

MINUTES

4898

MILWAUKIE CITY COUNCIL DECEMBER 2, 2003

CALL TO ORDER

Mayor Bernard called the 1923rd meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster	Councilor Deborah Barnes
Councilor Joe Loomis	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	Steve Campbell, Code Compliance Coordinator
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Alice Rouyer, Community Development/Public Works Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Historic Moments

Councilor Barnes read the history and prophecy of the Milwaukie School graduates written by Adam Keck in 1908. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

Mayor Bernard announced the City flags would be flown at half-mast honoring retired Milwaukie Detective Sergeant Lon Loudenback from sunrise Friday, December 5 until after his funeral on December 6, 2003. Swanson described the request he made to Governor Kulongoski's Office to authorize this action.

Scott Cook, 16721 SE Blanton, Milwaukie, member of Milwaukie Masonic Lodge, was interviewed for a vacant position on the North Main Developer Selection Committee. Cook was involved with the process in its early phases and agreed to apply as the Milwaukie Masonic Lodge representative to replace Michael Davis who recently resigned.

Councilor Lancaster asked Cook if he thought he could remain objective in the North Main Redevelopment project and any other redevelopment that might take place in the downtown area.

Cook understands the purpose of his involvement is to ensure Lodge interests are addressed with parking as its primary concern. He will do his best to be objective but will work to ensure Masonic Lodge concerns are heard.

Councilor Barnes noted Cook was not a registered voter and asked him if he intended to do so.

Cook recently moved to this location and intends to register soon. He looks forward to being involved with the North Main Project and becoming re-engaged in the process.

Mayor Bernard believes the Milwaukie Masonic Lodge has been a good partner in the process.

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 17, 2003; and**
- B. **Water Vulnerability Assessment Contract Award.**

Motion passed unanimously.

AUDIENCE PARTICIPATION -- None

PUBLIC HEARING – None scheduled

OTHER BUSINESS

Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Tree or Tree Limbs – Ordinance

Code Compliance Coordinator Steve Campbell presented the staff report in which the City Council was requested to adopt an ordinance amending Milwaukie Municipal Chapter 8.04. The current code requires that property owners keep noxious vegetation to 8 inches or less. The purpose of the amendment more clearly defines real property and extends owner responsibility to include right-of-way adjacent to the real property. The City currently asks the property owner to keep down vegetation in the public right-of-way and most citizens comply voluntarily.

The amendment further adds a section regarding dead, decaying or unsafe trees or tree limbs. The dangerous tree code addresses the permitting process but does not give the

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City authority to require that the unsafe tree be removed. This ordinance would allow staff to make the determination of whether or not the tree is dead and let the property owner move forward. The proposed amendment gives the City the ability to enforce.

Councilor Stone understands the City can enforce a property owner's removal of a dead or decaying tree on both private property and the public right-of-way.

Campbell said that is what this amendment proposes.

Firestone said, for the City to be able to order the removal of a tree on private property, it must be identified as a safety hazard to the public or to the adjacent property. So if a tree were in the middle of a private property and some distance from the property line, the City's ability would be limited.

Councilor Stone asked if it could be written more specifically.

Firestone advised that the City's ability to adopt a reasonable enforcement policy could be restricted if the ordinance is written too specifically. He noted the provision refers to trees that "present a safety hazard to the public or adjacent property." Firestone feels that it is clear and allows a reasonable amount of discretion while stating the tree must be a safety hazard to the public or property.

Councilor Loomis believes this is needed. There are quite a few trees in the City that have been brought to his attention that are on private property and could cause damage to an adjacent building or injure people. There are problem areas in the public right-of-way where trimming needs to be done. He asked Campbell to describe the process if someone has a tree that needs to be removed.

Campbell said the code enforcement department prides itself on voluntary compliance and working with the property owner. He would first meet at the property and look at the tree. If the owner feels the tree is not a hazard, an arborist can be called to make that determination. He would work with the property owner to make tree removal arrangements. Campbell discussed developing a list of contractors who might offer discounted prices. He would work with property owners who have financial constraints.

Councilor Loomis hopes Campbell will follow up on the idea of creating a list of nearby, reliable contractors with estimated prices.

Mayor Bernard agreed a list of contractors who are licensed and insured would be good but did not believe the City could pre-qualify any tree removal contractors.

Councilor Lancaster has major concerns with creating the list of contractors. The city attorney would probably be quick to point out the serious liability involved with a recommended list or contractual pre-arrangement for discounted services. If the City intends to do that, it will have to develop pre-qualification criteria. The City would be

responsible if the contractor fails to perform. While the concept of helping property owners is great, the issue is bigger than it appears on the surface.

Firestone said the City can create such a list but cannot be too restrictive. If someone wants to be on the list, they can be added. There could be some filtering by categorizing services such as contractors who have agreed to offer a 10% discount. The City cannot restrict who goes on the list as long as the contractor is willing to do the work and meets the basic qualifications.

