

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
July 19, 2011**

CALL TO ORDER

Mayor Ferguson called the 2106th meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Services Director JoAnn Herrigel, Associate Planner Brett Kelder, Assistant to the City Manager Teri Bankhead, Community Development and Public Works Director Kenny Asher

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

CONSENT AGENDA

It was moved by Councilor Hedges and seconded by Councilor Miller to approve the consent agenda consisting of:

- A. **Resolution No. 70-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing Authority to Enter into an Agreement with Clackamas County Service District No. 5 (District) Regarding the Transfer of Street Lights in Dual Interest Area 1 and Related to the NE Sewer Extension Project;**
- B. **City Council Minutes:**
 - 1. **April 26, 2011 Study Session;**
 - 2. **May 31, 2011 Study Session; and**
 - 3. **July 5, 2011 Regular Session; and**
- C. **Resolution No. 71-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Granting Authority to the City Manager to Sign an Agreement with Metro for a Nature in the Neighborhoods Grant of \$213,000 for the Klein Point Overlook and Johnson Creek Confluence Enhancements.**

Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

Ed Zumwalt, Milwaukie, encouraged people to attend the Milwaukie Daze Festival this coming weekend and highlighted some of the scheduled events.

Les Poole, Clackamas County, expressed concerns about Kellogg Lake environmental issues related to the crossing and commented on the irony the Council's considering habitat protections at this meeting. A group was gathering signatures to put urban renewal on the ballot in Clackamas County because they felt it was being abused. He had yet to see anything on the agenda regarding making Kellogg Lake Park and Kronberg Park a single entity. He asked for documentation for all funding being applied to mitigation of the historic railroad trestle, Kronberg Park, Kellogg Lake Park, the Trolley Trail, Kellogg Lake, and the Willamette Greenway. All the money, he stated, was being spent in Multnomah County.

Mr. Monahan said staff would provide Mr. Poole with the appropriate records request form to ensure he was provided with the desired information.

Fred Nelligan, Oak Lodge Community Council, read his comments to the City Council into the record. Based on his involvement over the past year, he formed the opinion that the Portland-Milwaukie Light Rail (PMLR) project was vital to the: continued integration of suburban communities with the Portland Metro area, to the economic redevelopment of the blighted McLoughlin commercial corridor, and to the efforts of Oak Grove to establish a unique and vibrant community identity. His involvement expanded to the Park Avenue Stakeholders Advisory Group that focused on making the Park Avenue Station a model commercial corridor. He commended the many people involved in making this project work for the benefit of all, and he, personally, was thankful for the opportunity to serve.

Mayor Ferguson recognized Mark Gamba for the photos he had taken of the City of which some were displayed in the Council Chambers.

PUBLIC HEARING

A. Garbage Rate Increase

Mayor Ferguson called the public hearing on the proposed increase in residential and commercial garbage and some drop box rates to order at 7:16 p.m.

The purpose of the hearing was to consider a resolution increasing residential and commercial garbage and some drop box rates to reflect increases in the Metro tip fee and fuel costs and to hear public comment on the proposal.

Ms. Herrigel, joined by Rick Winterhalter from the Clackamas County Office of Sustainability, provided the staff report. She reviewed the process to determine if the rate of return was in the 8% - 12% range. In January forms are distributed to the haulers to identify revenues and expenses to develop a composite. After a review in May, Metro reviews its tip fees and makes any necessary adjustments in July. With Metro's recent increase in tip fees, the haulers' rate of return would fall under 8%. She reviewed typical customer increases.

Mayor Ferguson reviewed the conduct of the hearing. No correspondence had been received on the matter, and no one wished to testify.

Mayor Ferguson closed the public testimony portion of the hearing at 7:25 p.m.

Councilor Hedges asked what the effect would be if the increase were not approved.

Ms. Herrigel replied the haulers would come in with a rate of return under 8%, which was under the allowable rate of return according to the franchise agreement, resulting in a larger increase next year. The 8% had been established as a reasonable rate to sustain business.

Councilor Miller commented this increase would be difficult for the average citizen.

Councilor Loomis asked the justification for the increase in Metro's tip fee.

Ms. Herrigel replied Metro considered the fuel and transportation costs related to moving material to Arlington. She discussed customers' service level options.

Councilor Miller understood recycling was not optional if one had garbage service.

Ms. Herrigel responded the haulers liked to have consistency so they knew what to pick up.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt the resolution increasing residential and commercial garbage and some drop box

rates to reflect increases in the Metro tip fee and fuel costs. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION NO. 72-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INCREASING RESIDENTIAL AND COMMERCIAL GARBAGE AND SOME DROP BOX RATES TO REFLECT INCREASES IN THE METRO TIP FEE AND FUEL COSTS.

B. Natural Resource Amendments to the Zoning Code and Comprehensive Plan – Ordinance and Resolution

Mayor Ferguson called the public hearing on the legislative Comprehensive Plan and Zoning Ordinance amendment initiated by the City of Milwaukie to order at 7:37 p.m.

The purpose of this hearing was to consider an ordinance to adopt proposed amendments to the Comprehensive Plan Chapter 3 and the Milwaukie Municipal Code Title 19 Zoning Ordinance to protect the City’s Natural Resources. This was a legislative decision by the City Council and was based on the following standards: the state wide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan policies; and applicable provisions of implementing ordinances. Mayor Ferguson reviewed the order of business.

The City Council decision was the final decision of the City. All testimony and evidence was directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Any party with standing could 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 were those who submitted written comments or testified and signed the City Council Attendance sign-up sheet.

There were no conflicts of interest declared and no challenges to the Council’s ability to participate in the discussion.

Mr. Kelter provided the staff report. The City had existing rules that protected its most sensitive areas. Cities throughout the region were being asked to update their regulations so construction and development activities did not harm the habitat of birds, fish, and native plants and trees. After working with dozens of citizens and property owners over the past two years, the City was ready to update its code to protect these habitat conservation areas while allowing property owners to make desired improvements.

The existing rules, adopted in 2002, protected the most sensitive areas that were within about 50-feet of our creeks and streams, wetlands, and the Willamette River. The proposed rules would extend protection to habitat areas beyond the water quality resource (WQR) areas. He provided an overview of Metro’s Nature in the Neighborhoods Program. Title 13 dealt with habitat conservation areas (HCA), and Mr. Kelter described the regulations. The City looked at its code to determine what barriers to habitat-friendly practices might be eliminated. In Milwaukie that meant somewhat widening the habitat areas near streams and wetlands while allowing everyday activities that resulted in small disturbances. The amendments would provide a reasonable path for development that met clear standards, including mitigation, and tree protection.

Mr. Kelter reviewed the two-year public outreach process undertaken by the Planning Department that included an advisory group, webpage information, an open house, and public notice. The Planning Commission held seven work sessions and recently held

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four public hearings on the matter. Some of the most controversial issues identified were tree removal, HCA exemptions for existing residential lots, allowing minor disturbances close to water quality resources like streams and wetlands, division of high-percentage resource properties, and reducing the burden on property owners. At its June 14 hearing the Commission concluded its deliberations and agreed by a 4:1 vote to recommend that the City Council adopt the proposed amendments. Mr. Kelder reviewed the project timeline.

Mr. Kelder described the elements of Type I, II, or III reviews, mitigation, and related fees and activities. Many activities had been identified in the proposed code that would be exempt from review, application, or fee. He showed a few examples by comparing consideration of activities before and after the amendments were adopted. He pointed out the trigger area outside the WQR and HCA that would necessitate a construction management plan if the activity were greater than 150 square feet. There had been lengthy discussions about tree removal which resulted in more clear rules for all parties. He described the Type I review that included a 1-for-1 tree replacement. Exempt situations included removal of downed trees, 3 or fewer nuisance trees, emergency situations, as part of a natural resources plan, and major pruning within 10-feet of structures. All Type III tree removals would go to the Planning Commission. He showed a slide of a lot with the 50-foot water quality resource area with an additional 150-feet of HCA. The inventory was done by looking at the stream areas of about 200-feet plus existing development such as driveways, parking lots, and houses. Additionally, elements such as existing vegetation and urban development value were all part of the cross-referencing and analysis. Therefore, the HCA line was not consistent like the WQR. Some kind of basic plan might be required if significant development activity were proposed near a certain resource.

Councilor Hedges understood the HCA was not a precise distance and asked how the property owner would know.

Mr. Kelder replied the map being proposed for adoption along with the rules would be used by staff and property owner to identify the HCA for a specific project. Additionally, the map would be reviewed for accuracy and made available online for reference. Staff has worked with a number of property owners to determine the impacts of the proposed code amendments.

Mr. Asher added referring to maps was not dissimilar to any maps staff might consult when there was a proposal to alter property.

Mr. Kelder noted Ms. Allgood had set up a laptop in the conference room if anyone had questions about their properties tonight. Another major category was options for new development. In the WQR, small additions up to 150-sf would be subject to a Type II review, while all other new construction needed Type III review. In the HCA, up to 500 sf of new disturbance was allowed outright. If the objective standards were met, it would be a Type I review; otherwise a Type III review would be required. This rule held true for new project, and if outside the WQR and HCA a construction management plan would be needed if the project were greater than 150 sf.

Mr. Kelder reported there had been significant discussion about certain property owners bearing a special burden for others. As a result, fees would be waived for some of the more simple processes like map corrections, construction management and natural resource management plans, and tree removal. Because tree removal was such an issue, the Type III tree removal fee of \$1,700 was reduced to \$500 to acknowledge the people going through the process were bearing a special burden for the community.

The Planning Commission recommendation was to adopt the ordinance and related exhibits as proposed with addenda. Mr. Kelter reviewed the decision-making options.

Lisa Batey, Planning Commission Chair, reported the body held four hearings on this very complicated matter and debated long and hard. Some of the environmental groups felt the amendments went too far in the direction of allowing tree removal while property owners felt the amendments were too stringent. The recommendation, including tree removal, was a compromise, and she felt the result was a happy medium.

No additional correspondence had been received other than the Audubon Society of Portland letter from Urban Conservationist Jim Labbe dated July 18, 2011, distributed at the work session.

Mayor Ferguson reviewed the conduct of the hearing.

Testimony in support:

Rob Kappa, Milwaukie, spoke on behalf of the proposal. He felt staff, the advisory committee, and the Planning Commission had dealt with a difficult issue. The preservation of tree canopy was very important, and protecting rivers and streams was critical. He encouraged the City Council to vote in favor of the proposed amendments and noted the Audubon Society's recommendation related to protection and restoration of regionally significant riparian habitat.

Vincent Alvarez, Milwaukie, fully supported the plan; however, he would like to see more restrictions on tree removal. Owning property on streams had special restrictions, and what was done on a certain property impacted others. He liked the Plan but would like more restrictions on tree removal.

Chantelle Gamba, Milwaukie, spoke in strong support of the proposed amendments. It was a sound recommendation to the City Council with one exception. She lived on a property that was heavily impacted by WQR and HCA and objected to the compromise that allowed property owners to cut down trees without a permit. The negative results of tree removal were well-documented. Tree removal eradicated the spawning grounds of native and endangered fish, contributed to the erosion of valuable topsoil, and increased vulnerability to flooding. By subjecting property owners to a permitting process, the City was not ruling out the possibility of tree removal but providing a broader perspective and a safety net to support healthy choices. She urged the City Council to adopt the code amendments with the exception of tree removal. She would rather see the City Council adopt a tree ordinance.

Mark Gamba, Milwaukie, stated the document before the City Council represented thousands of hours of work on a model Metro code molded to fit Milwaukie. It should give reasonable protection to our precious natural resources without unduly hampering property owners in the care of their land. In some places this code was a little more restrictive than the Metro version in that it was a result of a process in which there was a great deal of compromise and further assumed that municipalities had their own tree code. Metro assumed trees would already be protected and that the home exemption was not particularly damaging. Milwaukie did not have a tree code, so the presumed protections did not exist. He was opposed to the compromise that allowed the cutting of three non-native trees on certain properties. Other than that change, Mr. Gamba encouraged the City Council to adopt the proposed ordinance.

Jason Howard, Johnson Creek Watershed Council, Milwaukie, spoke as an active member in the natural resource overlay project. He echoed the comments of those who spoke before him and believed the removal of three trees went too far.

Jim Labbe, Portland Audubon Society, observed this was an important piece to a broad regional effort focusing in riparian corridors. Efforts were going into restoring and

enhancing these resources and these were consistent baseline protections throughout the region: adopt updated natural resource protections in a timely manner and without further weakening of safeguards for clean water and wildlife, revise permitted tree cutting in WQR to adequately protect and improve water quality and aquatic habitat, and avoid broad exemptions that would allow unmitigated tree cutting in HCAs on developed residential properties. He encouraged the City of Milwaukie to develop a tree ordinance and become a Tree City, USA.

Dick Shook, Clackamas County, spoke to the importance of preserving natural areas and urged the City Council to adopt the natural resource amendments. He agreed with earlier comments and encouraged moving forward to put something on the books.

Pat Russell, Clackamas County, read a brief letter which he had prepared as an individual into the record.

My name is Pat Russell and I live in unincorporated Clackamas County at 15989 SE Bilquist Circle, south of Bilquist elementary adjacent Webster Road. I have advocated for salmon recovery in the Kellogg-Mt. Scott watershed since 2001 and participated in Title 3 and 13 at Metro and habitat planning in the Beaverton area during the '90's.

As a past urban planner, I have been impressed with the City's efforts to date to restore salmon access at the mouth of Kellogg Creek and return its estuary to a more natural condition since the forming of the man-made impoundment in the 1850's by our illustrious Joseph Kellogg. Back then, it was known as Cold Creek with abundant salmon. We can't relive the past, but salmon do have a place in our community and are a key indicator of our watershed health and the City's viable domestic water resource. Please keep you restoration initiative alive and find the money.

I also appreciate the City's support and delegation of staff to help form and run the new North Clackamas Urban Watersheds Council. Both JoAnn Herrigel and Nicole West have been invaluable over the past two years.

It is good that your Planning Commission's recommendation under consideration tonight has come close to meeting the aspirations of the environmental community, gaining favor by groups, like the Portland Audubon. Salmon may be one step closer to coming home.

Neutral testimony:

Jean Baker, Milwaukie, had watched the process for many months as land use planning and the environment had been very important to her for many years. She objected to the changes in public notice and had concerns about fees and violation penalties. Other than these concerns, she felt staff had done a great job.

Tanya Burns, North Clackamas Parks and Recreation District, was a natural resource coordinator and participated on the advisory group which she noted was very diverse. She expressed concerns about areas that had already been degraded and needed to be enhanced. She did not think this would be a burdensome process, and she was committed to working with groups to improve habitat areas.

Testimony in opposition:

Christopher Burkett, Milwaukie, read his comments into the record:

I have been involved with the formation of these proposed Natural Resource regulations for over two years. I've exhaustively studied every state, regional and local document even vaguely associated with these regulations. I've met with Metro Regional Planners, attended every meeting of the Citizen's Advisory

Group, and participated in numerous follow up session of the Milwaukie Planning Commission. It's been an interesting journey and we're now at the final step which determines what impact these regulations will have on homeowners.

My single biggest concern about the proposed regulations is that they take away my ability to properly manage trees on our fully mature and manicured landscaped property. The natural world is infinitely complex and is filled with unexpected surprises. Despite our best efforts, it won't neatly conform to the fixed rules of planning departments. Our beautifully landscaped home property is as cohesively designed and as well maintained as the Japanese Gardens, or Crystal Springs Rhododendron Gardens in Portland. There is no erosion, degradation, or rupture of the local ecological fabric. We plan to spend the rest of our lives here; we know every square inch of our property, and we know what is best for our land. We do not need the government telling us what to do.

We have heard from the Milwaukie Planning Department about how the new restrictions on tree cutting are less onerous than what is currently in place. What hasn't been discussed is the deception that was used in 2002, which I saw and witnessed first had when I testified in opposition to that ordinance. The minutes from those meetings show that the Planning Commissioners had no idea that they were approving a tree cutting prohibition on homeowner's properties. They were deliberately deceived by the Planning Department at that time, who snuck this into the ordinance. This was done by inserting just one little word, "activity," into the prohibition section of the ordinance. Since tree cutting was not specifically permitted, it was thereby prohibited. The Commissioners had no idea that this was hidden in the language. They were also misled to believe that the ordinance only applied to new development and not existing home sites.

Regrettably, the statement to the effect that "every activity is prohibited unless specifically permitted" is still included in this new natural resource ordinance. This specific language is not in any other part of Milwaukie's code, nor is it in Metro's Model Ordinance, nor is it in any other local jurisdiction's Natural Resource Ordinance. This all-encompassing prohibition can lead to other, unnamed and unknown restrictions, as happened in 2002. Milwaukie already has many more restrictions than are required, without including this catch-all clause. Do not be misled by conciliatory statements in the "Intent Section" of the ordinance: they may mean nothing unless they are implemented by specific clauses in the body of the ordinance.

We have been informed by the Planning Department that our private property and our land is a "shared community resource," and that property owners must be subservient to the demands of the "good of the greater community." I strongly disagree with this socialist viewpoint which subjugates my basic rights as a private property owner. The proper function of government is the preservation of property, not the taking of property. Society cannot benefit when individuals are harmed. Our property doesn't need "restoration or enhancement." It need protection from bureaucratic depredation.

The concept of creating a "Habitat Conservation Area" is interesting but what about conserving our habitat? Humans are living creatures who need protection from bureaucratic oppression. Without regulatory protection, our idyllic home property and the quality of our life will be seriously degraded by the intrusion of local government into the most basic and personal aspects of our lives. The restrictions contained within these regulations compromise the use of almost all of our home property.

