

ORDINANCE NO. 1872

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A CERTAIN TRACT OF LAND INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM TERRITORY OF CLACKAMAS COUNTY R.F.P.D. # 1, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS.

WHEREAS, the City received written consent from a majority of the electors in the territory proposed to be annexed and all the owners of land in the territory proposed to be annexed, as required by ORS 222.125; and

WHEREAS, the tract of land is contiguous to the City and can be served by city services; and

WHEREAS, the property owner agreed to annex to the City in exchange for sewer service which was extended with Council approval in July, 1999; and

WHEREAS, the City Council dispenses with submitting the question of the proposed annexation to the electors of the City for their approval or rejection as provided for in ORS 222.125; and

WHEREAS, the City Council dispenses with the public hearing as allowed by ORS 222.125, Metro Code 3.09.045 and Milwaukie Municipal Code Section 1504; and

WHEREAS, the tract of land lies within the territory of Clackamas R.F.P.D. # 1; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District No. 5 For Street Lights; and

WHEREAS, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

WHEREAS, a report was prepared as required by law, and the City Council having considered the report, does hereby favor the annexation of the subject tract of land and withdrawal from the districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the annexation and withdrawals are not contested by any necessary party; and

WHEREAS, subsection E of Section 1504.1 of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan designation in accord with Table 1 in that section;

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

Section 1. The tract of land, described in Exhibit B and depicted on the attached map, is declared to be annexed to the City of Milwaukie.

Section 2. The tract of land annexed by this ordinance and described in Section 1 is withdrawn from Clackamas R.F.P.D. # 1, Clackamas County Enhanced Sheriff's Patrol District, and the Clackamas County Service District No. 5 For Street Lights.

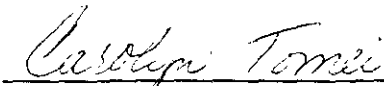
Section 3. Upon annexation the tract of land is hereby assigned a City Comprehensive Plan designation of Low Density Residential and a zoning designation of R-10.

Section 4. The findings and conclusions attached as Exhibit A are adopted. The City Recorder shall immediately file a certified copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.050 (g) and ORS 222.005. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on 3/7/00 and moved to second reading by 5 - 0 vote of the City Council.

Read the second time and adopted by the City Council on 3/7/00.

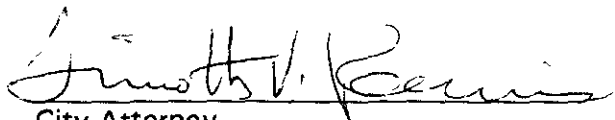
Signed by the Mayor on 3/7/00.


Carolyn Tomei, Mayor

ATTEST:

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


Pat Duval, City Recorder


City Attorney

FINDINGS

Based on the study and the public hearing the Commission found:

1. The territory contains .28 acres, one single-family residence, an estimated population of 4 and is valued at \$110,970.
2. This proposal was processed under the "Expedited Process" allowed under Metro Code 3.09.045 and Milwaukie Municipal Code Section 1504. Under the Metro Code only petitions by 100% of the property owners and more than 50% of the registered voters can be processed as expedited. This proposal met that requirement. Expedited annexations do not require a public hearing. Metro's notice requirements for expedited proposals provide for notice to interested parties 20 days prior to the decision date. That notice was provided.

The Milwaukie Municipal Code allows expedited proposals to go directly to the City Council for a decision and no hearing. The Code requires notice 20 days prior to all Planning Commission members, any resident within 400 feet of the annexation, to all affected governments and anyone who has requested notice. This notice was provided.

3. The property owner is annexing to the City to acquire sewer service to replace a failed septic system. The property owner entered into an agreement with the City in July, 1999 to obtain extraterritorial connection to the City sewer system prior to this annexation being processed under the City's new ordinance.
4. There are no specific criteria for deciding city boundary changes within the state statutes. However, the Legislature has directed Metro to establish criteria which must be used by all cities within the Metro boundary.
5. The **Metro Code** states that a final decision must include findings of fact and conclusions from those findings. The Code requires these findings and conclusions to address the following minimum criteria:
 1. Consistency with directly applicable provisions in ORS 195 agreements or ORS 195 annexation plans. [ORS 195 agreements are agreements between various service providers about who will provide which services where. The agreements are mandated by ORS 195 but none are currently in place. Annexation plans are timelines for annexation which can only be done after all required 195 agreements are in place and which must have been voted on by the City residents and the residents of the area to be annexed.]
 2. Consistency with directly applicable provisions of urban planning area agreements between the annexing entity and a necessary party.