Councilor Lancaster felt the Council needed to address the policy issue regarding private property and the manner in which a danger to the public is determined. Although he has no problem asking the general public to take care of right-of-way in front of their property, he is concerned about certain Milwaukie neighborhoods that have very large fir trees in the public right-of-way. If the property owner is asked to take full responsibility for those trees, then a serious hardship could be created for that party. The Council needs to think about establishing some sort of process in which property owners can partner with the City and get assistance in remedying the problem. The property owner is already responsible for getting the permit. He has a problem with putting an undue burden on the property owner under certain circumstances.

Mayor Bernard suggested amending the proposed ordinance to read dead or decaying tree limbs. There are a lot of trees along King Road and even on Main Street that have branches hanging in the public right-of-way. If the tree is identified as a great hazard, the tree could be removed and a lien placed on the property. He does have a problem with removing the entire tree and creating a burden for the property owner.

Campbell said he sees some limitations in doing that. The tree that started this process is full-sized, and a portion is torn off and hanging over Van Water Street. There was nothing in the code to deal with that type of situation. He was not sure limiting the amendment to tree limbs would address fully what staff is trying to accomplish.

Firestone proposed another approach for discussion purposes if the City Council is interested in limiting financial impact on a property owner for tree removal. The property owner could be responsible for an established dollar amount above which the City assumes the balance. There could be qualifications such as who planted the tree and who is responsible for its condition. If there is an old tree in the public right-of-way, the City could assume some responsibility over a certain dollar amount.

Councilor Loomis suggested a 50/50 arrangement between the City and the property owner.

Firestone said the Council could use either a dollar amount or a percentage method.

Councilor Lancaster had been thinking in terms of a threshold at which point City participation is initiated. In case where a resident has planted a tree in the public right-of-way that person should take full responsibility for the outcome. He feels it is a

different story if the tree was there when the property owner moved in. He would like to see the City establish a fair maximum threshold that the property owner pays with the City picking up the balance for large existing trees. He asked for an estimate of how many trees were being discussed.

Campbell has not seen a lot. Branches are the biggest issue. There have been about 6 to 10 trees identified as being unsafe. Most residents think it should be the City's responsibility, but there are budget constraints. Some residents have called with concerns about trees on adjacent properties, and staff tries to work out issues through mediation.

Councilor Barnes asked for a cost estimate to remove a large tree.

Councilor Loomis said there are a lot of variables, so it would be difficult to make an estimate.

Firestone added it would also depend on whether the timber is marketable.

Councilor Loomis is in favor of ceiling cost and then the City and property owner going 50/50 on the balance.

Mayor Bernard understands currently fines for cutting trees in the right-of-way go into the general fund, and he suggested that money go to the code enforcement fund for a tree removal assistance program. He recommended considering this proposal during the budget process.

Councilor Lancaster thought all the money should go to the code enforcement fund to address these types of issues in the future. The money from a marketable tree should go to fund the whole activity. Any balance from the proceeds should be banked in code enforcement for future activities in which the City might have liability.

Councilor Stone favors the percentage idea because every circumstance is different.

Councilor Lancaster thought it might be helpful to set a bottom threshold of \$500.00, for instance, above which the percentage scenario would be initiated. This would be similar to an insurance deductible.

Campbell said this ordinance would most likely address larger trees, so the removal costs will be on the high end.

Councilor Lancaster has no problem with the limb aspect because the cost would not be exorbitant; however, big trees are a different matter.

Swanson suggested re-writing section B by adding: "dead, decaying or unsafe tree limbs that present a safety hazard to public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal and if the owner of the

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real property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal." He used the term net cost in the event some of the tree is sold for lumber.

Mayor Bernard thought the deductible should be included.

Councilor Lancaster asked what an appropriate deductible amount might be.

Councilor Loomis asked Swanson to read the amendment a second time.

Swanson read section B: "dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal and if the owner of the real property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal." If Council wants to add the deductible, it would be, "the City shall be responsible for fifty percent (50%) of the net cost in excess of the dollar amount of the deductible."

Councilor Lancaster said now that he has heard it read, it would be simpler without the deductible.

Mayor Bernard asked if he would be responsible for all the trees on Main Street because he planted them as part of a downtown project. Does this mean the City would be responsible for all the trees on Main Street that require removal?

Campbell said the City would be responsible for 50%.

Councilor Lancaster was willing to drop the deductible with the 50/50 arrangement.

Councilor Stone was fine with removing deductible. Looking at this ordinance amendment, she noted a discrepancy with the staff report that does not mention limbs. She supported the 50%.

It was moved by Mayor Bernard and seconded by Councilor Lancaster for the first and second readings by title only and the adoption of an ordinance amending municipal code chapter 8.04 as amended.

Councilor Barnes is concerned about a retired couple with a dead tree they did not plant. 50% might mean no food or medication for a month. She hopes there is a resource for those in the community who are not wealthy and by no fault of their own have a dead tree in their backyard. There must be a list of contractors who would do this type of work pro bono for certain cases.

Councilor Stone asked how much the tree on Van Water would cost to remove.

Campbell said removal would probably cost \$1,500 to \$3,000. The house, he added, is a rental.

Mayor Bernard is confident the City will make the costs as easy as possible on the citizens while being responsible for the protection of others. He is more concerned about those who live next door and are simply mad at their neighbor, so they complain about the tree.

Campbell discussed the possibility of a payment plan.

