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



To: Mayor and City Council

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

From: Jeffrey King, Project Manager

Subject: Letter of Support for 2007-2008 TE Projects

Date: November 22, 2004 for December 7, 2004 Council Meeting

Action Requested

The Council is requested to authorize the Mayor to sign a letter of support for the Main Street Pedestrian Enhancement Project grant application submitted to ODOT under the Transportation Enhancement (TE) Program.

Background

Staff is seeking a letter of support for the Main Street Pedestrian Enhancement Project submitted to ODOT under the TE program.

On September 8, 2004 ODOT received applications under the Transportation Enhancement 2007-2008 Program more commonly know as TE. Approximately 79 projects were received by ODOT accounting for \$50 million in requests. There is \$7.9 million in available funds. The City of Milwaukie submitted an application for "Main Street Pedestrian Enhancement Project." The \$655,000 project is located on sections of Harrison and Main Street in downtown Milwaukie. The project includes new sidewalks, curbs, bike lanes, crosswalks, ramps, street trees, period lighting and streetscape furniture. An application was made to Metro under the MTIP for this same project, which provides the City with two opportunities for funding.

ODOT is now seeking comments on projects considered for TE funding until December 15, 2005. Public comments include letters of support, e-mails and faxes. Decision on final awards will be announced in March 2005.

Concurrence

Community Development, Planning and Engineering support sending this project to Council for their review and support.

Fiscal Impact

TE grant is for \$583,000. City would be required to provide a \$7,000 match beginning in 2007. Match could be spread over two fiscal years.

Work Load Impacts

This phase of TE coordination includes drafting a support letter and requesting residents to support Milwaukie projects. This is part of existing Community Development staff workplan.

Alternatives

- Authorize the Mayor to sign the project letter of support for project.
- Decline to offer letter of support.

Attachments

- City of Milwaukie TE project letter of support.

December 7, 2004

Pat Fisher
TE Program Manager
ODOT Local Government Section
355 Capitol Street, NE #326
Salem, OR 97301

Dear Ms. Fisher,

Please accept this letter from the City of Milwaukie as formal comment and support on our highest transportation priorities for the 2007-2008 Transportation Enhancement (TE) Program. The top priority for the City of Milwaukie is the Main Street Pedestrian Enhancement Project. This projects is vital to the improved mobility, town center redevelopment and more efficient transportation in Milwaukie.

The Main Street Pedestrian Enhancement Project is a key element in the redevelopment of the Town Center. The project scope includes new sidewalks, curbs, lighting, ADA ramps, scored intersection crossing, bulb-outs, urban street trees, and streetscape furniture. The Downtown Pedestrian and Streetscapes Improvement Project supports several important goals. It will address current pedestrian and other multi-modal safety deficiencies; it will enhance the pedestrian experience and increase mobility; and it will help support further private investment in the downtown. Uniquely, the project will make a connection between two planned multi-modal and streetscape projects. The Boulevard Improvements Project on McLoughlin Highway and the North Main Mixed Use Redevelopment Project are both slated for construction in 2005. They account for \$18 million in new investment in the Town Center. The TE project would allow for continuous access from the Willamette Riverfront Park to downtown businesses, parks and municipal services.

On behalf of the City of Milwaukie, I respectfully request that Metro fund this critically important project within the TE program.

Thank you for your consideration of our request.

Sincerely,

James Bernard
Mayor

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
RECORDING THE CERTIFIED ELECTION RESULTS FOR THE NOVEMBER 2, 2004
GENERAL ELECTION.**

WHEREAS, Section 13 of the Charter requires the certified elections results be made a part of the record of proceedings of the City Council; and

WHEREAS, the election results from the November 2, 2004 General Election have been certified by the Office of the Clackamas County Clerk; now, therefore;

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
CLACKAMAS COUNTY, OREGON THAT:**

Section 1: The certified election results, attached hereto as Exhibit "A" and incorporated herein, are hereby made a part of the record of proceedings of the City Council.

Section 2: This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on December 7, 2004.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP

NUMBERED KEY CANVASS

CLACKAMAS COUNTY, OREGON
GENERAL ELECTION
NOVEMBER 2, 2004

RUN DATE: 11/17/04 04:39 PM

REPORT-EL52 PAGE 0094

MILWAUKIE CITY COUNCIL POS 1

VOTES PERCENT

VOTES PERCENT

VOTE FOR 1

01 = CARLOTTA COLLETTE

3,972 51.48

04 = WRITE-IN

65 .84

02 = SARAI ST. JULIEN

462 5.99

05 = OVER VOTES

2

03 = MIKE STACEY

3,216 41.69

06 = UNDER VOTES

3,245

	01	02	03	04	05	06
0051 PRECINCT 051	459	81	361	6	0	415
0053 PRECINCT 053	438	42	293	6	0	275
0054 PRECINCT 054	390	42	260	5	0	266
0056 PRECINCT 056	313	31	308	6	0	233
0057 PRECINCT 057	356	53	417	9	0	355
0058 PRECINCT 058	271	15	233	7	0	275
0060 PRECINCT 060	484	34	344	6	0	338
0062 PRECINCT 062	470	51	340	8	1	382
0063 PRECINCT 063	410	50	321	11	1	369
0064 PRECINCT 064	381	63	339	1	0	337

CERTIFIED COPY OF THE ORIGINAL
 SHERRY HALL, COUNTY CLERK
 BY: *Darlene Kenney*
 Deputy
 NOV 19 2004

NUMBERED KEY CANVASS

CLACKAMAS COUNTY, OREGON
GENERAL ELECTION
NOVEMBER 2, 2004

REPORT-EL52 PAGE 0095

RUN DATE: 11/17/04 04:39 PM

MILWAUKIE CITY COUNCIL POS 3
VOTE FOR 1
01 = JOE LOOMIS
02 = WRITE-IN

VOTES PERCENT
5,755 98.01 03 = OVER VOTES
117 1.99 04 = UNDER VOTES

VOTES PERCENT
0
5,090

	01	02	03	04
0051 PRECINCT 051	683	16	0	623
0053 PRECINCT 053	551	10	0	493
0054 PRECINCT 054	504	11	0	448
0056 PRECINCT 056	482	9	0	400
0057 PRECINCT 057	580	21	0	589
0058 PRECINCT 058	395	5	0	401
0060 PRECINCT 060	664	11	0	531
0062 PRECINCT 062	654	11	0	587
0063 PRECINCT 063	615	17	0	530
0064 PRECINCT 064	627	6	0	488

CERTIFIED COPY OF THE ORIGINAL
SHERRY HALL, COUNTY CLERK
BY: *Darlene Denby*
Deputy
NOV 19 2004



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Gary Firestone, City Attorney

**Subject: Clackamas ESD Conditions of Approval re: Meetings
CSO-00-06**

Date: November 18, 2004

Action Requested

Approval of application by Clackamas Education Service District to amend conditions to allow increased meetings on a permanent basis. Specifically, staff recommends that the Council replace the existing conditions of approval relating to meetings and customary business hours with the following:

- a. A maximum of 20 daytime meetings per month are allowed, with a maximum attendance of 100 persons per meeting.
- b. A maximum 8 evening meetings per month are allowed, with a maximum attendance of 100 persons per meeting.
- c. Customary business hours shall be 7:00 am to 8:30 pm.

