

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
AUGUST 20, 2002**

**Call to Order**

The 1892<sup>nd</sup> meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King  
Larry Lancaster

Jeff Marshall  
Brian Newman

Staff present:

Mike Swanson,  
City Manager  
Gary Firestone,  
City Attorney  
Alice Rouyer,  
Director of Community  
Development and Public  
Works

John Gessner,  
Planning Director  
Esther Gartner,  
IST Manager

**PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

It was moved by Councilor Newman and seconded by Councilor Marshall to consider agenda item VI.B – Agreement with AT&T for Managed Institutional Network – in the consent agenda. Motion passed unanimously.

It was moved by Councilor Newman and seconded by Councilor Marshall to approve the consent agenda that included:

- A. City Council Minutes of August 5 & 6, 2002
- B. OLCC Application, Shari's of Milwaukie
- C. OLCC Application, Sunny Corner Market
- D. Oregon Department of Transportation Bike/Ped Grant Application
- E. Agreement with AT&T for Managed Institutional Network

The motion to adopt the consent agenda passed unanimously.

**AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **Code Amendments for Flag Lots, Subdivision Ordinance, House Design, Permitted Accessory Structures, and Administrative Provisions, File ZA-02-02 – Ordinance**

**Councilor King** called the public hearing on application ZA-02-02 filed by the City of Milwaukie to order at 6:10 p.m.

The request was considered by the Planning Commission at its July 23, 2002, public hearing, and the Commission recommended Council's approval. The Council hearing was de novo, and all persons wishing to speak on the proposal were recognized.

The purpose of this hearing was to consider the Milwaukie Planning Commission's recommendation to approve the Zoning and Subdivision ordinance amendments. The applicable standards to be considered include Zoning Ordinance 19.902 (amendments) and 19.905 (approval criteria), and 19.1011.5 (legislative actions).

Councilor King reviewed the order of business. The applicant has the burden of proving that the proposal conforms to all applicable criteria of Milwaukie's Comprehensive Plan and Zoning Ordinance. All testimony and evidence was to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow a response would preclude an action for damages in circuit court. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submitted written comments, testified or signed the Council hearing sign-up sheet. Councilor King reviewed the conduct of the hearing.

Jurisdiction and impartiality: There were no ex parte contacts or conflicts of interest declared. There were no challenges to any Council member's impartiality or ability to participate in the decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff report: **Gessner** provided the staff report in which the City Council was requested to adopt an ordinance amending municipal code titles 15 (public facilities improvements) and 19 (zoning ordinance), repealing title 17 (subdivision ordinance), adopting title 17 (land division ordinance), and declaring an emergency.

He summarized the public involvement process that included neighborhood association meetings, a direct mailing to 800 potentially affected property owners, and Planning Commission and City Council work sessions and hearings. He gave an overview of the proposed amendments.

The catalyst for this project was a desire to amend the flag lot ordinance. The key changes being proposed are increased accessway width from 20 feet to 25 feet, increased setbacks, the number of flag lots allowed in any partition, landscaping requirements, exclusion of accessway square footage from minimum lot area, and prohibition of flag lots in subdivisions. Additionally, staff addressed concerns with accessory structure size and architectural features. A list of 12 specific design standards for all new single-family residences, conventional and manufactured, was created from which a developer must include 3. Another amendment authorizes the Planning Director to specify application submission requirements and establish a fee for that service. Design regulations would be reduced for common landscape features such as pergolas, arbors, and trellises. Minor changes are proposed to clarify how transportation regulations apply to single-family development and sets threshold values. Lastly, final zoning inspections are required prior to occupancy to help ensure the development is consistent with the approved plans.

**Councilor Lancaster** commended Gessner on doing an exception job on this project.

Correspondence: The Mayor and City Council received correspondence from Dean N. Alterman, Attorney for Richard Cayo.

Supporting testimony: None.

Opposing testimony: **Keith Borchers**, 4186 SE Jackson Street, Milwaukie. He owns property in Milwaukie that could be partitioned for a flag lot, but he did not receive notice. He asked if any data had been collected on how much tax revenue would be lost resulting from this action. Has anyone thought about compensation for devalued property? Would people who already developed flag lots be required to meet screening and landscaping requirements?