3. Consistency with directly applicable standards for boundary changes contained in Comprehensive land use plans and public facility plans.
4. Consistency with directly applicable standards for boundary changes contained in the Regional framework or any functional plans.
5. Whether the proposed boundary change will promote or not interfere with the timely, orderly and economic provision of public facilities and services.
6. If the boundary change is to Metro, determination by Metro Council that territory should be inside the UGB shall be the primary criteria.
7. Consistency with other applicable criteria for the boundary change in question under state and local law.

The Metro Code also contains a second set of 10 factors which are to be considered where: 1) no ORS 195 agreements have been adopted, and 2) a necessary party is contesting the boundary change. Those 10 factors are not applicable at this time to this annexation because no necessary party has contested the proposed annexation.

The ***Milwaukie Municipal Code*** contains the following criteria:

The City Council shall approve or deny an annexation proposal based on findings and conclusions addressing the following criteria:

- A. The subject site must be located within the City of Milwaukie Urban Growth Boundary;
 - B. The subject site must be contiguous to the existing City limits;
 - C. The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met;
 - D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies; and
 - E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d) and, if applicable, (e).
6. The west side of the property is a steep slope with some large trees. The balance of the area is relatively flat.
 7. This territory is inside Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law which dictates that Metro adopt criteria for boundary changes specifically states that those criteria shall include " . . . compliance with adopted regional urban growth goals and objectives, functional plans . . . and

the regional framework plan of the district [Metro]." In fact, while the first two mentioned items were adopted independently, they are now part of Metro's Regional Framework Plan. The Regional Framework Plan also includes the 2040 Growth Concept. Metro is authorized to adopt functional plans which are limited purpose plans addressing designated areas and activities of metropolitan concern and which mandate local plan changes. Metro adopted one functional plan - the Urban Growth Management Functional Plan. They have codified this functional plan in Metro Code Chapter 3.07. and they include it as an appendix to the Regional Framework Plan.

The Urban Growth Management Functional Plan requires cities and counties to amend their comprehensive plans and implementing ordinances to accord with elements in the Functional Plan. Included in these requirements are such items as minimum density standards, limitations on parking standards, mandated adoption of water quality standards and rules relating to Urban Growth Boundary expansion into Urban Reserve areas. The Functional Plan was reviewed and found not to contain any directly applicable criteria for boundary changes.

8. The Metro Code states that the City Council's decision on this boundary change should be ". . . consistent with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans." Thus the applicable plans must be examined for "specific directly applicable standards or criteria.

The Clackamas County Comprehensive Plan is the applicable plan for this area. The general plan designation for this site is Immediate Urban on the County's Northwest Urban Land Map (Map IV-1). The County's Clackamas County North Urban Area Land Use Plan (Map IV-6) shows the area to be annexed as Low Density Residential. Zoning on the property is R-10, Residential, 10,000 Square Foot Minimum Lot Size.

The Clackamas County Comprehensive Plan consists of the 1992 Comprehensive Plan which includes various maps, the Mt. Hood Community Plan as amended and city-county growth management agreements (also called urban planning area agreements - UPAA's). The Plan is implemented by the County zoning and subdivision ordinances.

The chapters in the Comprehensive Plan consist of: Background; Issues; Summary of Findings and Conclusions; Goals; and Policies. Each chapter has been searched for materials concerning annexations. Sections of these elements which speak directly to the issue of annexation have been reviewed to decide whether the current proposal is consistent with them.

Citizen Involvement is the title of Chapter 2 of the Comprehensive Plan. Policy 6.0 states:

- *Seek citizen's input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.*

The combination of statutory and Metro notice requirements on annexations are consistent with this policy. The City Planning commission and affected units of government including Clackamas County Service District # 1, Clackamas County R.F.P.D. # 1, etc. were notified. Owners of all properties within 400 feet were sent notices.

Chapter 3 of the Clackamas County Comprehensive Plan, *Natural Resources and Energy*, covers the following topics: Water Resources; Agriculture; Forests; Aggregate Resources; Wildlife Habitats and Distinctive Resource Areas; Natural Hazards; Energy Sources and Conservation. All of these topics are covered in broad terms. At no point is there any mention of any specific criteria relating to annexation. Maps are included in the subsections on water (identifying various river conservation areas), aggregate resources and scenic & resource areas. None of these maps show any of these elements on the site to be annexed.

The *Land Use* section of the Plan, Chapter 4, identifies the territory proposed for annexation as *Immediate Urban*.