Background

The Council approved a Community Service Overlay for property owned by Clackamas ESD at 4011 Lake Road on September 12, 2000. At that time, a condition of approval was imposed limiting the number of meetings to 14 daytime meetings, not to exceed 25 persons, and 2 evening meetings, not to exceed 30 persons. Regular business hours were limited to 7:00 am to 6:00 pm. On December 19, 2003, the Council approved an increase in the number of meeting to 20 daytime meetings with a maximum of 100 persons and 8 evening meetings

with a maximum number of 100 persons. Customary business hours were changed to 7:00 am to 8:30 pm. These changes to the conditions of approval were approved on a temporary basis only. The conditions allowing the increased number of meetings and increased operating hours have since expired. Clackamas ESD now seeks a permanent change in the conditions of approval to allow it to hold meetings and have customary hours as was permitted during the temporary increase.

The limitations on meetings were originally imposed out of concerns with impacts on the neighborhoods. The key standards in allowing Community Service Overlays is whether the public benefits of the proposed community service use will outweigh the possible negative impacts. MC 19.321.4D. After the Clackamas ESD opened, Clackamas ESD received requests from other entities, including the Lake Road Neighborhood Association and the North Clackamas School District, to hold meeting in the ESD building. Clackamas ESD sought and obtained a temporary change in the conditions of approval to allow an increased number of meetings, increased attendance at meetings, and longer customary operating hours.

During the time that the increased meetings were allowed, the City received no complaints regarding the meetings. The only complaint that the City is aware of regarding the Clackamas ESD building is a complaint by one person that some persons turn left out from the ESD property onto Lake Road, ignoring the right turn only sign. This issue appears unrelated to the number of meetings. Staff believes that Clackamas ESD is making efforts to limit improper left turns from the site.

Given the lack of complaints regarding the additional meetings and the fact that many of the additional meetings are public meetings that serve the community, staff believes that allowing the increase in the number of meetings, attendance at meetings, and customary operating hours will serve the public interest and that the benefits to the public outweigh and negative impact on the community that may result from increased traffic.

Recommended Findings and Conclusions

1. CSO-99-08 was approved on September 12, 2000, approving community service use of property located and 4011 Lake Road, with conditions limiting the number of meetings and customary business hours at the site.
2. A temporary increase in the number of meetings was allowed between December 18, 2003 and May 31, 2004.
3. During the time additional meetings were allowed, additional meetings were held and no reports of any adverse impacts from those meeting was received.

4. In addition to meeting by the owner of the property, Clackamas ESD, meetings of other public organizations, including North Clackamas School District and the Lake Road Neighborhood Association, have been held on the property.
5. Allowing up to 20 daytime meetings and 8 evening meetings per month, with a maximum attendance of 100 persons per meeting, has only a limited adverse impact on the neighborhood. Allowing those meetings is in the public interest because it allows important public meetings to be held in an appropriate facility. The benefits to the public from allowing the meetings outweigh any the adverse impacts.
6. With the expanded meetings and hours allowed by the modification of the conditions, the use of the property by Clackamas ESD remains in the public interest with the benefits to the public outweighing the possible adverse impacts of the community service use.

Recommended Conditions of Approval to Replace Existing Conditions

1. A maximum of 20 daytime meetings per month are allowed, with a maximum attendance of 100 persons per meeting.
2. A maximum of 8 meetings per month are allowed, with a maximum attendance of 100 persons per meeting.
3. Customary business hours shall be 7:00 a.m. to 8:30 p.m.

Concurrence

The Planning Director, City Attorney, Community Development Director, City Manager have been consulted on this matter.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

1. Keep the existing restrictions.
2. Remove restrictions on meetings and delete any reference to customary hours of operation.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: November 23, 2004
RE: Agreement Between City and Milwaukie Pioneer Cemetery Association re Leona Knutson Trust Fund

Action Requested

The action requested is to approve the proposed agreement between the City and the Milwaukie Pioneer Cemetery Association and Cemetery trustees (Association) with respect to establishing rules governing the Leona Knutson Trust Fund (Trust).

Background

Earlier this year the City Council took two significant actions affecting the City's future relationship with the Cemetery. One was adoption of an amendment to the original agreement with the North Clackamas Parks and Recreation District (District). The amendment adopted in 2004 omitted the Cemetery from the list of parks and open spaces transferred to the District in 1992. The second was an agreement between the City and the Association setting forth certain understandings, including use of the Trust.

In late 2003 the Council authorized the City Attorney to file an action in the Circuit Court to appoint successor trustees to manage the Cemetery. The deed that created the Cemetery in the latter half of the 19th century also appointed trustees to manage the Cemetery. Successor trustees were appointed until the last one passed away in 1985. The appointment of successor trustees once again provided the management function as envisioned by the original grantors.

With the appointment, the City's only role was to administer the funds given to the City in 1995 pursuant to the estate of Leona Knutson. Those funds were to be used "for care and upkeep of [the] Milwaukie Pioneer Cemetery." Given this very limited role, I asked the City Attorney whether or not the City could assign the Trust to the Association. It was not possible to do so without both

endangering future use of the funds and without incurring significant costs that would be borne by the Trust. Thus, the City must continue to administer the Trust.

In conducting this review, I thought it best to further define roles with respect to the Trust. For example, if the Cemetery trustees are responsible for management of the Cemetery, they should have a major voice in the projects that are undertaken. The City's interest should be to ensure that the funds are expended for the broad purpose envisioned by Ms. Knutson. Thus, the proposed Agreement defines the City's and the Association's roles and responsibilities as well as limitations upon both parties.