**Mayor Bernard** responded this action does not disallow flag lots or impact those already developed.

**Borchers** asked how the allowable size for outbuildings was determined. People purchased and developed flag lots around his property, and now they are raising objections about how he develops his. He believes this is self-serving. He does not understand the accessory building siding requirements since there is no architectural continuity in his neighborhood. He questioned the need for another layer of inspections.

**Allan Alford**, 4005 SE Harrison Street, Milwaukie. He is part owner of a flag lot in the Ardenwald area. Why should a flag lot have different setbacks and be more restricted than the front lot? It will be impossible for some people to develop their property, but they will still be taxed for buildable property. He is aggravated by rules the City imposes and its attempts to be a big city. He does not feel it is fair that a 5-member Council dictates to the entire population because a few people complain to the Planning Department. Restricting the size of a garage is not a free society. Council sits back on its haunches and smiles, but there is no recourse for property owners. He does not

understand why the people no longer decide how the City runs. The Planning Commission voted on all these amendments in one vote, and he hopes the City Council will look at each element and consider the impacts on property owners. When he built his garage on his green space, his neighbors had a fit, and it cost him \$1,200 for a variance. The garage was still not as big as he wanted it.

**Paul Nemerguth**, 10190 SE 27<sup>th</sup> Avenue, Milwaukie. He asked if the development standards applied to new or existing flag lots. He is concerned the square footage in the pole portion is not included in the minimum lot requirements. He is opposed to the development standards because they are very restrictive and devalue property.

Neutral testimony: **Richard Cayo**, 4203 SE Johnson Creek Boulevard, Milwaukie. He thanked Swanson and Gessner for responding to his questions. He discussed the Portland Healthy Streams Initiative and his concern with any public entity actions. He agrees development standards are needed but feels they should be more lenient and user friendly. The \$1,400 variance fee seems high. He urged the City Council to be more lenient with property owners.

**John Siefer**, 11003 SE Stanley Avenue, Milwaukie. He is personally not in favor of flag lots, but his main concern has to do with communication. He understands in talking to the Planning Commission that, if a party has property that will fit under the current or future flag lot rules, administrative approval can be made without notifying adjoining property owners. He recommends, at a minimum, that the adjoining property owners receive notice and be given an opportunity to comment on the development proposal.

**Firestone** said if some action is absolutely, outright permitted, depending on the type of activity, it could simply be done without a land use approval. There is a notification process for partitions and subdivisions.

**Mark Green-Hite**, 7731 SE Tolman Street, Portland. He spoke in opposition to the proposed amendments. Although he is not a Milwaukie resident, he owns property on 30<sup>th</sup> Avenue. He understands why people have issues with flag lots, yet there are some properties that cannot be partitioned, subdivided or developed without creating a flag lot. For example, his property abuts public school property, so he has no other development options. The proposed 25-foot accessway requirement seems to address a livability issue rather than a fire, life safety concern. The change in the stem width requirement and not including it in the lot size makes it very difficult to partition property. He is concerned people with long lots are being penalized when density is the real issue. If this were the case, it would have been fairer if the notice to property owners had said the City Council was considering an ordinance to ban partitions. There are ways to deal with livability and privacy issues through setbacks and screening. Green-Hite believes there should be more opportunities for variances. A situation like his creates much less of an impact than properties in a fully developed area, and this should be taken into consideration. He supports additional flag lot restrictions to address privacy issues through better site design and screening. Making development criteria more difficult is not the way to deal with livability concerns related to flag lots.

Staff comments: **Gessner** responded to the public testimony questions and comments. Notice was sent to owners of properties at least 1.2 times the minimum lot size which is the amount of land necessary to allow a flag lot under today's regulations. Existing flag lots are subject to the rules in effect when the lot was created and protected as a legal nonconforming use.

There was a question about how the maximum allowable accessory structure size was determined. The zoning ordinance precedent was used which allows a 480 square foot accessory structure with lesser setbacks. In talking with the Planning Commission, Council, and neighborhoods, staff developed a maximum size it understood would meet the general needs of most property owners. Gessner addressed the questions about architectural materials. Accessory structures of 120 square feet or less may be constructed out of steel because there are so many convenient units of this size on the market. It would be inappropriate to over-regulate materials for structures this small. Staff heard from City Council that exterior building materials for structures larger than that should be like those ordinarily found in the neighborhood. One person commented there was no consistent architectural material in his neighborhood which could be to the applicant's benefit because the choice is wider.

