

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 17, 2008**

CALL TO ORDER

Mayor Bernard called the 2032nd meeting of the Milwaukie City Council to order at 7:04 p.m. in the City Hall Council Chambers.

Present: Council President Joe Loomis and Councilors Deborah Barnes, Greg Chaimov, and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Finance Director Ignacio Palacios, Community Development and Public Works Director Kenny Asher, Engineering Director Paul Shirey

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Clackamas County Plan for the Use of Deadly Force by Police Officers

Undersheriff Dave Kirby described the District Attorney's Deadly Physical Force Planning Authority pursuant to ORS Section 181.783(7) and ORS 181.783(8). SB 111 was passed in the 2007 legislature and created a Deadly Force Planning Authority in each county. The Planning Authority in Clackamas County included District Attorney John Foote, Sheriff Craig Roberts, West Linn Police Chief Terry Timeus, Clackamas County Sheriff's Office Sgt. Jeff Smith, Oregon State Police Lt. Rich Evans, and citizen member Elaine Krauss. Each Authority had to develop a plan with 6 minimum requirements: education, outreach and training, immediate aftermath, investigation, exercise discretion to resolve issues of criminal responsibility, collection of information including a debriefing after the incident, evaluate the plan, and estimate of the fiscal impacts. The Planning Authority had to conduct at least 1 public hearing before submitting its proposed plan to the governing body, and that was done February 2008. Two-thirds of the governing bodies had to approve the Plan, and the Oregon Attorney General (AG) would consider approving the Plan based on the minimum standards of SB 111. If the AG decided the Plan did not meet the minimum standards, it would have to be revised, and some grant funds would be available.

He believed all agencies in Clackamas County had an adopted policy for the use of deadly force by its police officers but if not had to have one in place by July 1. One important provision of the Plan was that each officer involved in an incident had to be provided with 2 sessions with a mental health professional within 6 months. The officer was only required to attend 1, but 2 had to be offered. Every officer involved in a deadly force incident must not return to work for 72 hours after the incident. Personnel costs incurred were eligible for grants from the Department of Justice. Anyone who may not be directly involved but wished to have counseling as they were affected would be subject to mental health counseling. The conclusions and recommendations resulting were not admissible in any subsequent lawsuit. The intent was that the discussion be open and honest without fear that something said would come back.

Lt. Layng addressed the section of SB 111 that someone from an outside agency be involved in the investigation and the role of the Interagency Major Crimes Team.

Councilor Stone noted the statutory requirement that they needed to see a mental health professional at least 2 sessions. She asked why they had 6 months to do this. It seemed like sooner would be better.

Undersheriff Kirby replied everyone was a little bit different especially in the law enforcement field. Sometimes people were stoic immediately afterward, and it may hit them months later. A few months later things would tend to come home, and they say maybe they would like that second session. He believed that was probably the reason for the timeline, but he deferred to Chief Kanzler or someone involved in the committee discussion as to how that came about.

Councilor Stone said it looked like they were required to have at least 2 sessions, which was great. She asked the typical number of officers used to investigate an incident where deadly force was used.

Undersheriff Kirby replied that was a very good question. The best he could say was that it varied especially immediately. A lot of investigative things needed to be done, so the more bodies the better. The immediate aftermath was the most critical because that was when collection of evidence and things of that nature occurred. Depending on how complicated the investigation was going to be would depend on how many officers stuck with the investigation throughout. In short that was the best answer.

Lt. Layng added in his experience it was not unusual to have 10 to 15 investigators at the scene initially. That could increase or decrease depending the complexity of the investigation. It would depend on the evidence being isolated in a small area or the number of witnesses or neighborhood canvassing that needed to be done.

It was moved by Mayor Bernard and seconded by Councilor Barnes to approve Clackamas County's plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies pursuant to ORS § 181.783(7) and ORS 181.783(3). Motion passed unanimously. [5:0]

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the consent agenda:

- A. City Council Minutes**
 - 1. May 6, 2008 Work Session**
 - 2. May 6, 2008 Regular Session**
- B. Resolution 52-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Making Initial Appointments to the Milwaukie Arts Committee;**
- C. Resolution 53-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the King Road Reconstruction (43rd Avenue to Hollywood);**
- D. Resolution 54-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; Classifying the Fees Imposed by this Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution; and Providing for Cost of Construction Indexing of System Development Charges;**
- E. Resolution No. 55-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract and Issue a Purchase Order with Bizon Landscape Services for Landscape**

- maintenance Services in the Amount of \$38,500 per year for a Maximum of Two Years; and
- F. An OLCC Application for 7-Star Market, 10598 SE 32nd Avenue, Change of Ownership

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- **Cyndia Ashkar, Oregon City**

Ms. Ashkar introduced Mr. Otsyula. He had a master's degree in public administration, and his emphasis was on environmental and natural resource policy and administration. He was an expert on the federal laws of the National Environmental Policy Act (NEPA) and the process we were currently in regarding the proposed plans for transportation for the South Corridor and our special concern central Milwaukie. Mr. Otsyula had worked in the field for 20-years for the States of Washington and Oregon and for private citizens and had his own consulting agency here in Milwaukie. We were really lucky to have that kind of expertise, and he had some things he wished to share. She had some graphics to share. I hear and I forget. I see and I remember. I do and I understand.

- **John Otsyula, Milwaukie**

Mr. Otsyula had been there before, and he agreed to consult with 755 people who signed the petition seeking an alternative to light rail following NEPA requirements.

Ms. Ashkar read from the frequently asked questions in the NEPA document on the federal webpage. It said that in the presentation of the alternatives of which it appeared there was only 1 through central Milwaukie the use of graphics and tabular or matrix format was encouraged. It said in summary the following points were required: one of those was a comparative presentation of the environmental consequences of all the reasonable alternative actions including the preferred alternative. She looked over the Supplemental Draft Environmental Impact Statement (SDEIS) and did not see that. She had a sample of what it would look like.