Swanson commented if the City abates the nuisance, it becomes a lien against the property and security against the eventual payment. These are nuisances, so eventually the City would determine the cost of the abatement and file a lien against the property. At that point some arrangement could be made.

Councilor Stone understands if property owners cannot pay up front, their portion of the cost of removal would automatically become a lien against the property.

Swanson explained the only reason the City would take action is because the tree constitutes a public safety hazard. Only when a property owner refuses, would the City decide it must take action because the tree is a danger to someone else. The City would declare the nuisance and give the property owner a period of time to abate. If the property owner refuses to take action, then the City has the choice of hiring a contractor and taking action to abate. The amount to abate the nuisance would become a lien against the property. The City would do this because the tree constitutes a public safety hazard, and its continued existence would be a concern. That is the only time the City would act.

Firestone pointed out that if staff decides the tree is a nuisance, the Council would hear any objections from the property owner. The Council would set the lien amount at a later date with or without an objection from the property owner.

Councilor Lancaster asked how frequently the City sets up payment plans.

Campbell said payment plans are set up on civil cases.

Swanson commented the last liens set by Council were about \$400 each.

Councilor Loomis thought some of the contractors might offer a payment plan.

Swanson said if there is a dangerous situation, the City has to act to protect the public, but it will also work with the property owner.

Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Loomis, Councilor Lancaster, and Councilor Stone aye; Councilor Barnes nay; no abstentions. Since the vote was not unanimous, the city manager read the CITY COUNCIL MEETING DECEMBER 2, 2003

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ordinance one time by title only with the amendment to section B to read: “Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal, and if the owner of the property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal.”

Mayor Bernard announced the second reading of the ordinance will be at the December 16, 2003 City Council meeting.

Councilor Lancaster takes Councilor Barnes’s comments to heart being a participant in the Walk a Mile Program, which has dramatically changed his perspective.

Amend Municipal Code Chapter 12.04 – Administration of Sidewalk Construction and Repair – Ordinance

Campbell presented the staff report in which the City Council was requested to adopt an ordinance amending Municipal Code Chapter 12.04 related to administration of sidewalk reconstruction and repair. Currently the code requires that property owners keep sidewalks in front of their properties in good repair in terms of cracked and broken panels or other problems that might cause a tripping hazard. Staff would like to extend that language to read “safe condition.” This would require the property owner to keep the sidewalk free of trip hazards such as accumulated leaves, acorns, snow, and other types of debris.

Councilor Lancaster asked if property owners who do not have sidewalks would be held to the same standards for the streets in front of their properties.

Campbell said there is already an ordinance in place that addresses public and private property and conditions that would create a nuisance to pedestrian traffic and not limited to sidewalks.

Councilor Lancaster asked if there is a greater cost in meeting the safe level versus the repair level.

Campbell said the proposed amendment speaks to sweeping debris such as leaves, nuts, and snow off the sidewalks. This is a matter of the property owner’s responsibility. Staff regularly cautions people that raking leaves into the street is not acceptable because storm drains become clogged.

Councilor Lancaster said certain properties would have a greater burden such as the streets leading to the new King Road Safeway development. He wants to ensure property owners clearly understand their responsibilities.

Campbell said each month there is a “Code Corner” in *The Pilot* newsletter and is one piece of the education process. The second piece is handing out flyers in the downtown

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area. The intent is not to write citations but to have safe, neat sidewalks. The amendment is to clarify the liability is not upon the City.

Councilor Lancaster wants to make sure the standards are clear.

Councilor Stone asked how many miles of sidewalks there are in the City. There are not really that many. Have there been problems?

Campbell was not sure how many miles of sidewalks are in the City. Debris on sidewalks has been brought to his attention several times. Some people think it looks bad, and others have actually complained of injuries from slipping on leaves, stepping on acorns, or tripping on a tree grate.

Mayor Bernard commented on the tree grates and how some downtown business and property owners do not feel responsible for maintenance.

Councilor Loomis understands this is a safety issue and not a beautification issue. If someone trips, who is responsible?

Campbell replied the current code reads that the property owner is responsible.

Firestone explained the amendment simply adds leaf, debris, snow and ice removal and similar maintenance requirements to the existing physical repair requirements.

Councilor Loomis asked if staff could look into grant programs for sidewalk repair.

Mayor Bernard commented the City of Portland has a contractor repair sidewalks, and if the property owner does not pay the contractor, the cost goes against the property as a lien.

Campbell said there are complaints about the cost of sidewalk repair, but it is important to keep walkers safe.

Councilor Stone asked the average cost of sidewalk repair including the permit cost.

Campbell said it depends on how extensive the repair is. If it involves tree roots pushing up a concrete panel, the tree has to be removed and the sidewalk repaired. One panel with the permit fee included can cost \$500 - \$1,000.

Councilor Stone said it seems this is another issue of hardship.

Campbell said the sidewalk repair is already in the code. The proposed amendment adds maintenance to the property owner's responsibilities.

Councilor Stone realizes the code is already in place, but there is no way to help those with financial needs.

Mayor Bernard said the Council would look into a grant program or some kind of hardship program for sidewalk repair and tree and limb removal.

