

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 2, 2010**

CALL TO ORDER

Mayor Ferguson called the 2073rd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff present: Acting City Manager Pat DuVal, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Community Services Director JoAnn Herrigel, Planning Director Katie Mangle, Milwaukie Police Chief Bob Jordan, Police Captain Steve Bartol, Police Captain Dave Rash, Human Resources Director Cynthia Trosino, Sgt. Jon Foreman, Detective Ryan Burdick, Engineering Director Gary Parkin, Light Rail Design Coordinator Wendy Hemmen, and Associate Engineer Brenda Reiner

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****Police Department Recognition**

Mayor Ferguson read from a letter from a citizen, Michelle Davidson, submitted to Chief Jordan and Captain Bartol thanking the Milwaukie Police Department for its consummate professionalism, commitment, and hard work. He also acknowledged Captain Rash, Captain Bartol, Sgt. Burdick, Sgt. Foreman, and Chief Jordan who were present and represented the entire police department.

Mayor Ferguson announced the Milwaukie Public Safety Committee Annual Police Officer Recognition Dinner to be held on March 18, 2010 at the American Legion Post 180. He encouraged citizens to get involved and demonstrate their support by attending or donating to the Police Department.

Mayor Ferguson read a letter of appreciation from the City of West Linn thanking Chief Jordan for his outstanding professionalism when managing a serious and complex investigation.

Councilor Barnes expressed her personal appreciation to the Milwaukie Police Department and its committed officers.

Update on Proposed Harmony Road Improvements

Gary Parkin introduced Associate Engineer **Brenda Reiner**, who participated in many of the City's street projects. Ms. Reiner stated that Clackamas County had recently reported that \$1.5 million was left over from the discontinued Environmental Impact Study (EIS) from the prior Sunnybrook project as the County had decided to de-federalize the project. The funds can be used to improve 82nd Avenue, Harmony Road, and Fuller Road leading to the Linwood area. The County wanted a feel for what improvements would be attractive to the City in that corridor focusing on pedestrian connections leading to the elementary school to the north, sidewalks, bulbouts, and islands. Ms. Reiner showed likely improvement areas that would allow for a continuous pedestrian connection to Linwood Elementary to the north; a continuous sidewalk on the south side of Harmony Road between the park entrance access driveway near Fuller Road up to Linwood Avenue. The images demonstrated the lack of a pedestrian-friendly sidewalk on the south side of Harmony Road.

The County was also considering signal upgrades and other strategies to improve traffic flow in the area. Improvements would also have a positive environmental impact on the slopes in that area. A section of Linwood Avenue with no sidewalks by Linwood Elementary School was identified as an area that would achieve the most access for the money. She reviewed the list of proposed improvements suggested by the County; included were pedestrian enhancements, illumination, signal upgrades and fiber optic conduit along Harmony Road.

Ms. Reiner stated that \$1.5 million was enough to do some upgrades but not quite enough to address many of the issues. The City and County were looking at how to use those funds for maximum impact and identified a combination of signalization and sidewalk improvements. Referring to the Transportation System Plan (TSP) Map she pointed out the sidewalk network. She noted this project was different from the Sunnybrook extension project still under discussion. This was a separate project but overlap could occur if some of the sidewalk improvements were completed by the City on Harmony Road. If the Sunnybrook Extension Project was done later, the sidewalks would have been completed.

Councilor Barnes reiterated that she would not support anything that attracted more traffic coming into the City on Harmony Road. When Council was at the table with the County and OTAK two years ago, they promised sufficient funds existed and that the signals would be changed; however; they have failed to keep their promise. Referring to the 3 p.m. bottleneck at International Way, she discussed the feasibility of an extended right-turn lane and using the County funds to widen that section to avoid continual backups.

Ms. Reiner reported that this was brought to City Council as an information item and that perhaps a work session was needed to further discuss the issue.

Councilor Stone inquired if there was some discussion about the project creating sidewalks partially down Railroad Avenue before the money was de-federalized and they had an EIS.

