

CITY OF MILWAUKIE
CITY COUNCIL MEETING
OCTOBER 16, 1990

The one thousand six hundred and tenth meeting of the Milwaukie City Council was called to order at 6:55 PM in the Milwaukie Center with the following Councilmembers present:

Roger Hall,
Mayor
Craig Lomnicki

William Fitzgerald
Chere' Sandusky
Michael Richmond

Also present:

Dan Bartlett,
City Manager
Tim Ramis,
City Attorney
Charlene Richards,
Assistant to the
City Manager
Charles Mansfield
Police Chief

Maggie Collins,
Community Development Director
Tim Corbett,
Public Works Director
Anne Nickel,
Development Coordinator
Paul Roeger,
Office Engineer
Pat DuVal,
Executive Secretary

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Proclamation - Business Women's Week

Mayor Hall read a proclamation naming the week of October 14 through 20, 1990 as *Business Women's Week* in the City of Milwaukie.

Proclamation - Red Ribbon Week

Charles Mansfield, Police Chief, announced that the City of Milwaukie was actively participating in drug prevention education activities. Students from Milwaukie and Linwood Elementary Schools presented Council, staff, and audience "drug free" buttons.

Mayor Hall read a proclamation naming the week of October 20 through 28 as *Red Ribbon Week* in the City of Milwaukie and encouraged citizens to participate in drug prevention education activities

Police Department Retirement - Trojan

Charles Mansfield, Police Chief, announced the retirement of Trojan of the Canine Unit. Trojan worked with the Milwaukie Police Department for five years. Mansfield said Trojan and his handler Officer Colt have received numerous commendations from local law enforcement agencies.

Mansfield presented Officer Colt with the "Chief's Award" for service to the Police Department.

CITY COUNCIL MEETING - OCTOBER 16, 1990**PUBLIC HEARING****Consideration of an Ordinance Setting a Public Hearing to Consider Establishment of an Economic Improvement District - Ordinance**

Mayor Hall opened the public hearing on consideration of funding for downtown development at 7:08 PM.

Mayor Hall explained the purpose of the hearing was to consider an agreement with the Milwaukie Downtown Development Association for funding development activities. Also, the Council considered an ordinance establishing a procedure for creating an economic improvement district and setting a time and date for the first of two public hearings on creating an economic improvement district in the downtown area.

Staff Report: **Anne Nickel**, Development Coordinator, presented the staff report in which the City Council was requested to approve the Milwaukie Downtown Development Association (MDDA) request to enter into an agreement with the City of Milwaukie for partial funding of MDDA activities and to approve an ordinance which sets a time and date for the first of two public hearings needed to establish an economic improvement district for downtown property owners.

Nickel explained that the MDDA was a partnership of downtown businesses, property owners, and the City. The group has held numerous meetings to discuss the special needs of the district. **Nickel** said the MDDA had met on September 5, 1990, and elected a Board of Directors and adopted bylaws and budget. She said that each partner was asked to contribute \$18,000 per year for a three year period.

Nickel said **Gary McClain**, MDDA President, requested that the City create the funding mechanisms. The first recommendation was an agreement between the City and the MDDA which identifies City expectations and financial commitments. The second recommendation was the establishment of an Economic Improvement District (EID) and of a business license surcharge for all businesses operating within the MDDA boundaries.

Gary McClain, President of the Board of Directors, introduced the board members and the steering committee members in the audience. He invited City Council to address their questions to the board members present.

Mayor Hall said the Council had been kept well informed of the MDDA activities.

Councilmember Richmond asked that it be explained why citizens should be an equal partner in the development of the downtown area. **Paul Graham**, MDDA Vice President, said the group had conducted a survey of downtown Milwaukie clients, customers, and shoppers. The data collected reflected what people really wanted in their downtown area. He said the downtown is a community resource and without it the community would be less well off. **Graham** added that goods and services could be improved through this action.

Councilmember Richmond referred to Attachment 4 of the staff report and asked why the development boundary was limited to downtown. **McClain** said it had been determined that this boundary would contain a manageable and more controllable number of projects.

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Nickel said boundaries were also defined by such things as changes in zones. She said this boundary would create an identifiable area.

Councilmember Richmond asked if the current project were successful, could the area be expanded. McClain said he hoped that achievements of the MDDA would be significant and that others would want to do similar development.