AGREEMENT

The City of Milwaukie (City) and the Milwaukie Pioneer Cemetery Association and individual trustees (Association) agree as follows:

RECITALS

- A. Ownership and management of the Milwaukie Pioneer Cemetery is vested in trustees appointed pursuant to the terms of the original deed of real property from Henry W. and Jane Eddy and William and Fidelia Meek dated _____.
- B. On April 19, 2004 the Clackamas County Circuit Court appointed the following as successor trustees pursuant to the terms of the said deed: Dolly Macken-Hambright, Mark Neubauer, Madalaine Bohl, and the Milwaukie Pioneer Cemetery Association.
- C. On January 20, 1995 the Multnomah County Circuit Court entered an order distributing twenty-five percent of the residue of the estate of Leona O. Knutson in the approximate amount of \$36,795 to the "City of Milwaukie, Oregon . . . for care and upkeep of Milwaukie Pioneer Cemetery", and the City has administered the funds continuously as a trust account (Trust) within the City budget.
- D. On May 4, 2004 the City and the Association entered into an agreement governing the use of Trust funds by the Association for maintenance of the Cemetery, including "landscape maintenance and repair of any structure or fixture within the cemetery, including grave markers."
- E. It is in the interest of the City and the Association to more specifically set forth terms governing the use and disposition of the Trust.

AGREEMENT TERMS

- 1. The City and the Association each covenant to use the Trust funds and all income earned only for direct costs for the care and upkeep of the Milwaukie Pioneer Cemetery, and the City and the Association each further covenant that no funds described in Paragraph 1 shall be used for administrative costs. Association expenditures of Trust funds shall be only by majority vote of the duly appointed trustees.
- 2. The Association shall have sole discretion to determine projects for which funds are to be spent, and the City may refuse payment only when a proposed expenditure violates the allowable purposes set forth in Paragraph 1.
- 3. The City shall maintain the Trust as a separate fund within the City budget, and it shall maximize investment earnings in a manner consistent with Oregon law.
- 4. Paragraph 2 of the May 4, 2004 Agreement between the City and the Association is amended to read as follows: The City and the Association covenant to maintain a minimum balance in the Trust of twenty-five

thousand dollars (\$25,000) unless otherwise agreed by the City and the Association.

5. The City shall annually budget as an amount for use by the Association the difference between the projected year end fund balance and the minimum balance as described in Paragraph 4, and the Association may draw up to the budgeted amount once each City fiscal year by forwarding a request for funds to the City Finance Director.
6. The City shall provide the President of the Association with an annual fiscal year accounting of the Trust no later than July 31 of each year, and the Association shall provide the City Finance Director by July 31 with: (1) a statement of actual expenditures from Trust funds for the preceding City fiscal year certifying proper use of the funds pursuant to Paragraph 1; and (2) the name of each duly appointed trustee.
7. The provisions of this Agreement may be amended only in writing and by mutual consent of the City and the Association.



To: Mayor and City Council

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

From: Jeffrey King, Project Manager

Subject: Status Report on Economic Development Grant Projects and Regional Partners

Date: November 19, 2004 for December 7, 2004 Meeting

Action Requested

1. The Council is requested to review the status report and provide feedback on economic development grant implementation tasks.
2. The Council is requested to decide on a one year membership renewal to the Regional Partners for Business.

Background

Periodically, staff has met with Council to gather feedback and provide an update on implementation of economic development grant tasks. The City received a \$25,000 grant from the Mt. Hood Economic Alliance to further economic development efforts in the City. Staff is now providing an updated status report on efforts to date.

A. Economic Development Grant Tasks

1. **Business Outreach & Visitation Program**
Completion Date Goal: Phase I May 10-December 30, 2004: On-going

Outreach meetings held since the last Council update include Precision Casparts, Oregon Cutting Systems. OLCC and Spot Security. Other

meetings held date have been with Marquis Company, OECO, and Mackay Photo Pak. The meetings have included Mayor Bernard, Councilor Barnes, Greg Jenks from Clackamas County Economic Development and Jeff King. The response from the companies we have met has been very positive. The business were pleased to find interest and to be able to meet with City elected officials. Most of the companies are either currently adding jobs or are considering new growth. They also were interested in some of the business resources information that we presented. Staff is providing follow-up services to encourage and support additional job creation and growth. These services include potential enterprise zone applications, workforce training grants and assistance, energy efficiency programs, financing, state tax credits and demographic and cost data. Over the summer a letter signed by the Mayor announcing the business visitation program was sent to the City's twenty-two largest employers.

Other Milwaukie companies slated for outreach and visitation shortly include ODS Health Plans, Harder Mechanical, Albertson's, WW Metal Fabrication, Bob's Red Mill, Portland Mechanical, Dark Horse, Key Bank, McGrath's Fish House and Johnson Controls.

**2. Inventory and profile of available industrial and commercial sites
Completion Date Goal: January 30, 2004**

A Consultant was hired recently to create a detailed profile of 19 of the largest sites and a basic profile of an additional 19 other sites. This profile will be placed on the City's website. Jeff King and our consultant Otak, met with the City's IS Department to develop a format for placing this site information on our website. It will include a map and an index page of sites that can be clicked on for more detailed information on a specific site.

The Community Development Project Manager maintains an inventory of available commercial and industrial sites throughout the City. Currently, the inventory resides with the Project Manager. Once a more detailed site profile has been completed, it will be posted on the City's website. It has been effective in providing quick turnaround to businesses seeking sites. Companies seeking information have included Oregon Cutting Systems, Spot Security, Carpets for Kids, Portland Mechanical and Safefresh. Staff has also established relationships with many of the area brokers. Recently, profile information on ten Milwaukie industrial/commercial sites was included on the statewide OregonProspector.com website.

**3. Develop an Economic Development/Enterprise Zone Marketing Flier
Completion Date Goal: September 30, 2004**

Councilor Barnes, Grady Wheeler and other staff members have been working with a consultant team on production of a marketing flier. The flier has been completed and is now being distributed to Chambers of Commerce and other economic development organizations or departments such as Clackamas County and Oregon Economic and Community Development Department. It will also be used for targeted business recruiting. The final product received was 2,700 copies of a professionally produced multi-color glossy two-sided sheet.