This heavy burden which will be placed on the backs of homeowners does not represent the will of all of the citizens of Milwaukie and it certainly does not represent the will of the homeowners who are going to be directly affected. Why do environmental activists who don't even live in Milwaukie attempt to dictate what happens to our landscaped home properties? How easy it is for people who don't have to live with, or pay for, the consequences.

By what right does anyone justify trying to shove us aside and take control of our land? Who worked hard for an entire lifetime to be able to afford to purchase this beautiful property? Who actually lives on it, maintains it, and pays taxes on it?

Then there's the question of how the Ordinance was reviewed by the Milwaukie Planning Commission. The Planning Commission was actually advised by the City's lawyer, during the course of their public meetings, that when crafting a legislative ordinance there was no legal necessity for them to weigh the facts or consider the evidence but that they could be openly biased and could vote however they chose to, without having to justify their decision. He also advised them that they could take 90% of the value of homeowners' property without it being considered a "taking," which would require compensation. They have followed his advice.

There are some Planning Commissioners who dismiss the landscaping plans of homeowners as being of no importance and some Commissioners who treat any Habitat Conservation Area as if it were public land which just happens to be inconveniently located on private property. They have dismissed most of our opposition without discussing the facts or merits of our objections and in the discussions have shown that they are sometimes not familiar with many details of the ordinance. At the conclusion of their process, they felt that the ordinance must be "balanced" because everyone seemed unhappy with it.

If it were up to me, I would throw the whole ordinance in the trash. But of course, it's not up to me. At a minimum, I urge you to adopt the "Homestead Exemption" clause, which will give us a little bit of breathing room. While this isn't a blanket exemption by any means, it may help shield us from further bureaucratic encroachment. The environmental restrictions which began with a deception in 2002 have grown, and the regulated areas have expanded, but this is not the end of the attempts to gain control over our property, it is only the beginning.

Somewhere a line has to be drawn to protect us. We simply want to live undisturbed on our land, in harmony with nature and at peace with our neighbors. We ask you to come to our aid this evening.

Russ Stoll, Milwaukie, pointed out the homeowner's exemption in Metro's model ordinance that allowed people to continue their landscaping practices on their property. It also contained a list of conditional activities. The homeowner's exemption had been taken out of the Milwaukie ordinance, and he read the language. This was not a blanket exemption. One of the most important things about watershed protection was preventing erosion into the creek, and secondary was preserving the canopy. As a volunteer with the Johnson Creek Watershed Council, he spent a lot of time restoring riparian habitat he fully agreed with the general thrust of the legislation. It was not a blanket exemption. However, he thought it was a fundamental point of American law and tradition that people had the right to enjoy their own property. In doing site visits he failed to see the need for these tree regulations. Most property owners were planting rather than removing trees. Trees enhanced property values. Without a homestead exemption the City was interfering too much with the lives and properties of its citizens.

Steve Melnichuk, Milwaukie, had been a steward of his property for 35 years, and it had more trees than when he purchased it. There were no invasive species, and most of the trees were native. During the Planning Commission meeting he made a presentation and requested a list of those activities that were permitted so he would know what was prohibited. He noted the HCA was quite large in some areas, and he felt there should be more research done before the City Council voted on adoption of the ordinance. He thought the fees were not “nominal” to all property owners.

Further staff comments:

Mr. Kelter addressed Ms. Baker’s comments relative to public notice. He referred to finding 7-C-1, Type 5 Public Notice on packet page 14 and concluded with a reference to 7-C-4, Measure 56 notice. He felt her concerns were addressed. He referred to staff report page 91 and the technical report review and explained the deposit. Other comments by Ms. Baker did not actually address the proposal before the City Council.

Mr. Kelter commented on Mr. Stoll’s reference to a section of Metro’s model ordinance. Staff used that document as its guide, and there were a number of things that did not appear in the code amendments now before the City Council as it was felt some sections did best serve the needs of the City of Milwaukie. Mr. Melnichuk’s comments about prohibitions had been addressed previously before the Planning Commission. The language being used referred to what type of activity required what type of review similar to the rest of the zoning code. It lists the types of activities that are allowed with different types of review and were, in fact, if one did not find an activity that meant it was not allowed. Mr. Kelter also noted nothing had changed in draft maps where areas for some types of activities were a concern and requiring some sort of simple plan. Mr. Melnichuk made a good argument for the fee proposal with regard to Type 1 which were the activities staff recommended waiving.

It was moved by Councilor Chaimov and seconded by Councilor Miller to close the public hearing. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson closed the public testimony portion of the hearing at 9:14 p.m.

City Council discussion and decision:

Councilor Loomis asked why the City chose to list what was permitted but not what was prohibited.

Mr. Kelter replied it was his understanding of how the larger zoning code worked and was specifically designed to say some activities were allowed in the resource areas but not others.

Mr. Ramis added this structure was inherited from Herbert Hoover when it was decided it was more efficient to make a list of what was allowed rather than create a long list of what was not allowed. This was a typical structure.

Councilor Hedges referred to page 33 and the possible requirement by the Planning Director of a maintenance bond.

Mr. Kelter replied it was in the section regarding standards for mitigation. It was intended to ensure the larger projects or those that might be phased would have some level of guarantee that the mitigation work would be done and that plant health and survival would be ensured for that period of time. An annual report was also required. Bonds were required for other projects to help ensure follow through. In this case there was some discretion on the part of the Planning Director.

Councilor Hedges was concerned a future Planning Director might require the bond on a whim. There did not seem to be any kind of appeal process.

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Mr. Asher understood a bond might be more typical on larger commercial developments. The amount of the bond would have a reasonable basis and not be capricious or arbitrary.

Councilor Hedges asked if this could be written so it did not apply to the residential property owner although he could understand for a bond for a commercial project. He asked for an explanation of the apparent inconsistency in how long plantings and trees were to survive.

Mr. Kelder replied the two-year time period had to do with tree replacement in a Type I process. This section was more general and had to do with a development situation. It could be made consistent although one had more to do with tree replacement and the other more development related general plantings.

Councilor Hedges asked why the WQR regulations were relaxed after being in place for a number of years.

Mr. Kelder replied the WQR regulations were adopted in 2002. From his research he understood Metro had provided a model ordinance and a great deal of that had been incorporated into the City's code without any recent revisitation. Some WQR rules were found to be unwieldy, blunt, and unresponsive under certain circumstances. This was an opportunity to make adjustment to the rules under certain situations to make them more effective.

Councilor Miller, referring to page 26, thought the ½-inch caliper replacement tree should be increased to 1-1/2 or 2-inch caliper. He believed 2-inch to 6-feet was the industry standard. He suggested the same type of change on page 32. He further recommended extending the bare root tree planting date from February 28 to April 15 for a better survival rate. He noted bare root trees were much less expensive.

Staff asked several clarifying questions on the proposals.

Councilor Loomis understood the City was required to amend its code to come into compliance with Metro regulations with some flexibility from the model code.

Mayor Ferguson called for a recess at 9:37 p.m. so staff could compile its notes. The meeting resumed at 9:47 p.m.

Councilor Loomis was not really in favor of the amendments but might support them if the homestead exemptions were included. He noted Dave Green, who was very environmentally conscious, testified that he had some concerns about property owners' rights.

Councilor Hedges supported requests to not cut down so many trees and limit that activity to keep the tree canopy as it was now. On the other side he supported the homestead exemption for residential properties. These people bought their properties before the codes came into being and should not be disadvantaged. He felt they were likely good stewards of their properties. If the City Council cannot agree on the homestead exemption, then those properties should be exempted from all fees for any type of planning review. He felt strongly about waiving fees for those who had been looking after their properties.

Councilor Chaimov had no amendments to suggest and supported the mauve, not green, amendments.

Councilor Miller wanted to remove the section that allowed cutting three trees without replacement as he did not feel it was appropriate.

Mayor Ferguson commented on the photos of well-manicured lawns and tree habitat. He questioned how one balanced property rights for established homes with ample

amounts of tree coverage with habitat protection. How did one balance property rights of those who were good stewards with those who do not care for their properties as well?

Mr. Asher replied the homestead exemption had been thoroughly scrutinized and tailored to address the equity issues.

Mr. Kelder stated a lot of these issues were discussed during the advisory process and identified as many specific situations property owners might encounter in dealing with their existing landscaping. He did not feel the homestead exemption was necessary in this code because exemptions were identified, and, in some cases, a simple review without a fee was written into the amendment. His perception throughout the process was that tree removal was the largest issue. He felt the bases had been covered without needing the broader exemption.

Mr. Asher felt that judicious oversight was better than a blanket exemption.

Councilor Loomis observed it was easier to regulate than not. People were fundamentally good stewards, and he felt it was important to educate people about what they can and cannot do with their property.

Councilor Hedges did not feel there should be a maintenance bond on residential properties and should only apply to commercial.

Councilor Chaimov observed this was difficult in that the City Council was trying to achieve a balance between the community's interest in waterways and habitat areas with property owners' rights to use their properties as they saw fit. Although the Planning Commission's decision may not have been his, these were the citizens designated by the City Council to come up with the best balance they could after listening to community input. He was not inclined to substitute his judgment for the balance they achieved. He was similarly disinclined to accept Mr. Gamba's suggestion about restricting tree removal as he was about Commissioner Stoll's suggestion to adopt the homestead exemption. He thought there was at least a reasonable possibility that with the number of exemptions built into this code and without Milwaukie's having a tree ordinance the City may not be compliant with Title 13. He would rather not have to redo this process. He would support the Planning Commission's work with the clarifying mauve amendments presented in the work session.

Mr. Asher summarized the proposals expressed by the City Council members: homeowner's exemption, not allowing the cutting of three trees, maintenance bond, the clarifying amendments, tree caliper size, changing the dates for bare root tree planting, tree survival and survival of replacement trees; consistency between establishment period between trees and shrubs, and if homeowner's exemption did not pass then waving all fees for those grandfathered in related to this part of the code. The City Council addressed each in turn.

1. Homeowner's exemption (Councilors Hedges, Loomis, and Miller in favor; Councilor Chaimov and Mayor Ferguson opposed. Passed 3:2)
2. Allow cutting of three trees (staff report page 25, B.1.f.) and using the language suggested by the Audubon Society letter point 2 and clarifying language in 19.402.6.B.1.f – the tree is not categorized as either a nuisance or native species on the Milwaukie Native Plant list and is not located in a WQR ~~categorized as Class A ("Good")~~, according to ~~Table 19.40241.G~~ provided that no more than 3 such trees will be removed during any 12-month period. (Councilors Hedges and Miller in favor; Councilors Chaimov and Loomis and Mayor Ferguson opposed. Failed 2:3)

3. Proposed amendments related to 19.402.2.D, Coordination with Other Regulations. (Passed unanimously)
4. Proposed amendments related to 19.402.4.A.9 related to exempt activities., Exempt Activities. (Passed unanimously)
5. Maintenance bond requirements do not apply to residential property owners. (Councilors Hedges, Loomis, and Miller in favor; Councilor Chaimov and Mayor Ferguson opposed. Passed 3:2)
6. Clarify language that replacement trees must be established two years from the time of the planting of the replacement tree. (Passed unanimously)
7. Change establishment periods to two years for consistency. (Councilors Hedges, Loomis, and Miller and Mayor Ferguson in favor; Councilor Chaimov opposed. Passed 4:1)
8. Change minimum caliper of replacement trees from ½-inch to 1-1/2- inch. (Councilors Hedges and Miller in favor; Councilors Chaimov and Loomis and Mayor Ferguson opposed. Failed 2:3)
9. Modify dates for planting bare root trees. (Passed unanimously)

The City Council discussed fee waivers and what costs might not be covered specific to this set of codes.

Mr. Asher noted there were already fees associated with WQR areas, so it was possible fees were being reduced which had already been collected and supported activities associated with earlier hearings.

Mayor Ferguson asked if fees could be adjusted in the HCA and outside the WQR. He called a brief recess at 10:34 p.m. so staff could look into some of these questions and resumed the meeting at 10:40 p.m.

Mr. Asher said the fees paid by applicants now tended to be higher fees related to land use and not necessarily tied to this code amendment. He thought it would be a mistake to waive land use fees because a property was in a WQR area or HCA. The fees particular to this code language had already been waived or reduced in the case of a Type III application. He felt the burden had already been addressed relative to these code amendments.

Councilor Hedges did not intend that waivers would apply to an empty lot but rather to those in residence in their own homes prior to the effective date of these amendments and only applicable when triggered by these codes.

Councilor Chaimov understood Councilor Hedges' intent was if there were an action separate and apart from these code amendment then the fees were not waived. The fees would be waived if the action triggered this code and this code alone.

Mayor Ferguson summarized: applications with fees associated with this code and this code alone would be waived in the area outside WQR and inside the HCA provided the property was residential and the applicant owned the property prior to the effective date of this ordinance. (Councilors Hedges, Loomis, and Miller and Mayor Ferguson in favor; Councilor Chaimov opposed. Passed 4:1)

Mr. Ramis suggested referring the matter to staff and considering the proposed code amendments at the August 2, 2011 City Council meeting.

Mr. Kelder briefly reviewed the amendments.

OTHER BUSINESS

A. Revisions to Board, Commission, and Committee Terms – Ordinances and Resolution

It was moved by Mayor Ferguson and seconded by Councilor Chaimov to hold the remaining agenda items over to the August 2, 2011, City Council agenda. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [5:0]

B. Council Reports

Mayor Ferguson announced several upcoming community events.

ADJOURNMENT

It was moved by Mayor Ferguson and seconded by Councilor Chaimov to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [5:0].

Mayor Ferguson adjourned the regular session at 10:56 p.m.

Respectfully submitted,

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL JULY 19, 2011

MILWAUKIE CITY HALL
10722 SE Main Street

2106th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page
No. |
|---|---------------------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 1 |
| A. Intergovernmental Agreement for Street Light Transfer in the NE Sewer Extension Area – Resolution | 2 |
| B. City Council Meeting Minutes: | 13 |
| 1. April 26, 2011 Study Session | |
| 2. May 31, 2011 Study Session | |
| 3. July 5, 2011 Regular Session | |
| C. Grant Agreement for Klein Point and Johnson Creek Confluence – Resolution | 22 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |
| 5. PUBLIC HEARING <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i> | 28 |
| A. Garbage Rate Increases – Resolution | 29 |
| Staff: JoAnn Herrigel, Community Services Director | |
| B. Natural Resource Amendments to the Zoning Code and Comprehensive Plan – Ordinance | |
| Staff: Katie Mangle, Planning Director & Brett Kelder, Associate Planner | |

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **41**
- A. **Board, Commission, and Committee Terms and Term Limits – 42**
Ordinance
Staff: Bill Monahan, City Manager
- B. **Council Reports**
7. **INFORMATION**
8. **ADJOURNMENT**

Public Information

- **Executive Session:** The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. **Board, Commission, and Committee Terms and Term Limits – Ordinance**
Staff: Bill Monahan, City Manager
 - B. **Council Reports**
7. **INFORMATION**
8. **ADJOURNMENT**

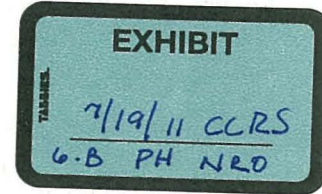
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MILWAUKIE
Dogwood City of the West

Memorandum



To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenny Asher, Community Development & Public Works Director
Katie Mangle, Planning Director

From: Brett Kolver, Associate Planner

Date: July 18

Re: Natural Resource Amendments: Response to Request for an Enumeration of Key Changes

At its July 5 work session on the proposed natural resource amendments, Council asked staff to prepare a comparison of the current Water Quality Resource (WQR) rules with the proposed new Natural Resource regulations for WQRs and Habitat Conservation Areas (HCAs), with respect to various hypothetical situations. What activities are not regulated now that will be regulated by the new code, and vice-versa?

This memo attempts to respond to this request, albeit indirectly. The challenge is described below.

Because the proposed amendments are tailored to address the qualitative Metro requirements, the many types of specific situations that were identified throughout the project by the Advisory Group and Planning Commission, and the numerous variables in each of the possible permitting situations (e.g., scale of project, proximity to a protected water feature, pre-existing site conditions, and quality of the designated natural resource), I have concluded that there is no really simple way to compare the proposed amendments to the current code. This project does not lend itself well to a side-by-side analysis, because so much of what is being introduced to Milwaukie's code is truly new.

An example of this challenge is as follows.

The Planning Commission requested that we develop a 4-page table to show the various activities that are covered by the proposed code, with the associated type of review for each. That table is included as Attachment 1 to the Commentary we prepared for Section 19.402 (the Commentary itself is Attachment 5 in the packet materials). Even without trying to compare the proposed code to the current code, the Commentary table provides a sense of the rules, which have been designed to address specific situations. However in presenting this table to the Planning Commission, we quickly realized that the issues were not being communicated effectively. There was simply too much information being processed.

Instead of an exhaustive list of what is changing, a better way to understand the effect of the new code would be to refer to the Commentary itself, as it tries to describe what is going on behind the new language.

That said, we can provide a few examples that demonstrate some of the ways the changing rules will affect property owners. These are included as illustrative examples only, and should not be confused as the most important or even the most impactful of the proposed amendments. However, they do constitute clear examples of "before and after" situations, as was requested by the Council.

1. Landscaping and Gardening

The current WQR code allows property owners to maintain existing landscaping and gardens within WQRs, without any need of review or permits. The same is true of planting native species and remove nuisance species (i.e., simple restoration work).

The proposed code retains these exemptions. It also establishes a new exemption for new gardens or outdoor play areas (150 sq ft) in WQRs, allowing some disturbance but limiting it from being too close to streams and preventing the clearing of trees to establish them. For HCAs, the proposed code allows up to 500 sq ft of disturbance in residential zones for new landscaping, gardens, patios, sheds, and the like.

