



COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

2355th Meeting

MINUTES

APRIL 5, 2022

Council Present: Councilors Lisa Batey, Angel Falconer, Council President Kathy Hyzy, and Mayor Mark Gamba, and Councilor Desi Nicodemus by video conference

Staff Present: Joseph Briglio, Community Development Director
Kelly Brooks, Assistant City Manager
Justin Gericke, City Attorney
Galen Hoshovsky, Natural Resources Technician
Vera Kolias, Senior Planner
Nicole Madigan, Deputy City Recorder
Ann Ober, City Manager
Peter Passarelli, Public Works Director
Natalie Rogers, Climate & Natural Resources Manager

Tim Salyers, Code Compliance Coordinator
Scott Stauffer, City Recorder
Samantha Vandagriff, Building Official
Jason Wachs, Community Engagement Coordinator
Laura Weigel, Planning Manager
Courtney Wilson, Urban Forester

Mayor Gamba called the meeting to order at 6:13 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Gamba announced upcoming activities, including the city's annual board and committee recruitment campaign, the annual State of the City (SOTC) event, Earth Day activities, a community resource fair, a prescription drug drop-off and shredding event, and the neighborhood district association (NDA) annual leadership elections.

Councilor Batey reported that certain residents of north and east Milwaukie were eligible to participate in a class action lawsuit settlement with Precision Castparts Corp.

3. PROCLAMATIONS AND AWARDS

A. None Scheduled.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Gamba reviewed the public comment procedures and **Ober** reported there was no follow-up report from the March 15 community comments.

Rod Smith, Milwaukie resident, expressed frustration with city staff responses to concerns raised by the public about trees around city hall infected with black knot fungus that the city would be removing. **Mayor Gamba** empathized with the frustration felt by community members who feel unheard and commented on the city's responsibility to safely solve problems. **Passarelli** discussed the removal and evaluation of the sick trees. **Mayor Gamba** and **Rogers** remarked on whether

pesticides could have saved the trees from being removed, noting concerns expressed by the public if the trees were safe to be around, and work done by the city in recent years to care for trees. **Councilor Batey** observed there were other trees in the area suffering from the same fungus and suggested pesticides could eliminate the fungus.

Phil Moen, Milwaukie resident, expressed concern about the proposed tree code and encouraged Council to do more to promote tree planting and not impose new fees. **Moen** also expressed concern about recently installed bulb-outs on 42nd Avenue and **Ober** offered to discuss 42nd Avenue with Moen outside the meeting.

6. CONSENT AGENDA

It was moved by Councilor Falconer and seconded by Councilor Batey to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. March 1, 2022, work session,
2. March 1, 2022, regular session,
3. March 5, 2022, Council retreat, and
4. March 8, 2022, study session.

B. Approval of an Oregon Liquor Control Commission (OLCC) Application for Kimmy's Market, 3141 SE Harrison Street – off-premises sales.

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

7. BUSINESS ITEMS

A. Neighborhood District Association (NDA) Leadership Check-In – Discussion

Wachs provided an overview of the city's NDA program, noting how the city supports neighborhood programming and ongoing projects and challenges.

Matt Rinker, Ardenwald/Johnson Creek NDA chair, reviewed the NDA's 2021 activities and plans for returning to in-person meetings and events in 2022. **Rinker** and **Councilor Batey** remarked on the importance of returning to in-person meetings.

Liz Start, Linwood NDA vice chair, remarked on the impacts of the COVID-19 pandemic on the NDA's ability to meet, and reviewed events and programs the NDA had organized or supported in 2021 and planned to organize or support in 2022.

Charles Bird, Island Station NDA chair, noted the challenges of meeting virtually and discussed the neighborhood's 2021 programs and events and plans for 2022. **Council President Hyzy** and **Wachs** remarked on what technology solutions the NDAs needed to invest in to run in-person meetings with virtual participation options.