Ms. Reiner confirmed that proposal was their actual preference but was deemed too expensive. They wanted to create a connection between the 7-Eleven and the elementary school. The City did not have the right-of-way and there were limitations on the south side because the railroad right-of-way cannot be purchased, which prevented widening to the south. Railroad Avenue is scheduled for a complete reconstruction in about three to four years, so doing improvements on in conjunction with that street reconstruction made sense. Staff is considering a combined stormwater and sidewalk improvement project with resurface. It was an ideal location to have a storm water separator between cars and pedestrians.

Councilor Stone understood the \$1.5 million was coming from the County, and asked if the City would have to match funds.

Ms. Reiner replied the County said that the City would not need to provide a match, adding that only about 560 ft of Harmony Road was in the City. The County is required to do a 10.27% match on federal projects.

Councilor Chaimov asked if the Railroad Avenue reconstruction project could be moved up to take advantage of utilizing the County's money to incorporate a sidewalk program while the City reconstructs the street.

Ms. Reiner replied that staff orchestrated a pretty complicated matrix of decisions in deciding which streets to improve, based on utility repairs, for example. However, it was an idea that could be considered, although it would not be a simple procedure.

Councilor Stone supported the idea of investigating whether the Railroad Avenue project could be moved up on the list because that street had been in need of repair for a very long time.

Ms. Reiner stated according to the County's schedule, the County would do a design this fall and construction in 2012.

Councilor Stone asked to be kept informed by engineering as to whether it could be moved up the list.

Mayor Ferguson stated it could be added to a future work session agenda.

Fourth Preliminary Engineering Update on Light Rail

Ms. Hemmen had provided updates to Council on light rail over the past few months. She discussed timing, preliminary engineering completion, 30% plans, Final Environmental Impact Study (FEIS), various community outreach efforts that had occurred, technical updates, and next steps for the project.

The FEIS draft would be available in March. The Preliminary Engineering Report would be completed in March and then the Advanced Preliminary Engineering would occur in April through September with the FEIS being published in May by the Federal Transit Authority (FTA). The FTA would examine the published FEIS and issue the record of decision by July 2010. The project will enter final design in September 2010.

Early construction activities will begin in January 2011 with the bridge starting first. There would be other activities such as the PGE electrical relocation work over Kellogg Lake. Main construction would commence in 2012 with the line opening in September 2015. TriMet wrapped up the plans in December 2009. City staff spent a lot of time reviewing the plans and went back to TriMet with over 300 comments. The top five issues were how parking in the downtown area will be accommodated, impacts from noise and vibration and mitigation not shown, the unknown height of the McLoughlin Bridge structure, the station design, and the train speed as it goes through Milwaukie's downtown. Some of the City's comments were incorporated into the 30% design plan; others were on the table for future discussions.

The FEIS comments and mitigations are being put into the plan set, which are being adjusted based upon plans coming in and on the budget established to meet the federal matching and the City's dedicated funds. One plan component being removed, but could be added later based upon the budget, is the stairwell from the Springwater Trail to the Tacoma Street station. There is still an ADA connection and an easy access for bikes. By the time the project gets to final design, it could again look significantly different. Preliminary Engineering will be complete this month and then the project will be applying for final design.

The FEIS document is being submitted to the FTA. The City has provided comments and feedback to Metro on what it received to date. There have been and will be public discussions at the upcoming light rail meetings in March and April. Traffic discussions have been held including a follow-up traffic meeting in March. Noise and vibration issues will be reviewed in April, and the visual simulations may be presented in March. The overall impacts that apply to the community will be presented in April. The City of Milwaukie has until the April/May timeline to provide final comments on issues not yet addressed. The final FEIS will be published in May. After the FEIS is published, there will be a 30-day public comment period. In July, a list of the generic mitigation options will be provided on all of the various project impacts.