2. Tree Removal

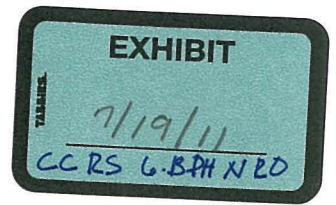
The current WQR code is very protective of trees, with only immediate emergency situations being exempt from review. Trees that are shown to present an imminent hazard can be removed after going through the Type I process (\$150 fee). All other tree requests must go to the Planning Commission, regardless of the species or status of the tree.

The proposed code includes restrictions on cutting trees in HCAs, but it does so in conjunction with providing much more specificity for considering requests to remove trees in WQRs. As proposed, no further review or permits would be required for removing downed trees (with minimal earth disturbance), removing nuisance-species trees (up to 3 per year), removing trees that present an immediate emergency situation, or major pruning of trees within 10 ft of a structure. With Type I review, one could get approval to remove trees that present non-emergency hazards, dead or diseased trees, more than 4 nuisance-species trees in a year, or up to 3 non-native trees if not in a WQR. The proposed code addresses more specific situations, adds the requirement of planting a replacement tree (one-for-one), and includes a proposal to waive the Type I review fee.

3. Natural Resource Management Plans

In the current WQR code, activities conducted in conjunction with an approved natural resource management plan are exempt from further review. The trouble is, Planning Commission review (Type III, with a \$1,700 fee) is required to approve such a plan.

In the proposed code, a property owner could work with the Soil and Water Conservation District or other legitimate resource agency to prepare a management plan. The City would review that plan with the Type I process and waive the application fee. A property owner who chooses not to work with such an agency could still prepare a management plan independently, and as long as it meets certain basic standards, it could be reviewed with the Type II process. Either way, management plans for doing the kind of restoration work that the City wants to encourage would have an avenue besides Type III review.



Pat Russell
15989 SE Bilquist Circle
Milwaukie, OR 97267
(503)656-9681

July 19, 2011
Milwaukie City Council
10722 SE Main
Milwaukie, OR 97222

RE: City Council Public Hearing, July 19, 2011
Natural Resource Amendments to the Zoning Ordinance and Comprehensive Plan (Metro Title 13)

Honorable Mayor Ferguson and Council members,

My name is Pat Russell and I live in unincorporated Clackamas County at 15989 SE Bilquist Circle, south of Bilquist Elementary adjacent Webster Road. I have advocated for salmon recovery in the Kellogg-Mt. Scott watershed since 2001 and participated in Title 3 and 13 at Metro and habitat planning in the Beaverton area during the 90's.

As a past public urban planner, I have been impressed with the City's efforts to date to restore salmon access at the Mouth of Kellogg Creek and return its estuary to a more natural condition since the forming of the man-made impoundment in the 1850's by our illustrious Joseph Kellogg. Back then, it was known as Cold Creek with abundant salmon. We can't relive the past, but salmon do have a place in our community and are a key indicator of our watershed health and the city's viable domestic water resource. Please keep your restoration initiative alive and find the money.

I also appreciate the city's support and delegation of staff to help form and run our new North Clackamas Urban Watersheds Council. Both JoAnn Herrigal and Nicole West have been invaluable over the last two years.

It is good that your Planning Commission's recommendation under consideration tonight has come close to meeting the aspirations of the environmental community, gaining favor by groups, like the Portland Audubon. Salmon may be one step closer to coming home. Thank you.

Respectfully yours,


Pat Russell

Proposed Amendments Related to Tree Removal

(Text proposed to be deleted is ~~struck out~~; proposed new text is underlined.)

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

6. Removal of trees under any of the following circumstances:
 - a. The tree is a "downed tree" as defined in Section 19.201, the tree has been downed by natural causes, and no ~~more than 150 sq ft~~ of earth disturbance will occur in the process of removing the tree.

19.402.6 Activities Requiring Type I Review

B. Limited Tree Removal

1. The Planning Director may approve an application for limited tree removal or major pruning within WQRs and HCAs, subject to Section 19.402.6.B.2, under any of the following circumstances:
 - d. The tree is a downed tree, but ~~more than 150 sq ft~~ of some earth disturbance is necessary to remove it.
 - f. The tree is not categorized as either a nuisance or native species on the Milwaukee Native Plant List and is not located in a WQR ~~categorized as Class A ("Good")~~, according to ~~Table 19.402.11.C~~, provided that no more than 3 such trees will be removed during any 12-month period.

Proposed Amendments Related to Nonconforming Development

(Text proposed to be deleted is ~~struck-out~~; proposed new text is underlined.)

19.402.2 Coordination with Other Regulations

- D. Nonconforming development that was legally existing for WQRs as of January 16, 2003, the effective date of Ordinance #1912, or that was legally existing for HCAs as of DATE, the effective date of Ordinance #____, and that is nonconforming solely because of Section 19.402, shall not be subject to the provisions of Chapter 19.800 Nonconforming Uses and Development. However, ~~any expansion of a nonconforming development within a WQR or HCA shall be subject to the applicable standards of Section 19.402.~~ development that is nonconforming for other reasons shall be subject to the provisions of Chapter 19.800.

19.402.4 Exempt Activities

A. Outright Exemptions

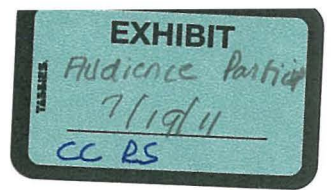
The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

9. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal structures, provided that the following criteria are met:
- a. There is no change in the location, or increase in the footprint, of any building, impervious surface, or outdoor storage area within a WQR or HCA.
 - b. ~~No variances to site-related development standards are required.~~
 - be. No other site changes are proposed that could result in increased direct stormwater discharges to a WQR. If the project will result in increased direct stormwater discharges, the proposal is subject to the Type II review process and the standards for discretionary review established in Subsection 19.402.12.



Oak Lodge Community Council

Your Clackamas County-recognized Community Planning Organization (CPO) • www.oaklodgecpo.org



19 July 2011

Testimony to City of Milwaukie Council Meeting

Thank you for the opportunity to speak briefly to you this evening.

My name is Fred Nelligan. I live in the Oak Grove community of unincorporated Clackamas County, just above Oatfield and Concord roads.

1 year ago, I knew relatively little about light rail... about the PMLR project... it's scope... it's impacts... it's benefits... or the concerns of the communities that would be impacted by it. Then, I was asked by the Oak Grove community to represent their best interests on the already-established TriMet Citizens Advisory Committee.

As a technical analyst in both geological and aeronautical sciences, I approached my new responsibilities of representing the community as a researcher. The complexity of the project and the wide-ranging breadth of technical issues required nothing less.

With the help of many over those first 6 months - attending on average 2 to 3 meetings per week - I slowly began to form the opinion that this project is **vital**:

- **vital** to the continued integration of suburban communities, such as ours, with the Portland Metro area;
- **vital** to the economic redevelopment of the blighted McLoughlin commercial corridor that *slashes* through the heart of our community and continues to degrade unabatedly each year;
- and **vital** to the efforts of Oak Grove to establish, once and for all, a unique and vibrant community identity, something it has been struggling to attain for more than 30 years.

Also over the past year, my involvement has expanded to the Park Avenue Stakeholders Advisory Group -- focused on making the Park Avenue station area a model for the rest of the McLoughlin commercial corridor, and to being a Board member of the Oak Lodge Community Council.

I believe -- that in order for this project to succeed **and**, most importantly, for interested citizens to have their ideas and concerns addressed -- I must be committed to staying on top of each issue, each concern, making sure that nothing is 'dropped' or forgotten by either TriMet or its design team. If you don't believe me... ask them. I'm always there; always in front of them; always asking questions on behalf of Oak Grove (even Milwaukie and Portland!) residents. Most of the time... I'm not a thorn; just a recurring reminder to keep striving to "get things right."

Lastly, I would not be the least bit surprised if you were to add up all the people who are dedicated to making this light rail project succeed -- from the staffs of the City of Milwaukie, Clackamas County, Portland, ODOT, Metro, TriMet, their engineering and urban design consultants, volunteer-based community councils, Design & Landmarks and other committees, plus various planning commissions, all the way to grassroots neighborhood associations and the like -- that there would be well over one-thousand people... dedicated to making this project "fit" in each community and to making this project "work" for the benefit of all.

In conclusion, I am grateful for the opportunity to serve with and learn from so many dynamic people, whether they be paid staff or unpaid volunteers. I am also proud of the energy, time, and skill that so many of these people bring to meetings and open houses on a regular basis. Your electorate is counting on these people whether they realize it or not.

My choice is to work to make this project something transformative and positive for our communities... to look forward, not backward... and to revitalize and energize our business cores.

Thank you.

A handwritten signature in black ink, appearing to read 'Fred Nelligan', with a long horizontal flourish extending to the right.

Fred Nelligan

Board Member, Oak Lodge Community Council
Elected Representative to TriMet's PMLR Citizen's Advisory Committee
Member, Park Avenue Stakeholders Advisory Group

15110 SE Concord Court
Oak Grove, OR 97267

fred@k9-coaching.com

EXHIBIT

7/19/11 CCAS
6B/A NRO



Natural Resource Code Amendments (Land Use File #ZA-11-01)

Public Hearing

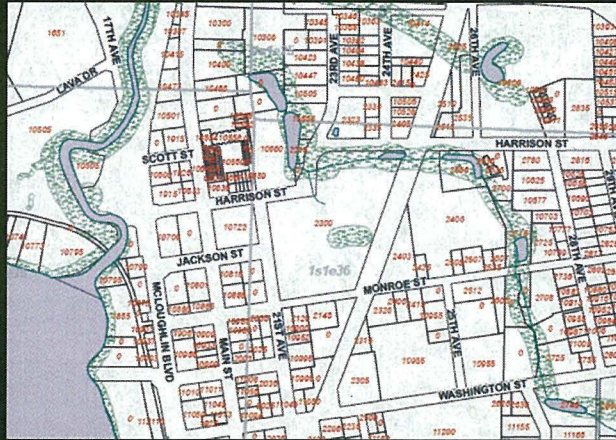
City Council
July 19, 2011

Presentation by Brett Kolver, Associate Planner



Water Quality Resource Regulations (MMC 19.402 – adopted in 2002)

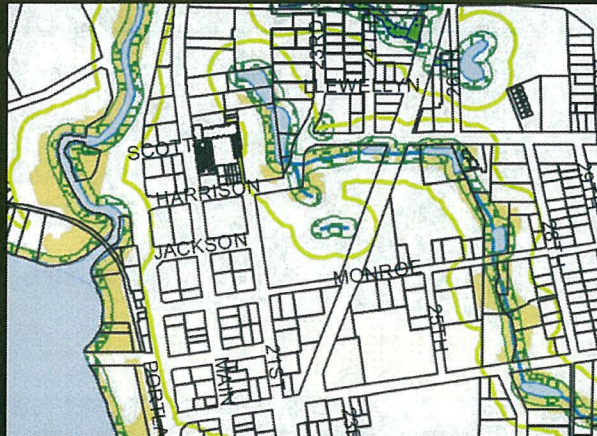
- 50-ft buffers around streams, lakes, wetlands
- Disturbance of the resource or buffer area requires significant review
- In compliance with Statewide Planning Goal 6



Habitat Conservation Areas (HCAs) (adopted by Metro in 2005)



- Protect streamside habitat beyond WQRs
- Allow some limited disturbance with clear standards
- Remove barriers to habitat-friendly development
- Update the initial HCA map provided by Metro
- Comply with Statewide Planning Goal 5



Metro Title 13 Regulations

1. Protect areas identified as riparian habitat.
2. Adopt new rules that establish performance standards and best management practices.
3. Adopt a map of habitat conservation areas (HCAs).
4. Provide a reasonable, timely, and equitable process to verify specific HCA locations.
5. Provide an option for meeting clear & objective standards, as an alternative to more discretionary review.
6. Establish habitat-friendly development practices for HCAs, and remove existing provisions in the City's code and comp plan that limit the use of habitat-friendly development practices in HCAs.



HCA Regulations (Simplified)

- Widen the areas of viable habitat near streams and wetlands
- Allow everyday activities that produce minimal disturbance
- Provide a reasonable path for development that meets clear standards (including mitigation)
- Protect trees
- Make it easy to correct simple mapping errors



Public Outreach

- **Advisory Group**

- 15 to 20 active participants
- Mix of interests and representation
- 6 group meetings (Sept 2009 to June 2010)
- Tours of resource areas
- Discussion of key issues, review of draft code and maps



- **Open House event held January 6, 2011**

- **Notice sent to property owners**

- Sept 2009 (invitation to participate)
- Dec 2010 (Open House invitation)
- Feb 2011 (PC hearing notice)



Planning Commission

Public Hearings

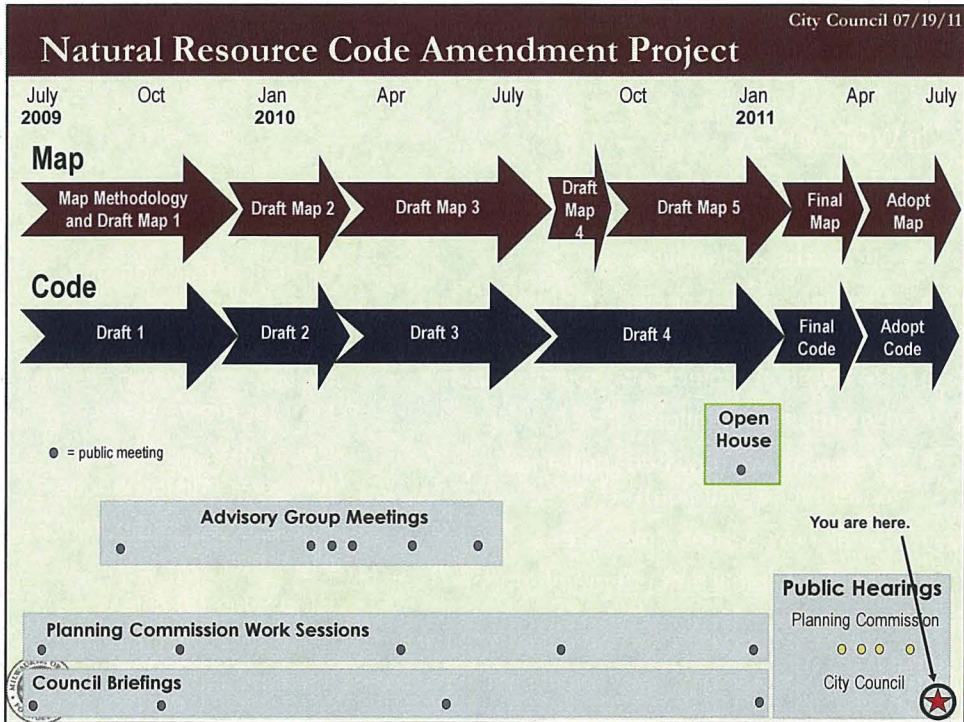
- March 22, 2011
- April 12
- April 26
- June 14



Hot Topics

1. HCA exemptions for existing residential lots
2. Tree removal
3. Allowing minor disturbances close to streams/wetlands (WQRs)
4. Division of high-percentage resource properties
5. Reducing the burden on property owners





WQR/HCA Permit Requirements

Type I Review:

- Limited tree removals
- Nondiscretionary HCA disturbances
- Natural resource management plans (assisted)

Type II Review:

- Special uses = utilities, paths, stormwater management
- Activities with minimal WQR impacts
- Low-impact partitions
- Natural resource management plans (unassisted)

Mitigation is required for most Type I, II, or III projects.

Type III Review:

(require impact evaluation and analysis)

- Major disturbance of resource area
- Partitions and subdivisions
- Activities that don't meet other standards



Exempt Activities

In WQR or HCA:

- Maintenance of existing landscaping
- Repair / maintenance of existing structures and utilities
- Planting native species, removing nuisance vegetation
- Restoration projects (w/ approved plan)
- Emergency situations
- Tree removal (downed, nuisance, emergency situation)
- Small new garden / play areas
- Trails = establishment / maintenance

In HCA only:

- Limited expansion of existing structures
- Minor encroachments (patios, walkways) = 500 sq ft for residential
- Excavation and limited temporary disturbances
- Public paths and outdoor rec areas
- Stormwater facilities



Landscaping & Gardens



BEFORE:

(in WQR)

- Maintenance of existing landscaping is allowed outright (no nuisance plants)
- OK to plant natives and remove invasive species
- Code is not clear about whether it's OK to remove natives and replace with lawn

(outside WQR)

- No restrictions except standard requirements for Erosion Control or Grading permits

Landscaping & Gardens

AFTER:

(in WQR)

- No removal of natives for lawn
- Up to 150 sq ft of new disturbance allowed outright (if not within 30 ft of top of bank and no tree removal); otherwise, requires Type II review (\$900 fee)
- Other new lawns or gardens require Type III review (\$1,700 fee)

(in HCA)

- Up to 500 sq ft of new disturbance allowed outright
- Option for Type I review (\$150 fee) if most of site is covered by HCA
- Otherwise, Type III review (\$1,700)



(outside WQR/HCA)

- Construction mgmt plan if > 150 sq ft



Tree Removal

Exempt

- Downed trees
- 3 or fewer nuisance trees
- Emergency situations
- As part of natural resource management plan
- Major pruning within 10ft of structures

Type I review

- Non-emergency hazard trees
- Dead, diseased, or dying trees
- More than 3 nuisance trees
- Tree removal that requires some earth disturbance
- Up to 3 non-nuisance, non-native trees if not in WQR (addendum)
- Major pruning

(Type I review includes 1-for-1 replacement)



*** All other tree removal gets Type III review (Planning Commission) ***

Tree Removal



BEFORE:

(in WQR)

- Remove tree only if immediate emergency (exempt) or imminent hazard (Type I review, \$150 fee)
- All other tree removal requests go to Planning Commission (Type III review, \$1,700 fee)

(outside WQR)

- No restrictions unless a flag lot is created or tree is in public right-of-way

Tree Removal

AFTER:

(in WQR or HCA)

- **Downed trees**—exempt if removed w/o earth disturbance; otherwise Type I review (fee waived)
- **Nuisance trees**—exempt for up to 3 trees/year; otherwise Type I review (fee waived)
- **Dead or diseased trees**—Type I review (fee waived)
- **Hazard trees**—exempt if immediate emergency; otherwise Type I review (fee waived)
- **Other trees**—if nonnative and not in WQR, Type I review (fee waived); otherwise, Type III review (fee reduced to \$500)

(outside WQR/HCA)

- Same as before



New Development



BEFORE:

(in WQR)

- **Existing structures**— Modifications that do not increase the disturbed area get Type I review (\$150 fee); all other additions need Type III review (\$1,700 fee)
- **New projects**—All other new construction needs Type III review (\$1,700 fee)

(outside WQR)

- No special restrictions

57:49

New Development

AFTER:

(in WQR)

- **Existing structures**—Small additions (up to 150 sq ft) get Type II review (\$900 fee); all others need Type III review (\$1,700 fee)
- **New projects**—All other new construction needs Type III review (\$1,700 fee)

(in HCA)

- **Existing structures**—Up to 500 sq ft of new disturbance allowed outright; Type I review option (\$150 fee) if objective standards are met; otherwise, Type III (\$1,700 fee)
- **New projects**—(Same as for existing structures)

★ (outside WQR/HCA)

- Construction mgmt plan if > 150 sq ft



Proposed Fee Changes

- Waive Type I fees for:
 - Boundary Verification
 - Construction Management Plans
 - Natural Resource Management Plans
 - Tree Removal
- Reduce Type III fee for Tree Removal (from \$1,700 to \$500)




Planning Commission Recommendation

- ❖ Adopt the ordinance and related exhibits as proposed with addenda.