Campbell said there are likely some assistance programs available.

Councilor Stone asked if homeowner insurance covers any of this.

Campbell replied insurance companies do not do anything until there is a claim.

Councilor Barnes said the difference for her is a person who deliberately causes a code violation versus a person, who through no fault of their own, is required by the City to do something but does not have the money to remedy the situation. She is uncomfortable with an ordinance that does not offer an option for assistance.

Campbell agreed there needs to be a balance.

Councilor Lancaster would like to delineate between gross negligence and benign neglect.

It was moved by Mayor Bernard and seconded by Councilor Lancaster for the first and second readings by title only and the adoption of an ordinance amending municipal code chapter 12.04

Councilor Stone asked if there would be something in this ordinance about hardship cases.

Mayor Bernard said the proposed ordinance refers to sweeping sidewalks in order to remove debris such as leaves, acorns, ice and snow. The repair section of the existing chapter would have to be amended.

The group agreed to look at that element in the future once staff returns with more information.

Motion passed unanimously. The city manager read the ordinance two times by title only.

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Loomis, Councilor Lancaster , and Councilor Stone aye; no nays; no abstentions.

**ORDINANCE NO. 1928:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL
CODE CHAPTER 12.04 – ADMINISTRATION OF SIDEWALK
RECONSTRUCTION AND REPAIR.**

Other

Councilor Barnes thanked Madalaine Bohl for preparing historic moments throughout the City's Centennial year.

Mayor Bernard announced the Council would hold an Executive Session immediately following adjournment of the regular session under the authority of Oregon Revised Statutes 192.660(1)(g) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 7:10 p.m.

Pat DuVal
Pat DuVal, Recorder



AGENDA

MILWAUKIE CITY COUNCIL DECEMBER 2, 2003

MILWAUKIE CITY HALL
10722 SE Main Street

1923RD MEETING

REGULAR SESSION - 6:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
- II. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- III. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of November 17, 2003 Work Session and Regular Session**
 - B. **Water Vulnerability Assessment Contract Award**
- IV. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None scheduled
- VI. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. **Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Trees or Tree Limbs – Ordinance (S. Campbell)**
 - B. **Amend Municipal Code Chapter 12.04 – Administration of Sidewalk Construction and Repair – Ordinance (S. Campbell)**
- VII. **INFORMATION**

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment of the regular session pursuant to ORS 192.660.

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

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: November 10, 2003
RE: FYI Memo for the Weeks of November 24, 2003 Through
December 5, 2003

December 1, 2003 Work Session

The work session begins at 5:30 P.M. with a light dinner and information sharing among the Council. Please come prepared with items of information that might be of interest to your colleagues. In addition, if you have questions pertaining to any item on the 12/02/03 agenda, please feel free to raise them at that time.

Agenda items for the work session are as follows:

1. **Riverfront Park Name Selection:** The City's Park and Recreation Board in cooperation with the Riverfront Board has selected three names for the riverfront park. Council will consider the input of these boards and the neighborhood associations in selecting a final name, which will be announced at the closing Centennial event on December 20, 2003.
2. **Consideration of a Change in the City Council's Meeting Schedule:** For a number of years the Council has separated its work sessions and regular meetings into two separate evenings. The only requirement is a Charter provision that provides for two monthly meetings at a time and place which the Council "designates." This item requests that Council discuss returning to a schedule whereby the work session and regular meeting are scheduled on the same evening.

December 2, 2003 Regular Meeting

The regular meeting will convene at 6:00 P.M. in City Hall.

Agenda items for the regular session are as follows:

1. **Water Vulnerability Assessment Contract Award:** This item is a request to authorize the City Manager to sign a contract with Kennedy/Jenks Consultants to prepare a vulnerability assessment of the City's municipal water system for an amount not to exceed \$27,500. The Public Health Security and Bioterrorism Response Act of 2001 and the Bioterrorism Act of 2002 require a vulnerability assessment of community water systems. The assessment takes into account the vulnerability of the water supply, transmission, treatment, and distribution systems to attacks and acts of sabotage or vandalism. It also considers risks posed to the surrounding community related to attacks on the water system.
2. **Amend Municipal Code Chapter 8.04-Weeds and Noxious Growth, Dead or Decaying Trees or Limbs:** The addition of this language to the Code will extend responsibility for maintenance of property to the right-of-way adjacent to an owner's property. Section B adds dead, dying, and decaying trees to that vegetation which is considered unsafe and should be removed.
3. **Amend Municipal Code Chapter 12.04-Administration of Sidewalk Construction and Repair:** The addition of language to the Code obligates an owner of property to maintain a sidewalk in a manner that provides for the public's safety. At present, the Code only provides that a sidewalk be maintained "in good repair."

Other Items of Interest

1. City facilities are closed on Thanksgiving Day and the day following Thanksgiving—November 27 and 28, 2003.
2. There is a Centennial Volunteer Reception on December 2, 2003 from 4:30 P.M. until 5:30 P.M. in the City Hall Conference Room. Please stop by and thank those folks who stepped forward to make the Centennial happen. Events such as these often are planned years in advance, but little had been done to prepare for the City's 100th birthday. Without their time and energy, nothing would have been possible. They deserve our thanks.
3. Do not forget the final Centennial event on December 20, 2003 beginning at 3:30 P.M. with the burial of the time capsule and continuing with the events at the riverfront at 5:00 P.M.