Mr. Otsyula stated the federal regulations said all viable alternatives that met the purpose and need of the project needed to be studied and presented to the public in such a format that they could make a decision. We were not all planners and did not all know NEPA. It took a technical expert to go through the SDEIS that was produced by Metro and TriMet. Previously some alternatives were looked at earlier last summer. What was looked at was called straw man alternatives. They were alternatives that defeated the purpose. They were not going to fit. If one looked at an alternative that did not work to meet the purpose and need, then it was dismissed. All alternatives were supposed to be considered. He came before the City Council before and had this discussion, Mayor. The purpose of the City Council was to take all alternatives to Metro and not to remove them prematurely. That was what happened with the straw man alternatives. To the extent this project had a local funding nexus it required 40% of the money to come from local jurisdictions. Previously, 2 times this project was voted down by the people specifically for that reason. The funding. In other words people were going to be taxed. To put out 1 alternative with 3 design options was a straw man alternative. It was no-build or the Tillamook branch. Another way to rephrase that was to say if the line did not go through the Tillamook branch the possibilities of it being funded were zero. Now the Federal Transit Administration (FTA) was aware of this. Metro knew this. It was anathema to be discussing stations when there was no decision yet reached on the locally preferred alternative. The locally preferred alternative, furthermore, was not an alternative that was preferred by the local people. It was what

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

Page 3 of 19

the agency, in this case Metro and TriMet, preferred. There were several alternatives being offered that the City Council did not take to the South Corridor Steering Committee. He went to the Committee and presented this alternative. The Mayor should recognize that very well. One was the McLoughlin alternative. If you put light rail on McLoughlin the impact to schools and Historic Milwaukie would be minimal. It was within the corridor and would fit the purpose and the need. There was no congestion on McLoughlin. The 2030 projection took in so many assumptions. He could come up with data that showed it different. He would be glad to share that with Metro.

Ms. Ashkar said we were in the 45-day comment period with the SDEIS that ended June 23. What we brought to people if listened to which was supposed to be the purpose of the public comment then we went to the Final and there would be another public comment period after that. Then it was the record of decision with yet another public comment period.

Mr. Otsyula continued. After the Final Environmental Impact Study (FEIS) was published there was a cooling off period in which all of the issues raised, if not addressed at that time, could be raised again. At the time the record of decision was published before even the funding came through we had a right to appeal. In this case he added that he lived in Milwaukie in one of the oldest houses that would probably crumble the first time light rail went by. His son went to the Portland Waldorf School. He had a lot of vested interest. He was not just volunteering his services, but he was very willing to volunteer his services. It was important that he did not see, and he had reviewed a few Environmental Impact Statements, was some detailed reasons why 2 previous times this was voted down. If you explored those and the comparison of impacts to prematurely eliminate viable alternatives, which was at the heart of NEPA, it was really unacceptable.

- **Cheryl Fisher, Clackamas County**

Ms. Fisher addressed light rail in the South Corridor. She felt we were circumventing the federal NEPA process by not including another alignment in the SDEIS.

PUBLIC HEARING

A. 2008 – 2009 Budget Hearing

Mayor Bernard called the public hearing on the 2008 – 2009 Budget and 2009 – 2013 Capital Improvement Plan (CIP) to order at 7:30 p.m.

The purpose of the hearing was to consider resolutions that were required to effect the adoption of the FY 2008 – 2009 Budget and to hear public comment.

Staff Report

Mr. Swanson reported there were 3 actions the City Council would take at this hearing, and he would take each separately. The first was a resolution declaring the City of Milwaukie's election to receive state revenue sharing. This arose from ORS 221.770 that required a resolution of the City declaring its intent to accept state revenue sharing and specifically in this case it was the liquor tax. It also required that the Council hold 1 public hearing to provide written and oral comment to the authority responsible, namely the City Council and allow the public to ask questions of the authority for adopting the budget of the City. It was traditional at this time that the Mayor calls specifically for any testimony, comments, questions, or written testimony with regard specifically to the state revenue sharing. It was the liquor tax currently budgeted as revenue in the amount of \$243,144. Mr. Swanson recommended Mayor Bernard call for testimony at this time on this specific issue for the purpose of either receiving oral or written

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

testimony or questions. If there was, the Council should take that into consideration. If there was not, the Council could take action to approve the resolution declaring the City of Milwaukie's election to receive state revenue sharing.

Mayor Bernard called for public comments on the election to receive state revenue sharing, and there was none. There was no correspondence regarding the liquor tax. He closed the public testimony portion of the hearing.

It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution declaring the City's intent to receive state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 56-2008:

A RESOLUTION DECLARING THE CITY OF MILWAUKIE'S ELECTION TO RECEIVE STATE REVENUE SHARING.

Mr. Swanson reported the second resolution certified services for state revenue sharing that came out of ORS 221.760 that required that cities in counties over 100,000 in population who received revenues from cigarette, gas, and liquor taxes be required to provide 4 or more of the following municipal services: police protection; fire protection; street construction, maintenance, and lighting; sanitary sewer; storm sewer; planning, zoning, and subdivision control; one or more utility services. This particular resolution outlined the services that were provided so that the City could receive cigarette, gas, and liquor taxes. This next fiscal year cigarette taxes were budgeted as revenue to the general fund of \$35,800. Liquor taxes were budgeted as revenue to the general fund in the amount of \$243,144. State gas tax was budgeted as revenue to the street fund in the amount of \$966,418.

Mayor Bernard called for public comments, and there were none. There was no correspondence. He closed the public testimony portion of the hearing.

It was moved by Councilor Loomis and seconded by Councilor Stone to adopt the resolution certifying services for state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 57-2008:

A RESOLUTION CERTIFYING SERVICES FOR STATE REVENUE SHARING.

Mr. Swanson said the third resolution was adoption of the FY 2008 – 2009 City budget and capital improvement plan (CIP), making appropriations, and declaring and categorizing taxes for fiscal year 2008 – 2009. There were 4 Budget Committee hearings, April 29, May 13, May 21, and June 17. At the May 21, 2008 Budget Committee hearing the budget document was approved with certain changes and established an ad valorem property tax rate for the general fund of \$4.1291 per \$1,000 assessed value and \$578,947 for the public safety debt service fund. The budget did not contain a lot of new items and was status quo. There would be the first full year of implementation of photo radar and red light enforcement. The Poetry Series would be funded out of the general fund. The City applied for a \$450,000 grant for Riverfront Park and included \$100,000 match for that. Mayor Bernard noted in the consent agenda under the street maintenance fund King Road was on the list for this year. The budget before the City Council had a few changes from the budget that was proposed by the Budget Committee, and the City Council had a list of those as Exhibit A. The changes were occasioned because the City did not have a finance director until March, so some things were missed or came in late. Revenues and expenditures balanced in each one. The \$300 item was a lease that was missed in the proposed budget, and the

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

Page 5 of 19

\$20,000 item under the general fund was a transfer of parking revenues from facilities that was overlooked. Under street capital and reserve a couple of projects were not completed as planned and would be completed in 2008 – 2009, so that money had to be rolled over. Under wastewater several revenues were missed in the approved budget and were added. The same was true in stormwater system development charges (SDC). The original Vactor truck cost was \$180,000, but due to an error it was listed at \$70,000 in the budget. The actual cost, however, was \$235,000. He noted the first vehicle was purchased in 2001, and it served every operations department at the Johnson Creek Boulevard facility. Under facilities there was the \$20,000 transfer to the general fund he mentioned earlier. It also carried forward the Cash Spot demolition money that Mr. Parkin discussed earlier as part of the CIP. Those were the changes listed in Exhibit A.

