

MINUTES

MILWAUKIE CITY COUNCIL REGULAR SESSION
JANUARY 2, 2007**OATH OF OFFICE**

Municipal Court Judge Ron Gray administered the Oaths of Office to Mayor Jim Bernard and Councilors Susan Stone and Deborah Barnes.

CALL TO ORDER

Mayor Bernard called the 1997th meeting of the Milwaukie City Council to order at 7:17 p.m. in the City Hall Council Chambers.

Present: Council President Deborah Barnes and Councilors Carlotta Collette, Joe Loomis, and Susan Stone

Staff: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, and Police Chief Larry Kanzler

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****CONSENT AGENDA**

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

- A. Minutes of the November 21, 2006 Regular Session
- B. Resolution No. 1-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating *The Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the Papers of Record for the City of Milwaukie.
- C. Minutes of the November 21, 2006 Joint Milwaukie/Metro Council Work Session

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- **David Aschenbrenner**

Mr. Aschenbrenner thanked the Council for listening to the public and making the hard decisions. It took a lot of patience, study, and work. He thanked staff from the top down for its hard work. The City needed people to get involved and engage in discussions to help find solutions for the City's current projects. He urged people to work toward solutions and answers rather than just highlighting the problems to help

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make the City better than it was today, better than it was yesterday, and as good as it possibly can be in the future.

- **Corky Coreson**

Mr. Coreson spoke in opposition to some of the proposals about density and light rail the last time he spoke to Council. He represented a group of people that had a similar view. They were trying to take some position and not just sit on their cans and complain. This was a perfect segue to what Mr. Aschenbrenner said earlier. Mr. Coreson was absolutely new to the political process and was totally lost. He did not know how to get involved other than to dive right in, so that was what they were doing. He put together a website that was designed to create a conversation about issues, and he was pleased with the comments. Whether they were in agreement with his ideas or not, the comments were considered and intelligent and courteous for the most part. It cannot be regarded as factual data upon which one might make a decision. It was just a place for people to talk. He was delighted that people were diving into it. The group he was with felt there was not a lot of substantial data to support what the public thought about a lot of these projects, and specifically the Milwaukie Town Center Project and light rail. They want to go to the public and ask questions. They talked about constructing a questionnaire and spreading it throughout the City and putting some boots on the ground. When he started doing that he ran up against a problem. One cannot just ask people a question without background. One cannot go up to people and ask 'how do you feel about density?' That did not mean anything. Did that mean townhouses? Did that mean 12-story apartment complexes? People needed background. In constructing the background his would be pretty negative. They could not really gather data with just their opinions because it would be skewed. Mr. Coreson was there to ask for a volunteer from Council, staff, or a citizen that was knowledgeable about the issues. They decided the best way to create a questionnaire was to do it in the format of the voters' pamphlet with arguments pro and con followed by the question. He intended to have a questionnaire completed by January 17 to get people to ask some questions and fill out the survey. He wanted someone to write the argument in favor of the issues he opposed. That way it would not be canted, and the data would be something other than opinion.

Mayor Bernard asked what issues Mr. Coreson opposed. Was it density or transportation? For some reason he felt at the last meeting that Mr. Coreson felt Milwaukie was an island and had control of the traffic going through the community. The City actually had no control over that. Over the years certain segments of the community used certain tools to protect themselves from transportation impacts. Before writing an argument, Mayor Bernard wanted to hear what Mr. Coreson's group was opposing.

Mr. Coreson had not suggested Milwaukie was an island in regards to traffic. The last time he addressed Council he had suggested there were existing codes in place that restricted people's ability to increase density. What he was hearing with projects like the one being proposed on the Texaco property was that some wanted to change it and increase density. He and the group suggested was that if density were increased then greater transportation problems were created. The more people, the more transportation issues. To control the issue of mass transit, one should control the population issue. There were already things in place to do that. Councilor Barnes made a good point at the last meeting about looking down the road 50 to 100 years and what would be left for future generations. He concurred that was a good question to ask. He also suggested that the Council's predecessors had asked that same question of themselves. That was why the City had ordinances and codes that prevented from going up too high and from building too densely on smaller pieces of property. He

gathered the question had to do with light rail as a solution to what was left for the children.

Councilor Barnes explained she had not really said that. She wanted to see the big picture. What she had seen was that there was not a lot of good pre-planning that resulted in current situation. Past Councils had not taken up the hard questions that this Council was now facing with street maintenance, sewer rates, water rates, and other similar issues. This body has had to deal with all those issues. Her thought had always been that the Council needed to think about the children and grandchildren. What would Milwaukie look like in 50 years? She asked Mr. Coreson if he thought anyone on Council wanted a five- to six-story building on the Texaco site because that seemed to be the common misconception in this community.