**4. Develop an Economic Development Section on the City's Web Site
Completion Date Goal: January 30, 2005**

Otak was recently hired to gather and complete economic development content for the City's website. Staff also continues to develop content and has researched a number of existing community websites. Community Development staff organized with Otak, our consultant, and the City's IS staff to coordinate efforts and develop a common format. Content sections will include demographics, doing business in Milwaukie (utilities, workforce, transportation, taxes, etc.), Contacts & Links, Business Sites, Business Assistance/Resources, Contacts & Links, and Success Stories.

**5. Establish an Economic Development Advisory Committee
Completion Date Goal: June- January 30, 2004**

The short-term Milwaukie Economic Development Advisory Committee has been established and has held three meetings to date. Members are a mix of business and public sector leaders including the Mayor, City Councilor Barnes, City Councilor-elect and NDA representative Carlotta Collette, a Planning Commission representative and others that were approved by Council. Attendance has been very high and members are quite engaged. Topics have included grant task review and overview, communication and cooperation, analysis of strengths, weaknesses, opportunities and threats/challenges, business development resources, commercial and retail issues, economic development and livability, and developing a shared vision. Meetings will be completed by late January/February 2005. A final report of suggestions and recommendations will be prepared and presented to Council at the conclusion of the committee meetings.

6. Industrial Land Infill Feasibility
Completion Date Goal: May 1 – October 30, 2004

This project will determine the feasibility of developing a 6.5-acre parcel of land abutting the International Way Industrial Park at the corner of International Way and Lake Road. The grant funded an initial transportation study to identify traffic issues and any barriers to development. The land has now attracted a developer who is planning to build 80,000+ sq.ft. of industrial flex space in four buildings. The City has completed annexation. The developer has completed a pre-application meeting with the City, prepared a traffic impact study and formally submitted a site plan. The Planning Department is now reviewing the application, which is slated for Planning Commission review sometime in December or January. The developer and broker have indicated that a number of businesses are already interested in the site. Staff is now in the process of identifying a potential grant from ODOT that will support transportation improvements at the intersection of International Way, Harmony and Lake Roads.

7. Industrial Building Reuse Assessment
Completion Date Goal: January 30, 2005

A consultant has been hired to help identify re-use opportunities of an underutilized facility in the North Main Industrial Area. A number of consulting hours will be provided to assist in filling space within a vacant facility in North Milwaukie Industrial area. Assistance will consist of retrofit and reuse assessments such as site characteristics, plant layout and design, engineering and market strategies to improve the likelihood of obtaining a long-term occupant in the selected building. The consultant is also preparing a template for the City to use in assessing similar sites in the future. Planning and Community Development are working in coordination with the consultant and the selected site property owners.

B. Regional Partnership for Business Development

The Portland Area Regional Partnership for Business has completed its first year as a more formalized and expanded organization to address shared economic priorities and an improved business climate for the region. The partnership encompasses a six-county area and includes cities, counties, business associations, Metro and utilities among its 28 members. Fourteen cities are now members including Happy Valley, Lake Oswego, and Wilsonville in Clackamas County.

During this past year, the Regional Partners completed a regional business plan, expanded membership and created sub-committees to focus on specific issues.

Subcommittees include metals, medical devices, silicon and display technology clusters, land use, marketing and community economic development strategy.

The Regional Partners also expanded memberships and qualified for a U.S. Economic Development Administration (USEDA) grant. The completion of a community economic development strategy (CEDS) will enable the partners and member communities to compete for USED A funds for the first time in decades.

The Regional Partners is still a fledgling organization and is working to gain visibility and champions. It answers to the Metropolitan Portland Task Force (MEPTF) and is working on turning that into a standing executive committee made up of elected officials and other high ranking leaders in the region. Membership in Regional Partners still provides both direct and indirect benefits to the City. They include:

- Providing a seat at the table that includes Milwaukie in regional economic development policy making
- Includes Milwaukie projects or needs in the CEDS strategic plan
- Includes Milwaukie in marketing efforts
- Milwaukie will be eligible for US EDA funds
- Keeps Milwaukie informed on business resources and regulatory changes
- Keeps Milwaukie networked with getting business leads from others and support and assistance from other economic development professionals.

Jeffrey King is the current Milwaukie representative to the Regional Partners. It is recommended that Milwaukie also name an Alternate. This alternate may be an elected or staff person.

Concurrence

Community Development, Planning, IST Department and the City Manager's Office support the implementation of economic development grant program and action steps.

Fiscal Impact

The total of these proposed economic programs and tasks under the grant project is budgeted at \$57,000. The budget consist of a \$25,000 grant from Mt. Hood Economic Alliance, \$14,000 cash match by the City, \$8,000 in-kind match by the City (staff time, space, etc.) and \$10,000 through the North Main Property Owners Group in the form of a transportation access study. The \$14,000 cash match from the City is in the FY2004/2005 budget. To date \$7,300 has been spent with another \$29,000 under contract. The renewal of the Regional Partners for Business membership is \$3,000.

Work Load Impacts

The proposed economic development program is included in the Community Development annual work program. Some tasks are being completed with consulting assistance.

Alternatives

1. Renew membership in Regional Partners for Business for one year.
2. Decline to renew membership in Regional Partners for Business.

Milwaukie, Oregon Enterprise Zone

*Small Town Amenities,
Big City Infrastructure...*

Welcome to the Best of Both Worlds

The City of Milwaukie is a vibrant oasis of livability and commerce optimally positioned within the Portland metropolitan area. Already home to many regional and national companies, the city is making additional investments to grow its business base: revitalizing its downtown core, upgrading its Riverfront Park, improving transportation... and rolling out the red carpet for new and expanding businesses.

By locating in Milwaukie's Enterprise Zone, your company is eligible for tax exemptions and other incentives to help boost your bottom line.

In addition, a team of local, regional and state partners will lend their expertise to help your business succeed.

Come join Precision Castparts, Johnson Controls, ODS Companies (health plans), ADP, Pendleton Woolen Mills, Bob's Red Mill, Dark Horse Comics and award-winning Providence Hospital in Milwaukie.

Now's the time to make your move.



Testing equipment at OEKO, Milwaukie.