Mayor Bernard called for public comments, and there were none. There was no correspondence. He closed the public testimony portion of the hearing.

Mr. Swanson said the real property tax rate remained the same as proposed by the Budget Committee as did the property tax in an amount same as set by the Budget Committee in May.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution adopting the Budget and Capital Improvement Plan, making appropriations, and declaring and categorizing taxes for fiscal year 2008 – 2009. Motion passed unanimously. [5:0]

RESOLUTION NO. 58-2008:

A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING APPROPRIATIONS, AND DECLARING AND CATEGORIZING TAXES FOR FISCAL YEAR 2008 – 2009.

B. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson reviewed the proposed amendments. In June 2006 the City Council was presented with a number of proposed amendments to the Municipal Code and the Comprehensive Plan that were forwarded by the Planning Commission. Among those were a couple of specific additions to the Municipal Code. One of them was Section 19.321.3 that defined major utility facilities that included wastewater treatment plants and decreed that they not be permitted as a community service use and were prohibited in all zones. The second was section 19.321.7 that declared those nonconforming uses, required the removal by December 31, 2015 and established civil penalties in the event that was not accomplished. Of course, they related practically to Kellogg Treatment Plant. When considered in June 2006 his recommendation was because the citizen advisory committee (CAC) process was underway rather than sticking a stick in the hornets' nest that we continue consideration of those along with the Land Use Board of Appeals (LUBA) filed on the adoption of the Comprehensive Plan amendments. Since then the amendments were being considered at the last meeting of each month to keep them alive. The 2 code sections have not yet been adopted by Council. Since the last time these were considered there was a development. The Community Partnership Task Force came up with its recommendations, which he would bring to the Council either at the July 1 or July 15 meeting. Councilor Barnes sat on that Committee. It attempted, and he thought wisely so, to establish a partnership of all providers and users within North Clackamas County. The first meeting of the new group would occur in October, so one of the things he would ask of Council was to support a representative. Because of this development he would ask the Council to continue consideration of adoption of both code sections.

Mayor Bernard understood 19.321.7 said any future sewage treatment plant would not be allowed in the City of Milwaukie.

Mr. Swanson replied 19.321.3 made any major utility facility a prohibited use in every zone. 19.321.7 required that any use prohibited by 19.321.3 prior to adoption of the section might remain in use only through December 31, 2015.

Mayor Bernard asked why the Council would not want to adopt 19.321.3 if the group determined building a new plant anywhere was cost prohibitive. Could the first one be adopted and the second held off for discussion at a later date?

Mr. Swanson thought that was an excellent question and would respond on July 15. He would discuss the suggestion with the City Attorney as it might impact the LUBA appeal. It might be seen as somehow preventing some action at Kellogg.

It was moved by Mayor Bernard and seconded by Councilor Chaimov to continue the hearing to July 15, 2008. Motion passed with the following vote: Mayor Bernard and Councilors Loomis and Chaimov voting 'aye' and Councilors Barnes and Stone voting 'no.' [3:2]

OTHER BUSINESS

A. City of Milwaukie-TriMet Umbrella Agreement for Transit Improvements in Downtown Milwaukie 2008 – 2018 – Resolution

Mr. Asher introduced Neil McFarlane, Executive Director for Capital Projects, and Steve Banta, Executive Director for Operations, from TriMet. Staff was seeking Council approval of a memorandum of understanding (MOU) which would be called an umbrella agreement that provided a road map for both the City of Milwaukie and TriMet with regards to Milwaukie as to what kinds of improvements were desired or intended for the City of Milwaukie over the next 10 years. The agreement anticipated there could be 1 very large capital project headed the City's way, and that was the light rail project. In advance of the Portland-Milwaukie light rail project City staff thought it was a good idea to dig down into some detail as to how, where, when, and with whose concurrence various decisions would be made about the project itself and transit facilities in downtown Milwaukie overdue for improvement. It was an attempt to look back and deal with issues here today and a look forward. Mr. Asher was really energized by this. It was not an easy agreement to reach not because the City did not have an excellent partner in TriMet. Any time one looked 10-years out you really started to put yourself out there when anticipating what you were agreeing to. In downtown Milwaukie transit was a very large presence. It has been and will continue to be. It really required a fair amount of good faith and creativity in how things were set up. He appreciated getting Council feedback at the work session and felt this was a running start. Last week they talked a lot about the safety and security section of the agreement. Chief Kanzler spoke the last time, and Mr. Banta was his counterpart here tonight.

Mr. McFarlane provided TriMet's perspective as the public transit provider. TriMet typically did not do this kind of agreement at this stage of a project, so it was new and unique. He also thought it was a terrific idea. Staff came to TriMet with the notion of laying out a roadmap. Many of the projects were complicated and grew in steps and layers. These were the very steps we would go through on various topics related to developing a project. The goal and objective was to be the best partner possible for the City of Milwaukie and to make sure whatever project was developed and molded to fit the community had the best benefits it possibly could and had the least impacts possible. That was the object. It could only be done by working closely with City Council, businesses, citizens, and neighbors. That was the objective. TriMet tried to live that in the way it developed these projects. Staff was dedicated to the notion of

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

Page 7 of 19

outreach and communication because again TriMet thought it was the only way it could be successful in delivering the projects. These projects were also very hard; they had lots of challenges including funding, technical, the railroad, the Oregon Department of Transportation (ODOT), the City of Milwaukie, the City of Portland, and all the agencies that molded the project in a certain way. This was a very early step. He appreciated the MOU's attempt to lay out a good roadmap that provided a list and work program to make sure the project fit Milwaukie to the very best extent possible. That was TriMet's objective and why it was important to support its adoption.

Mr. Asher said one way to think about this was an umbrella agreement because it was intended to address other agreements. There was the benefit of TriMet's experience in some regard because TriMet had built light rail projects in other communities. They built a few. They actually had a way of going through the light rail process with the communities, with the cities. It was blind to him as it probably was to most people who you actually dealt with regarding street closures and business impacts. How did you deal with safety and security? We talked a lot about that. How did you deal with things like quiet zones that were important to us before we signed up for the project? It gave a place to state all the expectations. We have been going through a light rail process for the last several years, and a lot of legitimate concerns had come up in the community not about light rail yes or no but about the conditions under which it would be built and integrated into the community. Mr. Asher and the rest of staff felt those needed a place to go. TriMet needed to acknowledge them, and there needed to be a statement of intention as to how those were dealt with. It was an MOU because there was no way to drill down through all of the details and all of those agreements right now. The best thing that we could do was to say there would be a number of agreements. He believed this MOU referenced 11. Assuming we went through the project everything from a funding agreement to a security operations plan, South Precinct establishment and operation agreement, design and construction intergovernmental agreement (IGA), conduct of construction agreement between TriMet and its contractor which Milwaukie would care about, a project maintenance agreement, completion of the FEIS which dealt with mitigations from impacts, a quiet zone application to the Federal Railroad Administration (FRA), if there were a park-and-ride built in downtown Milwaukie the City would want an agreement about how the park-and-ride was built and used, a bus stop shelter area agreement that was the first step toward dissolving the transit center that was a long-established goal in Milwaukie and one TriMet agreed to and which this agreement now began to define how and when we were going to start doing that work, a joint development agreement that talked about how the land was used jointly that TriMet acquired as part of the light rail project for redevelopment that met with the goals of the City, the agency, and the FTA. As much as we could do to note those agreements were forthcoming. Last week Council asked about more definition of when those would be forthcoming and hopefully Council received a list of those years in which we would expect to have those agreements before the Council and working on their execution.

