MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

August 19, 2008

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

Council Present: Mayor Jim Bernard and Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone.

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan, Operations Director Paul Shirey, Water/Wastewater Supervisory Ronelle Sears, and Utility Specialist II Jim Lund.

Public Safety Advisory Committee Interviews

Mayor and Council interviewed Ray Bryan for reappointment as the Historic Milwaukie Neighborhood representative.

Proposed Amendments to Milwaukie Municipal Code Chapter 13.12.063 – Fats, Oil, and Grease (FOG) Control

Mr. Shirey reported 13 months ago he brought an ordinance to amend the fats, oils, and grease (FOG) control section of the code to Council. They began implementation of that by notifying those who fell under the regulation. They had been implementing the program for nearly a year. At a meeting in June one of the businesses subject to FOG control brought forward a series of concerns about whether coffee shops were regulated under the code and or any business that conformed at the time of building codes and retrofit according to FOG regulations. They had provisions in the original ordinance that were passed in July 2007 in terms of penalties that did not conform to our current practice in administering civil penalties for non-compliance. They had gone back and reexamined the ordinance and made a number of proposed amendments. One of the amendments was to clarify that coffee shops would be subject to FOG regulation as a food facility as defined in new provisions of the code. They amended the penalties applicable to violators. In May in response to the concern by some of the coffee shop owners they started to draft an agreement that would allow for the City to incur the expense of installing a grease trap at the sink in the facility and measure the accumulation of FOG. After 6 month if there was more than an inch of accumulation then the owner would reimburse the City for the cost of the installation and proceed with a program to regularly clean out the grease trap and conform to the code. If there wasn't more than an inch of accumulation then the owner could choose to take it out or continue to use the trap. They held that in abeyance during the time that this question came up and met with three of the coffee shop owners a couple of weeks ago to explain what they are doing. He couldn't say that any of them were happier with what they were proposing because rather than excluding or excepting they were including those businesses as FOG generators and subject to FOG control. Staff included some disgusting pictures of these traps and a couple of establishments that served coffee and what that looked like. They included a list in attachment F of food service companies subject to this ordinance in this City. In attachment E they listed the cities they knew that had FOG regulations and those that did and did not include coffee shops. Attachment D was the explanation of why coffee

shops should be subject to regulation and the federal regulations regarding the discharge of fats, oils, and grease. One of the original questions was why are we doing it and where is the authority? Should coffee shops be subject to this regulation, and if not, why? Staff recommended adopting the proposed language and continuing to offer the installation at the City's cost for the three subject coffee shops.

Councilor Barnes had been trying hard to understand both sides since the last discussion. Great American Video was about the same size. What did they have to say?

Mr. Shirey introduced Jim Lund, Wastewater Specialist II and Ronelle Sears, Storm and Wastewater Supervisor.

Mr. Lund said the initial up front cost was a concern to Great American Video. They understood what the ordinance required and why we were doing it. One of the photos in the staff report was from Great American Video. Since the fixture had been installed it had obviously been working. Their initial reaction was that it would be costly, but they were willing to comply because there could be a concern or an issue.

Councilor Barnes noted some people at home put grease down their sinks without thinking, so why focus on restaurants? She knew there were regulations, but she wondered how much we put in the system other ways as well.

Mr. Lund agreed that did happen in homes. The point was getting it where it was concentrated and getting businesses involved to handle it up front. That was the key. He said a pubic outreach about grease should be considered.

Councilor Chaimov commented on the list of restaurants and coffee shops provided. Why did it say there is no grease at Big Town Hero and Quizno's? What did that mean?

Mr. Lund said all of their foods come prepared, prepackaged, and pre-sliced. When they took it out of the package it went directly into the sandwich. There were no dishes involved in the process, so they were not FOG-producing businesses. That was why there was separation among the businesses.

Councilor Chaimov said his interest was in making sure the City was imposing this ordinance on facilities that made enough of a difference to our water system and pipes to require compliance. Was there a way to quantify the level at which a business was considered to be contributing enough to require them to install the equipment.

Mr. Shirey replied the quantification was a tough issue. The really big producers were subject to an entirely different set of requirements, and the smaller producers were a challenge to measure. They knew that when throwing things like coffee and cream down the sink contributed fats and oils. Great American Video was their best opportunity to give an example of what that created because they installed the trap. That was one of the reasons why they wanted to go ahead with the program to install at the City's expense at the 3 coffee shops to actually get a measurable result. Every other jurisdiction they talked to that regulated small producers said the issue was that enough accumulation from those businesses all added up. There was no control mechanism for municipalities to target homes; they tried to education people. There was the ability and a trend to regulate this source of FOG in the system. No one was measuring; they tried that and realized it did not work. You have to install a grease trap to make the measurement.