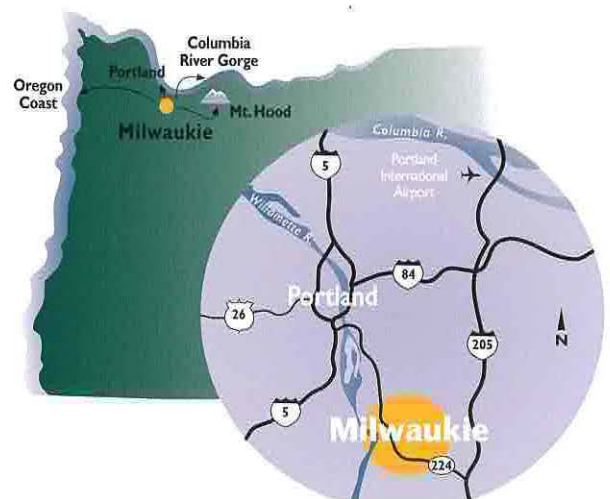
Bob Moore, CEO of Bob's Red Mill, with an employee.

Advantages of Locating Your Business in Milwaukie

- No sales or inventory tax; no City of Milwaukie business income or payroll tax.
- Educated, 300,000+ labor force within a 7-mile radius.
- One of the lowest labor turnover rates in the U.S.
- Located on four-lane state highways. Excellent access to interstates, rail and nearby international airport; 10 minutes from downtown.
- Variety of industrial, office and distribution sites available at competitive rates.
- Nearby proximity of the growing "Silicon Forest" cluster of high-tech industries.
- More than 10 colleges and universities in the area.

Enterprise Zone Incentives

- 100% property tax exemption (land and some personal property excluded) for first three years with \$25,000 minimum investment and net employment growth.
- Exemption may be extended to five years, depending on wages.
- Assistance with application and other business resources.



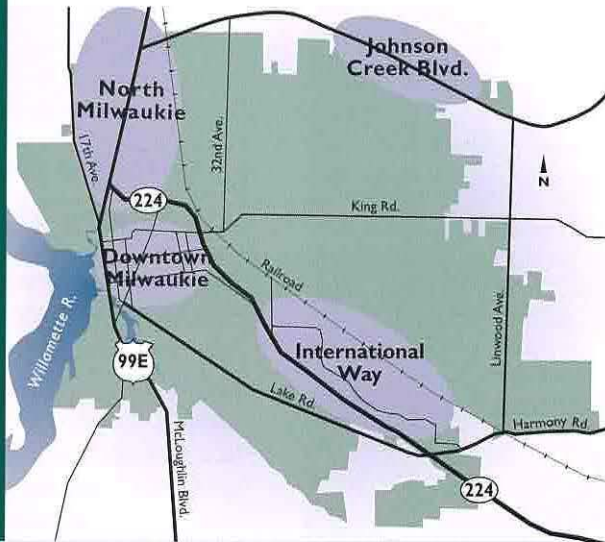
Why You'll Love Milwaukie

- Located along the scenic Willamette River, immediately adjacent to the Portland metropolitan area.
- Diverse housing opportunities from affordable to upscale.
- Active neighborhood associations.
- Public schools with a reputation for educational excellence.
- Named as one of the 50 best locations in the nation to raise a family.
- Accessible and responsive city councilors and government.
- Nearby proximity to the Oregon Coast, the Columbia River Gorge and Mt. Hood, which offers diverse recreation opportunities.

Sites Available

Industrial/commercial properties from 1,000 to 150,000 square feet available for sale or lease in four areas:

- International Way — 11 properties
- North Milwaukie — 12 properties
- Johnson Creek Blvd — 3 properties
- Downtown/Other — 14 properties*



Some sites come with additional land available for lease or sale. Many have space that can be subdivided. Rail spur available on some. Areas zoned for industrial use (office, distribution, warehouse, manufacturing), have full infrastructure, and offer Enterprise Zone benefits.

* Number of properties available when filer was published. Contact city for current specifics.



Milwaukie, Oregon
Now's the time to make your move.

Contacts:

Jeff King
Community Development Project Manager
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503.786.7609 or 503.786.7600
kingj@ci.milwaukie.or.us
City website: www.cityofmilwaukie.org

Greg Jenks
Business and Economic Development Coordinator
Clackamas County
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015
503.353.4328
gregjen@co.clackamas.or.us
County website: www.co.clackamas.or.us

Milwaukie, Oregon. Enterprise Zone



MEMORANDUM

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler, Chief of Police

Subject: Notification of Private Vehicle Tows

Date: November 8, 2004

Action Requested

Adopt an ordinance amending City Code 10.54 to require that tow companies notify the Milwaukie Police Department prior to towing vehicles from private property.

Background

Private property owners have contracted with tow companies to patrol their property and to tow vehicles that were not authorized to be on the property. Oregon state statues require that tow companies who impound vehicles or property from private property report to the local police jurisdiction the identification information of impounded vehicles within onehour of the vehicle being impounded. Many of the tow companies participating in private property patrols fail to make the required timely notification.

The Police Department has responded to complaints from apartment residents. An example is the mother whoreturned home from the grocery store with her two children in the car, parked her car in a non-designated parking space adjacent to her apartment, and took her two children into her apartment only to return to find her car missing along with her groceries. The Police Department responded to the reported stolen car and learned more than twohours later that the complainant's car had been towed as a private property impound.

On another occasion nearly ten months ago, a Milwaukie Police Detective responded to investigate the sexual assault of a child. The Detective parked his police car in a designated parking area. The police car's mobile radio was clearly audible outside the car along with various pieces of police identification on the seat of the police car. The Detective needed his camera and returned to where he had parked his police car only to find that the car was missing.

After nearly two hours the police car was identified by the tow company as a police car, and the tow truck driver was directed to tow it back to Milwaukie. The tow company dispatcher and the tow truck driver acknowledged that they recognized the police radio and police identification inside the car and that towing the police car was a mistake.

Unfortunately, the owner of the tow company demanded that the Milwaukie Police Department pay the cost of towing the police car both ways. When challenged as to why they had not notified the jurisdiction where the tow occurred within the one-hour requirement identified in State law, the tow company replied that they were in the process.

In response to the tow company's demand for payment, and after considerable conversation, I declined to authorize payment and suggested that they take legal action if they felt they had a legitimate claim. Subsequent correspondence from the tow company withdrew any claims.

Interviews with tow truck drivers suggest that they spend uncommitted work time prowling contracted parking lots. In some instances they report sitting and waiting for someone to park in violation of the impound notification signs and when the driver leaves the car, move in quickly and hook-up the car and quickly leave before the driver returns.