Mr. Asher reviewed the major sections of the MOU. This was a very Milwaukie-centric view of the agreement. He stated all the things TriMet was acknowledging or agreeing to in its statement of intent in these different areas. It was a way of explaining what the agreement was and also complimenting our partner in the process. This was uncharted water for TriMet. Typically they dealt with those issues as they arose in communities and not before projects were even signed off on. Hopefully, this would give everyone some sense of comfort that we were going into a large capital facility project with our eyes open and with TriMet's eyes open about Milwaukie's expectations. The first substantive section after the recitals talked about local match. How would this light rail project be paid for? Both parties acknowledged that \$322 million was already committed to the project. \$322 million was a lot of money from the State and from the

region through a Metropolitan Transportation Improvement Program (MTIP) allocation. Parties further agreed in that section they would make contributions to the local match. In an earlier version there were numbers about the amount of that match. At Councilor Loomis's request those numbers were taken out. The agreement still said there would be a contribution, but it did not say what the contributions would be. He expected the funding IGA would define those amounts and would be executed sometime toward the end of 2008. That was one change that should be noted at the top of page 2.

There was a section on safety and security in which TriMet acknowledged it did have increasing responsibilities as its system grew and that more must be done in Clackamas County. TriMet acknowledged it did not yet have the proper number of officers and that it was planning for more officers for security patrols. We talked a lot over the past year about how many that should be and when that commitment should come. He felt Chief Kanzler was satisfied as were Mr. Asher and Mr. Swanson that we had an acknowledgement that no one really knew what that number was, but it was going to be more than it was today. As this line went into operation this detail would be attended to. TriMet agreed to better coordinate with local law enforcement by incorporating a forum by the opening of the I-205 – Portland Mall Light Rail project in September 2009 that was a precursor to an ultimate obligation which was the South Precinct similar to what TriMet was now doing on the east and west sides. Mr. Banta was present to give more detail if the City Council wished. TriMet agreed to let Milwaukie's public safety officials influence the light rail project at every stage from design, engineering, construction, and operation. Milwaukie will want its people to have a say in not just how it was operated but also how it was designed. The security operations plan would memorialize what was agreed upon. TriMet agreed to security cameras and lighting at all stations and park-and-rides. That was talked about a lot last week. He let TriMet know this Council had a real interest in seeing not just the cameras but also monitoring those cameras. He was not sure how that would be pulled off. The agreement did acknowledge TriMet was interested in researching best practices and applying those best practices to whatever station got built here in Milwaukie. TriMet was also interested in monitoring those stations and park-and-rides. Now it was a question of how to do it. It may be this was the prototype and the place to figure it out. There was new language at the bottom of page 2 on that point as well. TriMet further agreed to work with Milwaukie schools and neighborhood associations about staying safe near light rail.

There was a section on design, engineering, construction, and maintenance in which TriMet acknowledged that the concerns of downtown Milwaukie neighborhoods and schools were unique and that Milwaukie was small and needed to maximize its downtown real estate for redevelopment and not for transit track and infrastructure. They did not know what the final alignment would be, but the City and TriMet were on record as acknowledging this was a small downtown, and the neighborhoods were very close to it. They probably have not built a project in quite that environment before, and there was acknowledgement of that. TriMet acknowledged the Milwaukie community would have an opportunity to participate in the elements designed in Milwaukie especially the station. So where there was some discretion about how things were designed Milwaukie was going to have a chance to participate in that process. There would be a design and construction IGA that would formalize the City's role in the design. It would do more than that but it was something the City would be very interested in. Staff was very interested. It did not want a design sort of just handed to us on stations. He would probably say as well there were certain things, probably most things, which were sort of standard. The City would not be telling TriMet how to space the ballast in the track. The station was certainly important. There would be a conduct of construction plan that TriMet would agree to with its contractor. In that plan the concerns the schools had about construction windows and impacts that our businesses

and neighborhoods had will all have a chance to be worked out prior to construction. As Public Works Director he had several operations.

There was a section on mitigation, and in the agreement both acknowledged that there was a federal process that was quite official and formal that sort of defined impact and necessitated certain mitigations for certain kinds of impacts. He got direction from Councilor Chaimov that we needed more than that. We needed some assurance that TriMet would do its best to mitigate the concerns that they knew this community had about this project. Whether it was safety and security, near schools, freight access in the North Industrial Area, or noise and vibration. Whatever it was TriMet was sort of on notice that Milwaukie had an expectation that we would not only follow the federal guidelines and we would not necessarily be satisfied with the federal guidelines. Frankly, this was one he was really pleased was still in the agreement because it was a big deal for this City as everyone stated. One of the big ones was the quiet zone. In the agreement TriMet and the City agreed to pursue designation of a quiet zone from the FRA and to design the project to give it the best chance of receiving that designation. We want it quiet in the downtown as quiet as it can be. TriMet was not at all opposed to that. It did not have ultimate control over that call so could not agree to making it happen but could agree to doing everything it could to make it happen. There was no disagreement about what the intentions were in downtown Milwaukie.

