

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
JULY 5, 2005

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Attorney Gary Firestone, Finance Director Stewart Taylor, and Planning Director John Gessner.

Proposed House Move Regulations

Mr. Gessner said the improvements in the present draft addressed zoning requirements, potential historical structures, and transferred the approval making authority from the City Manager to the City Engineer. At Council direction, the ordinance included a penalty of \$1,000 per day per structure. These regulations were much more restrictive than today's regulations, and it was clear what needed to be done in order to get a permit. There was concern that there would be situations in which there was public interest in relaxing some provision of the regulation. The Council would have the authority to relax any provision with findings that indicated doing so was in the public interest and that the benefits outweighed any possible impact by not fully complying with the regulations. It was a way to handle a problem of real public need. Staff solicited comments from three companies including D&R Associates, Emmert International, and Northwest Structural Moving. Of those three, Northwest Structural Moving responded and indicated it felt the regulations were consistent with other jurisdictions and did not have any issues.

Mr. Gessner was seeking direction from the City Council prior to the adoption hearing. He proposed the code amendment be considered at the July 19, 2005 Council meeting.

Councilor Stone asked Mr. Gessner if he looked at regulations in any other municipalities.

Mr. Gessner replied that he had looked at about 12 ordinances, which he would detail in the staff report.

Councilor Stone referred to page 5, section 15.20.090 – Requirement to Provide Notice. She asked if the PGE lines should be included.

Mr. Gessner said utility provider sign-off was required at the time of submission, which he would confirm in his report.

Councilor Stone understood the need for the policy but thought prohibiting temporary placement was a bit harsh. Although it would be discouraged, she

wondered if there could be a limited temporary storage provision of not more than 90 days.

Mayor Bernard was not comfortable with that.

Councilor Barnes discussed the earlier experience and did not want to go through the temporary stage again.

Councilor Stone understood that, and she certainly did not want to do that again either. She wanted people to know they would be liable for demolishing the structure or doing whatever was necessary. She hated for government to be so restrictive and wanted the City to have some wiggle room under special circumstances. Those would likely not come up very often if at all again. The last time was a special circumstance.

Councilor Collette thought temporary storage issue would be addressed with the flexibility in the ordinance rather than writing it in.

Mr. Gessner said that was correct as long as the City Council found it was in the public interest of doing so. For example, Council could make a finding that related to an historic structure. The proposed regulation was restrictive based on the experience of two years ago. To include a temporary period would require a significant re-write.

Councilor Stone asked if the policies of other municipalities specifically addressed that issue.

Mr. Gessner recalled seeing that sort of provision but nothing specifically.

Mr. Firestone said generally the codes were silent and did not explicitly address the issue of temporary storage of buildings or a temporary location. Most assumed that the location would be permanent.

Mr. Gessner suggested bringing back alternate language regarding temporary provisions if that was Council direction.

Mayor Bernard was comfortable with the proposed language, and thought the provisions were sufficient in the event of an emergency.

Councilor Collette added it also read that the temporary placement of relocated structures within public and private streets was prohibited unless expressly authorized under an approved relocation permit. She was comfortable with the proposed language with the understanding that it could be amended if necessary.

Councilor Stone wanted a provision. She would preface that by saying it needed to be done in a timely manner with some notation that the owner of the structure was financially responsible.

Councilor Barnes believed that stricter language would be more cost-effective for the City in the long term. The City spent a lot of money on the incident two years ago. Having an ordinance in place would probably result in spending a lot less on attorneys in the future.

Councilor Stone thought there should be some flexibility on the part of government when there were special circumstances. She wanted the City to be covered in terms of liability.

Councilor Loomis commented the City of Milwaukie went out of its way to help, and the proposed language gave the idea that it would never do so again. He liked Councilor Stone's idea that there be an alternative. He would like staff to look at that as long as it was not a lot of work; otherwise, as Councilor Collette said, there could be a workaround.

Mr. Gessner commented on not being able to legislate individual behavior. There were very specific terms established in the agreement that were not met. In trying to do the right thing, the City made several adjustments, which he thought were done in part because of the accountability issue. Giving permission was not the same as standing before the City Council and promising to take certain actions. If there was a potential delay in someone's following through on a promised move, then that person would be accountable to the City Council rather than staff. He thought the same end could be accomplished, and it was relatively easy to get someone before the Council in a time of need.