Immediate Urban areas are lands within the Urban Growth Boundaries which meet at least one of the following conditions: (1) Served by public sewer; (2) included within the boundaries of cities or within special districts capable of providing public sewer and planned to be served in the near future; or (3) substantially developed and surrounded by development at urban densities.

Public Facilities and Services are covered in Chapter 7 of the County Plan. The following policies of this chapter are related to annexation decisions.

POLICIES

* * *

Sanitary Sewage Disposal

* * *

4.0 Insure that sewerage facilities in Clackamas County are developed and maintained by the appropriate sanitary district, county service district or city.

* * *

6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water,

transportation, and storm drainage systems, which are necessary to serve additional lands.

* * *

7.0 Require the timely and orderly provision of sanitary sewers in all Immediate Urban areas except those identified as Floodplain and other hazard areas.

8.0 Prohibit subsurface disposal systems within Urban Growth Boundaries except for:

* * *

b. Parcels of ten acres or larger in Future Urbanizable areas inside the Metro Urban Growth Boundary (UGB), . . .

As required by LCDRC, Milwaukie and the County have an urban growth management agreement (UGMA) by which they coordinate their planning within an area of mutual interest next to the City. The territory to be annexed falls within the Urban Growth Boundary Management Area identified in the Agreement. The area to be annexed is actually surrounded by the City.

Section 6 of Part C of the Agreement states:

6. If an annexation to the CITY occurs, the CITY shall assume jurisdiction of COUNTY roads and local access roads that are within or abutting the area annexed. As a condition of jurisdiction transfer for roads not built to CITY street standards on the date of the final decision on the annexation, the COUNTY shall either reimburse the CITY for the actual cost of the overlay or the COUNTY shall install the overlay itself over the width of the then-existing pavement. However, if the width of the pavement is less than twenty (20) feet, the sum shall be calculated for an overlay 20 feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of CITY and COUNTY. Arterial roads will be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads will be negotiated and agreed to by both jurisdictions.

Generally speaking the Agreement calls for notice to the City of County actions in the area and notice to the County of City actions in the area. The required notice of this proposed annexation was provided to the County.

9. Chapter 1 of the City Comprehensive Plan, *Citizen Involvement*, calls for encouraging and providing opportunities for citizens to participate in the planning process. Annexations are not specifically identified as an element of the planning process. To the extent annexation can be viewed as related to

the planning process, it should be noted that the Planning Commission and all citizens within 400 feet were notified of this proposed annexation.

Chapter 2 of the Plan covers the *Plan Review And Amendment Process*. This chapter was examined and found not to contain any specific directly applicable standards or criteria for boundary changes.

The *Environmental And Natural Resources* section of the Comprehensive Plan, Chapter 3, was examined including the maps showing natural hazards, historic resources and natural resource sites. No criteria relating to boundary changes were found in the bulk of this chapter. However, in the Air, Water and Land Resources Quality Element, Policy 3 of Objective #4 appears pertinent:

Milwaukie will participate in studies and encourage the prompt implementation of resulting plans to provide sanitary sewer service to surrounding unsewered areas. Particular emphasis is placed on completing sanitary sewer extensions to areas contributing to water quality problems in Johnson Creek.

Chapter 4, *Land Use*, was examined and found not to contain criteria, policies, etc. which pertain directly to boundary changes.

Chapter 5 of the Milwaukie Comprehensive Plan covers *Transportation, Public Facilities and Energy Conservation*. One Goal in the Transportation element is to:

Provide a continuous citywide network of safe and convenient walkways that is integrated with other transportation modes.

The Walkways Master Plan indicates a proposed walkway along Johnson Creek Blvd. A portion of Johnson Creek Blvd. is included in this annexation.

A second goal in the Transportation element of the Plan is to:

Provide a continuous citywide network of safe and convenient bikeways and routes that is integrated with other transportation modes.

The Bikeways Network Master Plan includes Johnson Creek Blvd. in the Proposed Bikeways Network.

The Streets element contains maps and text which identify Johnson Creek Blvd. as an Arterial. Arterial streets "serve to interconnect and support the regional arterial highway system. They serve key regional as well as citywide function of connectivity."

The Public Facilities and Services element of Chapter 5 reiterates the City's intention to be the full service provider to areas within the City's urban growth area.

Chapter 6 is labeled *City Growth And Governmental Relationships*. Objective # 3 of the City Growth Element section of this chapter covers annexation.