The next section talked about transit facilities, amenities, and programs. This one was really more about the buses that were here today, and we expected to continue to be here more than the light rail project. There was a connection if the light rail project was built. If there was a station at Lake Road then there would be a lot of people making bus and transit connections in downtown Milwaukie. We needed to think forward to how bus traffic and bus transfers happened in downtown Milwaukie. There has been tortuous path with buses in downtown Milwaukie. Where those bus stops were. Where the buses laid over. The quality of the facility. The quality of the surveillance. All of those issues were long overdue to work out with TriMet. Progress was being made. The section started off by talking about park-and-rides. Any of the park-and-rides proposed on this light rail project would have some impact on Milwaukie. TriMet acknowledged that. It talked about in the event a downtown park-and-ride was built that the City would have some expectation that it would help design that garage so that it would conform with our mixed use requirements for the downtown especially with Main Street frontage. It was a very prominent site. We heard from the Park and Recreation Board that it was a gateway site. It cannot just be a stacked deck structure. Frankly, if there was a parking structure in downtown Milwaukie, the municipality ought to be able to have some use of it. TriMet was acknowledging there was an agreement to share the structure and to share in its design. We talked about dissolving the transit center, and that was affirmed in the agreement. TriMet acknowledged that the agency had changed course with regards to the bus layovers. It was no longer feasible to do that function at Southgate as we thought it was a year ago. There was no answer in this agreement for layovers. There was continued acknowledgement we wanted the layovers to occur in the optimal place which was a place that had the least impact on businesses as far as parking went and the least visual and noise impact on nearby residences. It was a challenge to figure out where to do that and not to have the buses driving all around downtown or driving out of direction. We will continue to work on that. There was a good bit in the agreement that talked about 2 bus stop shelter areas to replace the transit center that we had today. We would like to start working on one of these bus stop shelter areas now. In fact we already had the first couple of meetings and made some improvements behind City Hall to where we could have large sidewalks, architectural shelters, more seating, more lighting, a transit tracker, garbage receptacles, with all of the things a transit facility with this kind of usage deserved. That was going to happen. There was a further agreement here that if an when light rail

opened and we had a station to the south we would replicate that at the southern end of downtown. By decentralizing all of that bus waiting, improving the facilities, and by dealing with the layovers he thought that was what the community expected for dissolving the transit center. This agreement gave us a clear definition of what it was we wanted to do.

The last section talked briefly about joint development that was very important to him and hoped it was to everyone. TriMet acknowledged the light rail project had a regional benefit as people could move around the region more quickly and conveniently especially in this corridor. Mr. Asher thought it strengthened all the communities along the corridor, and it strengthened the region. That in and of itself might not be enough of a reason for Milwaukie to be interested in light rail. There was a very local benefit. He said it many times to the City Council and others there was a benefit to having a light rail station or stations in a community and in the City and even in downtown Milwaukie. That station area development was viewed, for living and working, as an amenity. People were willing to move to places, to relocate and start businesses near those amenities. One of the problems we had as a community was that we had very few tools to help make that sort of thing happen. We have talked about that as well. We did not have a land-banking program. We did not own property. We had some, but not enough to accomplish the objectives of the downtown plan. We did not have incentive programs for developers. We needed help, and this project could actually help. This was a public agency that would have to acquire some property downtown that was going to put in one station at the south end of town. The agency could actually work with us and for us to achieve some of those redevelopment goals. This agreement basically said if you are going to be in our town doing that sort of thing, we would like very much to be working on redevelopment projects with you and named a couple of sites that seemed to make some sense. One was the triangle site near Lake, Main, and 21st, another was the Cash Spot site which the City did own, and the third was the area near Tacoma. Tacoma was not in the City of Milwaukie, but the site just south was. There was no objection from TriMet as they liked to do that kind of thing. They understood that was where most of the local benefit came from in these projects. Mr. Asher thanked the Council for indulging all of that. It was a long list of agreements and acknowledgements. He hoped the Council viewed it the same way as he, Mr. Swanson, the City Attorney, and our partners at TriMet viewed it which was a really solid basis on which to proceed with the light rail project consideration or any of the transit improvements we would want for downtown Milwaukie over the next 10 years. He thanked the City Council and hoped it would take action and adopt tonight. He would entertain questions.

Mayor Bernard said this was not a public hearing, but Council would let people testify on this portion. He had a few people who wanted to testify. First he declared a potential conflict of interest for the record, "I am a property owner near the proposed light rail alignment, but the alignment does not touch any of my properties on Main, Washington, or 21st Street."

- **Ed Zumwalt, Milwaukie**

Mr. Zumwalt had a couple of ideas on the MOU. First of all if you sign a document like this you would have complete faith in the people you were signing it with. In the last 2 weeks he saw quite a bit of distrust. Maybe that was ironed out, but there was a lot of it visible. Maybe that will slow them down before they pull another stunt like pulling out of Southgate. This brought him to the 14 Points which he hated to belabor. Yeas ago when we put that together we thought we had the world by the tail. We had a really wonderful working group, and we trusted those people. He was asked by a couple of Councilors if that was a legal document, and he said it was not. It was a gentleman's agreement, and these were gentlemen. We shook hands. Everything was wonderful.

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

Page 11 of 19

Besides it had so much ink he did not see how anyone could weasel out of it. They showed him how. They trampled all over it, and what they did not trample over they were ignoring now. He did expect a lot of help from the City Council with mitigation in the neighborhood. Non-binding or binding. He noticed that a couple members of Council were hung up on that a couple of weeks ago. He would think that any understanding like this – any document like this would have to be non-binding by its very nature because who really knew what anyone understood about any document. Even if it was written up by attorneys. He did not think that was possible. A binding agreement bound the City's \$5 million as small as that amount was into the process. He knew \$5 million was not a lot in a \$1.4 billion project, but it was our money. \$5 million had a way of turning into \$15 million in a 20-year loan or however it was going to be done. It was not really the amount. It was that we voted this down twice in the City, and part of it was for monetary reasons. It was the idea of the thing. That was like someone coming up to you and saying, "look I am going to make your life just peaches and cream. It was going to be wonderful the rest of your life. First, I'm going to tear down your house, steal you wife and your car and your dog, and beat the stuffing out of you. First give me \$1,000." Mr. Zumwalt did not think so. It sounded like a country western song, but this was what they were asking. That \$5 million was nothing to them, but it was to us. Another thing that stuck in his craw a little bit was that it was mentioned a couple of weeks ago that the \$5 million would come back at us 2- to 2-1/2 times very quickly. Mr. Zumwalt was not disputing that. Economists got that figured out, but he wanted to know how that would manifest itself. He knew it would not come back in the taxpayers' pockets. Will it come back into the City's coffers or to the downtown businessmen in soaring land values. He knew it would not come back to Mike and Dion Shepard. The day the City Council said this transit station was going on Lake Road their little American dream and their property values went in the tank for good. That was the end of that little American dream. That was not the last little livability problem in this town before the mess was over with. This neighborhood and schools being so close. We ain't seen nothin' yet. But that was the way it went. Some people came out smelling like roses, and others got stuck with the thorns. His feeling on this was that the City should not sign any agreement with these people. As fine and upstanding as they were and as well meaning as they were things took over. This was too big a thing. They cannot control anything. Whatever they did, whenever they broke this agreement it will be for their benefit and to little old Milwaukie's because after all we needed to think about the region first.

