

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
August 15, 2006

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 Manager Mike Swanson and City Attorney Gary Firestone.

Public Safety Advisory Committee (PSAC) Interview

Cancelled.

Discussion with Municipal Court Judge Ron Gray

Mr. Swanson explained under Charter Section 28 the municipal court judge was one of three positions appointed by the City Council along with the city attorney and the city manager. The contract with Judge Gray expired at the end of June. This was not intended to be an evaluation but rather a conversation. There could be no discussion of individual cases. The judiciary was in the position of making decisions based upon the laws promulgated by the Council and was an independent arm of city government. The purpose of the municipal court was not to be a revenue generator for the City but rather a forum in which cases were tried and justice was dispensed. It was not where the budget was balanced.

Judge Gray discussed the revenue from the perspective of what the law required. A few years ago the powers that be in Salem decided there should be mandatory minimum fines imposed on traffic matters. Prior to that it was at the discretion of the court, so each had its own basic schedule. Having been at conferences with many justices of the peace and municipal judges he found that some of their ideas regarding fines were rather archaic. He established what courts called a violations bureau. If people came in on a first offense, then he set a standard for a minimum fine for certain types of offenses. People could settle their fines at the counter instead of going to court if they chose. The City still had that system but there were minimum fines that by statute had to be 50% of the maximum. There were certain areas where that got a little weird such as someone creeping through a stop sign who got the same minimum fine requirement as someone who completely blew it. One could make the fine higher if the driver was being irresponsible. The statute sets a maximum of \$360 and minimum of \$180. If you get someone with a perfectly clean driving record that went through a stop sign and just because their wheels had not quite stopped but they were otherwise trying to be safe that was a \$180 fine plus the assessments making the fine about \$230. While he did not apologize for minimum fines he did not feel the legislature had done a lot of people a favor by slapping some of those minimums on, but he does follow them. Generally when he explains people's rights at the onset of a court session he gets down to finances and talks about assessment that are added to the fine amount. He also tells people that maximums and minimums are set by state statute. More importantly when people line up to go to court, his staff looks at the driving record that goes back 10 years and tells the defendant the lowest fine amount plus assessments. The person can either see the judge or pay the fine. That takes some of the people out of the courtroom, and those who do go in are aware of the revenue side relating to minimum and maximum fines and assessments. He tells people that the assessments go into library funds and training police officers. He tried to use humor and told people assessment was just a fancy word for tax. Someone decided those needed to be collected, so the court followed that law. His clerk has that schedule, and she sticks to it. There was no hiding the ball as to how the court revenue worked.

Councilor Stone asked if the minimum fine only applied to traffic violations.

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Judge Gray said that was correct. It was a state law. Code violations were up to the individual cities, and since they were not under the authority of the state it was up to the City to set maximums and minimums.

Councilor Stone asked if there were maximums.

Judge Gray followed a formula. About the third month of the year there were citations for failure to have business licenses, and by the time they came to court they had paid for their business license. They can be fined each day, and often the citation covered a couple of weeks or maybe a month. If you did the math, that could be thousands of dollars. If they came in with a license and he had never seen them before, then he tried to treat all of them the same. He would fine them a certain amount and suspend part of that because they had a license so they knew there was a consequence. It was not like he was trying to take all the money out of their pocket for not paying attention to business. He had his own standards that he tried to apply uniformly because he was sensitive in every court he was in no matter his capacity that things not appear to be discriminatory. If he was going to treat someone differently he would tell them why. He had certain baseline things that he used. He has filed motions in other courts against prosecutors and judges who without some kind of reason appeared to be discriminating against one class of people or another. He did not want that label to ever be put on his court. He goes up from the baseline if he felt people deserved it and tell them why. First-time seatbelt offenders have the option of attending classes. That means the City collects less money, but the offender got an education if they opted to do that. If they came back on a second or third ticket, then they did not get that option.

Mayor Bernard said the Council had discussed setting a minimum fine amount on code violations. A neighbor had been concerned that an individual had gotten off for a smaller fine after a number of contacts by code enforcement.

Judge Gray said the matter had not been before the court multiple times. When those cases came in, someone from code enforcement usually came to court to answer questions. He will ask the history and try to find out why it had to be dealt with. Often times if they solved the problem he would ask them what the expenses were. He took it all into account when he decided what to do. He could remember someone who stood in front of him 10 years ago. Most of the time there were two and really three reasons why a violation persisted. One was that someone was just being a jerk, but that was rare. Second the owner may have health related issues and just could not do it. Because there were health issues there were also income issues. It took them a while to get dug out of that hole. The other frequent reason was the absentee property owner who rented to someone else. The landlord assumes the tenant is doing what his is supposed to be doing and was far enough away that they did not check on the property very often. Generally, his philosophy was the first time he saw the person unless it was a really bad situation he figured the benefit to the City was to accomplish getting the property back within the requirements of the law. Some people have had to spend \$2,000 to \$3,000 on labor and drop boxes to clean up their property. From a philosophical perspective there was not a lot he could do to hurt them at this point. They have cleaned up the property, and it was in compliance. They received a citation, so they knew they were wrong. They have come to court and said they were wrong. If they were in compliance or if he could set a future court date and driving them over some hurdles to get them into compliance, then the people of the City were much better off. There was always a fine, but the fine would get lower and lower if they expended their resources in fixing the problem. On the other hand if he knew they were a repeater, then the hammer got heavier when it fell. There was one piece of property upon which he levied three fines that totaled about \$105,000. He was not hesitant to hammer people if they asked for it. If it was a first time and he could get them to figure it out and fix the problem so no one had to look at it, smell it, or taste it ever again, then that was what he thought the City wanted out of him. If the neighbors did not like the fine amount – if they were in the same fix he would not treat them any differently. He could not help it if they did not understand that or if they sit in the back of the courtroom and run out and complain to someone else without ever talking to him