Tow truck drivers report that they frequently drive around with the impounded vehicle behind their tow truck as they look for other impound opportunities. In some cases they report unhooking the current towed vehicle and leaving it at the curb while they impound another vehicle. In some cases the impounded vehicle doesn't get back to the tow lot, or reported to the police jurisdiction involved, for hours.

To add insult to injury, tow companies charge the owner tow mileage and storage fees even if the impounds are stored behind the tow truck as it drives around looking for other vehicles to impound. These are but a few examples of the nature of predatory tow companies and their questionable business ethics.

Recommendation

To reduce the tow companies' opportunity for further abuses, the Police Department recommends the amendment of Title 10 of the Milwaukie City Code by adding Chapter 10.54. This amendment would require tow companies engaged in private property impounds notify the Milwaukie Police Department *prior* to impounding the vehicle. Failure to meet this requirement shall result in the assessment of a \$50.00 penalty for each incident payable to the City of Milwaukie.

Concurrence

Milwaukie Police Department
Milwaukie City Attorney

Fiscal Impact

There will be negligible fiscal impact.

Work Load Impacts

Our Dispatch Center will likely see some increase in pre-impound reporting v. post-impound reporting by private tow companies. The impact will be negligible except for the tow companies who currently violate the one-hour reporting require established by State law.

The Police Department will conduct a mail notification to all tow companies operating in the metro area along with a copy of the adopted changes to the Milwaukie City Code. An example of the proposed notification is attached.

Alternatives

Allow private tow companies to continue to operate in their current, unregulated predatory mode.



November 9, 2004

**Tow Company
Xxxx Street
Anytown, USA**

Subject: Milwaukie City Code 10.54.020 – Private Impound Notification Requirement

To Whom It May Concern:

The Milwaukie Police Department has received numerous complaints regarding the late reporting of private property vehicle impounds resulting in the Police Department needlessly accepting stolen vehicle reports only to later find that the complainants car had been towed as a private property impound. Some tow companies have been observed watching contract properties that are marginally signed as tow lots in anticipation of seizing a vehicle from an unsuspecting owner or operator. This conduct is deemed by many to be predatory in nature and not inline with the legal intent of removing unauthorized vehicles from private property. In some instances the impounded vehicle has not been reported as a private property impound for many hours, thus generating questionable tow and storage fees.

However, in an effort to remedy the tow company reporting failures, the Milwaukie City Council adopted an ordinance on December 30, 2004 requiring private impounds occurring in the City of Milwaukie be reported to the Police Department ***prior*** to the vehicle being seized. Failure, or late reporting of private vehicle impounds shall result in the assessment of a \$50.00 penalty for each incident.

I have included a copy of Milwaukie City Code 10.54.020 for your reference. All private property impounds shall be reported to the 24-hour Milwaukie Dispatch Center at 503-786-7500.

Yours truly,

Larry R. Kanzler
Chief of Police

Cc: Kathi Alford, Administrative Commander

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING CHAPTER 10.54, TOWING OF VEHICLES FROM PRIVATE PROPERTY.

WHEREAS, the City Council has determined that it is in the public interest to require notification to the City prior to towing of vehicles from private property without consent of the owner of the vehicle; and

WHEREAS, regulation is necessary to ensure that vehicles are not towed without proper justification; and

WHEREAS, notification can alert the police to vehicles that have been reported stolen or are otherwise involved in illegal activity, now; therefore,

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: Title 10 is amended by adding Chapter 10.54 as follows:

10.54.010 Definitions

For the purpose of this chapter, the following definitions shall apply:

“Private Property Police Tow” means any vehicle that is towed under Section 10.54.020 that is found to have been reported stolen, or for any other reason requires a police release.

10.54.020 Towing of Vehicles from Private Property

- (A) Any person towing and/or impounding a vehicle from private property in the City of Milwaukie without consent of the owner of the vehicle shall notify the Milwaukie Police Department prior to towing the vehicle.
- (B) The method of notification shall be a telephone call to the City Police Department prior to attaching any equipment to a vehicle on private property.
- (C) Release of a vehicle designated as a private property police tow is prohibited without a release or other authorization from the appropriate police agency.

10.54.030 Penalty

- (A) Late reporting or failure to report prior to tow will result in the assessment of a penalty. The penalty shall be \$50.00 for each incident. Penalties shall be payable to the City of Milwaukee.

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

Read the second time and adopted by the Council on _____.

Signed by the Mayor on _____.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

City Attorney
Ramis Crew Corrigan & Bachrach, LLP

srb/milwaukee/police/TowOrdinance



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: November 23, 2004
RE: Designation of Acting City Manager

ACTION REQUESTED

The action requested is adoption of the proposed ordinance authorizing appointment of an Acting City Manager and delegating the necessary authority and responsibility.

BACKGROUND

Since my appointment as City Manager I have appointed Pat Duval as Acting City Manager during the times I have been on vacation. My purpose has been twofold. First, I am often unreachable during a vacation, and I believe that it is important to maintain continuity in the management function. Second, I want to be unreachable during a vacation, and the knowledge that I have competent backup permits me to absence myself.

However, while I may be transferring my responsibilities, absent authority in the Municipal Code, I am not effectively transferring the requisite authority. This became apparent to me during our recent emergency exercise. Once an emergency is declared, the City Manager is vested with police powers (i.e., the authority to impose a curfew, etc). I am not comfortable that an Acting City Manager possesses that authority—even though she may have been designated.

Thus, the purpose of this ordinance is to ensure that both the responsibility and authority are transferred upon a designation. One might argue that Milwaukie Charter, Section 27(e)—MANAGER PRO TEM is applicable. It provides for Council appointment of a Manager Pro Tem in a variety of situations, including “the absence of the manager from the city.”

The proposed ordinance does not prevent the Council from exercising its authority under Section 27. In addition, the proposed ordinance creates a simple way in which less significant absences can be handled.

**CITY OF MILWAUKIE
ORDINANCE NO. _____**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT AN ACTING CITY MANAGER AND DELEGATING NECESSARY AUTHORITY TO THE ACTING CITY MANAGER AND ADDING A NEW CHAPTER 2.07 TO THE MUNICIPAL CODE.

