

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 19, 2002**

CALL TO ORDER

The 1898th meeting of the Milwaukie City Council was called to order by Mayor James Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Michelle Gregory,
Neighborhood Services
Manager
Esther Gartner,
IST Manager
Grady Wheeler,
Information Specialist
John Gessner,
Planning Director
Lindsey Nesbitt,
Assistant Planner

JoAnn Herrigel,
Program Administrator
Brion Barnett,
Civil Engineer
Alice Rouyer,
Director of Community
Development and Public Works
Jason Wachs,
Program Specialist
Linda Noren,
Information Systems Analyst
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Public Safety Appreciation Week

Mayor Bernard read a proclamation recognizing November 25 – 30, 2002 as *Public Safety Appreciation Week*. Representatives of the Milwaukie Police Department and Clackamas County Fire District #1 were present.

Centennial Event Update

Gregory and Centennial Committee Chair **Wilda Parks** updated the City Council and public on the upcoming events for the 2003 celebration. Parks noted the enthusiasm and dedication of the Committee members and positive involvement by local businesses and organizations.

Pilot Centennial Quiz Winners

Each winner of the Centennial Quiz in the September and October editions of *The Pilot* were awarded a young dogwood tree to commemorate the event. Allan DeLay was recognized as the first resident to respond to the quiz, and he, in turn, gave the City Council a 1951 photograph of what was considered to be the largest dogwood tree in the world at the time. The tree did not recover from damage sustained in the 1962 Columbus Day Storm, and it eventually died. It was located on Harrison Street near 32nd Avenue. Other quiz winners were John Siefer, Phil Korten, Jim Redmond, Betty Farr, Gene Pisaneschi, Bill Kerry, Norma Paelser, John Sciarra, Mike Hardy, David Lambert, Fred Behrman, Jim Mishler, Margaret Parsons, Sharon Phillips, Shirley Faust, Melanie Phillips, Betty Stewart, Linda Palmer, Wanda Reily, Daryl Miller, Carolyn Matson, Peter Drake, Mary Jarman, and George Cordy.

Redesigned City Website

Wheeler and **Gartner** demonstrated the redesigned city website and discussed future enhancements including electronic Council packets.

Councilor Lancaster suggested using an easier to read font and recommended implementing an on-line payment system.

CONSENT AGENDA

It was moved by **Councilor King** and seconded by **Councilor Lancaster** to adopt the consent agenda that included:

- A. **City Council Minutes of November 4 & 5, 2002;**
- B. **Metro Local Share Intergovernmental Agreement Extension;**
- C. **Metropolitan Implementation Program (MTIP) Grant Application;**
- D. **Resolution 26-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing a North Main Developer Selection Committee, Setting Criteria for Selection of Members and Setting a Timeframe for Reporting**
- E. **Community Development Block Grant Application**

The motion to adopt the consent agenda passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Code Amendment for Cell Towers and Other Wireless Communication Facilities (Application ZA-02-04) and Fee for Third Party Review

Mayor Bernard called the public hearing on the legislative zoning ordinance amendment to order at 6:50 p.m.

Mayor Bernard announced this would be a legislative decision by the Council based on the following standards: statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; and applicable provisions of implementing ordinances. He reviewed the order of business.

Mayor Bernard explained the City Council decision would be the final decision of the City. All testimony and evidence must 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. Any party with standing may appeal the decision 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 or testified and signed the City Council Attendance sheet.

Conflicts of Interest: No member of Council declared a potential or actual conflict of interest as defined in ORS 244.

No member of the audience challenged any Council member's ability to participate in the decision.

Initial Staff Presentation: **Nesbitt** presented the staff report in which the City Council was requested to adopt an ordinance amending the zoning ordinance improving Milwaukie regulations for wireless communication facilities.

Pursuant to FCC regulations, the City may adopt standards regulating cell towers, but it may not prohibit construction of new towers or discriminate in such a way that certain carriers cannot provide service to the area because of technological costs. Nesbitt reviewed the key issues related to the proposed action: prohibit construction of new towers in residential, commercial, and downtown zones; limit construction of new towers to the business industrial and manufacturing zones; establish a minimum separation requirement of 1500 feet for new towers; permit the placement of antennas on utility poles in all zones; and establish setback and landscape buffering requirements.

Nesbitt also proposed a resolution that would establish a fee for a third party review of wireless communication land use applications, a monthly fee for placing antennas on utility poles located within the right-of-way, and an administrative review fee for land use applications.

Correspondence: None.

Testimony in Support: None.