MAYOR/COUNCIL COMMUNICATION AGREEMENT

Guaranteed access to clear and easily understood information is a value of the City of Milwaukee. These agreements are intended both to foster conduct that realizes that value, while ensuring a healthy debate about competing ideas. Finally, they seek closure and a community that moves forward together, secure in the knowledge that decisions were made openly and fairly.

The agreements have one common behavioral thread—mutual respect. Thus, if the list does not anticipate a situation, a response that is respectful of all concerned should suffice.

1. In all Council events, work sessions, and meetings:

- I demonstrate respect for all who are involved;
- I respect all thoughts and ideas;
- I clarify facts and opinions to ensure understanding;
- I do not personalize my comments;
- I clearly state my own opinion as being mine;
- I look for ways to praise efforts and accomplishments; and
- I stay focused and participate.

2. In working with the Mayor and Councilors:

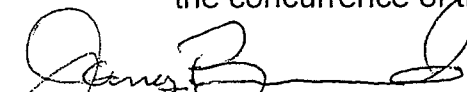
- I provide them with reasonable notice of matters I am introducing at meetings;
- I always represent the City's position before other jurisdictions unless none has been adopted, in which case I inform the Mayor and Council in a timely manner of the position(s) I have taken;
- I work toward consensus;
- Once the group has acted, I accept and respect the decision, and I do not publicly ridicule the Council, any individual member or participant, or the decision; and
- I first address a concern about either a violation of these agreements or any other matter in a direct, appropriate, private, and timely manner with the person(s) involved.

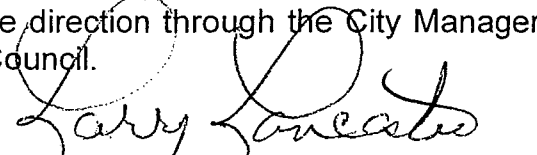
3. In working to seek broad-based community support:

- I communicate with the community to gather information; and
- I engage the community in a shared dialogue.

4. In working with staff:

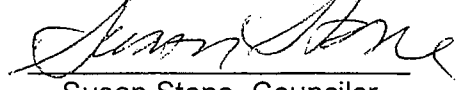
- I communicate with staff to gather information; and
- I exchange ideas with staff and give direction through the City Manager with the concurrence of the Mayor and Council.


James Bernard, Mayor


Larry Lancaster, Council President


Deborah Barnes, Councilor


Joe Loomis, Councilor


Susan Stone, Councilor

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
NOVEMBER 17, 2003

Mayor Bernard called the work session to order at 6:20 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, Community Development & Public Works Director Alice Rouyer, Project Manager Jeff King, and City Attorney Gary Firestone.

Open Public Forum

No participants.

North Main Project Update

Rouyer introduced Mike Rossman, Peak Development, and Jeff Myhre, Myhre Group Architects. She briefly reviewed the project schedule that includes reconvening the North Main Developer Selection Committee, holding a community open house, submitting the plan to the Design and Landmarks Commission in March, and starting construction October 2004. Rouyer discussed the site design, parking supply, and access to the Ledding Library and Scott Park. In addition to the commercial/residential building facing Main Street, the current design calls for a residential structure on Harrison Street. The proposed structures will be 3 to 4 levels with underground parking at the north end of the Main Street unit, and there will be about 8,500 square feet of retail space. Project personnel are working to incorporate parking needs for existing businesses. The City Council will be asked to consider the draft Development and Disposition Agreement (DDA) in January and February 2004. Rouyer indicated the state has approved the City's Vertical Housing Tax Credit application.

Mayor Bernard said he had a list of persons interested in getting more information on the housing units, and **Rossman** said, if there is interest, more units would be sold as condos.

Councilor Stone asked Rossman to describe the condo floor plans and estimated selling price.

Rossman replied the focus is on 1 bedroom with a den and 2 bedroom units that are 950 to 1,300 square feet. The costs will be about \$130,000 to \$180,000, and he noted the tax abatements would also be extended to the condo owners.

Councilor Barnes asked Rossman if there is a vision for the retail space. She is particularly interested in the marketing aspect and the types of use.

Rossman said it is early in the project to think about specific tenants. The retail area of about 8,500 square feet would house 3 or 4 users. Businesses interested in renting space will begin looking once construction gets underway.

Councilor Lancaster asked if the underground parking would be expanded if all the units go as condos.

Rossman replied that would add about 2 years to the project. Some residents may be satisfied with surface parking. Condo units will be sold at a certain price, and buyers will have options for upgrading such things as carpeting, plumbing fixtures, and cabinets.

Milwaukie Pioneer Cemetery Maintenance

City Manager Mike Swanson introduced **Dolly Macken-Hambright** and **Mark Neubauer** of the Milwaukie Pioneer Cemetery Association, Inc.