Decisionmaking Options

1. Approve the proposed amendments and ordinance as proposed.
2. Approve with additional modifications. (Modifications need to be read into the record.)
3. Continue the hearing.
4. Deny the proposed amendments and ordinance.







Questions?



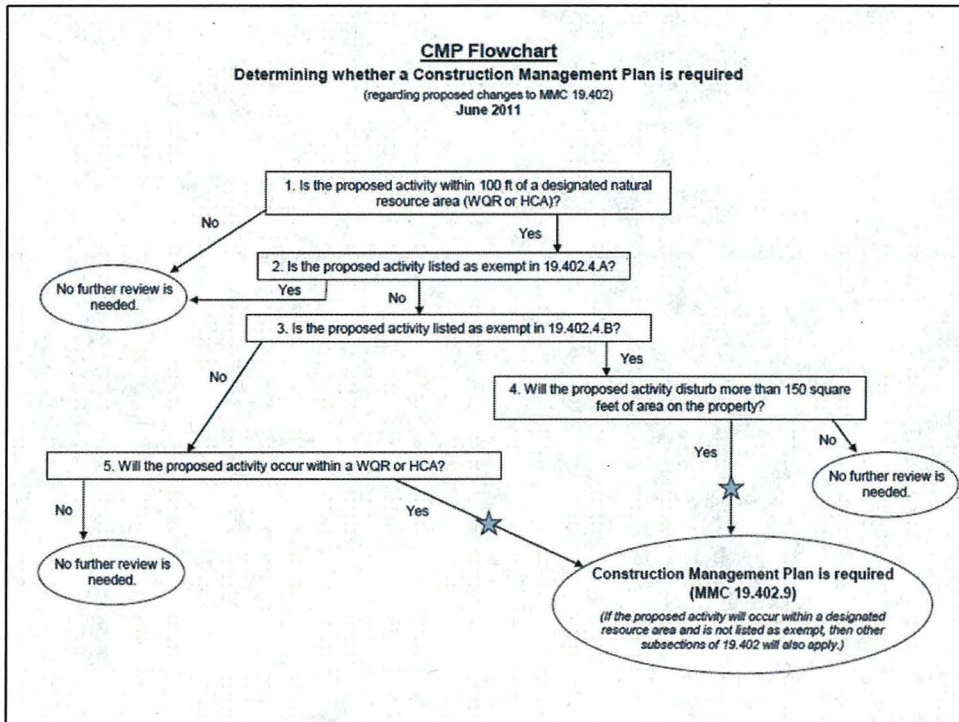
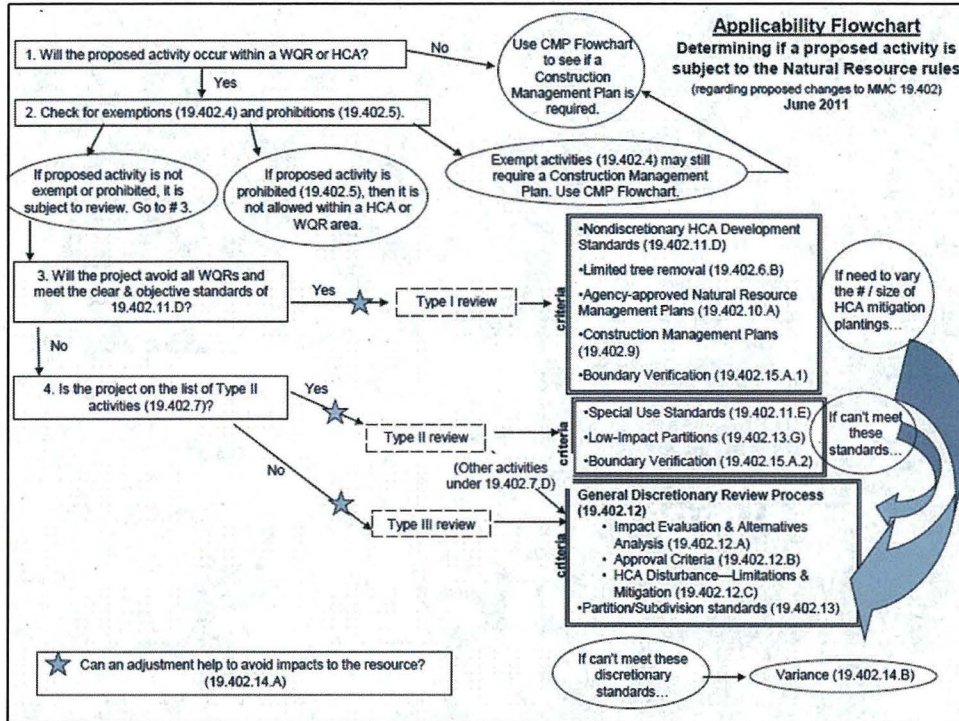
Questions?



Natural Resource Code Amendments
(Land Use File #ZA-11-01)

Public Hearing

City Council
July 19, 2011
Presentation by Brett Kolver, Associate Planner



Residential Exemptions (HCA only)



Current Proposal:

- Maintenance of existing landscaping is allowed outright
- Tree removal is the primary landscaping activity that is addressed separately

Alternative: Metro model HCA code exemptions

- On already-developed residential properties = Allow tree removal and new impervious services and small development (in HCA only)
- On all properties = Allow removal of 10% of vegetated cover and/or tree canopy (in HCA only)



Small projects near a protected water feature



Options

1. Allow very minor encroachments that get closer to a protected feature
2. Keep current policy of restriction if projects go closer

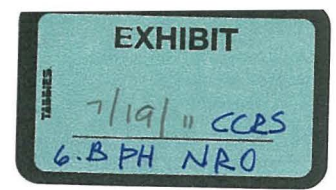


Division of high-% resource properties



- Proposal: Set 85% HCA coverage as max threshold for handling a partition with Type II review. Emphasize maintaining contiguity of resource across the new lots/parcels for other partitions and subdivisions.





Christopher and Ruth Burkett

July 19, 2011
Milwaukie City Council

Good evening,

I have been involved with the formation of these proposed Natural Resource regulations for over two years. I've exhaustively studied every state, regional and local document even vaguely associated with these regulations. I've met with Metro Regional Planners, attended every meeting of the Citizen's Advisory Group, and participated in numerous follow up sessions of the Milwaukie Planning Commission. It's been an interesting journey and we're now at the final step which determines what impact these regulations will have on homeowners.

My single biggest concern about the proposed regulations is that they take away my ability to properly manage trees on our fully mature and manicured landscaped property. The natural world is infinitely complex and is filled with unexpected surprises. Despite our best efforts, it won't neatly conform to the fixed rules of planning departments. Our beautifully landscaped home property is as cohesively designed and as well maintained as the Japanese Gardens, or Crystal Springs Rhododendron Gardens in Portland. There is no erosion, degradation, or rupture of the local ecological fabric. We plan to spend the rest of our lives here; we know every square inch of our property, and we know what is best for our land. We do not need the government telling us what to do.

We have heard from the Milwaukie Planning Department about how the new restrictions on tree cutting are less onerous than what is currently in place. What hasn't been discussed is the deception that was used in 2002, which I saw and witnessed first hand when I testified in opposition to that ordinance. The minutes from those meetings show that the Planning Commissioners had no idea that they were approving a tree cutting prohibition on homeowner's properties. They were deliberately deceived by the Planning Department at that time, who snuck this into the ordinance. This was done by inserting just one little word, "activity," into the prohibition section of the ordinance. Since tree cutting was not specifically permitted, it was thereby prohibited. The Commissioners had no idea that this was hidden in the language. They were also misled to believe that the ordinance only applied to new development and not to existing homesites.

Regrettably, the statement to the effect that "every activity is prohibited unless specifically permitted" is still included in this new natural resource ordinance. This specific language is not used in any other part of Milwaukie's code, nor is it in Metro's Model Ordinance, nor is it in any other local jurisdiction's Natural Resource Ordinance. This all encompassing prohibition can lead to other, unnamed and unknown restrictions, as happened in 2002. Milwaukie already has many more restrictions than are required, without including this catch-all clause. Do not be misled by any conciliatory statements in the "Intent Section" of the ordinance: they mean nothing unless they are implemented by specific clauses in the body of the regulations.

We have been informed by the Planning Department that our private property and our land is a "shared community resource," and that property owners must be subservient to the demands of "the good of the greater community." I strongly disagree with this socialist viewpoint which subjugates my basic rights as a private property owner. The proper function of government is the preservation of property, not the taking of property. Society cannot benefit when individuals are harmed. Our property doesn't need "restoration or enhancement." It needs protection from bureaucratic depredation.

The concept of creating a "Habitat Conservation Area" is interesting but what about conserving our habitat? Humans are living creatures who need protection from bureaucratic oppression. Without regulatory protection, our idyllic home property and the quality of our life will be seriously degraded by the intrusion of local government into the most basic and personal aspects of our lives. The restrictions contained within these regulations compromise the use of almost all of our home property.

This heavy burden which will be placed on the backs of homeowners does not represent the will of all of the citizens of Milwaukie and it certainly does not represent the will of the homeowners who are going to be directly affected. Why do environmental activists who don't even live in Milwaukie attempt to dictate what happens to our landscaped home properties? How easy it is for people who don't own the affected properties to make demands, when they don't have to live with, or pay for, the consequences.

By what right does anyone justify trying to shove us aside and take control of our land? Who worked hard for an entire lifetime to be able to afford to purchase this beautiful property? Who actually lives on it, maintains it, and pays taxes on it?

Then there's the question of how the Ordinance was reviewed by the Milwaukie Planning Commission. The Planning Commission was actually advised by the City's lawyer, during the course of their public meetings, that when crafting a legislative ordinance there was no legal necessity for them to weigh the facts or consider the evidence but that they could be openly biased and could vote however they chose to, without having to justify their decision. He also advised them that they could take 90% of the value of homeowners' property without it being considered a "taking," which would require compensation. They have followed his advice.

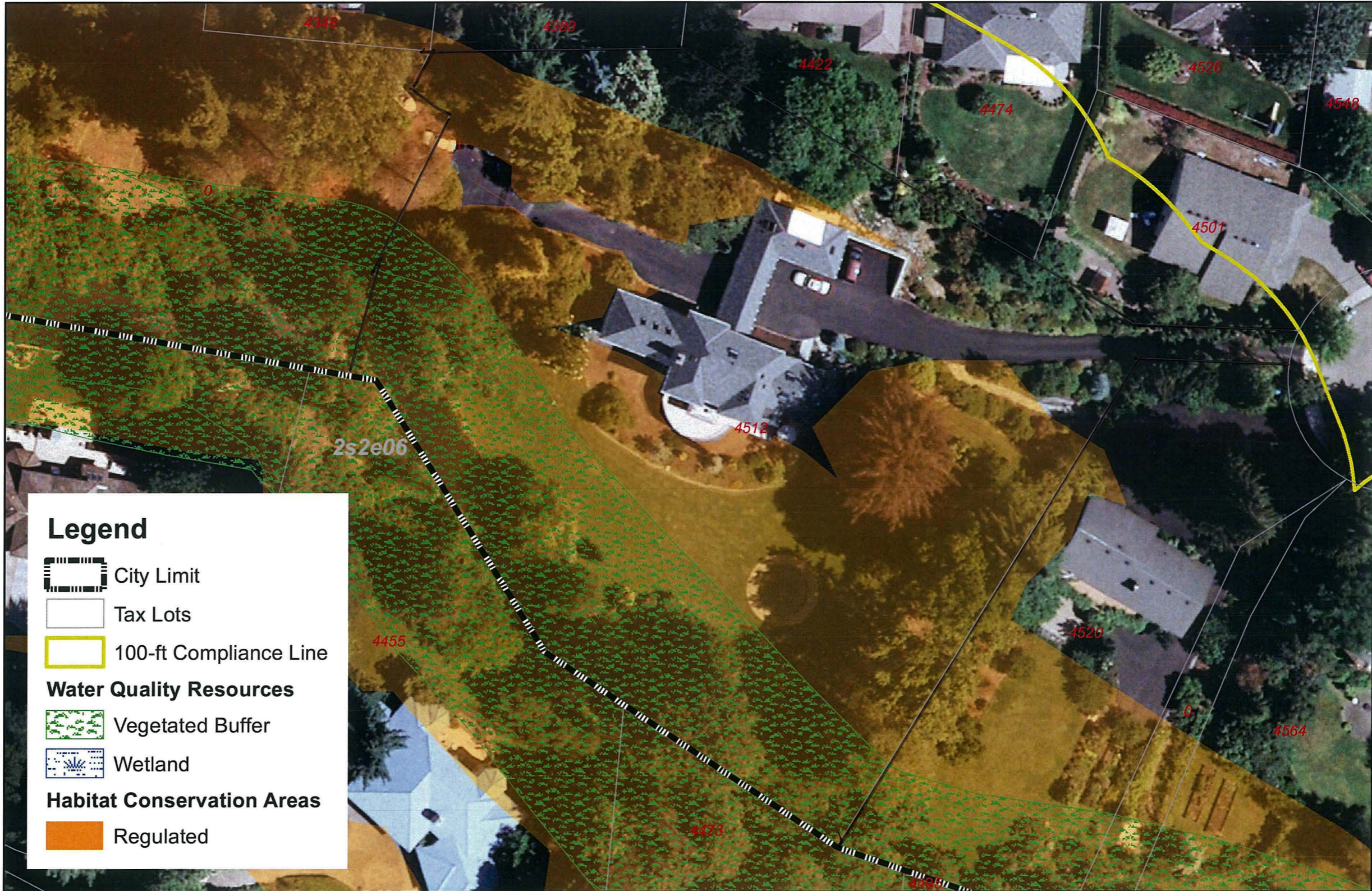
There are some Planning Commissioners who dismiss the landscaping plans of home owners as being of no importance and some Commissioners who treat any Habitat Conservation Area as if it were public land which just happens to be inconveniently located on private property. They have dismissed most of our opposition without discussing the facts or merits of our objections and in their discussions have shown that they are sometimes not familiar with many details of the ordinance. At the conclusion of their process, they felt that the ordinance must be "balanced" because everyone seemed unhappy with it.

If it were up to me, I would throw the whole ordinance in the trash. But of course, it's not up to me. At a minimum, I urge you to adopt the "Homestead Exemption" clause, which will give us a little bit of breathing room. While this isn't a blanket exemption by any means, it may help shield us from further bureaucratic encroachment. The environmental restrictions which began with a deception in 2002 have grown, and the regulated areas have expanded, but this is not the end of attempts to gain control over our property, it is only the beginning.


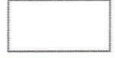
Somewhere a line has to be drawn to protect us. We simply want to live undisturbed on our land, in harmony with nature and at peace with our neighbors. We ask you to come to our aid this evening.

Thank you,

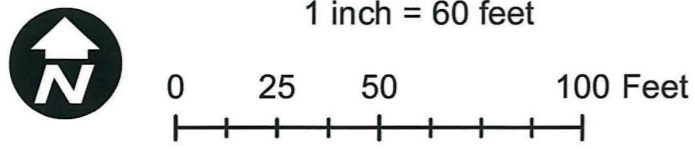
A handwritten signature in blue ink that reads "Christopher Burdett". The signature is written in a cursive, flowing style.



Legend

-  City Limit
-  Tax Lots
-  100-ft Compliance Line
- Water Quality Resources**
-  Vegetated Buffer
-  Wetland
- Habitat Conservation Areas**
-  Regulated

4512 SE Ryan Ct



Author: City of Milwaukie Planning Department, March 2011
 Source: City of Milwaukie GIS, Clackamas County GIS, Metro Data Resource Center
 All data depicted is approximate.
 Not suitable for building or engineering purposes.



EXHIBIT
 7/19/11

3.
CONSENT AGENDA



3.A.