Mr. Coreson thought that would be a logical conclusion from reading the request for proposals (RFP).

Councilor Barnes polled the Council for the record. She was not in favor of a five- or six story building there.

Councilor Stone and **Mayor Bernard** were similarly not in favor of a five- or six-story building

Councilor Collette would be in favor of a 5th story if it was setback with a nice public amenity and river views. No one she had spoken to was in favor of a six- or seven-story building.

Councilor Loomis was not in favor of a five- or six-story building.

Councilor Barnes noted a majority of the Council disputed the rumor that had gone on for almost a year. No one on Council wanted anything above five stories.

Mr. Coreson thought he was clear in respect to the five stories. He understood it was not consistent with existing building codes. Members of his group opposed changing existing building codes to go higher, and they opposed light rail. They would like to know how many people agreed or disagreed in the citizenry. If he went out to talk to the City Council and the data came back overwhelmingly that his neighbors disagreed, then he would shut up. For now he did not believe there was any compelling data about what the general public felt. They would like to go to the general public and ask some questions. Do you support this kind of a structure? Do you support the idea of changing existing building codes to build higher? Do you support light rail? Would you support the funding without knowing what it was right now? Are you in favor of all this? Do you want to see it happen? From the conversations on the website he was expecting to see a more polarized argument. He expected to see people for it or against it. He surprised to see how many viewpoints there were.

Councilor Stone asked how many responses there were.

Mr. Coreson replied it was not that high. A lot of people were looking, but only about 50 people have commented. As the web master he looked at the addresses, and he saw a small group of people talking back and forth. He could also see how many people were hitting. People were showing interest but not weighing in.

Councilor Barnes appreciated the fact that Mr. Coreson had come forward. She brought up the idea of having a reputable firm poll the community and talked to the City Manager about the issue of light rail that had polarized the community for a long time. Mr. Zumwalt said the community voted against light rail, but the polls showed that people were in favor of it. That made some sense in that people would say one thing and vote another. Should the money be spent in the City of Milwaukie to have the most

reputable pollster come in and poll this community – Milwaukie only? Should City money be spent to do that?

Mr. Coreson replied that was a loaded question because the quality of the data was based on the quality of the question. With respect to light rail the real issue was that most people voted with their checkbooks. What will the effect be on my wallet? It would be hard to ask if people were in favor of it if it was not clear how it would be funded. They did not know at what level they would be asked to participate in said funding. He would ask when the City talked about federal funding that it include the caveat that this was not money from heaven. Federal funding was tax dollars and not a charitable contribution. He thought it would be a good idea for a reputable polling company, but they would need to give them the background.

Councilor Barnes asked Mr. Coreson to hold off on the January 17 deadline and set up times to meet with Council and staff to determine a list of questions and find out how much Hibbetts would charge.

Mr. Coreson agreed, and Councilor Collette offered to help.

Mayor Bernard added that federal money for transit would go somewhere. People have paid for it already. Brining that money back to Oregon created many jobs other than keeping people on TriMet and Metro payrolls.

Mr. Coreson would not feel good that his money was paying for a project in a community that it did not want.

Councilor Collette commented that if Milwaukie did not want the money other communities would be lining up for it. Lake Oswego and Tigard wanted transit dollars. It was not as if people would not be paying taxes. Someone would get it, and the intent was to make sure the Milwaukie community got its share.

Councilor Stone agreed federal dollars did not just come from heaven. She wanted to make sure people realized it was their money. The point was to make sure that taxpayer dollars were well spent. The real question for her about light rail was that it was prohibitively expensive, and did it really serve the commuting public? She stated it did not. This line served only 1% to 2% of the commuting public. She was all for trains and public transit, but it needed to be something that really worked and gave people the best bang for the buck.

- **Rosemary Crites, 4917 SE Aldercrest Road**

Ms. Crites spoke as a concerned promoter of Milwaukie. It was clear there was not a lot of money around. She was there to address the Arco station and the fuel tax situation. Gas stations have a very small margin. Arco's business was cut by about 50% with the McLoughlin Boulevard traffic changes. This was a small business, and it would be in a real crunch with the fuel tax. Did we want to crucify the existing businesses to reach the objective? She thought businesses should be taken care of to make sure they made it versus running them out of town. More businesses would come in, but the City should keep an eye on the ones it had.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

Adoption of a Street Surface Maintenance Program – Ordinances, second reading

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

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Ms. DuVal polled the Council: Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye' and Councilor Loomis voting 'no.'