Corinn deTorres, Hector Campbell NDA chair, discussed the NDA's shift to virtual quarterly meetings and focus on more in-person events to better engage the community. **deTorres** reviewed neighborhood events planned for 2022.

Lisa Lashbrook, Lewelling NDA secretary, and **Rebecca Stavenjord**, Lewelling NDA chair, encouraged the city to schedule more NDA leadership meetings and discussed the neighborhood's 2021 activities, plans for 2022 events, and the challenges of holding virtual meetings. They commented on the community's focus on pedestrian and bicycle safety following the tragic death of a child due to a speeding vehicle.

Vince Alvarez, Lake Road NDA chair, remarked on the NDA's struggles with virtual meetings and board relationships, and reviewed the neighborhood's 2021 events, programs, and plans for 2022, which included the city's work to build Bowman-Brae Park. **Alvarez** commented on a community produced video on the history of Kellogg Creek, and it was noted staff would share the video link with Council.

Val Hubbard and **Rich Recker**, Historic Milwaukie NDA co-chairs, provided an overview of the NDA's work with other downtown Milwaukie groups, work to recruit new volunteers, holding meetings virtually, the impact of the passing of resident Ed Zumwalt, and noted activities and events the NDA sponsored in 2021.

Mayor Gamba thanked the NDAs for their work in the community.

Mayor Gamba recessed the meeting at 7:43 p.m. and reconvened at 7:51 p.m.

8. PUBLIC HEARING

A. Comprehensive Plan Implementation, Housing and Parking Code Amendments (continued) – Ordinance

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed amendments to the code, file #ZA-2021-002, to order at 7:51 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to receive a final staff report, take public comment, and continue Council deliberation on the proposed housing and parking coding amendments.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Kolias** provided an overview of changes to the code amendments proposed at the last hearing and asked for Council confirmation about the changes. The proposed changes included allowing accessory dwelling units (ADUs) in the front yard, adding universal Americans with Disabilities Act (ADA) design standards, setting minimum lot sizes for new single detached dwellings, and requiring 0.5 parking spaces per unit for townhouse developments. The group discussed the changes and Council unanimously agreed to all but one with a few minor adjustments; **Councilor Batey** did not agree with the proposed minimum parking requirement for townhouses.

Conduct of Hearing: **Mayor Gamba** reviewed the public comment procedures.

Correspondence: No correspondence had been received on the hearing topic.

Audience Testimony: **Garylynn Woodsong**, ADU study consultant, discussed the study's ADU front yard setback recommendations that were meant to encourage active use of front yards and accommodate the conversion of existing garages into carriage house ADUs. **Woodsong** also remarked on the definition of accessible housing units.

Vandagriff explained that the city could prefer that a development use ADA design standard, but the city could not require a developer to implement ADA standards. **Mayor Gamba** and **Vandagriff** remarked on the difference between planning approval requirements and what a building official can approve through an inspection process.

Mayor Gamba and **Kolias** remarked on when in the inspection process the city would discover that a developer had not met the standards they were required to build to and what staff could do to ensure the standards are met. **Councilor Batey** and **Kolias** noted that duplex and triplex housing units are subject to the commercial building code and detached housing units are subject to the residential building code.

Mayor Gamba and **Councilor Batey** remarked on the ADU study recommendations, in particular allowing housing units to be right next to the sidewalk.

Staff Response to Testimony: **Kolias** noted that due to the onsite parking requirement for ADUs a carriage house unit would have to include first floor garage space or have an outdoor parking next to the building.

Questions from Council to Staff: Council had no further questions for staff.

Close Public Comment: **It was moved by Council President Hyzy and seconded by Councilor Batey to close the public comment part of the hearing on the proposed housing and parking code amendments. Motion passed with the following vote: Councilors Batey, Nicodemus, Falconer, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

Mayor Gamba closed the public comment part of the hearing at 8:23 p.m.

Council Deliberation: **Council President Hyzy** agreed with the recommendation of using existing driveways to meet parking requirements but expressed concern about buildings coming right up to the sidewalk in residential non-downtown settings.