WHEREAS, the City Manager possesses certain powers delegated to the position by the Milwaukie Municipal Code; and

WHEREAS, at such time as the City Manager might be temporarily unavailable, it is advisable that authority be vested in another person to ensure the continuity of management responsibility.

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 2.07 in the form of Exhibit A attached hereto and incorporated by this reference.

Read for the first time on _____ and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the Council on _____.

Signed by the Mayor on _____.

Mayor

ATTEST:

Pat DuVal, City Recorder

Approved as to form:

City Attorney

Date

EXHIBIT A
To Milwaukie Ordinance No. _____

Chapter 2.07 Acting City Manager

2.07.010 Purpose

The purpose of this Chapter is to ensure continuity of management authority and responsibility during such time as the City Manager is temporarily unavailable.

2.07.020 Appointment of Acting City Manager

In the event of the temporary unavailability of the City Manager, the City Manager may designate a management employee of the City to serve as the Acting City Manager. The designation shall be for a specific period of time not to exceed fifteen consecutive work days, and it may be revoked at any time without notice.

2.07.030 Powers and Duties of the Acting City Manager

The Acting City Manager shall assume the duties of and possess the powers of the City Manager during the designation made pursuant to this Chapter. In the event the Council appoints a Manager Pro Tem as authorized by Charter Section 27, the Manager Pro Tem and not the Acting City Manager shall have the duties and powers of the City Manager.



To: Mayor and City Council

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

From: Gary Firestone, City Attorney
John Gessner, Planning Director

Subject: Measure 37 Implementation

Date: November 29, 2004

Action Requested

Adopt the attached ordinance revising the Measure 37 Ordinance to make some minor corrections needed to avoid risks of collateral claims and litigation.

Background

On November 16, the Council adopted an Ordinance to provide a process for the City to follow when Measure 37 claims are submitted. The process included a requirement that those who file invalid claims pay the City's costs. Failure to pay costs would result in a lien for those costs. The City Attorney has determined that there is a risk that the lien would be considered to be a property tax subject to Measure 11. Therefore, an amendment has been prepared that would delete the provision creating the lien, but would leave the requirement to pay in place and would make no other substantive changes.

Key Issue

Should the City impose a lien for nonpayment of costs when imposition of the creation of the lien would create the risk that the obligation to pay costs would be considered a property tax, which could reduce the amount the City could collect?

Concurrence

The City Attorney, City Manager, Community Development & Public Works, and Planning Director concur with the proposed amendment.

Fiscal Impact

The removal of the lien could add to transaction costs by requiring the City to seek a judgment against those who are required to pay costs and fail to do so. However, it could increase the amount recovered because the amount collected would not be “compressed.”

Work Load Impacts

The amendment is not likely to affect work loads of City staff.

Alternatives

The Council has the following decision-making alternatives:

1. Adopt the amendment.
2. Leave the original ordinance in place without modification.

Attachment Proposed Ordinance Amendment

**CITY OF MILWAUKIE
ORDINANCE NO. ____**

**AN ORDINANCE AMENDING ORDINANCE NO. 1940 RELATING TO
PROCEDURES FOR MEASURE 37 CLAIMS**

WHEREAS, on November 16, 2004, the City Council adopted Ordinance No. 1940 relating to procedures for Measure 37 claims; and

WHEREAS, the City Council has determined that minor changes to Ordinance No. 1940 are necessary to avoid any possibility that the requirement to pay costs be considered a property tax; now, therefore

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 1940 is amended by amending Exhibit A of that ordinance to read as shown on the revised Exhibit A attached hereto and incorporated by this reference.

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

Read the second time and adopted by the Council on _____.

Signed by the Mayor on _____.

Mayor

ATTEST:

Pat DuVal, City Recorder

Approved as to form:

City Attorney

Date

REVISED EXHIBIT A
to Milwaukie Ordinance No. _____

Chapter 1.20 Compensation for Reduction in Property Value

1.20.010 Purpose

The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

“Affected property” means the private real property that is alleged to have suffered a reduction in fair market value as result of the City’s regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.

“Claimant” means the property owner who submits a written claim for compensation under Section 1.20.030.

“Regulation” shall mean any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City.

“Restricts the use of property” means prohibiting a particular use of the property or making that use only permissible under certain conditions. Standards that regulate the form of development, how a structure must be constructed, or how grading or fill is to be conducted, such as yard setback requirements, height limitations, erosion control measures and building code standards, are not restrictions on the use of property, provided they allow reasonable use of the property for uses permitted at the time the owner acquired the property. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

“Manager” means City Manager or designee.

1.20.030 Application for Compensation

A. A property owner wishing to make a claim against the City under Measure 37 shall first submit a written demand for compensation to the City. A written demand for compensation is one that includes:

1. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

2. The name and contact information of the person making the claim , the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property.
3. Identification of the regulation that is alleged to restrict the use of the affected property and the amount of compensation claimed.
4. The amount claimed as compensation.

B. The City encourages but does not require the person claiming compensation to include the following information with the written demand for compensation:

1. A statement describing how the restriction affects the value of the property.
2. A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation.
3. A statement whether the application seeks compensation or a waiver, suspension or modification of the regulation.
4. A list of all persons with an ownership interest in or a lien on the property.
5. An appraisal showing the difference in the property value with and without the regulation. The City encourages the use of certified or licensed appraisers.

1.20.040 Notice

The City shall provide notice of the hearing required by Section 1.20.070 to all owners of the property, lien holders and security interest holders, record owners of property within 250 feet of the property, the neighborhood association for the neighborhood where the property is located, and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim, list a city contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

1.20.050 Staff Report

City staff shall prepare a report analyzing the claim. The staff report shall be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the City Council. Staff may discuss options with the Claimant and may enter into a settlement agreement with the Claimant as to actions within staff's authority. Staff may agree with Claimant that staff will recommend a particular course of action to the City Council if staff lacks authority to commit to the action.

The staff report shall be submitted to the Council, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by Section 1.20.070.

1.20.060 City Council Proceedings

The City Council shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of the demand for compensation but may be set at any time. The City Council may hold an executive session on the claim at any time.

1.20.070 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The City Council may limit the duration of testimony.