ORDINANCE NO. 1966:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.25 – STREET SURFACE MAINTENANCE PROGRAM, ADOPTING A STREET MAINTENANCE PROGRAM AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

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

Ms. DuVal polled the Council: Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye' and Councilor Loomis voting 'no.'

ORDINANCE NO. 1967:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30 – PRIVILEGE TAX AND IMPOSING A PRIVILEGE TAX ON ELECTRIC UTILITIES.

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

Councilor Stone raised the issue for discussion. She voted against this ordinance, and the Council had received some correspondence since the last meeting two weeks ago. She felt this ordinance put the five or six Milwaukie service stations at an economic disadvantage. It diminished the competitive edge with other stations. Prior to the public testimony two weeks ago she was even wondering if the City could count on this funding because people did go elsewhere for their gas if they could find it cheaper. She believed \$0.02 per gallon was enough to make people go to another service station for a cheaper rate at the pump. After she heard the public testimony Councilor Stone realized the negative impact it would have on the Milwaukie stations. It did not seem fair to her in terms of those businesses being able to compete with like businesses. She voted against it because she did not believe the City could count on this particular amount of funding. She recalled it was estimated that it could generate \$125,000 to \$200,000 annually because there was no control over where people might buy their gas. Secondly, it did put these five or six stations at an economic disadvantage. She thought it was unfair to the businesses.

There was no further correspondence from the other stations.

Mayor Bernard asked if the Association represented the other stations. The Council had only heard from one of the Milwaukie stations.

Councilor Collette was concerned about the difficulty of the legislature's adopting a gas tax increase, and she did not believe the cities should count on the state's doing it. She did not like the idea of putting the Milwaukie stations at a disadvantage. At the same time staff worked very hard to find a balanced program that contributed funds from various sources. This was the only one element that did not tax only Milwaukie residents. She supported it, but she suggested Milwaukie send a letter to the state legislators asking them to take the leadership role and help the cities. It was a difficult decision particularly since it was a relatively small contribution to the package.

Mr. Firestone knew that the Petroleum Association represented a large number of stations in the state. He did not know specifically about those in Milwaukie.

Councilor Barnes understood that this tax would be repealed if the state increased the gas tax rates.

Mr. Swanson replied the overall street maintenance funding program ordinance provided that if additional revenues came in from state and federal sources, then these would be adjusted.

Mr. Firestone added the first ordinance that was adopted was written that if there were increases from additional state gas tax revenues or from the County then there would be a dollar for dollar reduction. If the additional revenue came from gas taxes, then the local gas tax would be lowered.

Councilor Collette understood ordinance was not effective until July 1. Theoretically the legislative session ended in June, so she urged people to contact their senators and representative to help turn this around to protect the local gas stations.

Councilor Barnes urged the Petroleum Association to contact its lobbyist to make this a top priority before the legislature. This was a top issue with the League of Oregon Cities (LOC), and she felt everyone could work in tandem. This ordinance would not go into effect until July, so she suggested moving ahead.

Mayor Bernard understood Tigard adopted a local gas tax last week, and other cities around the state were doing the same. There was a real message being sent to the legislature.

Mr. Swanson stated section 3.25.030 was just adopted, and subsection A dedicated all of the funds collected pursuant to the three funding sources to street surface maintenance only. Subsection B stated that a dollar for dollar reduction would be made first on the local fee or tax most similar to the newly established fee or tax if in fact programs of county, regional, state, or other entities raised an amount greater than those in effect at the time of the adoption of this ordinance. There was a specific provision that if the state adopted a gas tax, this was where it would come from.

Councilor Stone agreed with Councilor Collette that the City needed to protect its local stations, but she disagreed in terms of waiting to see if the legislature would pass the gas tax. She thought they needed to be protected now. She urged the Council to consider a different vote and not pass this ordinance. She did that because of the letter from the Romain group. The Council heard testimony two weeks ago talking about the Oregon Petroleum Association urging the Council not to adopt this. In talking with counsel after the meeting she asked what the chances were that this would be referred to the voters.

Mr. Firestone replied that the City of Tigard adopted a similar tax two weeks ago, and within a day or two the group began the referendum process. Signatures were now being gathered. In at least two other cities, the Association was successful in getting the matter referred to the voters where it was defeated.

Councilor Stone referred to the letter dated December 22, 2006 from Paul Romain that openly invited the City to reconsider the vote and to work with him to establish a state gas tax increase. She thought Milwaukie should seriously consider doing that. She agreed with Councilor Collette that the Council needed to send a letter through the League of Oregon Cities to appeal to the legislators to get this changed. To impose this only on a few service stations in Milwaukie was not justified or fair because it took away the competitive edge. She was willing to work toward some legislation because everyone was hurting. Everyone was in the same boat. She did not want to see this referred to the voters because it was a waste of time, money, and resources when the City could concentrate on getting some real legislation to occur.