To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Gary Parkin, Engineering Director

Date: July 5 for July 19, 2011 Regular Session

Subject: IGA for Street light transfer of Street Lights in the NE Sewer Extension Area

ACTION REQUESTED

Authorize the City Manager to enter into an Inter-Governmental Agreement (IGA) with Clackamas County Service District No. 5, transferring 43 street lights from the County Service District to the City.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

June 2011: Council approved an Inter-Governmental Agreement with Clackamas County Sewer District No. 1, amending and re-stating the City's agreement with CCSD No. 1 regarding joint construction and shared use of two sewer lines constructed in the NE Sewer Extension project (Res. 58-2011).

March 2011: Council finalized the City's reimbursement district to recover costs expended on constructing the NE Sewer Extension (Res. 32-2011).

September 2010: Council authorized the creation of the NE Sewer Extension Reimbursement District (Res. 78-2010).

June 2010: Council approved an IGA with CCSD No. 1 describing the process by which ownership and maintenance of two shared sewer lines would be handled (Res. 63-2010).

December 2009: Council awarded the contract for construction of the NESE project to K & R Plumbing Construction Co. Inc., in the amount of \$2,653,257.05 (Res. 78-2009).

October 2009: Council approved the jurisdictional transfer of the streets located within Dual Interest Area "A".

February 2009: Council authorized the City Manager to enter into a contract with Century West for engineering services to design the project.

October 2008: Council approved moving forward with the extension of the City's sewer system into Dual Interest Area "A" including: entering into an IGA with Clackamas County for engineering services; applying for a DEQ loan needed to fund the sewer extension; and moving forward with public information efforts (Res.81-2008).

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services. With respect to Dual Interest Area "A", the agreement states: "The City shall assume a lead role in providing urbanizing services."

BACKGROUND

The City has completed construction of the NE Sewer Extension (NESE) project and properties are annexing into the City and connecting to the sewer mains. One of the first steps of the project was for the City to annex the street rights-of-way within Dual Interest Area "A" and transfer jurisdiction of the rights-of-way so that the sewer mains could be constructed, and then operated, by the City. The City and Clackamas County transferred jurisdiction of this area from the County to the City.

With the annexation of the rights-of-way (completed in January 2010) and the jurisdiction transfer, the City became responsible for the oversight of the streets including the street lighting. Exhibit 1 of Attachment 2 is a map showing the location of the street lights in Dual Interest Area "A" that became the City's responsibility. The last unaddressed item related to the jurisdictional transfer is the formalized transfer of the street lights.

This transfer is unusual in that the County has provided street lighting in this area through a street lighting district that collects fees for the lights as part of the property tax. The City assumed jurisdiction of the streets and street lighting when the public rights-of-way were annexed but the private properties will continue to pay into the street lighting district until they voluntarily annex into the City, at which time the properties will be de-annexed from the street lighting district.

The proposed IGA transfers the street light payment responsibility to the City and stipulates that the District will forward payments to the City from those properties still paying into the district during the next fiscal year. With the adoption of the IGA, payment responsibility for the (43) street lights within the NESE area and specified in the IGA, will shift from the Lighting District to the City. The IGA also provides for the transfer of payments received by the lighting district from those properties within the NESE area still paying into the lighting district for a one year period.

The street lights are provided by PGE and covered under the same agreement (schedule 91) as the other street lights in the City. The street lights will continue as option "A" lighting with PGE owning and maintaining them, similar to the majority of the City street lights.

CONCURRENCE

The City Attorney's office has reviewed the IGA, and related documents. Engineering and Planning worked cooperatively in the development of the street lighting transfer.

FISCAL IMPACT

The City will be liable for the street lights costs currently at \$448.06 per month. This is an increase of 1.8% in the City's current street lighting cost. Street Lighting costs are paid from state gas tax revenue. Payments from CCSD No. 5 in the first year (2011/12) will provide about \$3,300 to offset the cost of the transfer.

WORK LOAD IMPACTS

None.

ALTERNATIVES

This agreement benefits both CCSD No. 5 and City of Milwaukie. The City committed to taking jurisdiction of this area two years ago and benefits from the delayed transfer and the receipt of one year of payment.

Unilateral adjustments to the IGA by the City for additional subsidy are not possible. CCSD No. 5 has made it clear that the proposed IGA is the best they will offer.

ATTACHMENTS

1. Resolution
2. IGA with Exhibits

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING AUTHORITY TO ENTER INTO AN AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 (DISTRICT) REGARDING THE TRANSFER OF STREET LIGHTS IN DUAL INTERSET AREA 1 AND RELATED TO THE NE SEWER EXTENSION PROJECT.

WHEREAS, The City has annexed a number of streets in the Dual Interest Area 1 pursuant to its project known as the NE Sewer Extension Project; and

WHEREAS, The street lights in this area are currently operated, and paid for by the district; and

WHEREAS, The street lights are needed for safety and benefit the residents; and

WHEREAS, The City and the District have agreed to an approach to transfer the jurisdiction and costs of the street lights;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon, authorizes the Mayor to execute the Intergovernmental Agreement attached hereto as Exhibit A.

Introduced and adopted by the City Council on July 19, 2011.

This resolution is effective on July 19, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 2
AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF MILWAUKIE
AND
CLACKAMAS COUNTY SERVICE DISTRICT NO.5
REGARDING TRANSFER OF STREET LIGHTING SERVICES

This Intergovernmental Agreement (this "Agreement") is entered into by and between the City of Milwaukie, an Oregon municipality ("City"), and Clackamas County Service District No. 5, a county service district ("District"). Its purpose is to transfer responsibility and certain funds regarding street lighting services for an area currently in the District and recently annexed by the City.

RECITALS

1. In January 2010, the City annexed a number of local streets located within the service boundary of the District, pursuant to its project known as the "NE Sewer Extension Project" ("NESE"). These streets currently have street lights on them operated by the District. Attached as Exhibit 1 is a map identifying the subject streets that were annexed by the City ("NESE Streets") and the location of street lights on the NESE Streets.
2. The street lights located on the NESE Streets are currently operated, maintained and paid for by the District. Attached as Exhibit 2 is a list of the total number of street lights and poles operated, maintained and paid for by the district on the NESE Streets ("Lights").
3. Until property owners whose property fronts the NESE Streets as more fully detailed on Exhibit 3 ("Property Owners") annex into the City, their property is still located inside the District's boundary.
4. The District currently collects annual fees from the Property Owners in order to pay for these Lights.
5. It is in the best interest of the City and the District that the Lights continue to be operated and maintained along the NESE Streets.
6. ORS 190.003 *et seq.*, allows for intergovernmental agreements to achieve efficiencies and economies obtained thereby.
7. Under ORS 451.560(2) the City and the District may enter an intergovernmental agreement for the joint use or operation of street lights.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

- 1. Term.** This Agreement shall be effective upon execution, is retroactive to July 1, 2011, and will expire on June 30, 2012.
- 2. Project Summary.**
 - A. Assets:** The street light assets involved in this agreement are owned by Portland General Electric, thus, this agreement does not transfer assets.

B. Operations: The District will permanently transfer all responsibility for operating the Lights, including costs and maintenance, to the City beginning July 1, 2011.

C. Financial structure: To aid in the transition of the responsibility to pay for the Lights, beginning July 1, 2011 to June 30, 2012, the District will collect fees at a rate of \$45.00 from the Property Owners and transfer those revenues, less any discounts applied by Clackamas County Assessment and Taxation and less an administrative fee of 20%, to the City to offset the costs of operating the Lights. Beginning July 1, 2012 the District will cease collecting street lighting fees from Property Owners due to the fact that the City will thereafter be solely responsible for the costs for the Lights.

3. Obligations of the District:

- A. For the fiscal year July 1, 2011 to June 30, 2012, the District shall collect street light fees from the Property Owners.
- B. The District shall transfer to the City the following amounts of money on or before June 30, 2012 as follows:
 - i. The District shall withhold administrative charges in the amount of twenty percent (20%) to administer this Agreement; and
 - ii. For the payments collected in the fiscal year July 1, 2011-June 30, 2012 from the Property Owners, the District shall transfer 100% of the revenues received from property owners identified in Exhibit 3, less any discount applied by Clackamas County Assessment and Taxation and less the twenty (20%) administrative charge referenced above.
- C. Beginning July 1, 2012, the District will cease collecting street lighting fees from the Property Owners.

4. Obligations of the City:

- A. The City shall assume the PGE billings associated with the Lights beginning July 1, 2011, and thereafter be responsible for the costs and maintenance for the Lights. The City shall use the revenue provided by the District during the 2011-12 fiscal year solely to support the operation of the Lights.

5. Indemnity. To the extent permitted by law under ORS 30.260 – 30.300, and subject to Oregon Constitution Article XI, Section 11, each party shall indemnify and defend the other, its governing body, officers, agents, and employees from any claim, loss, or liability arising out of or related to any activity of that party on the facilities or any condition of the facilities caused by the sole negligence or act of a party.

6. Termination. If either party shall fail to perform any term or condition of this Agreement, then upon seven days' written notice, either party may terminate the Agreement and have no further obligation hereunder save for costs incurred prior to termination or Section 5 which shall survive termination.

7. General Provisions.

- A. Merger Clause. This Agreement embodies the entire Agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.
- B. Assignment. No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other party except by operation of law.

- C. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be effected or impaired thereby.
- D. Jurisdiction of Circuit Court. Any dispute or claim shall be settled in the Circuit Court of the State of Oregon for Clackamas County.
- E. Notices. Any notice herein required or permitted to be given shall be given in writing and shall be effective when actually received, and may be given by hand delivery or by United States mail, first-class postage prepaid, addressed to the parties as follows:

Attn: Public Works Director
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

Attn: Development Review Coordinator
Clackamas County
Department of Transportation and Development
150 Beavercreek Road
Oregon City, OR 97045

- F. Attorney's Fees. If a dispute should arise between the parties regarding any term or portion of this Agreement, the prevailing parties shall be entitled to such reasonable attorney's fees as a trial court may award and on any appeal therefrom.
- G. Modifications to this Agreement shall be in writing and signed by all parties.
- H. Each party shall give the other immediate written notice of any action or suit filed or any claim made that may result in litigation in any way related to this Agreement.
- I. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI section 10 of the Oregon Constitution, and is contingent upon funds being appropriated by the governing body of the District for the fiscal 2011-12 year.

8. Retroactivity. The provisions of this agreement are retroactive to July 1, 2011.

9. Counterparts. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, any one of which shall constitute an agreement among the parties.

[Signature Page Follows]

IN WITNESS HEREOF, the parties have executed this Agreement by the date set forth opposite their names below.

City of Milwaukie

Clackamas County

William Monahan,
City Manager

Chair

Witness

Recording Secretary

July _____, 2011

July _____, 2011

Approved as to Form:

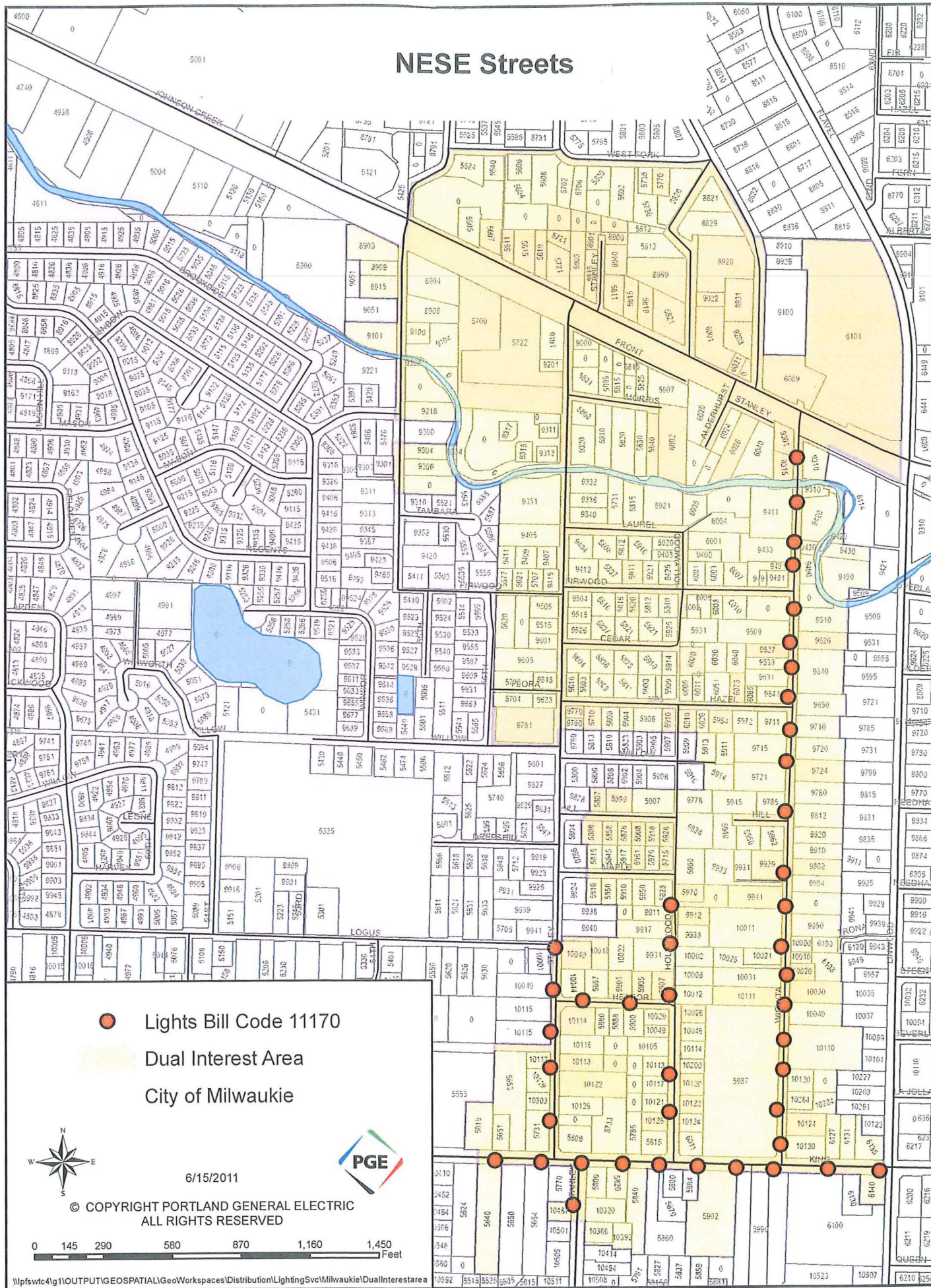
City of Milwaukie

Chris Storey, Asst. County Counsel

Exhibits:

- 1: NESE Streets
- 2: NESE Lights
- 3: NESE Property Owners

NESE Streets



- Lights Bill Code 11170
- Dual Interest Area
- City of Milwaukie



6/15/2011



© COPYRIGHT PORTLAND GENERAL ELECTRIC
ALL RIGHTS RESERVED

0 145 290 580 870 1,160 1,450 Feet

\\pfsvc4\g1\OUTPUT\GEO\SPATIAL\GeoWorkspaces\Distribution\LightingSvc\Milwaukie\DualInterestArea

Exhibit 2 NESE Lights

Option A

100W HPS COBRA 9,500 LUMEN

BC	Map	Sequence	Mount	LC	Lamp Type	Owner	Maint	Repair	Monthly	
									charges	Install
11170	D1230A	428000313	5181	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230A	428000312	4041	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230A	428000311	4040	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230A	428000310	1600	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230A	428000308	978	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300136	86	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300076	1529	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300091	6060	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300086	6061	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300106	3641	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300111	4010	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300116	4283	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300121	3658	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300161	1747	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300141	2195	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300151	407	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300146	2196	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300118	4284	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300126	3657	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300089	5084	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300096	682	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300119	4564	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	8/28/1958 0:00
11170	D1230D	428300300	6057	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	3/11/1998 0:00
11170	D1230D	428300299	6058	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300298	4707	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300297	6027	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
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11170	D1230D	428300294	2910	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300293	6059	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300292	4733	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300291	5162	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00
11170	D1230D	428300290	2087	34	100W HPS COBRA 9,500 LUMEN	PGE	PGE	PGE	\$9.52	2/26/1996 0:00

Option A

200W HPS COBRA 22,000 LUMEN

11170	D1229C	427800101	2421	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300031	177	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300036	178	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300041	2422	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300046	2912	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300051	3389	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300056	5575	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300061	2913	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300071	2440	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00
11170	D1230D	428300066	2438	39	200W HPS COBRA 22,000 LUMEN	PGE	PGE	PGE	\$13.39	8/28/1958 0:00

**Exhibit 3
NESE Property Owners**

Area	Rate	Taxlot Num	Parcel	Area	Rate	Taxlot Num	Parcel
15	B	12E30DC02900	00083037	15	B	12E30DD08100	00084278
15	B	12E30DC03100	00083046	15	B	12E30DD08200	00084287
15	B	12E30DC03101	00083055	15	B	12E30DD08300	00084296
15	B	12E30DC03200	00083064	15	B	12E30DD08400	00084303
15	B	12E30DC03300	00083073	15	B	12E30DD08600	00084321
15	B	12E30DC03400	00083082	15	B	12E30DD08700	00084330
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15	B	12E30DC03700	00083117	15	B	12E31AA03000	00084633
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15	B	12E30DD01600	00083616	15	B	12E31AA03200	00084651
15	B	12E30DD01700	00083625	15	B	12E31AA03400	00084660
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15	B	12E30DD01900	00083643	453	B	12E30DA00800	00080584
15	B	12E30DD02000	00083652	453	B	12E30DA01000	00080593
15	B	12E30DD02100	00083661	453	B	12E30DA01100	00080600
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15	B	12E30DD02700	00083732	453	B	12E30DA02500	00080771
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15	B	12E30DD03400	00083803	453	B	12E30DA10500	00081609
15	B	12E30DD03500	00083812	453	B	12E30DA10600	00081618
15	B	12E30DD03600	00083821	453	B	12E30DA10700	00081627
15	B	12E30DD03700	00083830	453	B	12E30DA10800	00081636
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15	B	12E30DD05100	00083974	453	B	12E30DA11700	00081725
15	B	12E30DD05200	00083983	453	B	12E30DA11800	00081734
15	B	12E30DD05300	00083992	453	B	12E30DA11900	00081743
15	B	12E30DD05400	00084009	453	B	12E30DA12000	00081752
15	B	12E30DD05500	00084018	453	B	12E30DA12100	00081761
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15	B	12E30DD05900	00084054	453	B	12E30DD03200	00083787
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15	B	12E30DD07300	00084198				
15	B	12E30DD07400	00084205				
15	B	12E30DD07500	00084214				
15	B	12E30DD07600	00084223				
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15	B	12E30DD08000	00084269				

**CITY OF MILWAUKIE
CITY COUNCIL STUDY SESSION
APRIL 26, 2011**

Council President Chaimov called the Milwaukie City Council study session to order at 5:09 p.m. in the City Hall Conference Room.