- **Rob Kappa, Milwaukie**

Mr. Kappa said the City Council had some tough choices ahead. He asked as a citizen of Milwaukie to move this project forward. He felt strongly the economic benefit to the City would come back to us. The money invested would come back tenfold. It was not just about changing habits. It was about changing a culture. He did not have to tell the City Council about the cost of gas. It was not going to go below \$4. It might someday go down to \$3.95, but it would not go any cheaper. People needed to have other methods of transportation. It was working families. It was new couples. It was senior citizens. It was middle-income people. The reality was that it was going to be too expensive to maintain the auto culture we have today. While some citizens may feel that the City Council was doing a good thing others will hate your guts. That was the nature of the business the Council was in. He asked them as a Council not to make the mistake he made 10 – 12 years ago. Push this thing through. It was going to be very viable for the City of Milwaukie. The City Council was asking all the right questions. He felt confident the City Council would handle the process. He guessed 3 to 3-1/2 years to complete the process. Asking questions about traffic and safety. When it came to the development of the project during construction there would be disruptions in the

neighborhoods. Sure there would be traffic problems. It was the nature of building a project this big. Move it ahead.

- **Ed Parecki, Milwaukie business owner**

Mr. Parecki brought up a couple of things. He thanked Mayor Bernard for declaring the conflict of interest but believed he made a small mistake in that declaration. Mayor Bernard and everyone else along the line would benefit from the light rail construction. In the event Mayor Bernard would benefit he would have an actual and not a potential conflict of interest. That being said he challenged Mayor Bernard's participation in the discussions and the vote. Barring that he briefly looked over the memorandum of understanding and even though he did not really have a professional background in looking at contracts there were a lot of problems with this memorandum in general. First of all the fact that it was non-binding gave him shivers. So what was the point of having a non-binding agreement if it was non-binding? Anything said in agreement could and would be nullified at any time. He did not understand the point of the agreement. Some of what he called the weasel clauses, there were tons of them in here. Just to name a few first of all was that it was non-binding. Second the fact that there was an open-ended statement that TriMet and Milwaukie would each make contributions toward the local match. That was an open-ended clause. It meant nothing. It meant that you will make contributions to whoever decided what the amounts were. \$5 million did not mean anything. It could go beyond anything. He suggested something along the lines of a not-to-exceed clause, so there would be a limit on the amount the City would be liable for in the future. It also mentioned a few times that more than 1 station could be built. At the last Council meeting they agreed to 1 station at Lake Road. Maybe it should be more specific. Maybe it should say "station" instead of "stations." Otherwise they could come back and say the City Council agreed to "stations" and let's add a couple more. Or one more at Washington or Monroe. Another little point they say, "agrees to exert its best efforts to mitigate." Well they could try the hardest they could -- that was the best effort. Sorry. No more mitigation necessary. They talk about noise and vibration. Again best efforts. They used the words along the quiet zone that agrees to the extent practicable. It was not practicable to do the quiet zone any more, so let's just drop it. The last attempt to do a quiet zone at a cost of over \$300,000 was abandoned. It failed once. Why will it not fail again on this line? They say things like traffic generated at these facilities will be especially important. What did that mean? It was important. We did not want the traffic, but this alignment would create nothing but traffic. Then it was very interesting that they had an understanding that the parties agreed they would enter into a binding agreement. The agreement itself was non-binding, so how can you tell them you would enter into a binding agreement with a non-binding agreement. Again on page 5 they say TriMet agreed to the extent practicable. Sorry it was not practicable so we cannot do it. Those were just a few points Mr. Parecki thought would be interesting. The last one about the joint development they used the term "if appropriate." Again, well sorry this was not appropriate so we will do that. He looked through the agreement and saw all the clauses that were totally meaningless. It was a non-binding agreement so what was the City Council signing, if anything.

Councilor Stone asked the City Attorney to comment on Mr. Parecki's concern about the Mayor's declaration of a potential conflict.

Mr. Monahan responded the ethics rules say an individual who was a decision maker needed to make a determination whether they had an actual or potential conflict of interest. A potential conflict of interest as when an action that would be taken had a potential, the possibility, but not necessarily a definite benefit. An actual conflict of interest was when one knew it was definite there would be a benefit. Mayor Bernard indicated in the past that by being a property owner in the downtown particularly in

CITY COUNCIL REGULAR SESSION – JUNE 17, 2008

APPROVED MINUTES

Page 13 of 19

regards to the potential location of stations there might be a potential increase in value to this property. Mr. Monahan thought what Mr. Parecki was indicating was that he felt by entering into this MOU for the City that the Mayor would definitely benefit from a financial benefit from light rail coming to the City. Mayor Bernard had to make his own determination whether he felt that was actual or potential. If there was a challenge and it sounded as if Mr. Parecki made a challenge it was up to the remaining members of City Council to determine whether or not they felt that the Mayor's conflict was potential as he characterized it or actual. The Mayor always had the opportunity if he chose to decide not to participate in a proceeding even when he had a potential conflict of interest. Mr. Monahan believed from the Mayor's actions tonight that he declared it as potential. That was how he understood it, and he was taking part in this proceeding. If the Council members chose to overrule that it was their prerogative. Obviously if the Mayor's declaration was wrong and someone wanted to challenge it at another forum that was their opportunity.

Mayor Bernard added he had declared this potential numerous times. He made the declaration 2 weeks ago and no one in the audience protested in the past. For clarification he heard numerous times that for example the Shepard's value had decreased. Was there not a potential that his property would decrease? It was amazing that one property owner's value decreased because of light rail, but the Mayor's increased. It seemed odd to him. Rumors last week were that TriMet bought his for \$2.9 million, and that was a lot more than Mayor Bernard would ask for it and appreciated it. The potential was there for anyone including every property owner in Milwaukie that the value would increase.

Councilor Stone disagreed it would impact everyone the same. The nearer to the line the more probable it was that in some way the property would be affected. The concern she had heard voiced and that people were wondering about was if there was a potential for an actual conflict of interest with a foreseeable sale of his property for instance with the building of light rail. That was a very real possibility. That concern had certainly been voiced. Mayor Bernard had a potential for an actual conflict of interest down the road. With the subsequent decisions. This was one decision that was going to be made, and there would be several more on top of that. The closer we get to the building of this, the closer Mayor Bernard could come to potentially having an actual conflict of interest.

Mr. Swanson said this was a memorandum of understanding that had a number of elements. Only one of which was the potential for light rail. He underlined potential because we had not even developed an LPA or gone through the FEIS process. If he remembered correctly a simple way to look at potential versus actual conflict of interest was that potential conflict of interest was one that could result in pecuniary benefit. An actual conflict of interest was one that would result in a pecuniary benefit. One had to look at it in terms of the action that was being taken tonight which was a memorandum of understanding. He thought there was still a long way to go before the memorandum of understanding would result in a pecuniary benefit as opposed to could. It seemed to him that the breadth of this thing – we talked about buses, shelters, light rail, development, and we did not talk about it just at that one place. In fact we did not even have an LPA. All we had was a recommended LPA. It seemed to him that the memorandum of understanding was at best only raised the possibility and could result as opposed to would result in a pecuniary benefit. He was not sure the memorandum of understanding resulted in pecuniary benefit to anyone in the sense that it would.