Neutral Testimony: None.

Testimony in Opposition: None.

Council Clarifications: **Councilor Lancaster** referred to staff report page 3, item 5.F, a proposed regulation to surround equipment cabinets and the tower base with a 6-foot security fence and landscape screening. He was concerned this somewhat vague language would be subject to interpretation.

Nesbitt explained the surrounding fence could be cyclone or wood, and standards would depend on the zoning of the site. There are no provisions for the type of wood used for fencing. The vegetative screening standards could be a condition of approval.

Councilor Lancaster asked how the collected fees would be used.

Nesbitt responded fees would be general fund revenue.

Councilor Marshall asked how staff arrived at a \$250 per month fee for each wireless antenna attached to a utility pole located in the right-of-way. He considered the fee low and suggested the rental be based on a percentage of revenue collected.

Nesbitt responded the fee is comparable to that charged by the City of Portland and Portland General Electric (PGE). Based on the Telecommunications Act of 1996, the City is prohibited from creating a regulation that would be too costly for some carriers.

Councilor Marshall was concerned about the poles being engineered to determine if they are able to withstand the stress of adding an antenna, and, thereby, potentially reducing their useful lives.

Nesbitt said applicants must have permission from PGE to attach an antenna before making application to the City. Essentially, the wireless communication provider is renting the right-of-way from the City rather than the pole itself.

Gessner encouraged the City Council to adopt the fee at this time and amend it later if need be. He will provide a supplemental fee report in December.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:10 p.m.

It was moved by Councilor King and seconded by Mayor Bernard to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities. Motion passed unanimously among the members present.

ORDINANCE NO. 1910:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19, THE MILWAUKIE ZONING ORDINANCE, ADOPTING NEW REGULATIONS GOVERNING SITING AND DESIGN OF WIRELESS COMMUNICATION FACILITIES.

LUBA Appeal Information: **Mayor Bernard** announced any party with standing might appeal the decision of the City Council 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.

It was moved by Councilor Marshall and seconded by Mayor Bernard to adopt the resolution establishing a fee for third party review for wireless communication land use applications, a monthly fee for placing antennas on utility poles in the right-of-way, and a fee for administrative review of wireless communication facility land use applications. Motion passed unanimously among the members present.

RESOLUTION NO. 27-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FEES AND CHARGES ESTABLISHING A FEE FOR THIRD PARTY REVIEW FOR WIRELESS COMMUNICATION LAND USE APPLICATIONS, A MONTHLY FEE FOR THE PLACEMENT OF WIRELESS COMMUNICATION ANTENNAS ON UTILITY POLES LOCATED IN THE RIGHT-OF-WAY, AND A FEE FOR ADMINISTRATIVE REVIEW OF WIRELESS COMMUNICATION FACILITY LAND USE APPLICATIONS AND CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

OTHER BUSINESS

Franchise with Northwest Natural Gas Company

Herrigel presented the staff report in which the City Council was requested to approve a nonexclusive franchise to Northwest Natural Gas (NW Natural) to operate a natural gas utility system serving Milwaukie residents. The existing franchise will expire January 31, 2003. The terms of the proposed agreement are substantially unchanged

with the exception of the franchise fee. The utility agrees to increase the franchise fee to the City from 3% to 5%, so, if approved by Council, the City will realize an additional \$100,000 revenue in the general fund annually.

Herrigel referred to a letter from The Grove Homeowners' Association, which cited 3 issues. First, the Association has concerns about streets being returned to acceptable standards after utilities make street cuts. Herrigel believes this is an internal issue that should be addressed outside the action before City Council at this meeting. Second, the Association believes NW Natural should provide customers with a list of local contractors when conversions are being made. Herrigel recommended this be handled outside the franchise. Third, the Association suggests stubbing off lines at the curb to minimize right-of-way disruptions.

Sandra Hart, NW Natural representative, addressed the proposal to stub out the lines. Because stubs would be in sidewalks or residents' front yards, NW Natural is concerned about safety. The likelihood of third-party damages also increases. Hart believes the Public Utilities Commission (PUC) and the insurance carrier would support this position.

Councilor Lancaster said, from his perspective, the bigger issue is utility cuts, which can dramatically reduce a street's useful life.

Hart responded that NW Natural is conscientious in its street repairs. The company tries to carry out conversions in an area rather than on an individual customer basis. Unless the ground is too rocky, NW Natural crews use directional bores to reduce right-of-way disruptions.

Herrigel added there is language in the agreement that, if NW Natural's street restorations are not completed to City standards within a given period of time, the City may carry out that restoration and charge the expense back to the franchisee.