Present: Mayor Ferguson (arrived 5:52 p.m.), Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Civil Engineer Brad Albert, Planning Director Katie Mangle, Senior Planner Susan Shanks, Engineering Director Gary Parkin, Stormwater/Wastewater Operations Supervisor Ronelle Sears, and Water/Streets Operations Supervisor Mike Clark

Public Area Requirements

Mr. Asher reviewed the process for determining transportation facility improvements.

Mr. Parkin handed out copies of Title 19 and discussed how frontage improvements in residential zones were based on the square footage of the project and on impacts in the downtown area.

Mr. Albert described his role in the development review process to determine if existing improvements were adequate or if the project needed to mitigate impacts. He compared the existing use to the proposed use to determine if trip generation were intensified and how to best mitigate related impacts.

Councilor Miller expressed concern with the basis for making these decisions and the potential financial impacts on the businesses.

Mr. Albert replied he used the best information available when he considered changes of use which might intensify vehicular impacts. He provided this information to the property/business owners during a pre-application conference.

Ms. Shanks described the 2009 code revision which changed from being a value-driven decision to being based on impacts.

Ms. Mangle discussed the Main/Monroe project started by Mr. Parecki and subsequent code amendments that resulted in a reduced project list.

Ms. Shanks reviewed the process and determinations in more detail by going through the sequence.

Councilor Hedges had a problem with fees in lieu of (FILO) improvements as a way to get around something that could impact safety.

Ms. Shanks replied cannot do FILO in cases where safety was an issue.

Councilor Hedges commented on the fairness of asking for bulb-outs, trees, and things of that nature during the current economic downturn. Matters like unsafe sidewalks definitely needed to be addressed. If the City codes were too stringent for today's situation, he agreed with Councilor Miller to put the PARs aside for a brief period.

Councilor Miller felt people should be able to improve their buildings and that PARs were a detriment to development in downtown Milwaukee. A moratorium might be in order while the City put together a fair, consistent plan. He felt kick-starting the downtown economy should be on the City and not the business owners.

Infrastructure Master Plans and Capital Investment Planning

Mr. Asher provided context for the projects that focused on areas where business was transacted and best served the City Council's goals. These would be the downtown area, 32nd Avenue, and the Murphy and McFarland sites. The three touchpoints were the City Council goals, Comprehensive Plan, and the Milwaukee Vision Statement.

The group discussed housing density and diversity, jobs, and the importance of fitting with the existing lifestyle and character of the neighborhoods.

Mr. Campbell gave a brief Economics 101.

The group discussed urban renewal, and **Councilor Miller** expressed his reluctance to place an extra burden on taxpayers.

Mr. Seals gave a brief overview of recent legislation setting certain limitations.

Councilor Loomis was not embedded in voting against urban renewal but did have questions.

Councilor Hedges urged re-use of the old buildings in the downtown area and commented on Safeway's veto power on businesses going into the King Road site.

Mr. Asher reviewed the work plan element and discussed Metro's construction excise tax (CET) program and pending litigation. He suggested using Metro funds for planning. The group discussed possible budget implications of the CET grant program.

Mr. Monahan discussed the proposed resolution before the City Council next week related to public area requirements. The group discussed those budget implications.

Communication Plan and Retreat

The City Council discussed how items were placed on the agenda and the need to be aware of possible budget implications when using staff time. The group discussed potential times for a retreat.

The study session ended at 8:20 p.m.

Respectfully submitted,

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL STUDY SESSION
MAY 31, 2011**

Mayor Ferguson called the Milwaukie City Council study session to order at 5:06 p.m. in the City Hall Conference Room.

Present: Mayor Ferguson, Council President Chaimov and Councilors Hedges, Loomis and Miller

Staff Present: City Manager Bill Monahan, Deputy City Recorder Juli Howard, Public Information Coordinator Grady Wheeler, Community Services Director JoAnn Herrigel, Code Compliance Coordinator Tim Salyers, Code Compliance Specialist Sarah Lander, Judge Ronald Gray, Court Clerk Carla Bantz, CD/PW Director Kenny Asher, Planning Director Katie Mangle, Light Rail Design Coordinator Wendy Hemmen, Senior Planner Susan Shanks and City Attorney Tim Ramis

Communication Strategy

Mr. Wheeler, explained the City's plan to change the Public Information Coordinator position to Public Affairs Coordinator. This change is recommended in order to meet the City's communication challenges. The new position would do a much better job of community what the city is doing. In the new role he would be meeting with department directors to determine stories and identify projects to promote to the public, he would work with directors on quarterly reports and improve staff report quality and work to establish the City brand. The position would move out of the Community Services Department and directly report to the City Manager. The new position would take effect on July 1. He would also work to increase the City's presence by using social media.

Mayor Ferguson liked the idea of consistent branding as well as a social media component. He would like to see social media set up for multiple departments such as police and library.

Mr. Monahan said he went to Clackamas Cities Dinner in West Linn and there were two editors from Oregonian speaking. Questions regarding press releases were asked of the editors and they said they take news directly from blogs. He said we need to change our focus to social media to be in line with how various media outlets work.

Mr. Miller said he supported the new position and felt one person should be speaking for the City instead of piece meal.

Councilor Hedges asked about the promotion and compensation.

Mr. Monahan said they were working on a salary analysis comparing Wilsonville, Lake Oswego and Gresham.

Councilor Loomis said newspapers are not looking for good news.

Mr. Monahan said all departments would be communicating with Grady as a resource and driver. He said we have to keep in constant contact with the media so they can't ignore us.

Mr. Wheeler said that he met with NDA's regarding The Pilot newsletter to get an overall sense of what the perceptions are of local government and what better ways the City can engage citizens. The suggestion was to identify other activity groups, such as Rotary bringing them to the table so we can better work with them. The effort would begin in late summer or early fall. They are doing a lot more with social media, and they aim to have something new up every day. They are learning more all the time. He said that Ms. Ragel met with a colleague who works in social media and they would be meeting to learn about medial tools that the City can use. Currently the City has 33 followers on Twitter and 150 fans on Facebook.

Code Enforcement

Mr. Salyers explained that there are two employees in the Code Enforcement department and 75% percent of their time is spent on code enforcement and 25% is spend on parking enforcement.

Mr. Salyers reviewed what violations they enforce, what constitutes a violation and how they are addressed. He explained that most code cases are complaint driven. He reviewed the abatement process. He went to NDA meetings to draw attention. They want to empower NDA's and develop more communication and emphasis on CE staff to drive the education piece to lead to self-policing.

Councilor Miller said he would like to see a process that isn't just complaint driven. He would like to personally work on that issue without increasing or requiring a shift in the current process. He didn't want a complaint to have to be filed before something is done.

Councilor Chaimov said a more proactive approach would be good.

Councilor Hedges said he was going to look at Gresham's code as a comparison.

Councilor Loomis was not supportive of changing the current process and wanted to know what the current workload was.

Mr. Salyers said they are at the same caseload as we had last year. Some ordinances that had been passed in recent years have caused a slight increase in code cases. They also have a better way to track the cases. He mentioned some new ordinances that have been added over the last couple of years. Some cases can be quick and easy and some can take years to resolve.

Mayor Ferguson is there an opportunity to have issues addressed proactively instead of reactively. He suggested picking a violation and targeting that issue for a certain period of time to remedy the problems.

Councilor Miller didn't have qualms about how much work there is to do. He suggested that public works staff that are out in the City have a reporting mechanism to code enforcement staff. Street Sweeper was the best example of

CITY COUNCIL STUDY SESSION – MAY 31, 2011

DRAFT MINUTES

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an employee who may see abandoned vehicles or other violations that he can report so a homeowner doesn't have to complain and then code enforcement can follow up on those issues.

Mayor Ferguson if they were reporting all then workloads would increase. It would probably be better to target one violation.

Councilor Loomis said we would be pitting the City against citizens looking for issues and it didn't sit well with them. He was also concerned about what the priority would be if a citizen called in versus a staff member.

Councilor Miller said they would report what they see and wouldn't be driving around looking for violations.

Councilor Hedges said the beauty of the current system is people only complain if they don't want to tolerate the issue. Felt one of the problems is that if people make a complaint it becomes a matter of public record and people can find out about it. In some cities it is not a public record and their details are kept private.

Mr. Monahan said that is a good first layer of defense, but it was reachable on a code enforcement issue.

Mr. Salyers said they do take an anonymous complaints over the phone. If the complainant sends an email that would be a public record. He talked about concerns he would see happening with going to a proactive approach versus reactive.

Councilor Miller wants to continue what we are doing because it works, but was trying to figure out a way neighborhoods could address issues to get them resolved without the current complaint driven process.

Mr. Monahan discussed public outreach on code enforcement issues and touched on the code section article that is in the Pilot each month. He discussed getting the NDA's more involved so the emphasis on education may drive more self-policing.

Mr. Monahan asked Mr. Salyers to get with Mr. Wheeler to see if there are ways to enhance the education piece to step up effort to improve the image of the community. He suggested incorporating something in Paul Klein's neighborhood walks.

Municipal Court Matters

Mr. Monahan introduced Judge Ronald Gray and Court Clerk Carla Bantz.

Mr. Monahan said photo radar has impacted court and processes and he thought it was a good time to get an update on court matters.

Judge Gray commented on \$45 state surcharge that has been mandated by the state legislature since October 2009 and is supposed to sunset on July 1. He talked about the plans that were drawn to make a court room in the fire bay area of the building. He wanted Council to consider using the surcharge revenue to create a courtroom. He invited Council to attend a court session to learn more

CITY COUNCIL STUDY SESSION – MAY 31, 2011

DRAFT MINUTES

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about it. He discussed HB 2712 that was designed to set a uniform bail schedule throughout the entire state and eliminate a judges right to reduce any fines and eliminate violations bureaus. He stressed the need for technology in the courtroom, and to reduce the need for paper.

Mr. Monahan said he has asked the IT department to work with departments to identify what they are in greatest need of and the T-Ticket equipment is one of the biggest issues for the police department.

Judge Gray said he attended a conference and talked to a representative from ODOT and he said that in the city of Keizer they are monitoring accident rates using data they gather from their T-Ticket machines. He suggested Milwaukie do the same thing.

Mr. Monahan said if we can share and utilize data with ODOT it would be very productive.

Judge Gray discussed an idea that he had about having a safety video campaign to educate the public on traffic safety. He also discussed the need of adding an end of school zone on sign on Lake Road because drivers are often confused in that area.

Judge Gray said that staff does a tremendous job of defusing anger and explaining what the court processes are. He gave kudos to the court staff and the security staff, which directly effects the way people behave.

Judge Gray discussed increase in court days for trials. His preference is to have 200 people or fewer people per docket and he doesn't want trials to be scheduled beyond 90 days. He also explained the education and diversion programs the court offers.

Councilor Miller thought it would be a good idea to move the court function to a satellite location.

Light Rail Planning

Mr. Asher he would discuss funding issues and the City's roles over the next couple of years. Staff would review the Core responsibilities.

Essential Roles –

Permitting – Ms. Shanks said this was the most well defined area of responsibility. She reported that they have reached a project milestone and were at 60% design, which was the point at which they can submit land use applications. The plans sets will be distributed on June 10. The Kellogg structure and trolley trail modification approval would come in July. She explained that Council had one main role as the decision maker on quasi-judicial appeal hearings.

Design – Ms. Mangle said now that they are at 60% design they have a lot more information. There are multiple meetings to be scheduled including open houses, the DLC will have a special meeting about surface treatment on walls and fences and how those should look. They would continue to engage in different design elements every month. TriMet would use that to come up with a

CITY COUNCIL STUDY SESSION – MAY 31, 2011

DRAFT MINUTES

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new cost estimate. The would be developing the City's official comment to the light rail plans. She explained Council's role is to stay informed and listen to constituents and give any feedback that you hear to Ms. Hemmen so staff can represent their interests.

Councilor Hedges said DLC members were in a one-way discussion with TriMet. We ought to be aware of the NDA leadership's views being expressed and want them to offer their opinions.

Councilor Miller wanted to know if there was a definitive answer to where the Trolley Trail's interim route would end.

Ms. Mangle said they would get the answer to that included in the June 27 open house and there is also going to be a special Island Station / Trolley Trail meeting.

Construction – Ms. Hemmen reported that building demo would begin on Adams and they filed for right-of-way street opening permits for geotechnical testing. They were currently working on Conduct of Construction guidelines and would like Council to weigh in on them. Staff will be meeting with impacted businesses and TriMet to help with their concerns so they can get their questions answered. Council had no required role in the construction element, but it would be nice to have support in some of the business communications with impacted properties. Parking will be a big issue and for employees, businesses and also contractor parking. Communication would be a big piece.

Funding – Mr. Asher said the City is a committed funding partner on the project, and must contribute \$5 million within 90 days of the full funding agreement. TriMet was trying to submit application at the end of June to hopefully have the grant agreement by the end of the year. There was no early time table on contribution amount. There is a question about the local match on donated property and the City may need more appraisals. The project funding was mostly figured out but not entirely. Staff will come back in June or July with options to meet the August deadline. They would be asking TriMet for some funding flexibility. He explained the term Betterment - improvements that are made either related or near to the project, but are not the projects responsibility for funding.

Mr. Monahan discussed an issue regarding a proposed annexation of property by Happy Valley that was within Milwaukie's UGMA. A meeting has been set with the Happy Valley City manager to engage in a discussion and express the City's opposition. He would give a follow-up report on June 7.

Mayor Ferguson adjourned the meeting at 8:17pm.

Respectfully submitted,

Juli Howard, Deputy City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
July 5, 2011**

3.B.3.

CALL TO ORDER

Mayor Ferguson called the 2105th meeting of the Milwaukie City Council to order at 7:18 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson, Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Engineering Director Gary Parkin, Facilities Maintenance Coordinator Willie Miller, and Public Affairs Coordinator Grady Wheeler

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Hedges to approve the consent agenda consisting of:

- A. **Resolution No. 64-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract with Diversified Abilities to Extend Janitorial Services for Five Years for an Amount Not to Exceed \$625,000;
- B. **Resolution No. 65-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting Bylaws for the Milwaukie Park and Recreation Board;
- C. **City Council Minutes:**
 - 1. March 29, 2011 Study Session;
 - 2. May 3, 2011 Work Session;
 - 3. May 17, 2011 Work Session;
 - 4. May 17, 2011 Regular Session;
 - 5. June 7, 2011 Work Session;
 - 6. June 7, 2011 Regular Session; and
 - 7. June 21, 2011 Regular Session
- D. **Resolution No. 66-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Don Wiley to the Public Safety Advisory Committee as the Linwood Neighborhood District Association Representative;
- E. **Resolution No. 67-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Sue Richardson to the Public Safety Advisory Committee as the Lake Road Neighborhood District Association Representative; and
- F. **Resolution 68-2011:** A Resolution of the City Council of the City of Milwaukie, Oregon, Nominating Siri Bernard as the City of Milwaukie Representative to the Center/Community Advisory Board.

Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Renewal and Extension of the Public Area Requirement Grant Program – Resolution

Mr. Monahan provided the staff report on the grant program initiated by City Council in May to stimulate economic activity in the downtown. One party took advantage of the program, and of the initial \$20,000 in grant funds a little over \$6,000 remained. At the June 28, 2011, City Council study session, a downtown property owner, Dark Horse Comics, expressed interest in applying for the additional grant funds but needed additional time to do so. Staff recommended that the program be renewed and extended through June 30, 2012.

It was moved by Councilor Miller and seconded by Councilor Loomis to adopt the resolution renewing and extending the temporary economic development grant program created by Resolution 57-2011 through June 30, 2012. Motion passed with the following vote: Councilors Miller, Hedges, Chaimov, and Loomis and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION NO. 69-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RENEWING AND EXTENDING THE TEMPORARY ECONOMIC DEVELOPMENT GRANT PROGRAM CREATED BY RESOLUTION 57-2011 THROUGH JUNE 30, 2012.

B. Council Reports

Mayor Ferguson and Councilors provided an update on meetings they attended on behalf of the City and announced upcoming community events.

ADJOURNMENT

It was moved by Mayor Ferguson and seconded by Councilor Chaimov to adjourn the meeting. Motion passed with the following vote: Councilors Miller, Chaimov, Hedges, and Loomis and Mayor Ferguson voting “aye.” [5:0].

Mayor Ferguson adjourned the regular session at 7:32 p.m.