Macken-Hambright contacted Swanson about taking over maintenance of the Pioneer Cemetery by a non-profit organization. Records indicate the City had little to do with the cemetery up to the mid-1970's at which time the trustees requested the City annex the property and take over maintenance responsibilities. When the North Clackamas Parks and Recreation District was formed in the 1990's, the intergovernmental agreement authorized the District to take over property maintenance. In 1995, Leona Knutson left the City \$36,000 in her will for cemetery care and upkeep.

When this proposal was made, Swanson ordered a title search to find out who actually owned the property. He discovered the cemetery property was conveyed to three trustees in 1874 and were responsible for appointing their successors. According to the records, the last living trustee passed away about seven years ago without any successors being appointed.

Swanson recommends turning cemetery maintenance over to the non-profit and directing the city attorney to take action necessary to appoint trustees according to the original deed. The City has fiduciary responsibility because of the Knutson trust. Local Boy Scouts have been consistent in helping maintain the cemetery, and that group is represented in the non-profit organization.

Swanson has researched the proposal to this point with minimal expenditure of funds and is seeking Council direction on the next steps.

Macken-Hambright added the Cemetery Association has approved articles of incorporation and bylaws, and a request has been filed with the State Corporate Division for corporation status. She anticipates the Association will begin kick-off activities in January 2004. The group's interest is in preservation and restoration of headstone and monuments for historical interest. She discussed the probable make-up of the Board of Trustees. She is working on an inventory of the plots based on City records and a book published by the Milwaukie Museum in the 1980's.

Councilor Barnes asked what the group intends to do while waiting for its non-profit status.

Swanson replied at this time the Parks District has indicated it is amenable to transferring maintenance responsibilities, but he needs Council direction to begin the process. The City will be able to offer a modest amount of funding through the Knutson Trust. The disadvantage is that the Association cannot collect funds because it is not yet designated a non-profit organization. Trustees must still be appointed by the district court, but the Board can take over maintenance responsibilities immediately based on the limited funds the City can provide.

Councilor Barnes understands the attorney fees will be about \$1,000 and asked if that would come out of the trust.

Swanson said the trust is for care and upkeep, so he proposes attorney fees come from the regular city attorney budget.

Mayor Bernard added funds could come from various sources including Celebrate Milwaukie, Inc.

Councilor Stone understands the board manages the cemetery and is a voluntary effort. She asked if the board is accountable to the City.

Swanson explained that the trustees are basically accountable to each other and have fiduciary responsibilities under state law. The board could be sued over certain issues since it is essentially responsible for cemetery management. The City's responsibility is fiduciary under the Knutson trust.

Councilor Loomis said the condition of the cemetery is shameful and appreciates residents stepping forward to take on this project.

Councilor Stone commended everyone on their efforts.

Swanson said the board would be responsible for continuing the line of trustees. This is a different way of doing business, and he feels this meets the intent of the original donors when they gave responsibility to three citizen trustees. The line

of trustees ran out in 1994, and the original donors deserve to have their intentions honored.

Councilor Lancaster added it is critical to ensure continuation of this organization. Although he assumes the group will do so, he feels there should be a minimum maintenance standard established.

Swanson said the Milwaukie Police Department would be responsible for taking action if there were vandalism.

Macken-Hambright said typically vandalism repair takes years due to shortage of funds. Public service could be considered for those found guilty of vandalism. There was considerable damage to the Pioneer Cemetery during the 1960s and 1980s. Headstones are broken and missing as a result of vandalism and carelessness.

Public Meetings and Records Training

City Attorney Gary Firestone provided a brief Council training session on public meetings and public records.

Other

Council directed staff to put a copy of the Mayor and City Council Communication Agreements in the time capsule.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment of the work session pursuant to ORS 192.660(1)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations; and ORS 192.660(1)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation that is likely to be filed.

It was moved by Councilor Lancaster and seconded by Councilor Barnes to adjourn the work session. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 7:45 p.m.

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL
NOVEMBER 17, 2003

CALL TO ORDER

Mayor Bernard called the 1922nd meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster	Councilor Deborah Barnes
Councilor Joe Loomis	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	Steve Smith, Finance Director
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Alice Rouyer, Community Development and Public Works Director	Jason Wachs, Program Coordinator
Jeff King, Project Manager	Grady Wheeler, Information Specialist

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Centennial Year Final Events

Program Coordinator Jason Wachs and **Information Specialist Grady Wheeler** briefly outlined plans for the Centennial Closing Event scheduled for December 20, 2003. The day's highlights include burial of the time capsule, announcement of the riverfront park name, sponsor recognition, music, viewing the Christmas Fleet, refreshments, and bonfire.

Historic Moments

Councilor Barnes read a poem about the Milwaukie Pioneer Cemetery from *The Western Star*, 1850. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

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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 October 20 and November 3 & 4, 2003;
- B. Award Contract for Final Design of Seismic Upgrade to Elevated Tank; and
- C. Resolution No. 49-2003: A Resolution of the City Council of the City of Milwaukie, Oregon Acting as the Local Contract Review Board, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2003 – 2004.

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION -- None

PUBLIC HEARING – None scheduled

OTHER BUSINESS – None scheduled

Mayor Bernard announced the Council would meet in work session after the regular session adjourns.