She reviewed the community outreach efforts including the Johnson Creek Boulevard traffic meetings. There was a big push for the Conceptual Design Report (CDR) to be accessible on the City website. The February and March open houses in Portland and Milwaukie were well attended, with a lot of enthusiasm for light rail coming in from 95% of the participants. Further discussions would take place at the future joint Planning Commission and Design Landmarks Commission (DLC) meeting on March 9th. TriMet will be attending all the neighborhood meetings and presenting copies of the CDR on March 16th.

Ms. Hemmen noted that technical changes had occurred to the Milwaukie Station based on Union Pacific Railroad requirements. The railroad wants all public areas to be 25 ft away from its rail lines. TriMet hired Urban Designer Tad Savinar to assist Milwaukie in examining the

urban design elements and issues facing the downtown. He was already working on that process.

The Park Avenue Park-and-Ride was reduced from 1,000 to 600 parking spaces, resulting in the reduction of FEIS impacts to the community, as well as acquisition and displacements. The Tacoma Park-and-Ride was reduced from 1,000 to 800 spaces, dropping to floor level.

Staff met with the City's legal counsel and TriMet to update all parties on Land Use Final Order (LUFO). She reviewed a flowchart showing the land use elements that various segments of the project would go through; part will be processed through an intergovernmental agreement (IGA) and part through an Engineering Right-of-Way Permit controlled by the Public Works Standards. On March 9th, different elements of the station and substations will be reviewed by the Planning Commission, Design and Landmarks Committee, and staff. TriMet will present the CDR and discuss the different permitting and requirements that will be needed.

The next steps are to complete the EIS, the Advanced Preliminary Engineering Design, the Milwaukie Station, 21st Avenue, Adams Street, and Lake Road and the urban design elements. The railroad crossings will have grade changes and major re-grading will occur when adding additional lines. Further issues involve questions about bus routes and stops locations, how parking will be mitigated, train speeds and clarifications about impacts due to PGE utility changes. This will be the first draft of the CDR, the document that speaks to the community and addresses the components of concern to the community. The quiet zone efforts are yet to be presented.

Councilor Stone confirmed that although the Park Avenue and Tacoma Street park-and-ride lots were reduced, they would still be designed to expand to 1,000 and 800 parking spaces, respectively. She asked if there were any indication that another floor and additional spaces could be added to the park-and-ride lots in the future, which had been a great concern for the neighborhood. When the project was first mentioned years ago, parking garage spaces were reduced to 750 spaces, but were supposed to have been larger. She wanted to ensure there was a commitment that another floor would not be added, because the staff report indicated it would be similar in height to surrounding structures in that neighborhood. She would not like to see that change.

Ms. Hemmen replied that was a question she had, but she did not have an answer yet.

Councilor Stone was curious why there were more parking spaces at Tacoma than at Park Avenue. She understood light rail was being built for all the traffic coming from the south that needed to go to downtown Portland. Why not have more parking spaces at Park Avenue, which was at the south end, to capture that traffic?

Ms. Hemmen replied Park Avenue was designed to capture mostly the Hwy 99E traffic and Tacoma's park-and-ride would capture most of Milwaukie and all of Hwy 224, Sellwood, and much of the SE Portland area.

Councilor Stone noted the top five outstanding issues from the 25% Plan, and asked if signalized intersections would be considered a priority concern.

Ms. Hemmen replied that signalization did not make the top five, but whether or not 42nd Avenue would be signalized was an important issue. Staff was recommending that it be signalized due to the other impacts to Johnson Creek Blvd and the surrounding area. The final decision on that will not be until final design.

Councilor Stone noted visual mitigation was not in the top five, particularly the raised track portion of the light rail leading from Tacoma Street Station to Olsen. She inquired why.

Ms. Hemmen explained that the visual element would not be addressed in the 25% preliminary engineering design, but was a topic that would be discussed and included in the FEIS. This was

an extremely important topic for discussion at one of the next monthly meetings, and dealt with what the light rail structure would look like coming into and exiting Milwaukie. The shape and size was addressed in the FEIS visuals, but the hows and whys would be part of the urban design elements process with the Mr. Savinar and would be ongoing over the next six months.