Councilor Loomis said his biggest fear was not being able to complete a move. He liked Councilor Stone's idea of looking at a flexible alternative.

Mayor Bernard heard general consensus on the provisions as currently written.

Councilor Stone would like something in the ordinance stating that the Council discouraged temporary placement. If the City Council approved it, then there needed to be a timeline. She supposed the Council could do that when they saw the case.

Mr. Firestone said that could be accomplished under the exceptions.

Letter to Speaker of the Oregon House, Karen Minnis

Mayor Bernard sought authorization to sign the letter to Speaker Minnis regarding photo radar.

Councilor Barnes said Chief Kanzler asked that the words "so-called" be removed.

There was consensus for the Mayor to sign the letter on behalf of the Council.

Council Communication Agreement

The Mayor and Council signed the agreement with the understanding that it would be reviewed at a later date. This version included Councilor Collette's signature and deleted former Councilor Lancaster's name.

Letter to Portland Mayor Tom Potter Regarding the Proposed Siting of Wal-Mart at Tacoma Street and McLoughlin Boulevard

Councilor Stone referred to page 1 and suggested adding, "The Sellwood and Ardenwald Neighborhoods would carry the brunt of impacts from this new store. Increased traffic volumes on Johnson Creek Boulevard and 32nd Avenue will

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diminish neighborhood livability and property values and displace local businesses." At the end she felt there needed to be a tougher statement than looking at this as a challenge. She thought it was more than a challenge to the neighborhood. She suggested the last sentence read, "Thank you for your support, Mayor Potter. We are ready and willing to work with you to address this threat to neighborhood livability and small business development in our communities." She believed those two issues were the heart of the matter.

Councilor Collette was good with those changes.

Councilor Loomis said he would remove that item from the consent agenda for discussion.

PERS Financing

Mr. Taylor discussed the costs associated with PERS participation including the unfunded actuarial liability (UAL). That was the present value cost of funding future benefits as employees retired. A portion was unfunded with PERS on a system-wide basis and an individual participant basis. The City of Milwaukie had an unfunded liability with PERS that currently constituted a piece of the rate that was paid to PERS with each payroll. PERS identified that on December 31, 2003, and based on actuarial tables determined what would need to be paid over that period of time in order to fund that liability. Governmental entities have taken different steps to fund that liability. He would provide information on funding that liability with PERS and if that would be done by continuing to participate with PERS as a portion of a rate or considering the alternative of issuing bonds. In that case, there would be a lump sum payment as pre-paid contributions. PERS would draw from that account in substitute for the portion of rate charged each year. There were some benefits, disadvantages, and risks associated with different parts of that funding. He introduced Carol Samuels to discuss the pros and cons of the proposed bonds. Ms. Samuels had experience with PERS and was currently with Seattle-Northwest, the company that was packaging the current series of bonds.

Ms. Samuels discussed the current status of PERS and the historic acts that the legislature made two years ago that basically cut the deficit in half. No one actually appreciated how much that other half was going to be. In January, the PERS actuary projected that jurisdictions across the state would see about a 9% increase, which was a percentage of payroll. That was a bigger increase than the PERS Board anticipated. Because the magnitude was so much greater than anticipated, the Board took an action to delay the implementation of the increase. The rates beginning July 1, 2007 would be increased by the amount not absorbed in 2005. The amount of the increase was not exact at this point because the 50% cut made in December 2003 made certain assumptions. She noted that PERS information was out of date by the time it was released. The contribution rate based on the 2001 valuation was 9.55% and increased to 17.4%. The rate was revised to 14.17% and was expected to grow to 18.87% in July 2007. There was currently a debt that was not being paid. That debt was similar to any other loan in that the longer it took to pay back, the more expensive

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it would be. The normal cost reflected the actuary's best guess of how much the City needed to pay today to cover all of its obligations going forward. The health care premium amount paid for post-retirement health care benefits. The major change was in the amortization of the unfunded actuarial liability (UAL). That was the amount that had not been paid to date. She noted the UAL was negative in the first column indicating a surplus. PERS was recognizing losses by phasing them in over a four-year period, and the 2002 negatives were just starting to hit the books. Simultaneously, the Legislature recognized all of the positive changes but only a portion of the negatives. That left Milwaukie, for example, with a surplus, but that was only on paper. Arguably from a financial standpoint, it might have been better to recognize the gains and losses at the same level. That was one reason why the increases were so dramatic.