or asking to be heard by him while they were there in court. He got it from the defendant and the code people. If he had any questions he would delay court and ask them to go out and inspect the property and report back on a given date. He would not impose a penalty until he heard if the property was in compliance. He told people to talk to code and work with them. They were easy to work with if the defendant talked to them. If in the future they had problems, then they needed to call Mr. Salyers and ask him what could be done. That was the approach he took.

Mayor Bernard said the Council talked about the numbers of offenses. Sometimes people did not have money or had other issues. He thought the Council was uncomfortable in enforcing a minimum if people could not afford it or had other issues.

Judge Gray said sometimes cases were nursed along with people making incremental progress on property. He set two or three court appearances, so he used as much coercive power as he could to accomplish the ultimate goal, which was to bring property into compliance

Councilor Stone would rather see the money spent on getting the property back into compliance rather than a fee. They could probably not afford both.

Mr. Firestone explained one of the differences between code compliance and the traffic situation was that the traffic ticket was for a specific violation. With code compliance one could find six or seven code violations that had been going on for a period of time, and suddenly the civil penalty was enormous.

Judge Gray added it would be easy to levy a fine, and it would be easy to hit someone hard. He could say something had gone on for so many days, and the fine was so much per day for all of those days. The reality was one wanted to accomplish the goal of having everyone feel that justice was done, that the property was in compliance, and they had learned something and would not do it again. He always encouraged the off site manager to come in and look at their property occasionally and be responsible. If the lesson was that the property manager should be more hands-on then everyone would be better off. If that failed he could always ding them in the pocketbook because they would come back again, and there would be more citations. Frankly, one would expect squeaky wheels from the neighbors that were being annoyed. Someone's dog may be barking incessantly. He told one lady if he had the power to permanently ban her from having pets, he would. He would consider putting her in jail for contempt if she did not comply. If the need did arise he would not hesitate to be punitive.

Councilor Collette liked his approach of making improvements in the community and trying to be just and fair. The concern that was raised which she thought was valid had to do with people being cited multiple times. Code enforcement staff might go to a property numerous times, and the City was spending hundreds of dollars. Then that person would get a minimal fine.

Mr. Swanson said if a party was cited into court, his sense was that they got one bite of the apple. There was a rougher approach if someone came into court multiple times. Municipal court was the last resort. Code violations were typically worked out through a process. The philosophy was to work with people and to bring them into court if staff could not get their attention. The first time they were cited may have been after a lot of process, but it was still the first time.

Judge Gray thought the question had to do with cost recovery in relation to a piece of property. There was a huge difference between the fine and recovering costs. They came from different legal areas. He did have the ability to levy abatement costs and had no problem with the City's recouping its expenses. The analogy had to do with someone doing his job on the daily basis and if those costs should be recouped. He thought that was dangerous political ground. If there were actual costs incurred because the court directed something then he would enforce on that assuming it was written properly. If he asked the department to do something beyond the call of duty, then the recovery of those costs were up

to the Council through some kind of assessment. That was different from the fine, which was really more punitive. He thought it was how it was drawn up and the ability to recover that separate from the fine itself.

Mr. Firestone asked Mr. Gray how he used civil penalties as an attempt to compel remediation when there was still an ongoing violation.

Judge Gray made it clear the fine was a certain amount per day, and that was when their eyes popped. He does not know anything about the case unless they are at trial where all of the steps of the process were evidence. When someone pleads guilty he will turn to code enforcement for a history. They will either confirm the defendant's comments or indicate the story was accurate. He will ask what still needed to be done, and sometimes the defendant and code enforcement will come in with a joint plan. He tells the defendant the more they do to fix the problem the more they would save. He wants people to spend their money correcting the problem.

Councilor Loomis said from his perspective Mr. Gray was doing what he was expected to do. Council wanted code enforcement to be neighborly and work to a solution, and that was exactly what Judge Gray was doing.

Mayor Bernard thought Judge Gray did a fantastic job with youth.

Judge Gray wished he had the ability to use community service, but it would need to have a specific type of authority granted. He did require that parents come to court with their children for minors in possession of tobacco. He tells parents point blank that they are not to pay their child's fines because they were engaged in an adult activity and should be responsible as an adult to take care of the consequences of their ill-gotten behavior. They should not run to mom or dad to bail them out. He has running debates with the parents in the presence of their kids that they are not to go pay that bill. The child chose the path, and if he pays for it then it will mean more to him. Those children will be more likely to come back on other offenses in the future because they had not accepted responsibility for their behavior. He would like to do community service because it would mean more, but the City just cannot do that. Now that there was another officer, the number of people in the court sessions was increasing. If it remained that high then he would have to think about some alternatives. He thought the optimum number was around 200 for arraignment court.

Joint Meeting with North Clackamas 12 School Board Members and Superintendent Ron Naso

Postponed.

Mayor Bernard adjourned the work session at 6:14 p.m.

Pat DuVal

Pat DuVal, Recorder