1.20.080 Council Decision

In deciding the claim, the City Council may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:
 - a. The regulation does not restrict the use of the private real property,
 - b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.
 - c. The claim was not timely filed.
 - d. The Claimant is not the current property owner.
 - e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.
 - f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

- g. The regulation is required by federal law.
 - h. The regulation protects public health and safety.
 - i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted by the City.
 - j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.
 - k. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through g. The basis for this finding must be clearly explained.
 - l. The City has not established a fund for payment of claims under Measure 37.
2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.
 3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.
 4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be as to the property only unless the City follows the procedure for a legislative land use decision.
 5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the written demand for compensation was filed. The specified date shall allow the City time to process the contributions and pay compensation.

The City Council may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The City Council may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the City Council directs staff to negotiate, the Council shall set the matter for further action no less than 175 days from the date of the notice of claim became complete. If the City Council directs staff to negotiate, it may delegate authority to staff. The Council shall take final action within 180 days of the written demand for compensation. The City shall take actions 2 through 5 only if it determines the claim is valid.

1.20.090 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.080, including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code. The City may retain an appraiser to assist the Council determination.

1.20.100 Reimbursement of Costs

If a claim is denied and ultimately determined to be invalid, the Claimant shall reimburse the City for the costs the City incurred in processing the claim.

1.20.110 Severability

If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

**North Clackamas Parks and Recreation District
Milwaukie Center/Community Advisory Board
Minutes of October 8, 2004**

Members present: Joan Staley, Ben Tabler, Jim McCready, Chuck Petersen, Kim Buchholz, Sharon Phillips, Eleanor Johnson, Jane Hanno, Molly Hanthorn, Kathi Schroeder

Member Excused: Katie Rudfelt
Guests: Carolyn Mills, Malinda Iakob
Staff Present: Joan Young

Call to Order: Kim called the meeting to order at 10:02 am. Chuck moved and Jim seconded approval of the minutes of August 13, motion carried. Sharon moved and Ben seconded approval of the minutes of August 27, motion carried.

Correspondence: Abi Croisant resigned as she had taken a job which would not allow her to attend meetings. Joan Newman declined to apply for another term.

Action Item: Malinda submitted an application to join the board and introduced herself to the board. Her application will be on the agenda at the November meeting.

Board/Committee Reports

Executive Committee: Did not meet.

NCPRD Board: Eleanor distributed copies of a letter Charlie Ciecko sent to Jonathan Mantay outlining the process used and the recommendation made by the Parks Board concerning the North Clackamas Park ball fields. The Parks District offices have moved to Sunnybrook.

North Clackamas Aquatic Park Task Force: Molly reported on the meeting on September 29. Staff provided the group with answers to many questions that had been raised in earlier meetings. The Task Force will meet on Wednesday, Dec 1. This meeting will be an opportunity to work with a facilitator to review and consider the mass of information and suggestions gathered so far.

Budget & Finance: Did not meet.

Programs and Services: No meeting.

Nutrition & Transportation: No meeting but reminder of Big Band dance the last Sunday of the month and the Bazaar coming up. The buffet serving tables have arrived.

Building Review: Jim reported that 3 HVAC units have been replaced and the 4th unit repaired. The wood floors were refinished during shutdown. The halls and several rooms were repainted and lots of other cleaning done. The contract janitorial service needs to be

improved. Soft spots in the roof are being watched. The sliding door will get a new closing unit.

Friends of the Milwaukie Center: Eleanor reminded about the Bridge Tournament. Entertainment books are here and for sale.

Center Report: Joan announced Rachel has a new job in Ashland. Tina is bridging the gap in recreation office. Safety Day is coming up. Milwaukie Centennial Memory Books are for sale.

Information/Announcements: Kim complimented Tina for her work on travel cooperation with Willamette View. Jane mentioned there are lots of new trips available and they are high quality. Chuck shared information on the Clearwater Project meetings that are taking place. Sharon announced the Candidates Fair being hosted by the Milwaukie Historic District.

Meeting adjourned at 11:20 am.

m. hanthorn, secretary

North Clackamas Parks and Recreation District
MILWAUKIE CENTER DIVISION
Monthly Report for October, 2004

Programs & Services

October 13, staff facilitated the first annual Safety Awareness Day, providing participants contact with personnel from Clackamas County Fire District #1, Milwaukie Police, American Medical Response, Red Cross, AARP 55-Alive, Providence Milwaukie Hospital Physical Therapy Dept. to access information about a variety of personal safety issues. Staff also conducted a fire drill with on-site participants as a part of the day's activities.

Forty-seven people enjoyed the Travel Program's annual Mystery Trip to Rasmussen Farm, Bonneville Dam and Eagle Creek Fish Hatchery. The December Christmas Lights Tour already has 2 full busses with a total of 40 people signed up. The Travel Program has 3 new volunteers allowing the desk to be open Monday – Friday and planing more trips!

Center volunteers provide blood pressure checks twice a month, aiding those concerned about high blood pressure or other medical conditions to keep current on their blood pressure readings. Last year 139 folks were served with almost 800 blood pressure checks.

Milwaukie Center's Fall programs are hopping. Fall term classes are in process with over 200 students for twenty eight different offerings. Eight Activity groups, led by volunteers, involve a number of older adults in shared interests.

Fall Community Garden Day on October 30 was sponsored by Clackamas County Master Gardeners, with 23 people accessing the service and 80 soil samples tested.

Fund-raising

The Friends of the Milwaukie Center hosted 80 bridge players for a successful annual Bridge Tournament. Cash prizes were awarded to top winners and there were door prizes from Tebo's, Billy Reed's, and McGrath's. A light lunch was provided, thanks in part to Albertsons and HomeTown Buffet.

The Nutrition Program's annual Best in the West Bazaar was a bustling, great success with a huge bake sale and forty craft vendors. The Bazaar grossed \$2,387.

The second monthly Big Band Dance, a cooperative effort between the Nutrition Program and Brad Davis' Kansas City Rhythm Kings Band, was a quiet affair on Halloween night, with only 29 participants. Staff is working on publicity and outreach to the dance community to boost attendance at future dances.

Coming up

Famous Sunday Thanksgiving Dinner – a benefit for Meals on Wheels in north Clackamas County – Nov 14, 3-5 pm. Enjoy roast turkey and all the fixin's for only \$6 pre-purchased, \$7 at the door, children under 12, \$3.

Big Band Dance on Sunday, Nov 28, 5-8:30 pm. \$8.50 each or \$15 per couple. Dance to the big band sounds of Brad Davis' Kansas City Rhythm Kings! The deli Bistro will be open and wine available for purchase from Marquam Hill Vineyards.