Mayor Bernard announced the Council will hold an Executive Session immediately following adjournment of the work session under the authority of Oregon Revised Statutes 192.660(1)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations and ORS 192.660(1)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

ADJOURNMENT

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


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

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development/P.W. Director

From: Paul Shirey, Engineering Director 

Subject: Award Contract for Water System Vulnerability Assessment

Date: November 17, 2003 for December 2 meeting

Action Requested

Authorize the City Manager to execute a contract with Kennedy/Jenks Consultants to prepare a vulnerability assessment of the Milwaukie municipal water system for an amount not to exceed \$27,500. This amount includes a contingency of 10%.

Background

With the federal passage of the Public Health Security and Bioterrorism Response Act of 2001 and the follow-up Bioterrorism Act of 2002, community water systems are now required to conduct Vulnerability Assessments (VAs). VAs help water systems evaluate susceptibility to potential threats and identify corrective actions that can reduce or mitigate the risk of serious consequences from adversarial actions (e.g., vandalism, insider sabotage, terrorist attack, etc.). The assessment takes into account the vulnerability of the water supply system, transmission, treatment, and distribution system. It also considers risks posed to the surrounding community related to attacks on the water system.

To quote from literature developed by EPA: *"An effective vulnerability assessment serves as a guide to the water utility by providing a prioritized plan for security upgrades, modifications of operational procedures, and/or policy changes to mitigate the risks and vulnerabilities to the utility's critical assets. The VA provides a framework for developing risk reduction options and associated costs."*

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Council Staff Report – Water Vulnerability Assessment Contract Award
November 17, 2003 for December 2, 2003 Meeting
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Common steps for a VA typically include the following:

1. Characterize the water system, including its mission and objectives;
2. Identify adverse consequences to avoid;
3. Determine critical assets that might be subject to malevolent acts;
4. Assess the likelihood of such acts from adversaries;
5. Evaluate existing countermeasures; and
6. Analyze current risk and develop a plan to reduce the risk.

The Milwaukie water system serves approximately 21,000 people and is defined as a small system (less than 50,000 population served). Under the law, the City is required to submit a VA by June 30, 2004, and certify our Emergency Response Plan by December 31, 2004. There is no financial assistance available to small systems to pay for the cost of this assessment.

Four proposals were received in response to the solicitation for qualified consultants to perform the VA. Each proposal was ranked according to a set of five criteria and Kennedy/Jenks was selected based on the level of experience in performing these types of assessments, the quality and experience of their personnel and the cost of services. The assessment will take about 60 days to complete and will be presented to City Council in March/April next year.

Concurrence

Engineering staff has formed a team with the Water operations group to select the consultant and manage the project. The City's Risk Manager will be kept informed of results of the assessment.

Fiscal Impact

The \$27,500 project cost was anticipated in the 2003-2004 Water operations budget.

Work Load Impacts

The Vulnerability Assessment project is included in the current year work programs for both Water and Engineering.

Alternatives

- Approve the award of this contract to Kennedy/Jenks Consultants.
- Award the contract to another consultant.
- Do not award the contract.



To: Mayor and City Council

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

From: Steve Campbell, Code Compliance Coordinator

Subject: Ordinance Amendment 8.04 – Weeds and Noxious Growth, Dead or Decaying Trees or Tree Limbs.

Date: November 17, 2003

Action Requested

Adopt an ordinance amending Municipal Code Chapter 8.04 – Weeds and Noxious Growth. The purpose of amending this section is to clearly define “real property” and to include additional code language to extend owner responsibility to “any portion of a right-of-way adjacent to the real property”.

A section “B” is added to the ordinance to ensure the public’s safety and welfare by addressing “Dead and Decaying Trees and Tree limbs that present a safety hazard to the public”.

Background

Code Enforcement staff has identified areas within the Weeds and Noxious Growth Ordinance that limit the City’s ability to effectively enforce areas of right-of-way and trees presenting a safety hazard.

The purpose of amending this ordinance is for the City to effectively manage the growth of noxious vegetation in the portion of the right-of-way adjacent to “real property” by extending the responsibility to the owner of “real property”, without burden and expense to the City. Currently the City’s only mechanism for compliance

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with owners regarding growth of noxious vegetation in the portion of right-of-way adjacent to "real property" is through the cooperation and good will of the property owner adjacent to that portion of right-of-way.

In addition, the proposed amendment addresses the concern for public safety regarding dead and decaying trees both on public and private property. The City receives reports of unsafe or otherwise dangerous trees on a regular basis. These trees are both on public rights-of-way and private property. Without the ability to act on these unsafe trees the City's only way to assist the citizen with their concern for safety is to refer them to get a lawyer.

By having the ability to act on both proposed amendments to the weeds and noxious vegetation ordinance, the City lessens both our potential costs for maintaining portions of right-of-way and liability for public hazards. These proposed amendments meet with the Council goal of beautifying Milwaukie neighborhoods by utilizing City Codes.

Concurrence

The City Attorney has reviewed and commented on the proposed amendment and feels it is beneficial to the City and the Community.

Fiscal Impact

No fiscal impact is expected from this action, however the amendment may prevent a costly maintenance burden to the City in the future.