Respectfully submitted,

Pat DuVal, Recorder



To: Mayor and City Council
Through: Bill Monahan, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Grant agreement for Klein Point and Johnson Creek Confluence
Date: July 11, 2011

Action Requested

Approve a resolution granting authority to the City Manager to sign an agreement with Metro for a Nature in Neighborhoods Capital grant of \$213,000 for the Klein Point overlook and Johnson Creek enhancements proposed by the Johnson Creek Watershed Council.

Background

In the winter of 2011, Robin Jenkinson, from the Johnson Creek Watershed Council and JoAnn Herrigel, Milwaukie Community Services Director, submitted an application to Metro's Nature in Neighborhoods Capital Grant program for \$213,000 to complete the construction of Klein Point overlook at Milwaukie Riverfront Park and in-water enhancements of Johnson Creek. In May 2011, Metro announced the award of this grant to the City and the Watershed Council.

JoAnn Herrigel has been working with Metro staff to finalize an agreement for the project and expects a final agreement to be completed by mid-July. To expedite the signature of the agreement and to allow work to begin as soon as contract documents are complete, staff is requesting that Council grant the City Manager authority to sign the grant agreement with Metro.

The work at the confluence of Johnson Creek and the Willamette River is proposed to begin on August 1. The work on Klein Point will begin later in August or early September.

A full description of the proposed work is attached for Council's review.

Fiscal Impact

Johnson Creek watershed Council has provided the majority of the match for this grant. No new City funding is being requested to match this grant award.

Work Load Impacts

The Community Services Director will allocate 50% of her time over the next several months to coordinating the completion of Klein Point designs with David Evans and Associates, developing a Request for Proposals for a construction firm to complete the work, and monitoring the work as it progresses.

Alternatives

Deny the City Manager authority to sign the agreement and require that staff bring the completed agreement to Council for their approval. This would delay the initiation of work on the Johnson Creek project.

Attachments

Resolution

Project Description for Klein Point and Confluence Project

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
GRANTING AUTHORITY TO THE CITY MANAGER TO SIGN AN AGREEMENT WITH
METRO FOR A NATURE IN NEIGHBORHOODS GRANT OF \$213,000 FOR THE
KLEIN POINT OVERLOOK AND JOHNSON CREEK CONFLUENCE
ENHANCEMENTS.**

WHEREAS, the City Council goals include completing construction of Milwaukie Riverfront Park by 2013; and

WHEREAS, the City and Johnson Creek Watershed Council have been awarded a grant to construct the first phase of Milwaukie Riverfront Park and enhancements to Johnson Creek; and

WHEREAS, Council wishes to expedite the signature of the grant agreement with Metro so that work on the Johnson Creek confluence and Klein Point may begin as soon as possible;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to sign an agreement with Metro for a Nature in Neighborhoods grant of \$213,000.

Introduced and adopted by the City Council on July 19, 2011.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

KLEIN POINT OVERLOOK & HABITAT ENHANCEMENT

Metro Capital Grant Proposal, October 2010

1) Project Narrative

a. Project Description

The City of Milwaukie and the Johnson Creek Watershed Council are partnering to complete improvements at and near the confluence of Johnson Creek with the Willamette River. This proposal focuses on improvements within a portion of the City of Milwaukie Riverfront Park property, called "Klein Point," and in-water work in Johnson Creek. Specifically, we are requesting funds for the following three project elements:

- 1) Installation of a Log Habitat Structure on the southern bank of the Confluence
- 2) Construction of a Sewer Pipe Protection Riffle in Johnson Creek
- 3) Construction of the Klein Point Interpretive Overlook

Funding for completion of these three elements will supplement existing or potential grants for two construction projects. One is a JCWC planned in-water habitat enhancement at the Creek confluence. The other is the City of Milwaukie's Riverfront Park project, which begins at Klein Point and moves south of Kellogg Creek to the northern boundary of the County's wastewater treatment plant property.

Johnson Creek Confluence Project

Johnson Creek enters the Willamette River on the east bank at river mile 18.5, upstream of the Sellwood Bridge, in Milwaukie, Oregon. The proposed project reach extends 1,350 feet from the 17th Street Bridge downstream to the mouth of Johnson Creek. This confluence area supports juvenile rearing and adult migration of federally listed Chinook, Coho, and Steelhead, among other species. However, due to decades of urban development, the reach is heavily degraded. Stream banks have been armored and confined, large wood and riparian forests have been removed, former floodplains have been filled and are criss-crossed with sewer and electric infrastructure, and until the 1960's, the Portland-Milwaukie Streetcar crossed Johnson Creek at this site.

This stretch of Johnson Creek is beginning to recover. The streetcar tracks and a house built on the former floodplain have been removed. In an effort to further enhance this reach of the creek, JCWC used an Oregon Watershed Enhancement Board (OWEB) Technical Assistance grant in 2007 to identify restoration alternatives within the reach. A restoration consulting firm, River Design Group (RDG), was retained for initial feasibility assessment and design development. With additional support from The Nature Conservancy/PGE Salmon Fund, RDG completed a site assessment and survey, hydrologic and habitat flow analysis, alternative-design evaluation, and has developed the selected design to a 90% level (see attached).

In October, 2010, OWEB awarded JCWC a grant of \$126,750 to construct the proposed confluence enhancements. JCWC has also received \$69,005 from the FishAmerica Foundation for project implementation. While these funds are expected to be adequate for the majority of the work proposed, a funding gap remains.

Project Element #1: To fill some of this gap, JCWC is proposing to use Nature in Neighborhood Funds to build a single, large log jam habitat structure on the southern bank of Johnson Creek on City of Milwaukie Riverfront Park property. The request includes only material costs, as construction mobilization and other contracted fees will be covered through other funding sources for the larger habitat enhancement project.

Project Element #2: Throughout project design, the location and depth of an active sewer line has drawn the concern of biologists and hydrologists working on the project. This fall, in order to identify ways to better integrate this City infrastructure into the project, JCWC engaged engineer, Joe Richards, to design an additional habitat feature which would protect the City's sewer line and prevent further erosion in the creek bed. Nature in Neighborhoods funds would be used to construct a riffle on top of the sewer pipe. The riffle will be integrated with the overall salmon habitat enhancement design. JCWC expects to construct the aquatic habitat enhancements during the in-water work period (usually mid-July to later September) of summer, 2011.

Milwaukie Riverfront Park

Milwaukie Riverfront Park, an 8.5 acre site adjacent to the City's downtown, is nestled between the Willamette River to the west, Kellogg Creek to the south, Johnson Creek to the north and McLoughlin Boulevard to the east. A design for what will become the City's "Living Room" has been developed for the City by David Evans and Associates and is currently being reviewed the Corps of Engineers with final approvals expected by December 2011. Local land use and Department of State Lands approvals have already been granted.

The existing site, accessible from Jefferson and Washington Streets, contains a boat launch, parking areas and a small restroom. Proposed improvements will include a new boat launch with parking areas north and south of Kellogg Creek, a play area for children, one large and one small restroom facility, an amphitheatre for performances, a festival lawn, two overlooks for river viewing and pathways for pedestrians and bikers. A transient dock for visiting boaters is also proposed to the south of Kellogg Creek as well as a pedestrian bridge over Kellogg Creek to facilitate pedestrian movement between the north and south segments of the site.

The property located at the north end of the Park, referred to as Klein Point, was donated to the City in 2003 by Sharon and Gary Klein. A condition of this donation was that the property remain in a relatively natural state. Gary Klein, currently a member of the Riverfront Board, has expressed his support for using the plaza as an interpretive area in which signage might educate park users about Johnson Creek and the former Portland Traction line.

Project Element #3: Nature in the Neighborhoods Funds would be used to construct Klein Point Interpretive Overlook. This proposed viewing plaza was designed to minimize the impact to the Water Quality Resource Area. The plaza is 20 feet in diameter and will be made of flag stones set in permeable gravel rather than concrete. There is a low seat wall around the plaza for safety and to prevent random access to Johnson Creek. The 4 ft wide path leading to the viewing area will be made of gravel or wood chips. All invasive species will be removed from this area but a large oak tree and other native plants in this area will be maintained.

The proposed plaza on Klein Point is intended to allow public access to this portion of the property for viewing of the mouth of Johnson Creek and the Willamette River. Interpretive signage will be installed in the plaza to describe 1) The habitat enhancement project at the confluence of Johnson Creek 2) The history of the Portland Traction line, and, 3) Describing plants, animals and natural features in the area surrounding the plaza.

5.
PUBLIC HEARING



To: Mayor and City Council
Through: Bill Monahan, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Garbage Rate Increase
Date: June 30, 2011

Action Requested

Approve a resolution increasing residential and commercial garbage rates to reflect increases in the Metro tip fee and fuel costs.

History of Prior Actions and Discussions

- August 2004
Council approved a garbage rate increase of 2.79% for both *residential and commercial* services (effective October 1, 2004)
- September 2006
Council approved a *residential* garbage rate increase of \$1.16 per can per month (effective September 1, 2006).
- October 2007
Council approved a *residential* garbage rate increase (effective November 2007) to reflect various anticipated cost increases, equalizing the City's residential rates with those of Clackamas County's and authorized the distribution of roll carts for commingled curbside recycling
- July 2008
Council approved rate increases for commercial and residential rates to reflect increases in fuel prices, a Metro tip fee increase of \$4.61 and to achieve parity with Clackamas county rates.

- July 2009
Council approved rate increases for residential and commercial garbage rates to reflect increases in disposal costs and a downturn in recycling markets and an increase in drop box rates to move toward cost of service.
- June 2010
Council approved rate increases residential and commercial garbage rates to reflect increases in disposal costs and achieving parity with Clackamas County rates.

Background

Each year, the City's franchised garbage haulers submit financial information to the City showing their revenues and expenses for the previous year. Each hauling company submits multiple spread sheets of information showing, in fairly fine detail, of all expenses and revenues related to the provision of garbage, recycling and yard debris collection service. The information submitted by the individual collectors is consolidated to create a composite 'company'. The City, with the assistance of County staff, and a contracted financial analyst, reviews this data and determines whether a rate increase is necessary. Costs are adjusted to eliminate those costs allowed for tax purposes but not allowed for determining collection rates. This composite is used to analyze the financial health of the entire system.

The City determines the solid waste franchise system's health based on what is called the "return on revenues" (ROR). Chapter 13.24 of our municipal code states that rates should be adequate to provide a ROR equal to 10% of the composite gross revenue.

For 2010, the haulers' consolidated ROR was 9.54 %. The projected ROR for 2011, if rates are not modified, would be 7.65%. This low projection is based on several factors. First, Metro recently approved a tip fee increase of \$3.68 a ton, effective August 1, 2011. Disposal expense is approximately 30% of the direct operational expenses. A disposal fee increase of this or greater magnitude can be expected over the next several years.

Second, analysis has been conducted on a range of factors impacting the cost of providing service, including fuel and personnel costs and potential recycling revenues. The market value of recyclables (recycling revenues partially offset costs) and improved hauler operating efficiencies have lessened the need for higher fees. While there has been an increase in the revenue earned from the sale of recyclables, it is still less than half that earned in years prior to the precipitous declines beginning in late 2008. In 2009 and 2010 the rates did not include revenues from the sale of recyclables (as none were expected). The proposed rates for 2011 include an anticipated increase in revenue from the sale of recyclables in the coming months.

All costs have been increased per inflationary factors. The anticipated increase in fuel costs and the disposal fee increase have been factored into the projections used to calculate the proposed fee adjustments. The proposed rate changes would increase the projected ROR to 9.17%. The haulers have agreed to a lower than 10% ROR in 2011 due to the current economic conditions effecting our local rate payers.

After reviewing the financial figures for 2010, conferring with Clackamas County Solid Waste staff, and meeting with the garbage haulers and their financial consultant, City staff developed the following rate increase proposal:

- Increase residential rates for all service levels to reflect the Metro tip fee increase. The proposed rates would be the same as those proposed by Clackamas County.
- Increase commercial can and cart and container rates to reflect tip fee increase. The proposed rates would be the same as those proposed by Clackamas County.
- Increase on container service of \$2.51 per yard
- Increase drop box service fees and the delivery fee by a small amount to more accurately capture the costs associated with this service

A complete rate sheet is attached showing all new rates as proposed for all service levels. For comparison sake, the following table shows some examples of proposed and existing rates for various service levels.

Residential			
Commercial			
Can +Cart		Adjustment	
Current	Service Level	Proposed	\$
\$ 23.90	20 gal cart	\$ 24.55	\$.65
\$ 27.45	32/35 gal	\$ 28.20	\$.75
\$ 36.10	60/65 gal	\$ 37.10	\$ 1.00
\$ 42.20	90/95 gal	\$ 43.40	\$ 1.20
\$ 12.30	On call customers	\$ 12.70	\$.40
\$ 22.09	Multifamily-1 Bill	\$ 23.70	\$ 1.61
\$ 23.50	Commercial 32 can	\$ 24.25	\$.75
\$ 34.05	Commercial 60/65 gal	\$ 35.05	\$ 1.00
\$ 36.65	Commercial 90/95 gal	\$ 37.65	\$ 1.00

Commercial			
Container		Adjustment	
Current	Service Level	Proposed	\$
\$ 87.17	1 yard weekly	\$ 89.68	\$ 2.51
\$141.73	2 yard weekly	\$ 146.75	\$ 5.02
\$ 239.61	4 yard weekly	\$ 249.65	\$ 10.04
\$ 327.91	6 yard weekly	\$ 342.97	\$ 15.06

	Current	Proposed	Change
Drop Box Delivery Fee	\$25.00	\$40.00	\$15.00

Open Drop Box-All Zones	Current	Proposed	Change
10/20 Cubic Yards	\$110.00	\$113.00	\$3.00
30 Cubic Yards	\$127.00	\$130.00	\$3.00
40 Cubic Yards	\$144.00	\$147.00	\$3.00

Compactors-All Zones	Current	Proposed	Change
Less than 25 Cubic Yards	\$125.00	\$128.00	\$3.00
25-34 Cubic Yards	\$165.00	\$169.00	\$4.00
Greater than 35 Cubic Yards	\$191.00	\$196.00	\$5.00

Concurrence

The garbage haulers have reviewed the proposed rates and support the staff proposal. Clackamas County staff has reviewed the proposal and feels that it meets the needs of the City's haulers and their customers.

Fiscal Impact

Increases in collection revenue may increase the amount of franchise fees paid to the city by a small amount.

Work Load Impacts

None.

Alternatives

Deny approval of the resolution and request that staff and the haulers consider rate changes further.

Attachments

- Consolidated financial information
- Rate Resolution
- Proposed Rate Sheet

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INCREASING RESIDENTIAL AND COMMERCIAL GARBAGE AND SOME DROP BOX RATES TO REFLECT INCREASES IN THE METRO TIP FEE AND FUEL COSTS.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE adopting new rates for garbage service in the City, effective August 1, 2011.

WHEREAS, Section 13.24 of Milwaukie Municipal Code provides that the City Council may set rates and implement rate changes, and

WHEREAS rate projections for 2011, without a rate adjustment, are below 8%, which is well below the 10% prescribed in City Code, and

WHEREAS, effective August 1, 2011, Metro’s Transfer Station tip fee will increase by \$3.68 per ton, and

WHEREAS, revenues from the sale of recyclables are increasing but remain depressed, leaving minimal offset of the cost of collecting recyclables and

WHEREAS, the proposed rates are comparable to local jurisdictions in the Metro area and will achieve parity with those of Clackamas County,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON that the rates for garbage and recycling, herein attached as “Uniform Solid Waste and Recycling Rates, Proposed as of August 1, 2011,” are effective on August 1, 2011, and

Section 1. The City of Milwaukie residential, commercial and drop box rates for garbage collection are revised as shown in Attachment A.

Introduced and adopted by the City Council on _____, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment A
City of Milwaukie
Uniform Solid Waste and Recycling Rates

Uniform Monthly Residential Fees
Rates as of August 1, 2011

SERVICE	MONTHLY RATE
<u>20 Gallon Can (Mini-Can)</u>	
1 Can (1 time/week).....	24.55

- Weekly collection includes recycling and yard debris service.

<u>32 Gallon Can/Cart</u>	
1 Can (1 time/week).....	28.20
2 Cans (1 time/week).....	56.40
Each Add'l Can.....	28.20
Extra can of garbage (occasional)*.....	6.05
Extra Can of Yard Debris (occasional)	2.60
Court Apartments (1 time/week/recycling only).....	23.70

- Weekly collection includes recycling and yard debris service. Recycling bins and yard debris carts must be placed at the curb.
- Additional stops per week are charged at 100% of the first stop per week rate.
- * This rate is for the first extra can collected, each additional at the stop is \$3.00.

<u>Roller Carts</u>	
60 Gallon Cart (1 time/week)	37.10
90 Gallon Cart (1 time/week)	43.40
Extra Can of Yard Debris (occasional)	2.60

- Weekly collection includes recycling and yard debris service. Recycling bins and yard debris carts must be placed at the curb.
- Additional stops per week are charged at 125 % of the first stop per week rate.
- A deposit of \$30 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first).
- A \$10.00 redelivery fee may be charged for redelivery within one year, regardless of reason.
- Maximum weight for 60 gal. cart is 100 lbs and for 90 gal cart is 120 lbs.

<u>Monthly and On-Call Service</u>	
Monthly	12.00

On Call 12.70

- Monthly service includes recycling but not yard debris service.
- Monthly and on-call customers must subscribe for one year in advance for yard debris service.
- On call customers must provide hauler with 24 hours notice

Uniform Monthly Commercial Fees

SERVICE	MONTHLY RATE
----------------	---------------------

32 Gallon Can/Cart

One Can (1 time/week).....	24.25
Two Cans (1 time/week).....	48.50
Each Addt'l Can.....	19.84
Extra can (occasional).....	5.00

- Additional stops per week are charged at 100% of the first stop per week rate.