Councilor Lancaster asked if it was to the City's best advantage to enter into a 10-year franchise agreement.

Herrigel said the term and fee is comparable to what other cities in the state are doing. Milwaukie has had a good relationship with NW Natural, and there are no technological changes, such as one might see with a cable provider, which would make a shorter-term agreement more desirable.

Councilor Lancaster was concerned about all of the franchise fee programs' having more of an economic basis and recommended looking at the impacts of the City's franchise agreements.

Hart referred to the Grove Homeowners' Association's concerns about the contractor list. Contractors must go through a screening process to be included in the company's participation program. When NW Natural goes into a conversion area, it takes a

contractor along to discuss the process; however, the participation program is not limited to that one contractor.

Councilor Lancaster noted the common complaint about cuts being made to streets just recently improved. He asked if there is an outreach program to improve project coordination.

Hart replied NW Natural tries to work with cities and developers.

Mayor Bernard discussed the feasibility of placing a moratorium on street cuts.

Swanson commented that public works departments and utility companies working together is a fairly recent development. Regarding the franchise term, he noted franchise fees have recently come under attack and have been subject to challenges by companies such as Qwest. PGE and NW Natural have not taken that course and have continued to be supportive of local governments. If the City does annex additional land in the future, franchise revenues will increase proportionately. Swanson thanked Herrigel for taking on the responsibility of negotiating the franchise agreements and doing it very well.

It was moved by Councilor King and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance granting a nonexclusive franchise to Northwest Natural Gas. Motion passed unanimously among the members present.

ORDINANC NO. 1911:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING A NONEXCLUSIVE FRANCHISE TO NORTHWEST NATURAL GAS TO OPERATE A NATURAL GAS UTILITY SYSTEM PROVIDING NATURAL GAS SERVICES TO RESIDENTS WITHIN THE CITY AND TO INSTALL, MAINTAIN AND OPERATE FACILITIES FOR THE TRANSMISSION OF NATURAL GAS WITHIN RIGHTS OF WAY AS WELL AS RELATED COMMUNICATIONS SYSTEM FOR THE DISTRIBUTION OF NATURAL GAS.

Other Items

Rouyer announced that the City received a \$200,000 grant from the State to construct sidewalks on 42nd Avenue between Olsen Street and Johnson Creek Boulevard.

Board and Commission Appointments

Mayor Bernard, with the consent of Council, appointed Ray Harris to the Park and Recreation Board and Rick Bantz (Lake Road Neighborhood) and Karen Martin (Hector Campbell Neighborhood) to the Public Safety Advisory Committee.

Levy Failure

Swanson said the current 2002 – 2003 budget is balanced, but during the budget process last spring, a \$1.2 million shortfall was predicted for fiscal year 2003 – 2004. With the defeat of the local option tax measure in November, the City finds itself in the situation of having to respond as early as possible and making some decisions in order to approach the budget process in a good position. He suggested engaging in a process and making some decisions that might lead to adjustments in the current year's budget. He and Finance Director Smith recently projected about a \$973,000 shortfall in 2003 – 2004. PERS recently notified entities of a 5% increase, which translates into about \$80,000 for Milwaukie. Given this scenario, the target is about \$1.1 million reduction to balance the FY 2003 - 2004 budget.

Swanson discussed the need to balance speed with a quality decision-making process. The process must be speedy and fair and carry with it a high level of integrity. He recommended that the Budget Committee begin hearings in January 2003 and the changes, including staff notices, be implemented at the end of January. The intent is to balance the budget and provide services – not to hurt the taxpayers. He advocated for maintaining a healthy contingency to fulfill the City's fiduciary responsibilities.

Councilor Lancaster suggested starting the Budget Committee meetings in December.

Councilor King wished to have some input into the process before going off Council.

Councilor Marshall agreed he would like to provide input as well. There is a history, and to a certain degree it could be said he and King are a part of it. He encouraged scheduling a Budget Committee meeting in December with Councilors elect attending. He advocated making final decisions by the end of January and implementing plans by February 1st.

Councilor Lancaster encouraged public outreach to gather input on what services residents wish to receive.

It was the consensus of Council to direct the Budget Committee to call a meeting on December 16 in lieu of the regularly scheduled Council work session.

Executive Session

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment to discuss real property transactions pursuant to ORS 192.660(h).

ADJOURNMENT

It was moved by Councilor King and seconded by Councilor Marshall to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 7:55 p.m.

Pat DuVal, Recorder