Councilor Falconer observed there were many lots in the city with wide driveways and front yards that could accommodate carriage house ADUs. **Council President Hyzy** expressed concern about giving up the 20-foot front yard setback requirement. The group discussed how existing front yards could accommodate parking requirements, a new ADU, and preserve vegetation. **Mayor Gamba** and **Councilor Falconer** did not have strong preferences about allowing housing up to the sidewalk and **Councilor Falconer** presented a drawing of a front yard to suggest the possibility for such ADUs to be built. **Councilor Batey** expressed concern about the pedestrian experience with varying sizes of front yards.

Kolias noted if the city allowed the possibility for housing to be built up to the sidewalk, it could be proposed on streets without sidewalks and suggested that the city’s design standards would need to be reviewed. **Councilor Falconer** suggested Council revisit ADUs next to sidewalks in future code amendment packages. **Mayor Gamba** and **Falconer** agreed that the city’s design standards needed to be updated in general.

Kolias remarked that an ADU on a sidewalk could be approved under the current code. **Council President Hyzy** and **Kolias** confirmed that staff would provide updates to Council on ADU developments in the future.

Continue Hearing: **It was moved by Councilor Batey and seconded by Councilor Falconer to continue the hearing on the Comprehensive Plan housing and parking code amendments, file #ZA-2021-002, to a date certain of April 19, 2022. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

Mayor Gamba closed the public hearing at 8:42 p.m.

B. Comprehensive Plan Implementation, Tree Code Amendments (continued) – Ordinance and Resolution

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed amendments to the code, file #ZA-2021-002, to order at 8:43 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to hear the final staff report, take public comment, and continue deliberation.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Rogers** provided an overview of previous changes to the proposed tree code and fees agreed to by Council. The changes would only require a tree plan when construction resulted in an expanded building footprint.

Rogers reviewed the proposed tree fees, noting that the city manager could waive fees and **Ober** commented on how tree fee waivers would be considered. **Councilor Falconer** asked that the fees document use gender neutral language.

Rogers presented alternate versions of the proposed non-development tree code fees structure. The group discussed the originally proposed fee structure and three alternatives, which included a graduated fee structure, a \$60 per diameter at breast height (DBH) structure, and a flat fee model. **Councilor Batey** proposed a fourth alternative fee structure that would include a \$60 fee per DBH for removing trees under 24-inches and a graduated model for bigger trees. **Passarelli** commented on how the fees had been developed for property owners that may or may not be able to pay fees.

Rogers presented example situations of what the fee alternatives would cost for tree removal on private property. The group discussed the possibility of a situation where a commercial developer could pay less to remove multiple trees than a residential property owner would to remove a single tree. **Council President Hyzy** observed that the fees would be new and could be changed. **Gericke** suggested Council was veering into deliberation and should finish the staff report and take comment.

Rogers presented the originally proposed enforcement fee structure and an alternate fee model that would be used when a tree is removed without a city permit. The alternate model proposed a fee of twice the amount of what the tree removal permit would have been. The group discussed the alternate enforcement fee model and **Ober** remarked on the city manager fee waiver process and suggested staff would report back to Council as the tree code and fees were implemented.

Rogers finished presenting the proposed enforcement fee structures.

Correspondence: No correspondence had been received on the hearing topic.

Conduct of Hearing: **Mayor Gamba** reviewed the public comment procedures.

Audience Testimony: **Anthony Allen**, Milwaukie resident, remarked that the proposed code gave the city the ability to deny tree removal permits and asked about the parameters for the city making those decisions. **Rogers** reviewed the decision standards staff would use when considering a tree permit application and noted that a staff decision could be appealed to the city manager.

Allen asked if the standards gave the city the ability to deny commercial developers' tree removal permits and **Rogers** confirmed that the city could deny a commercial developer or residential property owner's permit application. The group discussed when a homeowner or developer's tree permit application could be denied.