Ms. Samuels discussed the UAL amount that was the calculation of the dollar amount owed as of December 31, 2003. No payments had been made, and interest had been accruing since December 31, 2003. However, it was not built into the rate structure. The PERS system did not provide information in a timely manner, so adjustments could be made. The other driver was that PERS worked on a biennial budget to match the State. She noted the move to reduce the rate increase was not a decision the PERS Board made with input from anyone.

Ms. Samuels referred to page 4 which provided a history of the UAL. What seemed outrageous in 1999 ended up to be a \$17 billion shortfall in 2002. It was the magnitude of that problem that forced the Legislature to take action. The Oregon Supreme Court ruled that changes to the 8% guarantee and cost of living suspension were unconstitutional. The financial consequences, which were not reflected in the rates, were expected to be minimal because PERS had been building up some reserves. The hope was that the reserves would take care of the reversals of the 8% guarantee.

The main problem was that returns were not keeping up with the guaranteed 8%. She noted in 2002, the fund lost 9%, which meant a 17% shortfall. Even though in 2003 the fund earned 20%, that was only 12% more than the expectation and was not enough to offset the major losses in the preceding years. She discussed pension systems nationally. The PERS Board exacerbated the problem by paying out to Tier 1 employees when earnings were in excess of 8%. When using 8%, one could not assume every year would be good. PERS did not put sufficient money aside during the good years for leaner times.

Ms. Samuels discussed options before the local jurisdictions. Over the past several years, some jurisdictions financed their PERS liability by selling bonds. Bonds were sold on a taxable basis, which meant that the interest paid on them was subject to federal taxes. Consequently, the interest rate was higher than the City might be used to on a tax-exempt bond. In today's market the rate would probably be under 5%.

Ms. Samuels provided a list of jurisdictions that had entered into this type of obligation. Most participated in pools to take advantage of economies of scale and to be more competitive in the corporate taxable bond market. She discussed
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the true interest costs (TIC), which she believed would be between 5% and 6% on the upcoming issue. The largest entity on the list was the State of Oregon in entered the bond market in October 2003.

She provided a summary with the assumption that the bonds would be sold in early September with a closing date of September 30, 2005. Under this scenario the rate would be reduced as of October 1. She calculated that the City would need about \$4.2 million to retire its debt and assumed an interest rate of 6%. The total savings over the life of the issue under the assumption that the money earned 8% interest was about \$1.2 million or \$50,000 annually. On a present value base, the savings would be about \$772,000. The last statistic had to do with how other kinds of re-financing were evaluated.

Ms. Samuels reviewed the savings on page 9 of the handout as they were spread out over time. The assumption was made that the savings would be mostly level over the life of the issue. The City would not have to take its savings this way if it did not wish to do so. If it were assumed the payroll was growing with fixed-level savings, the percentage reduction in the payroll rate would go down. If the City wanted a fixed reduction in its payroll rate, it might want to structure the savings to increase over time. The City could structure it any way it wished and not be dependent upon others in the pool.

She reviewed the rate reduction. Milwaukie's PERS rate as of last week was 14.17%. If the \$4 million payment were made, she estimated the rate reduction would be 4.45%. The debt cost depended on the payroll numbers used. She reiterated that the PERS data was from 2003. She would work with staff because the last thing the City would want to do was to structure a debt payment, which was fixed, based on a payroll assumption that was too high and get into cash flow difficulties. The net savings was estimated at 1.09%.

Ms. Samuels addressed the issues the Council would wish to consider. Refinancing the UAL was not risk free. The savings were based upon the performance of the funds sent to PERS. For example, if the City borrowed \$4 million and sent it to PERS for deposit in a lump sum account in the City's name, then it was similar to a pre-payment account for the City of Milwaukie. To the extent those monies earned 8%, the savings would be exactly what she showed the Council. If the money earned more than 8%, then the savings would go up. If it earned less than 6%, then the City would be in a worse financial position than if the City had stayed with the pay-as-you-go option. This was known as a classic arbitrage play. The City was borrowing money at a given percentage and investing it in hopes of earning more. The breakeven was the cost of the borrowing.