Conduct of Hearing: Jim Backenstos, 3626 Harrison St., said that Graham's Stationery was a valuable resource in the downtown area. He said he believed the director of the development project should be one of the business owners.

Backenstos asked for clarification of Section 2 of the ordinance limiting assessments on residential real property or any portion of a structure used for residential purposes. Ramis said the language in that section reflected state statutes.

Questions of Clarification: None.

Close Public Testimony: Mayor Hall closed the public testimony portion of the hearing on the downtown development at 7:27 PM.

Discussion among Councilmembers: Councilmember Lomnicki said he endorsed the City's investment for revitalization of the downtown. He said he believed the City should have a support, rather than a lead role in this program.

Councilmember Richmond asked if the agreement had been approved as to form by the City Attorney. Ramis said it was.

Decision by Council: It was moved Councilmember Sandusky and seconded by Councilmember Fitzgerald to authorize the Mayor to sign an Agreement for the City of Milwaukie with the Milwaukie Downtown Development Association with the amendments and dates. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions.

It was moved by Councilmember Sandusky and seconded by Councilmember Lomnicki to read the ordinance establishing a procedure for creating an economic improvement district and setting a date, time and place for a public hearing to consider the area for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions. The ordinance was read the first time by title only.

It was moved by Councilmember Lomnicki and seconded by Councilmember Sandusky to read the ordinance for the second time by title only. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Sandusky and seconded by Councilmember Lomnicki to adopt the ordinance. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions.

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ORDINANCE NUMBER 1690:

AN ORDINANCE OF THE MILWAUKIE CITY COUNCIL ESTABLISHING A PROCEDURE FOR CREATING AN ECONOMIC IMPROVEMENT DISTRICT AND SETTING A DATE, TIME AND PLACE FOR PUBLIC HEARING TO CONSIDER THE ESTABLISHMENT OF AN ECONOMIC IMPROVEMENT DISTRICT IN THE DOWNTOWN AREA, IN ACCORDANCE WITH ORS 223.112-223.132.

Continuation of Appeal of Planning Commission Decision Denying Request to Relocate Billboard - File No. AP-CI-90-02

Mayor Hall opened the public hearing on the appeal by Ackerley Communications of a Planning Commission denial of a request to relocate a billboard at 7:45 PM.

Mayor Hall explained the purpose of the hearing was to consider an appeal of the Planning Commission's denial of a request filed by Ackerley Communications to relocate a billboard from 10655 SE McLoughlin Blvd. to 3045 SE Harrison in Milwaukie. This hearing is a continuation of the hearing held on September 18, 1990.

Staff Report: **Maggie Collins**, Community Development Director, presented the staff report in which the City Council was requested to consider the appeal based upon specific criteria contained in the sign code rather than through generalized arguments regarding transportation impact or the need to disburse location of signs.

Collins said the Planning Commission was concerned that the billboard would increase traffic problems at an already hazardous intersection. In a memo from City Attorney Ramis, it was pointed out that the sign ordinance does not refer to transportation, alternative sites, or safety criteria. **Collins** said the City Attorney memo stated that the sign ordinance does not address the Planning Commission's concerns regarding alternative sites or relocation criteria.

Collins said staff recommended that City Council base its decision upon specific criteria contained in the sign code rather than generalized arguments regarding transportation impact or the need to disburse location of signs.

Ramis said the criteria with which the City Council might make its decision were extremely limited. He said the proposed new site does obstruct a scenic view of a specially landscaped area; unusual natural beauty; or public or private park for public use. **Ramis** said the Planning Commission raised important issues in its deliberations, but these do not appear to be reflected in the City's sign code. He said the Council is restrained at this time, but also suggested that the City develop codes to address the issues of traffic safety and impact on the community.

Mayor Hall said although the Council had concerns with the issue, the relocation could not be addressed under the current sign code. **Councilmember Fitzgerald** asked if the City could make certain restrictions at this time, such as dimension. **Ramis** said the City Council could not at this time.

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It was moved by **Councilmember Richmond** and seconded by **Councilmember Sandusky** to tentatively grant the appeal of the applicant contingent upon findings by the staff. Motion passed 5 - 0 with the following vote: **Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond** aye; no nays; no abstentions.