Mr. Lund gave an example of why it could not be measured even on a large producer. There was a meat packing company in Clackamas and one of the problems was backups in that area. They would try to quantify by measuring it, and you could do it. The problem was that the grease was a stratospheric and clings to the pipe.

Councilor Chaimov understood Great American Video had a service that came in periodically to clean out the trap, and from that they knew how much was pulled out. Was that something that could be applied at other places?

Mr. Shirey replied measuring could not be done without installing a trap.

Councilor Chaimov understood the City was saying if an inch was found, then the business has to pay for it. It struck him that an inch, depending on the size of the trap, was not a sufficient way to quantify. Could it he done by weight?

Mr. Lund said they tended to go by percentages because even though there may or may not be a weight quantification one had to figure out how much was being put into the system. One had to look at the cumulative effect on the system. Even if it went all the way to the City pipe, once it hit the 8-inch sewer line it stopped and built up, and water could not pass.

Mr. Shirey did not know how much was enough because there was no standard to go buy. He did not know of another community that was doing that. He did not have a way of saying one pound or a gallon or a different measure of some kind was a threshold at which a business would need to install a trap.

Councilor Chaimov assumed the City would require installation and depending on how much was collected the business may or may not have to pay for the trap. He was looking for a reasonable amount.

Mayor Bernard thought there needed to be an established amount and that the City should not arbitrarily tell people they need a trap.

Councilor Loomis thought there needed to be a comparison with other restaurants. If they were putting out the same as a household, it would be hard to hold the business to that standard. The installation was not cheap. Great American spent $1,600 plus the pumping fee every 6 months.

Mr. Lund said initially the cycle would be 8 weeks, and from that point on service would be pushed out as appropriate so additional costs were not incurred.

Mr. Shirey said the problem was that all grease traps were not built alike. They came in different sizes and of course they would accumulate at different rates depending on a number of variables. That was why most communities adopted that if a business meets the food service definition then the assumption is you would accumulate in some fashion grease, fats or oils. It did not matter if it was a gallon or 600.

Mr. Swanson explained when this came up in June he wanted to have some time and have them look at it again as he was skeptical. In the end he said to go forward because of the impact. The impact was not a single place. It was a cumulative effect of multiple businesses. It was a standard that needed to be made up because in order to measure you had to have a grease trap. The question was if a grease trap was required. In order to come up with a standard you have to have it. We have said an inch of grease on the surface would be a trigger point at which there was responsibility. Anything less than that, the City would cover the cost of installing the trap, which was a standard. If one looked at the Brookside station one saw a layer of grease on top of all of the other stuff. It

would probably be the easiest thing to measure because there was no standard for grease traps. All traps were not created equal. Consequently if you were to do a pound measurement it would be difficult to come up with a standard. The one-inch was something that was available. He believed that the coffee shops did create a serious enough problem given more than one was dumping into the system. Staff was trying to afford some protection to the infrastructure.

Mayor Bernard did not feel anyone on Council disagreed with that idea, but there are so many different sizes of traps and accumulation could vary. It seemed to him a pound measurement made more sense than an inch measurement unless they were all the same size traps.

Mr. Lund said when the cleaners clean the traps they look at it and they can see the depth. You cannot weigh it out because the haulers come in with a sucker hose that pulls everything out. They based everything on a percentage. The percentage was based on the water level compared to the fat level. The reason they use that particular factor was because there were different sizes of traps. Once it gets to a certain point it starts bypassing the trap and is not working. That was why they used a percentage value. One also had to take the amount of solids on the bottom into account.

Mr. Shirey explained there were baffles so when the water moved through them the water stopped if it got too full and went right across the top.

Councilor Barnes asked if the six other cities with regulations had specifics.

Mr. Lund replied they were all inclusive.

Mr. Shirey said that was the method staff proposed with the exception of the three coffee shops. They would be a special exception to the rest of the program.

Councilor Chaimov noted Pietro's complied and asked what happened if after a year they found not much was contributed. If we were applying a standard to coffee shops, should it apply to Pietro's too?

Mr. Lund said County was planning on adopting a FOG program that he understood would include coffee shops.

Mr. Shirey understood that the County was going to do what staff proposed. He needed to leave with some direction on what to come back to Council with.

Councilor Chaimov's preference was that staff show Council using its best judgment an amount that would show up in traps and was enough to require that business to cover the expense of putting in the trap and below which the public should cover the expense.