Mr. Firestone had heard and seen some things but had not looked at each city with a gas tax and if there had been any effort to try to stop it. The Petroleum Association would probably have more information.

Councilor Stone commented there was some time because the ordinance would not take effect until July.

It was moved by Councilor Barnes and seconded by Mayor Bernard for a brief recess to speak with someone in the audience. Motion passed unanimously. [5:0]

Councilor Barnes asked to reopen the discussion. She wanted to reconsider her vote to change the wording.

Mr. Firestone said one options even though it had been moved and seconded was to make a motion to continue this matter to a future date.

It was moved by Councilor Barnes and seconded by Councilor Stone to continue the matter to the second Council meeting in April. Motion passed unanimously. [5:0]

Mr. Swanson read the title which was, "an ordinance of the City Council of the City of Milwaukie creating and imposing a tax on motor vehicle fuel dealers; providing for enforcement, administration and collection of the tax; and amending the Municipal Code by adding a new Chapter 3.40."

Councilor Barnes added it was a matter to timing. The legislature began next week and by mid-April the City would know where this was going. The Council could make a decision one way or the other at that time.

Councilor Stone suggested waiting until June.

Councilor Barnes said this was a compromise with those who brought forward the concern.

Councilor Stone did not want to see the City get into a pickle if the legislature had not made a decision.

Mr. Firestone said it could be continued in April.

Councilor Collette was still very concerned about the need to send the legislature a strong message. As communities backed out of making the strong decision, it was easier for the legislature to not make the strong decision. At some point the cities needed to tell the state it had to lead. Local businesses could not be put in jeopardy because the state lacked leadership. He felt voting today would send a stronger message than waiting until April. If a compromise had been reached, she was willing to reconsider her vote.

Mr. Swanson understood Councilor Collette's position. On December 19 Mr. Romain was clear about the vulcanization of the gas tax and that the Association was committed to passing a reasonable gas tax. In a sense this put something over the Association's head that could be used. This particular City was waiting for leadership in the legislature before subjecting its five stations to an additional \$0.02 per gallon tax. He believed the Association would work hard with the other organizations to bring it to bear.

Mr. Firestone clarified there were 13 jurisdictions in the state that had gas taxes – two counties and 11 cities. He was not sure if it was that the Association did not oppose the tax or if the ordinances were successful. The Council could in the interim take action by adopting a resolution urging the legislature to act and even stating the Council's intent to enact an ordinance if the legislature did not act.

Mayor Bernard believed that was the Council's intent at this time, and he recommended that the Council write a letter to its legislators.

The motion to continue the matter to second Council meeting in April passed unanimously. [5:0]

Councilor Barnes asked that the letter written to the house and senate transportation committee chairs.

B. Authorization to Purchase Emergency Operations Center (EOC) Equipment -- Resolution

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution authorizing the city manager to purchase audio and video equipment from CompView to complete the upgrade of the City's EOC." Motion passed unanimously. [5:0]

RESOLUTION NO. 02-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO PURCHASE AUDIO AND VIDEO EQUIPMENT FROM COMPVIEW.

C. Council Report

Councilor Stone thanked the citizens of Milwaukie for their support over the past four years and looked forward to their continued support. She would work hard to ensure their interests were represented and tax dollar were spent wisely. She hoped to have a cohesive Council that would be productive and work together.

Councilor Barnes echoed those sentiments. She had just signed on as a lobbyist for the Oregon Association for Career and Technical Education. The legislation she proposed was being moved through the session through Sen. Schrader and was co-signed by ten lawmakers to look at the merits of professional/technical education on Oregon. On a personal note, a young man asked permission to marry her middle daughter.

Councilor Collette reported on the Clackamas Community College School Board and announced an interim president had been hired.

Mayor Bernard would be in Salem the following day with other Mayors to talk with legislative assistants. He would be in Washington, D.C. in March with the Joint Policy Advisory Committee on Transportation (JPACT). He announced the Willamette Falls TV Community News Show beginning February 23, 2007.

Councilor Collette wished State Rep. Carolyn Tomei a happy birthday.

Mr. Swanson announced that this would be the last City document Mr. Firestone would sign before going to the City of Newport where social gaming was allowed. He would bring the social gaming matter up at the next work session. He discussed the Council all-day Teambuilding Session with Dr. Bill Grace on February 10.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 8:17 p.m.

Pat DuVal

Pat DuVal, Recorder