Bartlett said due to the nature of the quasijudicial land use hearing that the findings would be provided to City Council at the November 20 meeting. The applicant would then have an opportunity to review these findings.

Consideration of Zone Change, Subdivision, and Natural Resource Review Application - File Nos. ZC-90-01; S-90-01; NR-90-01

Mayor Hall called the public hearing on the application of Great American Development Company for the rezoning of 10.63 acres located at 4060 SE Lake Road to order at 7:57 PM.

Mayor Hall said the purpose of the hearing was to consider rezoning 10.63 acres from R-10 to R-7. The applicant is Great American Development Company.

Staff Report: **Maggie Collins**, Community Development Director, presented the staff report in which the City Council was requested to continue its hearing on the zone change until the Planning Commission renders final decisions of the two related matters. The related matters were the preliminary plat approval (S-90-01) and natural resource review (NR-90-01). The Planning Commission will consider the two items at the October 23, 1990, meeting. Collins said the City Attorney had recommended that the public hearing be opened on October 16, 1990, and then continued until a date certain, November 6, 1990.

No one in the audience wished to speak on the matter.

It was ordered by Council to continue the hearing to November 6, 1990.

Consideration of Appeal of Civil Service Commission Final Order of August 1, 1990 - Police Officer John Toll

Mayor Hall opened the public hearing on the appeal of Officer John R. Toll a Civil Service Commission final order at 7:58 PM.

Mayor Hall said the purpose of the hearing was to consider an appeal of the Civil Service Commission's final order regarding establishment of a promotional register. In a final order issued August 1, 1990, the Civil Service Commission found that the City did not fail to establish a promotional register from a list of eligible candidates as required by Charter Section 57(C). Under Charter Section 67, the petitioner, Officer Toll has a right to appeal the decision of the Civil Service Commission to the City Council.

Staff Report: **Charlene Richards**, Assistant to the City Manager, presented the staff report in which the City Council was requested to uphold the Civil Service Commission decision to allow a promotion register to exist with one qualified candidate.

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Richards said the question was whether a register can exist with only one name and be appointed. Richards reviewed the process of establishing a register. She said the Charter does not speak to the minimum number of names needed to make a valid entrance or promotion register. Richards said the City would call Todd Brewer, Civil Service Commissioner, and Dan Bartlett, City Manager, as witnesses.

Todd Brewer said an investigation had been made by the Civil Service Commission on July 18, 1990, to investigate the alleged abuse of Charter Section 57(2). The Commission found that the City had established a promotional register from a list of eligible candidates. Brewer said the Commission believed that this gave the maximum opportunity for internal promotion.

Councilmember Sandusky asked which staff member was the appointing authority. **Richards** said the appointing authority by Charter is the City Manager, and the Department Head makes hiring recommendations to the City Manager. **Councilmember Sandusky** said in this case, the City Manger has the final decision.

Councilmember Sandusky asked who decides if a list is good. Richards said it can be determined that one name is not enough from which to choose, but the City Manager has the final decision.

Bartlett said vacancy selection is based on departmental long-term goals. It is determined if one or more names on a list is adequate. Bartlett said in the instances under discussion, it had been determined by departmental needs that the rules allow to consider one name on the list.

Councilmember Sandusky said then these decisions were done on a case-by-case basis. **Mayor Hall** asked if it were desirable to have two names, but a list would not automatically rejected because there was only one name.

Petitioner's Presentation: **Officer John R. Toll** said there appeared to be no consistency in the process. He said that 57(2) refers to more than one candidate, but it has not been consistently interpreted between the Police and Fire Departments.

Councilmember Sandusky asked the source of the written exams. She asked if an exam could be developed in a biased manner. **Richards** said a recognized consultant had developed the criteria of job skills in the testing process and developed the assessment center. **Richards** said an exam must be shown to be indicative of the potential success rate on the job. She said testing for police officers and firefighters are standard in the state and in most cases have been developed by LGPI.

Councilmember Sandusky said that the Charter does state the plural "candidates" rather than singular.

Toll said he believed an exam could be developed with a particular candidate in mind. He said only one person had passed the exam that was given for this position.

Councilmember Fitzgerald asked the range of the test scores. **Toll** said he did not know.

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Councilmember Lomnicki asked if there were usually a cutoff point for the exam. **Richards** said it was lower than the usual 70%. The person whose name was on the list was above the passing score.