Mr. Shirey asked about the business that had already installed their traps?

Mayor Bernard did not believe there should be an exception.

Councilor Chaimov said that was the issue they had to confront.

Mayor Bernard was concerned about opening the City up to liability for making the exception for the three shops.

Councilor Chaimov did not see it as an exception for three coffee shops. It had to be applied across the board or not at all. He would like to hear what was the staff's best judgment.

Mr. Swanson commented there were a number of businesses in town that saw this as a need. Starbuck's did it as a policy. Another business owner saw it as

good business and citizenship and did not expect compensation. There were people that saw it as good public policy so went ahead and did it. They did not expect any compensation. There were a substantial number of people that did comply. He was not very supportive of putting in a grease trap and paying for it if something did not happen. He thought that ignored the fact that a number of people did it voluntarily as they saw it as a good thing. He saw this as supporting a different behavior.

Councilor Chaimov might ultimately agree that no exceptions are warranted, but he would like to have the ability to weigh the options.

Mr. Shirey said the staff recommendation was a 40-pound trap and one inch accumulation. That was the smallest size trap which he assumed would go into the coffee shops and was the most appropriate size for that kind of business.

Councilor Chaimov did not see making an exception for coffee shops because he did not see why a coffee shop was any more or less likely to cause a problem than Big Town Hero or Milwaukie Bowl. The basis was that it was either prepackaged or it was not, and things went down drain. His perspective was if things were going in the drain it did not matter whether it was a coffee shop or any other establishment. There ought to be a single standard applicable to everyone. Wichita Pub should be held to the same standard that coffee shops were.

Mr. Shirey said we are too late for that. If we would have talked about this a year ago before the ordinance was implemented that would have been fine. That did not work here. He believed we needed to either do the coffee shop thing or make everyone comply that meets the definition.

Mr. Lund said part of the problem with having an oversized tank was that if it was not pumped out the tank would begin rotting because of the pH drop. Then not only do you incur the cost of the maintenance, but the cost of replacement.

Councilor Loomis said he spoke with Great American Video and was told it was not something they wanted to do; they were just complying. The owner described himself as a left wing greenie, but did not feel it was really necessary. If it were not retroactive it would be a different thing. It was a tough time for businesses, and any added expense was difficult. We cannot compare them to Starbuck's. He needed something that was measurable. How often did it need to be pumped out? He had a feeling that citizens were contributing more than the coffee shops.

Mr. Swanson said he would not speculate on what WES would do, but if the County was adopting the same standard he would not be surprised if a wholesale customer would have to adopt similar standards. His point was if county did adopt the FOG ordinance in the same manner as proposed here, that as a wholesale customer there would come some point at which Milwaukie would be requested to adopt the same standard. They would not be happy having district customers limited in someway and wholesale customers having an easier ride.

Councilor Chaimov did not have a problem with the requirement. It was a question of who paid for it. He would like staff to come back with an ordinance that included some cutoff, and then Council could vote.

Mr. Shirey understands the request, but he was not certain he could bring back what Councilor Chaimov was asking for. It would be good to get some clarity on what the County was going to do.

Councilor Chaimov said the impossibility of the task might influence a direction.

Councilor Barnes asked if we could see what other jurisdictions did outside of Oregon?

Mr. Lund said it was more common on the east coast, and they actually charged a yearly permit fee to administer and inspect. Portland was considering it because of DEQ restrictions.

Wastewater Contract and Proposed Rates

Mr. Swanson said there were three separate. Questions 1 and 2 related to Community Partnership process. Did City Council wish to continue into the next phase and if so who would you want to represent you? Staff recommended continuing. The last group came up with some principles one of which was the Kellogg Treatment Plant recommendation. Everyone was asked to buy into the principles. The City's goal was still to decommission Kellogg, not to make the footprint smaller. Before leaving tonight we want to make sure that they told Mr. Kuenzi if the City wished to continue and who would represent it in the process.

Mr. Swanson thought there might have been some misunderstanding. In December 2007 WES reviewed the information. The reason we are here was that we did have some problems with what was being proposed. The last time he invited Mr. Kuenzi to make some restatements and to answer any questions because ultimately we did have a big issue in front of us, which was the big decision on the wastewater treatment agreement and proposed rates.