**Gessner** discussed the inspection prior to occupancy, which supports the existing inspection programs by ensuring all departmental requirements are met. The amendment will also make certain there is a final inspection for zoning purposes and ensure development criteria are followed.

One of the speakers raised the question about flag lots' having different setbacks than other types of lots. The Council and Planning Commission discussed how to create an open space around homes constructed on a flag lot for the benefit of the adjoining property owners. Setbacks have been increased to provide the desirable separation between existing properties and the new flag lot which may impact as many as 4 neighboring lots.

Another speaker discussed staff's ability to make an administrative approval on flag lots without noticing neighbors. Staff does have the authority to approve partitions, which may include flag lots; however, under the City Council's direction the City adopted an increased notice area requirement up to 300 feet of the partition. This applies to all type 2 administrative decisions.

**Siefer**, who made that statement, challenged Gessner's response. When he called the Planning Department on a parcel he thought would be going through this type of administrative process, he was told notice is not required.

**Gessner** apologized for the incomplete information Siefer was given. All administrative decisions on partitions are noticed to adjoining property owners.

**Gessner** addressed Green-Hite's comments about these regulations being drafted with the intent of prohibiting flag lots. Based on City Council and Planning Commission work, it is clear the intent is to improve the livability of flag lots within existing neighborhoods rather than banning them. The regulations themselves will not necessarily prohibit creation of flag lots in situations where the lot is not now large enough under the proposed dimensional standards. As property values rise, neighbors may find it beneficial to negotiate land swaps for flag lot development. Gessner's sense of the process is that the City Council is trying to balance livability issues with development interests of owners of oversized lots. There are opportunities to request a variance.

**Councilor Marshall** said those making public testimony seem to believe this action is being proposed to ban development in the City. Accessory dwelling units are encouraged on sufficiently large lots and may be a form of development preferable to flag lots.

**Clyde Ruby**, 11004 SE Stanley Avenue, Milwaukie. He asked for clarification of the regulations relating to gazebos, arbors, and other such outbuildings he has already constructed on his property.

**Gessner** responded a person might need a building permit for these types of structures depending on the size. The proposed regulations allow pergolas, arbors, and trellises to be located within the required yard setback. From Ruby's description, those structures on his property would be legal today.

Close public hearing: **Councilor King** closed the public testimony portion of the hearing at 7:05 p.m.

Council discussion: **Councilor Newman** supports the proposed regulations. During his term on Council, neighborhoods have been concerned about flag lot development, and he believes there is overwhelming public support for these regulations. Flag lots are generally perceived as degrading the quality of life in a particular neighborhood, lowering property values, and violating others' senses of privacy. These regulations do not prohibit flag lots but make them more neighborhood friendly by restricting setbacks to protect privacy and providing a balance that has generally been perceived as non-existent. The proposed regulations ensure certain conditions exist to protect privacy and neighborhood livability and address neighborhood association concerns.

**Councilor King** understands how Ardenwald residents feel about their privacy being chipped away by houses in what they thought was a lovely backyard. She is strongly in favor of the proposed ordinance. She noted the large Ardenwald lots were platted after World War II as victory gardens.

**Councilor Lancaster** added it has taken a year to prepare regulations to balance conflicting interests while preserving individual private property rights.

**Councilor Marshall** says, for him, this is culmination of about 8-9 years work and is the reason he got involved with his neighborhood association and city government. He understands banning flag lots would not be healthy for the community, and he fully supports the proposed ordinance.