Councilmember Richmond said this was not a question of the test, but of interpretation.

Brewer said the Civil Service Commission did not perceive a conflict. The Charter does establish, but does not limit a list to more than one name. **Brewer** said it was not fair to deny an opportunity to that one person who does pass by requiring more than one name.

Councilmember Sandusky it seems that the Charter should supersede the Civil Service Rules.

Council Discussion: **Councilmember Lomnicki** said he believed the Council should uphold the Civil Service Commission decision. He said he agreed with staff that the integrity of the system should be maintained while hiring the most qualified person. **Councilmember Fitzgerald** concurred.

It was moved by **Councilmember Lomnicki** and seconded by **Councilmember Fitzgerald** to uphold the Civil Service Commission decision to allow a promotion register to exist with one qualified candidate. Motion passed 4 - 1 with the following vote: **Mayor Hall**, **Councilmember Lomnicki**, **Councilmember Fitzgerald**, and **Councilmember Richmond** aye; **Councilmember Sandusky** nay; no abstentions.

AUDIENCE PARTICIPATION

Jim Backenstos, 3626 SE Harrison, said he believed the skateboard ordinance should be extended beyond the downtown business area. He discussed the election laws and that all candidates adhere to them. **Backenstos** requested a more complete description of bills. **Bartlett** said this might be possible with new software that would be in use shortly.

Jean Schreiber, 10120 SE Waverley #60, spoke on three topics. She said she believed the Budget Committee should meet the week after the November General Election to discuss the impact of finance measures. **Mayor Hall** asked when the budget process would begin. **Bartlett** said staff began its work in October, and the Budget Committee with the new City Council would meet in January. **Bartlett** said the Parks District would influence the state of the City the most. **Schreiber** said she was not concerned with an immediate emergency, but she believed the City should plan.

Schreiber said she believed the City should make better use of cable access by scheduling public service programs. She also suggested that the City newsletter have a broader distribution.

OTHER BUSINESS

Consideration of Support for Passage of Ballot Measure 26-1, Light Rail Transit Local Funding Match - Resolution

Maggie Collins, Community Development Director, presented the staff report in which the City Council was requested to adopt a resolution supporting the passage

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of Ballot Measure 26-1. She presented information of the measure and how it could affect Milwaukie and its residents. The Milwaukie Comp Plan is in compliance with the regional transportation plan.

Councilmember Lomnicki said he was in support of the measure. **Councilmember Richmond** said he was concerned with motivation of the measure and some of the language contained in the measure.

It was moved by **Councilmember Lomnicki** and seconded by **Councilmember Sandusky** to adopt the resolution supporting the passage of Ballot Measure 26-1. Motion passed 5 - 0 with the following **Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond** aye; no nays; no abstentions.

RESOLUTION NO. 36-1990:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN SUPPORT OF BALLOT MEASURE 26-1, A PROPOSAL TO ISSUE GENERAL OBLIGATION BONDS TO CONSTRUCT LIGHT RAIL TRANSIT IMPROVEMENTS, SAID PROPOSAL TO BE CONSIDERED AT THE NOVEMBER 6, 1990, GENERAL ELECTION.

Consideration of Authorization for City Manager to Sign Water Purchase Agreement with City of Portland

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to authorize the City Manager to sign a new Agreement with the City of Portland for the purchase of water, including an amendment to the Agreement specifying that backflow prevention equipment and a meter device be installed by March 31, 1991. The amendment was included in the 1990 agreement, but the City of Milwaukie was not able to include it in the 1990-91 budget.

Corbett said currently only wells 6 and 8 are in operation. Total water purchases from Portland for the calendar year have totaled \$200,500. The total purchases from Portland are anticipated to be approximately \$356,500. **Corbett** said it has been determined that water costs will be about 26% lower when the packed towers are in operation. If the City had been capable of using its own wells in the 1990 calendar year, the City would have realized a savings of \$92,000.

Councilmember Fitzgerald asked if the price had increased from the previous contract. **Corbett** said there had been no increase from the previous contract. **Councilmember Fitzgerald** asked if the City of Portland would supply the backflow meter. **Corbett** said the City Budget cycle had not allow the meter, and an extension had been requested. The meter device will have to be installed by March 31, 1991.