OBJECTIVE # 3 – ANNEXATION

To ensure that City annexation policies conform to urban service and growth management policies

Policies

1. The City will only support annexation requests from properties within the City's Urban Growth Management boundary.
 2. The city will deliver services in this area when:
 - The city is able to provide an adequate supply of needed services
 - A majority of residents and property owners within an area to be served desire City services
 3. The City will require annexation in order to receive or utilize a City service
 4. All areas encircled (islanded) by City Limit lines will be annexed
11. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. The statute was enacted in 1993 but no urban service agreements have yet been adopted in Clackamas County.
12. The City of Milwaukie provides sanitary sewer collector service. A 12-inch sewer line is in Johnson Creek Blvd. adjacent to the property. Under an agreement with the City the property is already hooked up to this line.
- Clackamas County Service District No. 1 provides sewage transmission and treatment services to Milwaukie by contract.
- Sanitary sewer service costs \$33.85 every two months or approximately \$17 per month.
13. The area to be annexed receives water from the City of Milwaukie's 12 inch water line in Johnson Creek Blvd.

The City provides water from 7 wells and has emergency interties with Portland and adjacent water districts. Storage is provided by 3 reservoirs with a capacity of 6 million gallons. The water distribution system consists of lines which are sized to give sufficient pressure for both domestic use and fire flows. In Milwaukie residents are billed bi-monthly for water. The user fee consists of a \$ 5.95 base charge and \$ 1.35 per 100 cubic feet of water. An

average household might use 1200 cu. ft. of water per month so a typical bill might be around \$19. This property is being billed at the inside-city rate.

14. The area to be annexed is served by a new 18 inch storm sewer line in Johnson Creek Blvd. The City does charge a storm water fee (\$8 every two months) which the property owner will pay upon annexation.
15. This territory is currently within Clackamas County R.F.P. D. # 1. Oregon Revised Statute 222.120 (5) allows the City to specify that the territory be automatically withdrawn from the District upon approval of the annexation.

Milwaukie provides fire protection via a contract with Clackamas County Rural Fire Protection District No. 1. One station is located within the City in the Public Service Building on Harrison near Highway 224. It is staffed with 3 full time fire fighters/paramedics and houses two fire engines. All firefighters in the District are EMS trained to the Advanced Life Support level. This station is backed up by fully manned stations at Fuller Rd., Lake Road and Oak Lodge.

16. The territory is currently served by the Clackamas County Sheriff's Department. Subtracting out the sworn officers dedicated to jail and corrections services, the County Sheriff provides approximately .5 officers per thousand population for local law enforcement services.

The area to be annexed lies within the Clackamas County Service District for Enhanced Law Enforcement which provides additional police protection to the area. The combination of the county-wide service and the service provided through the Enhanced Law Enforcement CSD results in a total level of service of approximately 1 officer per 1000 population. According to ORS 222.120 (5) the City may provide in its approval ordinance for the automatic withdrawal of the territory from the District upon annexation to the City. If the territory is withdrawn from the District, the District's levy would no longer apply to the property.

Upon annexation the Milwaukie Police Department will serve the territory. The Milwaukie Police Department has 33 sworn officers which provides a ratio of 1.7 officers per 1,000 population. By ordinance the City must maintain a ratio of at least 1.5 officers per 1,000.

17. This territory is within Clackamas County Service District # 5 for Street Lights. In that District only some areas are lighted and if lighted the property owners in the lighted area pay a yearly assessment of \$32.50 for lights on existing wood poles or \$45 on metal poles. ORS 222.120 (5) would allow the Council to specify in its approval ordinance that the territory be withdrawn from that district. The City of Milwaukie does provide street lighting service at no extra charge to City residents.
18. Planning, neighborhood associations, nuisance abatement and other municipal services are also provided by the City and will be available to the territory from the City upon annexation.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the City Council determined:

1. As noted in Finding No. 9, the territory to be annexed is located within the City's Urban Growth Boundary. This is in accord with Approval Criteria "A" in Section 1502.3 of the Milwaukie Municipal Code.
2. The territory to be annexed is contiguous to the existing City limits as required by Approval Criteria "B" of Section 1502.3. This is also noted in Finding No. 9 and on the Map attached to this order.
3. As explained in the staff report and noted in Finding No. 2 the requirements of the Oregon Revised Statutes for initiation of an annexation are met. This meets the requirement of Approval Criteria "C" of Section 1502.3 of the Milwaukie Municipal Code.
4. Approval Criteria "D" of Section 1502.3 of the Municipal says the proposal should be consistent with Milwaukie Comprehensive Plan Policies. As detailed in Finding No. 10, the Council finds the proposal is consistent with the Plan Policies. It is consistent with: 1) the public involvement aspects of Chapter 1 of the Plan; 2) with the portion of Chapter 3 encouraging public sewers as a way to protect the environment; 3) with the public facilities chapter which encourages availability of municipal services; and 4) with Objective 3 of Chapter 6 which encourages annexation where the City can supply services and/or of areas surrounded by the City.
5. The proposal complies with the applicable criteria of the Metro Code as required by Approval Criteria "E" of Section 1502.3 of the Milwaukie Municipal Code. This compliance is covered in the Conclusions which follow.
6. The Regional Framework Plan was examined and found not to contain any decision-making criteria directly applicable to boundary changes.
7. The Metro Code at 3.09.050(d)(3) calls for consistency between the City's decision and any "directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facilities plans;"