**Mayor Bernard** supports the regulations based on a recent flag lot developments in the community.

Discussion and decision by City Council: **It was moved by Councilor Marshall and seconded by Councilor Lancaster to read the ordinance amending municipal code titles 15 and 19, repealing title 17, adopting title 17 (land division), and declaring an emergency for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.**

**It was moved by Councilor King and seconded by Councilor Lancaster to read the ordinance amending municipal code titles 15 and 19, repealing title 17, adopting title 17 (land division), and declaring an emergency for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.**

**It was moved by Councilor Lancaster and seconded by Councilor Marshall to adopt the ordinance amending municipal code titles 15 and 19, repealing title 17, adopting title 17 (land division), and declaring an emergency. Motion passed unanimously.**

**ORDINANCE NO. 1907:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, AMENDING THE MILWAUKIE MUNICIPAL CODE TITLE 15, TITLE 19-ZONING ORDINANCE, REPEALING TITLE 17-SUBDIVISION ORDINANCE, AND ADOPTING TITLE 17-SUBDIVISION ORDINANCE, AND ADOPTING TITLE 17-LAND DIVISION ORDINANCE, AND TO ADOPT AN EMERGENCY CLAUSE TO ENACT THESE AMENDMENTS.**

**Mayor Bernard** said any party with standing might appeal the City Council decision to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

**Re-Adoption of Public Contracting Administrative Rules and Adoption of Findings in Support of Exemptions – Resolution**

**Mayor Bernard** called the public hearing to order at 7:10 p.m. The purpose of the hearing was to give members of the public an opportunity to comment on the findings developed in support of exemptions from the competitive bidding requirements.

Staff report: **Gary Firestone**, 1727 NW Hoyt St., Portland. Some entities' public contracting rules have been challenged because interested parties were not given a chance to review findings developed in support of adopted exemptions. The purpose of this hearing is to provide such an opportunity. The rules adopted in resolution 8-2002 have not been amended.

Correspondence: None.

Testimony: None.

**Mayor Bernard** closed the public testimony portion of the hearing at 7:15 p.m.

**It was moved by Councilor King and seconded by Councilor Newman to adopt the resolution re-adopting the public contracting administrative rules. Motion passed unanimously.**

**RESOLUTION NO. 21-2002:  
A RESOLUTION OF THE CITY COUNCIL OF MILWAUKIE, OREGON,  
ACTING AS THE LOCAL CONTRACT REVIEW BOARD, READOPTING  
PUBLIC CONTRACTING ADMINISTRATIVE RULES.**

## **OTHER BUSINESS**

### **General Election Ballot Measure – Resolution**

**Swanson** provided the staff report in which the City Council was requested to adopt one of two proposed ballot measures. **David Aschenbrenner**, Budget Committee Chair, joined him. The purpose of adopting one of these resolutions is to place a measure on the November 2002 ballot to deal with \$1.2 million shortfall in the general fund while maintaining cash reserves. The general fund is one of only 2 City funds that benefit from property taxes; the other is the Public Safety Building debt service.

The City's 2002 – 2003 annual budget is in excess of \$37 million; however, most funds, such as sewer, water, storm, and streets, is fee supported. These funds are dedicated to those services and cannot be used for general fund purposes. The departments in the general fund are basic core services: municipal court, the fire service contract with Clackamas County Fire District #1 (CCFD1), police services, public access studio, recycling, City parks efforts outside the Parks District, neighborhood services, code enforcement, planning services, and 49% of library services.

Although he feels the proposal to annex to CCFD1 is the best long-term decision, community input has persuaded him the idea is too complex to adequately explain to voters before the November election. Secondly, the economy is not favorable for a tax increases.

**Swanson** recommended a local option tax on the November 5, 2002 ballot that would maintain current service levels. For example, the police department is currently staffed at 1.5 officers per thousand. The neighborhood services program involves residents through the associations and keeps them informed through the newsletter. Milwaukie has an active code enforcement function that helps residents with neighborhood problems. The library is surpassing all previous circulation records, and, at the insistence of a Budget Committee member, increased the hours open to the public by 7 each week.

When he formally began the City Manager position one year ago, **Swanson** did not desire to come forward to say the City needs more money. He must, however, propose a local option tax of \$1.10/\$1,000 assessed value. According to the county tax assessor, the average assessed value of a single-family Milwaukie home is \$114,000. If this levy passes, the average homeowner would pay \$125.40 annually to maintain current City services.

**Aschenbrenner** said the Budget Review Board was charged with looking at the projected shortfall and proposing a course of action. In speaking with City residents, he and other Board members discerned the annexation proposal was difficult to grasp. The Board recommends the City Council put a local option tax levy on the ballot to maintain current services in the general fund. He reminded the public that this is where the daily service happens – getting a police officer at your door when you need one, checking out a book or doing research at the library, attending a Neighborhood Association meeting, and having nuisance concerns addressed through code enforcement. It is important to Milwaukie's livability to maintain these services, and that is what the local option levy will do.