It was moved by **Councilmember Richmond** and seconded by **Councilmember Sandusky** to authorize the City Manager to sign a new Agreement with the City of Portland for the purchase of water including an amendment to the Agreement specifying that backflow prevention equipment and a meter device be installed by March 31, 1991. Motion passed 5 - 0 with the following vote: **Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond** aye; no nays; no abstentions.

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Consideration of Cooperative Intergovernmental Agreement with the State of Oregon, Pendleton Woolen Mills, and Waverly Greens - Resolution

Paul Roeger, Office Engineer, presented the staff report in which the City Council was requested to adopt a resolution authorizing the Mayor to sign a Cooperative Improvement with the State of Oregon, Pendleton Woolen Mills, and Waverly Greens. The resolution covers the engineering, construction, and financing of a left-turn refuge on 17th Avenue to Lava Drive.

Roeger said the developer of Waverly Greens apartments had done a traffic study and it was determined that a refuge was needed. It was agreed that each party would pay 1/3 of the additional cost to build the left-turn refuge. The City has no out of pocket cost for this construction. City will maintain refuge and the Johnson Creek bridge after construction is completed.

Councilmember Fitzgerald asked if there would be a cost for moving the utilities due to construction. Roeger said there would be no costs other than moving a manhole cover and a waterline.

It was moved by Councilmember Sandusky and seconded by Councilmember Fitzgerald to adopt the resolution authorizing the Mayor to sign a Cooperative Improvement with the State of Oregon, Pendleton Woolen Mills, and Waverly Greens. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions.

RESOLUTION NO. 37-1990:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN ON BEHALF OF THE CITY A COOPERATIVE IMPROVEMENT AGREEMENT BETWEEN THE STATE OF OREGON, PENDLETON WOOLEN MILLS, INC., WAVERLEY GREENS APARTMENT, AND THE CITY, COVERING ENGINEERING, CONSTRUCTION, AND FINANCE OF A LEFT-TURN REFUGE ON S.E. 17TH AVENUE TO S.E. LAVA DRIVE.

Consideration of Intergovernmental Agreement with Clackamas Community College for Classes at the Milwaukie Center

Charlene Richards, Assistant to the City Manager, presented the staff report in which the City Council was requested to authorize and direct the City Manager to sign an Intergovernmental Agreement between Clackamas Community College and the City of Milwaukie/Milwaukie Center on behalf of the City. The agreement was approved and endorsed by the Center/Community Advisory Board. The agreement is for the end of the academic year.

It was moved by Councilmember Sandusky and seconded by Councilmember Fitzgerald to authorize and direct the City Manager to sign an Intergovernmental Agreement between Clackamas Community College and the City of Milwaukie/Milwaukie Center on behalf of the City. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions.

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Sign Ordinance and Charter/Civil Service Rule Recommendations

Councilmember Richmond suggested that the City Attorney's office perform a comprehensive review of the sign ordinance. Mayor Hall asked for a City Attorney opinion regarding the conflict of the Charter and the Civil Service Rules.

It was the consensus of Council to direct the City staff and City Attorney's office to address the issues of the sign code and the ambiguity between the Charter and the Civil Service Rules.

Advocacy of Parks District

It was moved by Mayor Hall and seconded by Councilmember Sandusky to prepare a letter supporting the Parks District. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond; no nays; no abstentions.

CONSENT AGENDA

It was moved by Councilmember Sandusky and seconded by Councilmember Fitzgerald to adopt the Consent Agenda which consisted of the City Council Minutes of October 2, 1990 and a Liquor License Application for JD's Cafe. Motion passed 5 - 0 with the following vote: Mayor Hall, Councilmember Lomnicki, Councilmember Fitzgerald, Councilmember Sandusky, and Councilmember Richmond aye; no nays; no abstentions.

ADJOURNMENT

Mayor Hall announced that the City Council would meet in Executive Session under the authority of ORS 192.660(1)(e) immediately following adjournment to discuss real property transaction.

Mayor Hall adjourned the meeting at 9:31 pm.

EXECUTIVE SESSION

Mayor Hall convened an executive session regarding property acquisition. Dan Bartlett, City Manager provided information to the Council concerning two real estate transactions. The Council discussed the transactions and asked to be kept informed of the progress toward acquisition.

Executive session adjourned at 9:55 P.M.

Pat Duval
Dan Bartlett