

MINUTES

MILWAUKIE CITY COUNCIL NOVEMBER 16, 2004

CALL TO ORDER

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

Councilor Deborah Barnes
Councilor Joe Loomis

Councilor Susan Stone

Staff present:

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

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

PLEDGE OF ALLEGIANCE

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

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Outstanding Milwaukie High School Student of the Month

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

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

CONSENT AGENDA

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

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

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

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. Municipal Code Update Title 15 – Buildings and Construction

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

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

Staff Report

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

Correspondence: None.

Public Testimony: None.

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

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

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

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

ORDINANCE NO. 1939:

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

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

Measure 37 Implementation

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

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

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

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

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

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

Mr. Swanson read the ordinance in full.

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

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

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

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

ORDINANCE NO. 1940

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

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

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

Staff Report

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

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

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

Conflicts of Interest

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

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

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

Correspondence: None.

Public Testimony: None.

Council Questions of Staff: None.

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

Deliberation and Decision

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

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

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

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

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

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

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

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

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

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

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

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

ORDINANCE NO. 1941:

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

OTHER BUSINESS

A. Council Meeting Dates

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

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

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

RESOLUTION NO. 37-2004

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

Transit Center Update

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

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

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

Councilor Lancaster discussed the Council President election in January.

ADJOURNMENT

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

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

Pat DuVal

Pat DuVal, Recorder