Mr. Kuenzi distributed a summary presentation on the Community Partners Task Force. The item on Kellogg remained open. The Task Force got to a sticking point over the Kellogg Treatment Plant question. This was about the best you could do at this point with the Kellogg question until we started to go forward putting binding agreements in place, and then start making decisions as a whole. They looked at the cost of decommissioning Kellogg Treatment Plant and doing the replacement at Tri-City at a cost of about $150 million. The Task Force was not willing at this point to say the group would absorb that cost. It did not mean that as we went forward in the future they would not reconsider it. Going into the process he would not put too much weight on this. His gut feeling was you go forward, and the decommissioning would be a business decision when it costs more to invest in Kellogg than it did to replace that capacity elsewhere. There was a business argument to be made there, and the timing was not right as part of this process.

They were asking Council to ratify those recommendations and appoint someone to the next group to work out those binding agreements. The intergovernmental agreement (IGA) was a separate issue. There was no guarantee that the community partners forum would go forward. He hoped that it did because he believed there was a real benefit to everyone by going forward. They still have to have an IGA in place between CCSD#1 and Milwaukie for those services. When he came on December 4, 2007, Mr. Kuenzi asked to look at options for distributing equally and fairly the cost of the Phase 1 program across all customers whether you were inside or outside of the District on a contractual basis. They came back to the board with four different options. The Board landed on the case for Milwaukie and Johnson City that are not in the District. That meant that Milwaukie would be equally sharing the cost of those improvements that were needed within CCSD#1 and fell back to the existing customer base. They stripped out the growth component of the Phase 1 improvement program because CCSD#1 would get a portion of those revenues through system development charges (SDC) so they did not think it was fair to

charge wholesale customers for that growth component. They took the remaining $64 million for the cost of improvements and billed that against all of the customers. He pointed to a figure of $20.12 per connection was their first stab at what that would look like for Milwaukie. The Council directed him to go forward with that concept and develop a new IGA between the City and CCSD#1. As the Community Partners went forward the IGA may be folded into the binding agreement or it may continue to hold depending on what Council wanted to do. They needed to have and agreement in order to go forward.

Chris Storey, CCSD#1 Attorney, said the IGA in addition to reflecting the Board direction also tried to address the plethora of previous IGA's between Milwaukie and CCSD#1. By his count there were 13 different IGA's ranging from 1986 to current. A lot of them had bits and pieces that were useful, but most had fallen by the wayside. The purpose was to reflect the rates and the responsibilities of management. The first section defined various terms in the agreement. Section 2 referred to the services that were to be provided by CCSD#1. That was pulled from a 1990's IGA with updated language that reflected the current regulatory environment. The main differences were in section 3-rates and how they were assessed. The previous mechanism in place was that there was a meter at the pipe that delivered sewage to Kellogg, and they measured the flow into the plant. At the end of the year they created a percentage that when multiplied by the operating costs determined Milwaukie's charge for the year. There was no true capital component; it was purely an O&M charge. As capital facilities needed updates there were separate amendments to the IGA to reflect the capital charges that went against Milwaukie's percentage. The new rate arrangement was intended to short circuit that process by building in both a capital and normal O&M expense component leveled over time as part of a standard wholesale rate. Instead of measuring at the Plant they measure it per customer/per household. They charge out on an EDU basis and allocated the anticipated borrowing costs for this $64 million, the cost of O&M they anticipate, and the cost of capital. The initial calculation was a little different than before. The costs came out to $22.05. As part of the conversation with the Board they thought that was a pretty steep jump and they wanted to reduce that. In section 3.3 there was a phase in of the rate that would be charged which would start at $18 per EDU per household per month. It then phases up to $20 and then $22 after 3 years.

Mike Kuenzi said one of the reasons they went to a fundamental shift in the way we charge was because they never knew what they were going to charge the City and the City never knew what you were going to pay until the end of the year. This year you got hit up for $1.8 million and last year it was about $1.2 million it was all over the map because of the flow, and the changes or expenses. This way the City would know what you owe and the City could plan for a 3 to 5 year horizon.

Mayor Bernard said the City had no input on capital expenditures.

Mr. Storey mentioned that the remainder of the agreement was intended to reflect prior existing agreements as far as coordination of the system, SDC charges, coordination of pre-treatment programs and other issues.

Mr. Kuenzi said the Mayor was right. The City was not in the District so it had no say in planning although he knew several people from Milwaukie had attended meetings and given input into the project. That was the contractual arrangement at this point. There were some choices. The City could join the District, which would give it a say in the participation in that process. The City could continue

the way it was. His perspective was that it was best right now for the City to push Community Partnership and have a seat that the table moving forward.

Mayor Bernard asked if Milwaukie had the option of buying from someone else?

Mr. Kuenzi replied the City could buy from Oak Lodge or Portland.