She discussed rates of return. The Oregon Investment Council was responsible for PERS investments, and it was historically very strong. History, however, cannot be an absolute predictor of what would happen in the future. The first pooled obligation Seattle-Northwest did was in 2002, and the interest rates were substantially higher. The boilerplate resolution had a maximum interest rate of 6.5%. The 2004 Series TIC was 6.11%. She noted that the North Clackamas City Council Work Session – July 5, 2005

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School District was doing very well because it entered the market at just the right time. Another issue was that investors in taxable bonds did not like early redemptions.

Page 18 of the handout provided the timelines for the financing program that would put the bonds on the market in mid-September. During that time, Seattle-Northwest would assemble the materials. PERS would charge \$1,000 to calculate the payoff. Agencies could opt out up to 7 days prior to the pricing. If the City was interested, Seattle-Northwest requested an authorizing resolution no later than July 21.

Councilor Collette understood the alternative to selling bonds was to pay out-of-pocket on an ongoing basis at 14.17%. She asked if the City could absorb that kind of expenditure.

Mr. Taylor indicated he was concerned about that issue because expenditures were growing, and revenues were not. Next year's budget would be even tighter, and PERS was certainly one of the contributing factors. Personnel costs were typically 1/3 of the budget. He acknowledged that there were risks involved. Several other jurisdictions including Clackamas Fire District #1 and the City of Oregon City expressed interest in participating. Lake Oswego was not interested in participating primarily because of the risk issues. He discussed the pay-as-you-go scenario and the legislative impacts that might address the unfunded liability.

Councilor Collette understood there was no refund if the Legislature fixed the debt. It was in a savings account that might or might not earn good returns.

Ms. Samuels had heard many jurisdictions say this was too high, but she thought it was important to focus on the right risk. If the rate were reduced in the future, then it would be bought down further. The risk was in not earning the rate of return. She commented on various economic philosophies.

Mr. Taylor said it was appropriate to focus on that risk and added that the most compelling reason to consider bond funding was because market rates were very favorable right now.

Ms. Samuels thought it was appropriate to say it was a risk either way. Seattle-Northwest would create the pool with those jurisdictions that said they would approve the resolution.

Councilor Stone asked how many years it would take to pay back the debt if the City chose this route.

Ms. Samuels replied it was 23 years.

Councilor Stone asked Mr. Taylor if he felt it was feasible to take the pay-as-you-go scenario given some anticipated economic recovery and additional revenue coming into the City. She hoped that would jump start the cash flow. She asked him for his forecast of the status quo.

Mr. Taylor believed those were two separate questions because the cost to fund PERS was relative through that 23-year period. It was either through the rate or through bonds. The market return was going to affect the participation in PERS similarly. The money from the sale of the bonds would be invested at PERS and earned interest based on market return. He thought a good way to address the question would be to ask if economic development or this choice would be positive or negative in terms funding the portion of costs associated with personnel. That would be relative to the market over the 23-year period. It appeared there could be benefits and would be a good option for the City to consider. Most likely, the market would fluctuate in a way that there would be savings to the City for that portion of costs related to PERS retirement. Economic development could contribute to reduced costs, but it was not a revenue generator.

Councilor Collette understood that if the money earned 8%, then the City would be saving \$53,000 annually or \$772,000 over the 23 years.

Mr. Taylor said the savings was not huge. This option had more to do with cost containment. It was significant in PERS costs depending on where the rates fell.

Councilor Stone did not like the concept of borrowing money to hopefully save money. It was risky.

Mr. Taylor included a statement from PERS regarding financing schemes. The unfunded UAL was not shown in the City's books as a liability. Within a few years, it could likely show through implementation of a program similar to GASB 34. If the City moved to this debt arrangement, a liability would be shown.

Councilor Collette intended to discuss this with her cousin who was a CPA for cities like Laguna Beach. She did not have enough knowledge to make a decision at this time.

Mr. Taylor said the initial resolution would move the City to the first step of the process of getting information from PERS. He thought it would be prudent to have the reasonable expectation that the desire was to move forward.

Councilor Stone asked Mr. Taylor if he thought this was good way to go.

Mr. Taylor replied that he felt it was.

City Attorney Introduction

Mr. Firestone introduced **Bill Monahan** who would be assisting Ramis, Crew & Corrigan on a contractual basis.

Mayor Bernard adjourned the work session at 6:47 p.m.

Pat DuVal

Pat DuVal, City Recorder