Roller Carts

60 Gallon Cart (1 time/week)	35.05
90 Gallon Cart (1 time/week)	37.65

- Additional stops per week are charged at 125 % of the first stop per week rate.
- A deposit of \$30 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first).
- A \$10.00 redelivery fee may be charged for redelivery within one year.

Compacted Containers

2.2 times the loose container fee

- Containers weighing in excess of 500 lbs per cubic yard will be charged this fee plus disposal for the excess weight.
- Compactors furnished by the customers shall be compatible *with* the equipment of the collector. If the collector agrees to furnish the compactor, the collector may charge a reasonable rental fee based on the value of the compactor and the cost of repair and maintenance.

Uniform Drop Box Fees

Drop Box Service

Loose Material - for repeat customers:

10/20 Yards.....	113.00 (plus disposal costs)
30 Yards.....	130.00 (plus disposal costs)
40 Yards.....	147.00 (plus disposal costs)

- An additional \$25.00 per drop box may be charged for one-stop service (plus disposal costs).
- Deposits of no more than \$500.00 may be charged for each drop box.

Compacted Material:

Under 25 Cubic Yards.....	128.00 (plus disposal costs)
25-34 Cubic Yards.....	169.00 (plus disposal costs)
34 + Cubic Yards.....	196.00 (plus disposal costs)

- Rental fee after 48 hours on location is 6.30 per day or 63.00 a month, whichever is less, if one load per week hauled.
- Mileage charge of \$4.70 per mile (over 18 miles round-trip from shop or Metro South).

Non-Customer Services

(Non-customer includes a regular customer with a less than weekly service frequency.)

Recycling Only

Weekly curbside collection of recyclable 4.15

Yard Debris Subscription Service Annual fee must be paid in full in advance

60 Gallon Cart 5.30

Extra can of yard debris 2.60

Permanent second can..... 3.85

- Monthly rates predicated on weekly service.
- This service is provided only within the Urban Growth Boundary.
- The subscriber is required to pay for one year of service in advance.

ANY OTHER TYPE OF SERVICE

If, due to changes in technology or needs of residents and business people of Milwaukie, additional or other types of services are needed, the charge for the service shall not be discriminatory, shall be reasonable by being commensurate with the rates above, and shall not exceed the rates most generally applicable in the Portland Metropolitan area.

Bio-Medical Services Fees

Number of units	Tub Rates	
	per Gallon	
	20/21	35/48
1	\$ 81.45	\$ 83.25
2	\$ 61.85	\$ 63.50
3	\$ 54.30	\$ 56.00
4	\$ 49.35	\$ 51.00
5	\$ 46.35	\$ 48.00
6	\$ 44.35	\$ 46.00
7	\$ 41.85	\$ 43.50
8	\$ 40.40	\$ 42.00
9	\$ 37.35	\$ 39.00
10	\$ 35.85	\$ 37.50
11	\$ 34.75	\$ 36.50
12	\$ 33.25	\$ 35.00
13	\$ 32.75	\$ 34.50
14	\$ 32.00	\$ 33.75
15	\$ 31.25	\$ 33.00
16	\$ 26.30	\$ 28.00
17	\$ 26.30	\$ 28.00
18	\$ 26.30	\$ 28.00
19	\$ 26.30	\$ 28.00
20	\$ 26.30	\$ 28.00
60	\$ 17.90	\$ 18.75
75	\$ 17.45	\$ 18.05
90	\$ 12.80	\$ 13.10

Commercial Container Rates

Stops/ Week	Size in Cubic Yards					
	1	Add'l	1 1/3	Add'l	1.5	Add'l
1	\$89.68	\$75.24	\$110.24	\$92.08	\$116.56	\$98.41
2	\$171.63	\$144.40	\$212.74	\$179.01	\$225.35	\$189.36
3	\$253.58	\$212.12	\$315.23	\$264.94	\$334.18	\$280.87
4	\$335.54	\$282.73	\$417.74	\$351.49	\$442.97	\$371.59
5	\$417.49	\$350.44	\$520.24	\$437.42	\$551.80	\$465.97
6	\$499.44	\$420.22	\$622.75	\$522.67	\$660.59	\$556.08

Stops/ Week	Size in Cubic Yards					
	2	Add'l	3	Add'l	4	Add'l
1	\$146.75	\$123.65	\$197.11	\$166.17	\$249.65	\$212.11
2	\$285.77	\$241.50	\$381.79	\$322.46	\$486.87	\$413.09
3	\$424.79	\$358.54	\$566.47	\$479.38	\$724.09	\$613.23
4	\$563.81	\$473.24	\$751.15	\$638.36	\$961.31	\$810.77
5	\$702.84	\$595.32	\$935.83	\$793.68	\$1,198.53	\$1,014.88
6	\$841.86	\$710.60	\$1,120.51	\$945.73	\$1,435.75	\$1,215.29

Stops/ Week	Size in Cubic Yards					
	5	Add'l	6	Add'l	8	Add'l
1	\$299.84	\$275.09	\$342.97	\$314.50	\$417.46	\$384.45
2	\$586.07	\$537.28	\$672.33	\$617.52	\$821.31	\$755.96
3	\$872.30	\$797.31	\$1,001.68	\$914.25	\$1,225.16	\$1,127.68
4	\$1,158.53	\$1,059.04	\$1,331.04	\$1,217.50	\$1,629.01	\$1,497.40
5	\$1,444.76	\$1,323.69	\$1,660.40	\$1,520.36	\$2,032.86	\$1,860.14
6	\$1,730.99	\$1,590.94	\$1,989.76	\$1,817.04	\$2,436.71	\$2,235.83

- Collector shall furnish the container
- Overweight charge for containers over 300 lbs. per cu.yd. determined through mutual agreement between hauler and customer
- Container cleaning, if required more than twice in 12 months, will be charged at actual cost of cleaning

6.
OTHER BUSINESS



To: Mayor and City Council

From: Bill Monahan, City Manager

Subject: Revisions to Board, Commission, and Committee Terms

Date: July 11, 2011

Action Requested

Approve the attached ordinances and resolution that implement direction given by City Council during the July 5, 2011 work session for potential modifications to the regulations that apply to individuals applying for and holding positions on boards, commissions, and committees.

Specifically, Council directed that new guidelines be prepared that place the following limitations on certain board, commission, or committee appointments:

Appointments will be for terms of two (2) years except the Budget Committee will continue to have three (3) year terms, and, the Planning Commission will continue to have four (4) years terms.

Planning Commission and Budget Committee members are limited to two (2) terms, while all others, those boards, commissions, or committees with two (2) year terms, will be limited to three (3) terms.

The limitation on terms will be firm; the language within MMC 2.10.030 D. that allowed the waiver of the limitation and allowance for additional terms "if it is in the public interest to do so" will be removed.

No individual shall be considered for appointment to a position on either the Planning Commission or Budget Committee where a member of their household serves on that commission or committee and their respective terms would overlap.

Background

Council held a retreat discussion on June 4, 2011 where it discussed a number of topics. Council discussed boards, commissions, and committees and whether modifications should be made to terms of individuals appointed in the future to these bodies. In addition, Council discussed by-laws and a code of conduct.

Initial ideas expressed by Council included:

- Each board, commission, and committee should have a set of by-laws that comply with a standard set established by City Council.
- The Council will develop a Code of Conduct that it will consider adopting for itself. If the Council adopts a Code, that Code will then be made a requirement of all City boards, commissions, and committees.
- The terms of individuals appointed to City boards, commissions, and committees should be two years unless the term is specified as being otherwise in the City Charter or state law.
- Two individuals from the same household should not serve on the same board, commission, or committee.

A draft set of by-laws and code of conduct are being developed by staff. Drafts will be presented to the Council for review at a later date.

Staff conducted a review of City codes that revealed that the terms of City boards, commissions, and committees vary. Section 2.10.030 G. of the Milwaukie Municipal Code states that terms shall not exceed four years and expire on the last day of March unless mandated by State statute or by the City ordinance that established the board, commission, or committee. Presently, Section 2.10.030 D. states that no person “may serve more than two (2) successive terms on any board, commission, or committee unless there is an interval of at least one (1) term prior to the reappointment; provided that the council may waive the limitation if it is in the public interest to do so.” Prior practice of Council has allowed some individuals to serve on bodies for more than two successive full terms.

Research showed that individuals were assigned terms for four years in all cases except where a code provision stated a lesser term. Apparently, the Council historically interpreted Section 2.10.030 G. to provide for four year terms, although the language states that an appointment is made for a term “not to exceed four years.” Council has discretion to direct a lesser term for those bodies.

Present term limits as defined or practiced:

- CUAB – term is not stated in Chapter 2.11, but four years has been the norm.
- Park and Recreation Board – term not stated in Chapter 2.12, but four years has been the norm.
- Budget Committee – Chapter 2.14 specifies three year terms, consistent with state law for cities that have an annual budget process. Terms now expire on June 30.
- Planning Commission – term is not stated in Chapter 2.16, but four years is the norm.
- Arts Committee – Chapter 2.17, adopted in 2008, established the initial terms as three and two years. At the expiration of the initial terms, each position is filled for a two year term.

- Design and Landmarks Committee – Chapter 2.18 specifies that each member is appointed for a three year term.
- Center/Community Advisory Board – the Council nominates one individual to this board, as provided by Chapter 2.20. The term is three years. Since the board is appointed by Clackamas County, our term should remain consistent with that established by the County.
- Public Safety Advisory Committee – Chapter 2.24 established the terms for two years. The terms expire on June 30.
- Riverfront Board – Chapter 2.26 does not specify length of terms, but four years has been the norm. Terms expire on October 31.
- Library Board – Chapter 2.28 does not specify length of term, but four years has been the norm.

Council discussed these findings at its work session of July 5, 2011. Council directed staff to prepare a resolution and an ordinance to specify that all future appointments will be for two year terms except for those to the Budget Committee and Planning Commission.

To change the terms of those boards, commissions, and committees that do not have specific terms noted in the Milwaukie Municipal Code, Council can by resolution interpret Section 2.10.030 G. to allow terms less than four years and direct staff to begin transitioning new appointments and reappointment to two year terms. A code revision is needed to change the Design and Landmarks Committee to two year terms (Chapter 2.18). To modify the terms of the Design and Landmarks Committee, an ordinance has been drafted.

Council also directed staff to prepare a code amendment to provide for a three term limit for those positions with a two year term. To accomplish this, a code revision is needed to change the language of Section 2.10.030 D. to read:

“D. Reappointment to a board, commission, or committee shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, commission, or committee and his or her stated willingness to continue. No person may serve more than:

1. Two (2) successive terms on the Budget Committee or Planning Commission unless there is an interval of at least one (1) term prior to the reappointment;
2. Three (3) successive terms on any other board, commission, or committee unless there is an interval of at least one (1) term prior to the reappointment.”

Council directed that the appropriate steps be taken to prohibit two or more individuals from the same household serving on either the Planning Commission or Budget Committee. Separate ordinances have been developed to modify chapters 2.14 and 2.16 to accomplish this.

Fiscal Impact

Changing some terms of office to two years and limiting reappointment opportunities will have a fiscal impact and create additional work for staff assigned to advertise for applicants, process applications, orient new members, and update rosters of boards, commissions, and committees.

Work Load Impacts

Changing some terms of office to two years and limiting reappointment opportunities will create additional work for staff assigned to advertise for applicants, process applications, orient new members, and update rosters of boards, commissions, and committees.

Alternatives

1. Adopt the attached ordinances and resolution implementing the direction given by City Council to modify the appointment and reappointment regulations that apply to individuals applying for and serving on boards, commissions, and committees.
2. Adopt one or more modified ordinances and/or resolution.
3. Direct staff to research the issue further and schedule a later Council discussion to discuss additional alternatives.
4. Take no action.

Attachments

1. Term Limitation Ordinance
2. DLC Term Limitation Ordinance
3. Planning Commission Limitation Ordinance
4. Budget Committee Limitation Ordinance
5. Resolution Clarifying Terms of Office

Attachment 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.10 TO MODIFY THE LIMITATIONS ON REAPPOINTMENT FOR PERSONS APPOINTED TO VARIOUS CITY BOARDS, COMMISSIONS, AND COMMITTEES.

WHEREAS, Milwaukie Municipal Code Chapter 2.10.030 D. restricts reappointment of an individual serving on a board, commission, or committee to serving no more than two successive terms on any board, commission, or committee unless there is an interval of at least one term prior to the reappointment provided that Council may waive the limitation if it is in the public interest to do so, and

WHEREAS, the Council has determined that term limits should be strictly enforced rather than the past practice of routinely waiving the limits, and

WHEREAS, the Council has determined that since the terms of Planning Commissioners and Budget Committee members are longer than other City board, commissions, and committees, individuals appointed to the Planning Commission and Budget Committee should be entitled to consideration to serve for up to two successive terms, and

WHEREAS, the Council has determined that individuals appointed to boards, commissions, and committees having two year terms should be entitled to serve up to three terms.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1.

Chapter 2.10.030 D. of the Milwaukie Municipal Code is amended to read:

Reappointment to a board, commission, or committee shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, commission, or committee and his or her stated willingness to continue. No person may serve more than:

1. Two (2) successive terms on the Budget Committee or Planning Commission unless there is an interval of at least one (1) term prior to the reappointment.
2. Three (3) successive terms on any other board, commission, or committee unless there is an interval of at least one (1) term prior to the reappointment.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.14 TO MODIFY THE TERMS OF MEMBERS OF THE DESIGN AND LANDMARKS COMMITTEE.

WHEREAS, Milwaukie Municipal Code Chapter 2.18.010 B. specifies the terms for individuals appointed to serve as citizen members of the design and landmarks committee, and

WHEREAS, the Council has determined that the terms of individuals serving on the committee be modified to assist in the recruitment of committee members, and

WHEREAS, the Council has determined that by establishing two year terms rather than three year terms should assist in recruitment efforts, and

WHEREAS, the Council desires to encourage citizen participation on city boards, commissions, and committees from throughout the city.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1.

Chapter 2.18.010 B. of the Milwaukie Municipal Code is amended to read:

The Design and Landmarks Committee shall have five (5) members appointed by the City Council for two (2) year terms. The Council shall have discretion to reappoint or remove Committee members. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of historic preservation or history. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of architecture, planning, landscape design, or similar field.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:

Ordinance No. _____ - Page 1

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Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.16 TO ESTABLISH A LIMITATION OF THE NUMBER OF INDIVIDUALS FROM A HOUSEHOLD APPOINTED TO THE PLANNING COMMISSION.

WHEREAS, Milwaukie Municipal Code Chapter 2.16.020 specifies membership qualifications for individuals appointed to serve as citizen members of the planning commission, and

WHEREAS, the Council has determined that it is important to have the planning commission comprised of individuals that represent the interests of the entire community, and

WHEREAS, the Council has determined that allowing more than one individual from a house hold to serve on the planning commission could restrict the opportunity to maximize geographic and socio-economic diversity on the committee, and

WHEREAS, the Council desires to encourage citizen participation on city boards, commissions, and committees from throughout the city.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1.

Chapter 2.16.020. A. of the Milwaukie Municipal Code is amended to read:

The Commission shall consist of seven (7) members appointed by the Council, no more than two (2) of whom may be nonresidents. No more than two (2) members shall be engaged in the same kind of occupation, business, trade, or profession. No more than one individual from a household may be appointed to serve on the committee at one time.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 4

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 2.14 TO ESTABLISH A LIMITATION OF THE NUMBER OF INDIVIDUALS FROM A HOUSEHOLD APPOINTED TO THE BUDGET COMMITTEE.

WHEREAS, Milwaukie Municipal Code Chapter 2.14.020 specifies membership qualifications for individuals appointed to serve as citizen members of the budget committee, and

WHEREAS, the Council has determined that it is important to have the budget committee comprised of individuals that represent the interests of the entire community, and

WHEREAS, the Council has determined that allowing more than one individual from a house hold to serve on the budget committee could restrict the opportunity to maximize geographic and socio-economic diversity on the committee, and

WHEREAS, the Council desires to encourage citizen participation on city boards, commissions, and committees from throughout the city.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1.

Chapter 2.14.020. of the Milwaukie Municipal Code is amended to read:

The Committee shall consist of the members of the governing body and an equal number of members appointed from the electors of the municipal corporation. No more than one individual from a household may be appointed to serve on the committee at one time. The appointed members shall be appointed for terms of three (3) years. Appointments will expire the last day of June.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 5

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CLARIFYING THE TERMS OF OFFICE FOR CERTAIN BOARD, COMMISSION, AND COMMITTEE MEMBERS UNDER MILWAUKIE MUNICIPAL CODE SECTION 2.10.030 G.

WHEREAS, the City of Milwaukie Municipal Code (MMC) Chapter 2.10 provides direction concerning the City's boards, commissions, and committees, and

WHEREAS, the City Council has historically interpreted certain language of MMC Section 2.10.030 G. that allows committee appointments to be made for terms not to exceed four (4) years to be applied routinely as four years, and

WHEREAS, the City Council has determined that certain boards, commission, and committees should have terms that are less than four years, and

WHEREAS, the City Council has determined that the terms of those boards, commissions, and committees that are not mandated by State statute or by the City ordinance that established the board, commission, or committee should be established by formal Council action.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, that:

Section 1. The terms of City boards, commissions and committees are as follows:

1. Citizens Utility Advisory Board – two years
2. Park and Recreation Board – two years
3. Planning Commission – four year
4. Milwaukie Arts Committee – two years
5. Riverfront Board – two years
6. Library Board – two years

Section 2. The terms established by this resolution shall apply to all appointments and reappointments made after this date.

Section 3. This resolution is effective immediately.

Introduced and adopted by the City Council on July 19, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)