The Council has reviewed the acknowledged Clackamas County Comprehensive Plan which currently applies to this site and finds approval of this annexation to be consistent with the very few directly applicable standards and criteria in that plan.

Chapter 2 of the County Comprehensive Plan calls for an emphasis on citizen participation. The Council concludes that the notice given on this proposal makes it compatible with this section of the Plan.

The *Public Facilities* chapter of the County Plan also contains requirements with which the Council believes this proposal is consistent. The County, by agreeing the City should assume the lead role in providing urbanizing services through the UGMA, is insuring ". . . that sewerage facilities in Clackamas County are developed and maintained by the appropriate . . . city." (Policy 4.0 under the subheading of Sanitary Sewerage Disposal). By annexing to Milwaukie, which can provide a full range of services, the proposal is also in accord with Policy 13.0 under the subheading Water. This requires ". . . water purveyors to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers and storm drainage facilities . . ."

8. With regard to Metro Code 3.09.050 (d)(2) the Council finds that this proposal is consistent with the Clackamas County - City of Milwaukie UGMA which requires the City to notify the County of any annexation decisions. The Council notes that the record states the County was notified of this proposal.
9. Metro Code 3.09.050(d)(5) states that another criterion to be addressed is "Whether the proposed change will promote or not interfere with the timely, orderly and economic provision of public facilities and services. The Council concludes that the City's services are adequate to serve this area, based on Findings 12-18 and that therefore the proposed change promotes the timely, orderly and economic provision of services.
10. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from Clackamas RFPD #1. The City's general property tax levy includes revenue for City fire protection. To prevent the property from being taxed by both the District and the City for fire services, the territory should be simultaneously withdrawn from the Fire District.
11. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from the Clackamas County Service District for Enhanced Law Enforcement. Upon annexation the City's police department will be responsible for police services to the annexed territory. The City's general property tax levy includes revenue for City police services. To prevent the property from being taxed by both the District and the City for law enforcement services, the territory should be simultaneously withdrawn from the Enhanced Law Enforcement District.
12. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from Clackamas County Service District No. 5 for Street Lights. Since the City Provides this service the territory should be withdrawn from the District.

EXHIBIT B

Proposal No. AN-0100

Property Description 12E30BB02000

Parcel 1:

PART of the George Wille D. L. C. in Section 30, in Township 1 South of Range 2 East of W.M., described as: BEGINNING at a point which is South 0°15' East 402.60 feet distant and South 67°28' East 381.57 feet distant and South 88°00' East 148.5 feet distant and North 65°00' East 190.0 feet distant from the Northwest corner of Section 30, Township 1 South of Range 2 East of W.M. running thence North 65°00' East 60 feet to a steel shaft driven at the Southeast corner of the tract of land conveyed to M.J. Manville, his wife, by deed recorded May 27, 1944 in book 525 at page 612, records of deeds of Clackamas County, Oregon, running thence North 3°30' West 150.0 feet; thence running South 65° West 60.0 feet; running thence South 3°30' East 150 feet to the place of beginning.

Parcel 2:

BEGINNING at a point which is South 83°48' East 653.34 feet and South 3°30' East 215 feet from the Northwest corner of Section 30, T1S, R2E, W.M., County of Clackamas, State of Oregon, said point being the most southerly corner of a tract of land conveyed by William B. LeSuer, et ex, to Richard L. Rosenberg, et al by deed recorded October 21, 1966 in Book 681, page 454, Deed Records; thence North 71°21'40" West along the south line of said Rosenberg tract a distance of 76.44 feet to an iron rod; thence South 33°19'15" East 30.16 feet to the most southerly corner of that certain tract of land conveyed to Edward V. Brattin, et ux, by deed recorded October 19, 1953 in Book 474, page 595, Deed Records; thence North 3°30' West along the west line of said Brattin Tract a distance of 150 feet to the northwest corner thereof; thence North 65° East along the northerly line of said Brattin Tract a distance of 60 feet to the northeast corner thereof; thence 3°30' West a distance of 5.98 feet to the point of beginning.