**Mayor Bernard** commented, when driving King Road and Monroe Street, he supports the annexation proposal so some road repair can be done in the City. He asked how long it will be before Milwaukie begin needed repairs.

**Swanson** said Milwaukie's state gas tax share has been declining for several reasons. In addition to consumer conservation, Milwaukie is not growing. Gas tax is calculated on road miles and population. As cities grow, their share of available funds increases either through increased square miles or added population. In relative terms, Milwaukie's share keeps getting smaller. Street lighting bills are paid from the street fund, and Milwaukie that is about \$300,000 annually. Once the general fund problem is solved, Milwaukie will look at a transportation utility fee as part of a countywide process. He announced he and Mayor Bernard would be making presentations at neighborhood meetings and hold "open houses" at city hall for people to stop by and ask questions.

**Aschenbrenner** added the Budget Review Board meetings have all been open to the public and copies of the 2002 – 2003 adopted budget are available.

**Councilor Newman** thanked the Budget Review Board members, Mayor Bernard, and Swanson for their community outreach efforts. He understand the difficulty in asking citizens to tax themselves. He is proud of Milwaukie's services, which touch residents' lives on a daily basis. This is not a case of empire building, and there will be no additional parks purchased or roads repaired. The proposed levy will simply pay for current services.

**Councilor Lancaster** was originally opposed to levy because he believes annexation is the best long-term decision. However, he realizes annexation is a complex issue, so he supports the levy proposal. Milwaukie has already worked hard to make city government lean and accountable, and there is nothing left to cut other than basic services. It is the voters' choice if they wish to pay more to maintain current service levels. It is appropriate to put the levy proposal on the November ballot.

**Councilor Marshall** is disappointed the City is not looking to fund more park land, but he does concur the annexation proposal is complicated. He believes the levy is the way out of the current situation. He reminded people it was not that long ago that there were only 1.2 police officers per thousand population, code enforcement was only a half-time position, there were no neighborhood associations, and \$10,000 was not going back to each neighborhood annually for projects.

**It was moved by Mayor Bernard and seconded by Councilor King to adopt the resolution submitting to the voters a ballot measure proposing a 4-year local option tax for general operations.**

**RESOLUTION NO. 22-2002:  
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MILWAUKIE, OREGON, CALLING AN ELECTION TO SUBMIT TO THE  
VOTERS A FOUR-YEAR LOCAL OPTION TAX FOR GENERAL  
OPERATIONS BEGINNING JULY 1, 2003.**

**Amend Municipal Code Chapter 2.10 – Boards and Commissions Generally – Ordinance**

**DuVal** presented the staff report in which the City Council was requested to adopt an ordinance recognizing recent advisory board name changes.

**It was moved by Councilor Newman and seconded by Councilor King to read the ordinance amending municipal code Chapter 2.10 – Boards and Commissions Generally for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.**

**It was moved by Councilor King and seconded by Councilor Lancaster to read the ordinance amending municipal code Chapter 2.10 – Boards and Commissions Generally for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.**

**It was moved by Councilor Lancaster and seconded by Councilor Marshall to adopt the ordinance amending municipal code Chapter 2.10 – Boards and Commissions Generally. Motion passed unanimously.**

**ORDINANCE NO. 1908:  
AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING  
MUNICIPAL CODE CHAPTER 2.10 – BAORDS AND COMMISSIONS  
GENERALLY, AND AMENDING ORDINANCE 1793.**

**Riverfront Board Appointments**

Mayor Bernard re-appointed Riverfront Board members: Gary Klein, 1 year; Dave Green, 2 years; Mike Stacey, 3 years; Steve Loaiza, 3 years; Mitch Wall, 2 years; Michael Martin, 3 years; and Paul Verbout, 1 year.

**Executive Session**

**Mayor Bernard** announced the City Council would meet in executive session immediately following adjournment to discuss potential litigation and real property transaction pursuant to ORS 192.660.

**ADJOURNMENT**

**It was moved by Councilor King and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.**

**Mayor Bernard** adjourned the meeting at 7:50 p.m.

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Pat DuVal, Recorder