Mr. Swanson did not think Portland was an option because it was so expensive. He supposed Milwaukie could build its own facility. He did not believe Oak Lodge was interested in taking wholesale customers. What we had was some different perceptions of history. In 1970's a bunch of folks likely went to the Elks to talk about wastewater treatment. At the time the City had its collection system. When it came time to create District 1 the reason the City did not become part of the District was because it was created both to finance the collection system and the treatment system. Milwaukie already had a collection system, so financially the choice would have been made to become a wholesale customer of the resulting District. Over time Milwaukie suffered for what was basically a wise business decision back then. On the other hand they had made some very unwise business decisions because the agreement they entered into with the District did not provide for equity. It basically put the City on the hook for 40% of the local share to the construction of Kellogg Treatment Plant and some interceptors. The City funded 40%, but he did not believe it had ever used 40% of the plant capacity. Any capacity issues that had been raised over the last 34 years had not been a result of the City. Now Milwaukie was being asked to deal with capacity issues even though it was not using it. There was also a problem with the risk premium, which would be a revenue bond.

Mr. Kuenzi said it would be a 20% fee to cover the fact that CCSD#1 ratepayers are incurring the debt in Milwaukie, as the City is not financially responsible for that debt. There were ways around that. If Milwaukie wanted to take on a proportional share of that debt in terms of responsibility they could build that in to get rid of the fee. He was not sure how to do that legally since the City was not part of the District, but there were some option. Milwaukie could walk away from this agreement right now with no debt obligation because the entire debt obligation is on CCSD#1.

Mr. Swanson said realistically the chances of walking away were zero. He did not see much risk for the District. Milwaukie was actually in the risk position because it was on a month-to-month contract that could be canceled with 180-days' notice. He thought the City had been unfairly characterized over the years as a leech on the system because it was not part of the District. Quite to the contrary the City had spent a substantial amount of money to pay for capital, and those who would argue that the City was somehow living off of the District were either misinformed or uninformed. The new methodology of charging based on EDU was something the City was interested in. Right now the ability to predict was pretty weak, and that part of it worked in our favor.

Mr. Storey said the EDU was an assumption that the rules say each household contributed about this much so the households were not actually metered. A Laundromat, for example, would be more than one EDU. It was a standard rate that was adopted industry wide.

Mr. Monahan said there was probably more work to do to analyze the agreement than what he had done to this point. He was looking for Council direction and primary issues.

Councilor Barnes would not approve the IGA because of a number of issues many of which had been brought up at the table. There was still a lot of work to

be done so Milwaukie and its citizens were not put in a bad position. The staff report talked specifically about finance fees, and risks to the City were huge for her. She did not want to leave the City open to that. More important was the cost to Milwaukie. They had discussed this and had their updates on the Community Project. Milwaukie sat at the table and said what it was willing to do. It still bothered her that no one stood up and said Milwaukie had done this this and this, and we were willing to look into it. She could not support the IGA that was before the body now. Milwaukie staff needed to sit down with County staff and work this out so it did not open Milwaukie residents and the City legally to more risk and it needs to be more fair and equitable. Milwaukie had done more than its share supporting CCSD#1 as a whole for many years. There were a few bad IGAs in the past, and she did not want to continue that.

Mr. Kuenzi was not aware there was anything in front of the City Council in final form. There was still work to be done. Mr. Swanson had been very clear that there were some issues that needed to be worked out. Some he was not sure could be worked out, and some of them they could try to resolve. They were still a couple of months away before having a final IGA to vote on.

Mr. Swanson said this was nowhere near final. It would be good for Mr. Kuenzi to hear from Council.

Mr. Kuenzi said there were two issues that came up in staff discussion: equity and rate. The rate reflected exactly what the increase was to CCSD#1 ratepayers. He was not sure there was a lot of room there. Certainly if the equity issue was important he could quickly arrange a discussion. With the amount of available talent the language details could certainly be worked out in order to move forward.

Councilor Stone arrived at 6:39 p.m. due to work constraints.

Councilor Chaimov wanted to see the regional partnership program continue and suggested Councilor Barnes continue in that capacity. As to the agreement he thought the key issues had been identified. If the City and County staffs continue to work together, he was confident that they would come up with an agreement that was satisfactory to both sides.

Councilor Loomis echoed Councilor Chaimov's comments. It was a work in progress.

It was Council consensus to continue the process with Councilor Barnes as the City's representative.

Mr. Kuenzi hoped to get things moving by mid-September because he would like to get through the agreements by the end of the year.

Mayor Bernard adjourned the work session at 6:41 p.m.

Pat DuVal

Pat DuVal, City Recorder