Ober noted that Councilor Nicodemus had left the meeting at 9:31 p.m.

Allen expressed concern for the tree removal appeal process, pointing out when a permit is denied by city staff, the review and decision is left to the city manager who is also city staff.

Close Public Comment: **It was moved by Councilor Batey and seconded by Council President Hyzy to close the public comment part of the hearing on the proposed tree code amendments. Motion passed with the following vote: Councilors Batey, Falconer, and Hyzy and Mayor Gamba voting “aye.” [4:0]**

Mayor Gamba closed the public comment part of the hearing at 9:33 p.m.

Council Discussion: **Council President Hyzy** expressed support for the non-development tree code \$60 per DBH alternate and suggested the fees were an experiment that the city would revise in the future.

Councilor Batey observed that in addition to the permit fees a property owner would need pay for an arborist and that the proposed fees were too low. **Rogers** noted that the city would not require a certified arborist opinion to remove a tree.

The group noted that in addition to the proposed fee structures there was a separate fee for rare and threatened trees.

Councilor Falconer expressed support for the \$60 per DBH alternate fees except for the removal of larger trees. **Mayor Gamba** proposed creating a fee structure that would use the \$60 per DBH alternate up to 30-inch trees and the graduated fee schedule for bigger trees. The group discussed the proposed alternative hybrid structure, and it was Council consensus to use the proposed hybrid structure.

Mayor Gamba and **Councilor Falconer** remarked on the possibility that a property owner would be told they could not remove a tree.

Mayor Gamba asked if Council believed the developer tree removal fees were significant enough to prevent trees from being removed. **Passarelli** and **Council President Hyzy** believed the commercial fees were sufficient to protect trees.

The group remarked on how the code would consider the tree canopy goal when a residential property owner wanted to remove trees. It was noted that staff would report to Council after the code was in effect for several months.

Passarelli asked for Council consensus on the proposed enforcement fees and **Rogers** reviewed the proposed alternates. **Councilor Batey** expressed support for charging a fee that was twice what the permit fee would have been. **Ober** reiterated that staff would report back to Council on how such fees were being assessed and commented on the city manager's role in implementing Council policies. **Councilor Falconer** suggested the Tree Board could be asked to review the code in the future. **Mayor Gamba** summarized that Council supported the alternate enforcement code structure and Council agreed that the city needed to conduct a lot of community outreach and education about the new code.

Ober noted that Council was scheduled to vote on the proposed tree fees on April 19 and that Councilor Nicodemus may have additional remarks to make at that meeting.

Continue Hearing: **It was moved by Councilor Batey and seconded by Council President Hyzy to continue the hearing on the Comprehensive Plan Tree Code Amendments, file #ZA-2021-002, to a date certain of April 19, 2022. Motion passed with the following vote: Councilors Falconer, Batey, and Hyzy and Mayor Gamba voting “aye.” [4:0]**

Mayor Gamba closed the public hearing at 9:52 p.m.

C. Master Fee Schedule Revision, Tree Code Fees – Resolution

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed tree code fee revisions, to order at 9:53 p.m.

Mayor Gamba announced that the hearing would be continued at the next meeting.

Continue Hearing: **It was moved by Councilor Batey and seconded by Council President Hyzy to continue the hearing on the tree code fee revisions to a date certain of April 19, 2022. Motion passed with the following vote: Councilors Falconer, Batey, and Hyzy and Mayor Gamba voting “aye.” [4:0]**

Mayor Gamba closed the public hearing at 9:54 p.m.

9. COUNCIL REPORTS

Mayor Gamba and **Ober** explained that Council had been asked to write a letter in support of securing federal funding for the Housing Authority of Clackamas County’s Hillside housing development project. It was Council consensus to support the letter.

10. ADJOURNMENT

It was moved by Council President Hyzy and seconded by Councilor Batey to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba adjourned the meeting at 9:55 p.m.

Respectfully submitted,


 Scott Stauffer, City Recorder

This page intentionally left blank.