Mr. Monahan thought Councilor Stone portrayed the struggle. A conflict of interest could at one point in time be potential and at another point in time given changes in circumstances could be actual. The determination tonight was not for what the future

was but for what this action was before the City Council whether the Mayor had an actual or potential conflict of interest with this action.

Councilor Loomis commented in response to Mr. Parecki's question about why we were entering into a non-binding agreement he felt it was to identify the City Council's concerns so they could be addressed. That was the main reason for this document. We did not know all the issues or things that would arise. He would not be comfortable in signing a binding document at this time because things changed. It really did come down to trust and a true partnership. At the last City Council meeting he was feeling uneasy just because of the way comments were made by certain folks. He felt better. He was going to meet with Mr. MacFarlane. Get to know him a little bit better and feel at ease with the partnership. That was the crucial thing. Things were going to change as we went along. We were all aware that TriMet was in the transportation business, and that was what TriMet did. Milwaukie was in the City business, and that was what the Council did. Together we wanted it to be a good project and benefit us. He liked what was said at the beginning and wanted to believe it. He hoped they could work toward that relationship. The money part was an issue with him and always had been. Milwaukie did not have a lot of money, and there were a couple of big projects in the City that also had regional benefit and had greater benefit to the citizens of the City of Milwaukie. Money was tight here as it was everywhere. \$5 million did not sound like a lot compared to a \$1.4 billion project, but it was nearly half of the City's discretionary funds. It was a big concern. If we can have a good partnership, we can work through this. If he had the same feeling he knew it was a conflict of interest or potential or actual that was where he was confused. He was not sure it would bring that benefit. You hear it brings benefit on one hand, and others think it brings the whole town down. That was where he struggled a little bit. He needed to listen and pay attention a little more and look into things a little more.

Councilor Barnes agreed with Councilor Loomis. She did not want to go into a binding contract after Mr. Asher explained what we were trying to do. This was the start and building blocks for us. That was how she viewed it. It was like when you start a new school year. You start with everyone on the same page, and you start to build trust. Being together on this project and starting in this way helped build that trust. She looked forward to that. Her big concern was getting the security cameras to a point where we could actually see them on the Internet or on television. ODOT made that available for people who wanted to check road conditions. She knew that under this non-binding agreement TriMet would work at best practices. She volunteered her services this summer to work with them as a person who was actually in the media and worked with cameras. She would be more than happy to work with TriMet and Grady Wheeler to come together on a project that could actually put those cameras through our cable channel. Whenever anyone turned on Milwaukie cable access if we were not playing something that was prerecorded we could actually see those cameras. Or we could go to the Internet like the ODOT cameras. She was willing to work with them to find a way to have that happen.

Mr. Banta appreciated the support and willingness to work with TriMet. His concern was what did the nation do in terms of viewing and monitoring CCTV cameras because it was new for TriMet. Frankly they did a lot of construction under Mr. MacFarlane's guidance and others, and sometimes they liked to look out to other properties to see what they did in terms of incorporating something new into the one infrastructure and the process or procedure. That was his concern about how they went through in doing it. To him it was very different when looking at an ODOT camera for congestion on one of the local thoroughways versus monitoring public's behavior. He was not qualified to speak on behalf of that and was why he recommended doing an industry best practice.

Councilor Stone could well imagine you knew where she was coming from because she definitely made herself known. She really thought we had gone way far away in the direction that was intended 4 or 5 years ago when the 14 Points were developed. This was a regional project. Milwaukie used to be designated as a regional center and that did not sit well with the Council then. It did not sit well with her now. They downgraded us, if you will, to a town center, and then they created what became known as the 14 Points. They did not seem like they were being acknowledged in this particular alignment and what you wanted to do to our town. You needed Milwaukie. The region needed this center. She had a real problem with disrupting the safety and livability of this town and this neighborhood at our expense for the region. She did not think that was right. She thought that the 14 Points needed to be honored. Brian Newman spoke about the 14 Points back in April 2003, and he said there were 4 that were most significant. The main one was that light rail stay out of residential neighborhoods, and it was going right through one. Now how can we do that? How can we say 5 years ago that you have our word that we are not going into your neighborhoods, and now that was where we were going? The second point was that the leadership wanted no mandates on density or other planning requirements if light rail were to come to Milwaukie. Metro had agreed that light rail would come to Milwaukie on its terms with no density requirements. This was what Metro Councilor Brian Newman said, and he would be vigilant this commitment was kept. The third was a stipulation that the downtown transit center be moved specifically to the Southgate Theater site in the North Industrial Area. We even had a date certain for that move, and it never happened. Her point was that things did change. The basic concept of wanting to keep the small town feel was forgotten about that. Milwaukie was a diamond in the rough. We were a very small footprint for a very large transportation project that in her estimation was completely disproportionate to the size and scale of this town and this neighborhood. It had no business coming through this neighborhood like that and especially going behind a school and near 2 other schools. The funding issue was big for her too. People needed to be able to vote on how they wanted their transportation dollars spent and particularly the people in Milwaukie in terms of if they truly wanted this to come to their town. She would like them to answer for her tonight about the possibility of the funding actually happening to extend this line to Park because if it did not go there something needed to be in this agreement that said it would not, in no way, we would not turn the south end of town into a train depot and a bus depot. Right now the transit center was not being moved. It was being made over. It was being upgraded. It was not moved. We still had bus transit and layovers there. It did not sound like it was going to be moved any time soon. She did not want to see a train depot because that really increased the footprint of this project, and she thought it was inappropriate for Milwaukie. Something like that needed to be in the agreement. If we did not extend the line to Park, if there was not the funding to do that, then we will terminate at Southgate. We will not terminate in Milwaukie. She did not want the project to be built without voter approval. If she had that she would support it, but she needed voter approval to have that happen for her.

Councilor Chaimov asked Mr. Asher if he considered the memorandum of understanding to be the best commitment the City could obtain at this stage from TriMet on how TriMet would build and operate any light rail system.

Mr. Asher replied absolutely yes.