Alternatives

Continue to maintain the right-of-way from cooperative landowners.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 8.04 -- NUISANCES.

WHEREAS, Milwaukie Municipal Code Chapter 8.04 defines those acts, conditions or objects related to nuisances within the City of Milwaukie; and

WHEREAS, Section 8.04.110 describes weeds and noxious growth that may be detrimental to the public's health, safety, and welfare; and

WHEREAS, it is further determined in addition to those items previously identified that dead or decaying trees or tree limbs may also be detrimental to the public's health, safety, and welfare,

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

Section 8.04.110 – The Milwaukie Municipal Code is amended to read as follows:

Section 8.04.110 – Weeds and Noxious Growth, Dead or Decaying Trees or Tree Limbs

The following things, practices or conditions on any real property are nuisances. For purpose of this section, "real property" includes any portion of a right-of-way adjacent to the real property.

- A. Grass, thistles, cockleburs, brambles, wild blackberry bushes, weeds or other noxious vegetation greater than 8 inches in height, that have gone to seed or that are a fire hazard.
- B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property.

Read for the first time on _____, 2003 and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____, 2003.

Signed by the Mayor on _____, 2003.

James Bernard, Mayor

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ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

City Attorney



To: Mayor and City Council

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

From: Steve Campbell, Code Compliance Coordinator

Subject: Ordinance Amendment 12.04 – Administration of Sidewalk
Reconstruction and Repair.

Date: November 17, 2003

Action Requested

Adopt an ordinance amending Municipal Code Chapter 12.04 – Administration of Sidewalk Reconstruction and Repair. The purpose of amending this section is to expand the responsibilities of landowners to take the necessary action to repair and keep the sidewalks in front of their property in good repair and in a safe condition.

Background

Code Enforcement staff has identified areas within the Administration of Sidewalks Chapter 12.04 - that limit the City's ability to effectively enforce sidewalks adjoining real property.

The purpose of amending this ordinance is for the City to make it the obligation of the landowner to keep the sidewalk in front of their land in a safe condition. Presently conditions exist on sidewalks that may cause a reasonable risk to public traveling on them.

Currently the City maintains an ordinance requiring and obligating the owner of the property to keep the sidewalk in front of their property in "good repair". Good

repair pertains to the actual condition of the concrete sidewalk and does not obligate the owner to keep the sidewalk in a safe condition, Amending this ordinance would add "safe condition" to the obligation of the landowner. Safe condition includes things like, keeping the sidewalk free of ice, snow, litter, debris or any other condition that creates risk of harm to person or property.

In addition, the proposed amendment addresses the concern for public safety and welfare of citizens and visitors who use the sidewalks.

Concurrence

The City Attorney has reviewed and commented this ordinance and feels it benefits the City and the community.

Fiscal Impact

This amendment will decrease liability facing the City under the current ordinance.

Alternatives

- Adopt the proposed ordinance
- Deny adoption of the proposed ordinance
- Hire additional City employees to maintain sidewalks in a safe condition.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 12.04 – ADMINISTRATION OF SIDEWALK RECONSTRUCTION AND ERPAIR.

WHEREAS, Milwaukie Municipal Code Chapter 12.04 describes the duties and obligations of the property owner relating to maintenance of sidewalks in front of their land; and

WHEREAS, Milwaukie Municipal Code Section 12.04.020 describes those conditions under which the property owner must take action to repair sidewalks in front of their land; and

WHEREAS, it is in the interest of public health, safety, and welfare to also keep sidewalks in a safe condition by keeping them free of ice, snow, litter, debris or any other condition that creates a risk of harm to person or property.

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

Section 1: Section 12.04.010 is amended to read as follows:

Section 12.04.010 Duty of property owners.

A. It is made the duty and routine obligation of all owners of land adjoining any street in the city to maintain in good repair and safe condition the sidewalks in front of the land.

B. For purposes of this section, a sidewalk shall be deemed not in good repair, if among other things:

1. Panels or pieces of same are displaced more than one-half inch from adjacent panels or pieces; or
2. Entire pieces or panels are absent, or there exist pieces or panels broken into parts smaller than one square foot; or
3. The grade from one piece or panel to the adjacent piece changes by more than one-half inch per foot in any direction; or
4. Handicap access ramps or driveways deviate from the slopes and dimensions included in the standards and specifications set by the city.

This list is not intended to be exclusive.

C. The City Manager, Director of Engineering or a designee shall have the power and authority to determine the grade and width of all sidewalks, the material to be used, and the specifications for the repair upon any street or part thereof, or within any district in the city.

D. To be in safe condition, a sidewalk must be free of ice, snow, litter, debris or any other condition that creates risk of harm to person or property.

Section 2: Milwaukie Municipal Code Section 12.04.060 is revised to read:

Section 12.04.060 Liability of property owner.

The owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of failure to maintain in good repair or safe condition the sidewalk in front of the land. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to maintain a sidewalk abutting the owner's property in good repair and safe condition. Said property owner(s) shall be liable to the city for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by this chapter to maintain in good repair and safe condition the sidewalks in front of the land.

Read for the first time on _____, 2003 and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____, 2003.

Signed by the Mayor on _____, 2003.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

City Attorney