Mayor Bernard commented we had come a long way from a numerous page agreement to a blank page to what Mr. Asher described as getting everything we wanted. He was thrilled we had come so far. It was important to note, and Councilor Stone addressed it, that the City of Milwaukie was very concerned it did not end at the south end of downtown. The \$250 million was tied to Milwaukie light rail, and we would

be very concerned should it end there. He was very satisfied and very excited about moving this project forward. Just to address another issue. It was kind of amazing to him how, like Councilor Loomis said, in one area it destroyed the community and in the other one the Mayor got richer. He did not understand how that happened. One neighbor where light rail ended their value dropped 100%, but the Mayor's was raised 100%. He found that difficult to understand. He was excited about this and would vote in favor of the MOU.

Mr. Asher responded many of Councilor Stone's concerns which were shared by some of the community would have a full airing won July 14 and 15 which was where and when the LPA discussion would occur. They scheduled 2 nights to make sure that indeed everyone would have a chance to come and testify and that the Council would be able to have a full chance to discuss and ask questions. A lot of those concerns go right to the project itself and the LPA. That was probably the right time to take that on in earnest. The second was just to respond to the comment about should the terminus be at Lake Road in downtown Milwaukie and how to contend with that. There was language in 3.A of this agreement that talked about minimizing the footprint of the project should that happen and to incorporate and integrate some of those infrastructure facilities in a way that really did maximize downtown Milwaukie real estate for redevelopment. He felt that one was in their minds and addressed as well we can here. He shared the concern about the terminus at Lake Road, and that was the next discussion we needed to have.

Mayor Bernard said members of Council were getting emails, but he was not sure they were going anywhere else. He had been sending them all to Ms. DuVal but did not know about the others. Councilor Barnes agreed to forward them to her who would submit them to Metro.

It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the Mayor to execute a memorandum of understanding with TriMet establishing an umbrella agreement regarding transit improvements in downtown Milwaukie for the years 2008 – 2018. Motion passed with the following vote: Mayor Bernard and Councilors Barnes, Chaimov, and Loomis 'aye' and Councilor Stone 'no.' [4:1]

RESOLUTION NO. 59-2008:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH TRIMET ESTABLISHING AN UMBRELLA AGREEMENT REGARDING TRANSIT IMPROVEMENTS IN DOWNTOWN MILWAUKIE FOR THE YEARS 2008 – 2018.

B. Authorizing the City Manager to Execute a 2-Year Intergovernmental Agreement with Clackamas Fire District #1 to Provide Apparatus and Vehicle Maintenance Services to the District

Mayor Bernard understood from a Battalion Chief that the District Board had voted to extend the agreement.

Mr. Shirey reviewed the agreement. The last time this came before this City Council Mayor Bernard was involved and none of the rest were 10 years ago. It seemed worth spending a couple of minutes review this agreement. He started with telling the Council that the City maintained a fleet services division at the City with 5.5 mechanics and a fleet supervisor. Up until 10 years ago it was a pretty small group. Their responsibilities

included the maintenance of police vehicles and staff cars and specialized public works equipment and trucks. 10 years ago when the City agreed to transfer its fire personnel and equipment to Clackamas County Fire District it entered into a 10-year agreement at the time and took 2 fire mechanics under the City's employ. Since then a third fire mechanic was added. For the last 10 years the City maintained all of the District's equipment, and over time that number grew as well which was one of the reasons the third mechanic was added. To be honest with the Council the reason was not to make money. It was about providing a service he assumed the District asked the City to provide at the time. The agreement expired at the end of this month. The District asked the City to continue to provide the service, and he said he would as long as the City continued to recover the expenses associated with providing the service. The City was not in the business of making money; it was in the business of providing the service and recovering expenses. This agreement did not change dramatically the terms of the earlier agreement over the past 10 years. It was more specific about a few items. The cost of service was added in attachment C which was a spreadsheet that described what we were basing our charges to the District on. That included the recovery of 100% of the salary of the 3 fire mechanics, a portion of the salary of the fleet supervisor, a portion of the salary of the administrative assistant, and recovery for the space occupied generally speaking by the activities of the fire mechanics in the garage and related expenses. The Council may have noticed that the facilities charge was fixed for 2 years. The District felt that while the rest of the City's contributing to the improvements that were made in all of the buildings owned by the City benefited all the parties, it did not really benefit the District. They felt that maybe the City was pushing that a little bit too much and asked the City to cap it. Mr. Shirey agreed to do that but that was also the reason he wanted to come back to this in 2 years to see where we were at in that respect. The District had on the other hand a chance to look elsewhere to see if it could buy this service for less money. Mr. Shirey seriously doubted that was possible but gave them an option to change providers if it wished to do so. Those were really the 2 big changes, and he recommended approval of the IGA.

Councilor Loomis recalled in a work session a list of things, and this was one of them, that said the City had this agreement with the District and was losing money and being taken advantage of. Had that all changed and was everything good? It was a comment by another staff member.

Mr. Swanson thought this went a lot further toward recovering costs. They were looking at a 2-year agreement to test the market to see what else was out there.

Councilor Loomis understood some changes had been made to recover costs in this agreement as opposed to the old agreement.

Mr. Shirey replied that was correct.

Mayor Bernard did not believe the City was complaining it was being taken advantage of, but he did not recall the specific thing. We were losing money on it because we had an agreement. He was concerned the District might hear a comment that the City thought it was being taken advantage of.

Councilor Stone asked the reason for the City's losing money.

Mr. Swanson believed it was probably not costed correctly.

Mayor Bernard understood this was an opportunity to make a correction. The only thing that would go unchanged in the 2 years was the facilities charge.

Mr. Shirey clarified the agreement stipulated that beginning in March of the year preceding the end of the fiscal year the new cost of service agreement would be negotiated. The City's costs continued to go up, and they had to participate in those.

They had not as a part of this agreement ever been clear about this cost distribution in the previous IGA.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution authorizing the City Manager to execute a 2-year apparatus and vehicle maintenance agreement with Clackamas Fire District #1. Motion passed unanimously. [5:0]

RESOLUTION NO. 60-2008:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO-YEAR INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS FIRE DISTRICT #1 TO PROVIDE APPARATUS AND VEHICLE MAINTENANCE SERVICES TO THE DISTRICT.

C. Council Reports

Councilor Chaimov attended the final Poetry Series reading and announced the picnic on July 26 during Milwaukie Daze. On a personal note he was pleased and honored to attend his daughter's college graduation.

Councilor Barnes attended her daughter's high school graduation. She volunteered at the Friends of the Ledding Library Book Sale and was a part of the fundraiser cruise in for a Milwaukie High School student. She would attend the National Education Association Convention in Washington, D.C.

Mayor Bernard noted the success for the Milwaukie Farmers' Market and announced the City Hall Anniversary Celebration on July 11. He was honored to celebrate his father's 80th birthday. On July 1 the Clackamas Fire District would open the South End Station in Oregon City.

Mr. Swanson announced an executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties regarding current litigation or litigation likely to be filed.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 9:01 p.m.



 Pat DuVal, Recorder