Councilor Stone asked if that meant there was still a possibility of the raised section going to grade sooner.

Ms. Hemmen replied no, the raised section had reached its limit; it could not get any smaller because of the freight rail. The freight rail had to be grade separated and elements needed to be retained underneath: approximately three crossing off spurs and also the Tillamook Branch. The structure had been minimized as much as possible.

Councilor Barnes read part of the staff report which stated, "City staff reiterated that the minimum operating segment was not a viable community option, although it was included in the FEIS." She asked how the City ensure it got out of that FEIS and how much of an option would there be if it remained. She noted the City did not have a voice because the Council had made a majority decision that they would proceed if it went to Park Avenue.

Ms. Hemmen replied that the Minimum Operating Segment (MOS) was a required element which had to be addressed. The FEIS explained the whole project with a sidebar allowing the Council an opportunity to make comments in the future. All project partners to date were committed to taking the project to Park Avenue.

Councilor Barnes asked that in considering cost savings measures, how much money would the City need to save in order to make this work.

Ms. Hemmen responded that the last gap was actually smaller now than earlier estimates. Now, there was approximately \$20 million the project did not feel it could overcome. To make this project work, some savings could be adjusted by way of financing or contingency items. The project currently had to include a 20% contingency, which was a lot of money considering the \$1.4 billion project. TriMet believed it had all the required financing, and it was just a matter of ascertaining how that contingency item worked. The FTA still had to be approached with a balanced budget. Assuming the City had the current 20% contingency, the 25% estimate results in a balanced budget. Other things were being considered that could be removed. Staff was committed to making sure it was the right thing for Milwaukie.

Mayor Ferguson moved the Audience Participation portion of the agenda to follow the Council's action on the Consent Agenda.

CONSENT AGENDA

It was moved by **Councilor Chaimov** and seconded by **Councilor Stone** to approve the consent agenda as presented.

A. **Resolution No. 19-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, revising the Planning Commission Bylaws.**

B. **OLCC Application for 7-Eleven, 6303 SE Harmony Road, Change of Ownership**

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

AUDIENCE PARTICIPATION

Linda Hatlelid, stated that last October at an Ardenwald/Johnson Creek light rail meeting, Ms. Robbins of TriMet had told her that the signal on JCB was not a done deal. She read her written statement into record as follows:

"After the completion of the JCB Phase 1, 2, 3, and 4 Reconstruction 32nd to 45th, JCB became a multi-modal street. The engineers on the project, by design, accomplished several things. The travel lanes were made narrow, 10-ft. They kept the 25-mph speed zones on JCB since it is a residential street. The right turn lane off of the 32nd overpass to 32nd Ave was removed. A rectangular curbed area with dirt was designed on the north side of 32nd to narrow the entrance on to 32nd from the 32nd overpass. The right turn lane at 45th Place and JCB by the bridge was removed. A sidewalk on the south side of the Johnson Creek Bridge was added to narrow the travel lane on the south side of the bridge traffic lane. A curbed area was designed closer to Springwater Trail that crossed JCB just to the west of the Johnson Creek Bridge, which was to slow traffic at 45th and JCB. Trees and shrubs were originally planted in the structure, but have been taken out by various accidents. These trees and shrubs have not been replaced and mostly weeds grow there now. A crosswalk and signs for Springwater Trail crossing were established.

The existing three-way stops at 32nd, 36th, 42nd remain for a safe take-your-turn entry to, through, or off of JCB. This ensures that at least three times, a vehicle would have to stop before proceeding on JCB. Pedestrian double lines were painted at those three, three-way stops. Pedestrian and handicap slots or ramps were designed and placed on the sidewalks for use at the various cross streets such as at 43rd and others.

My parents bought a home on JCB near 42nd in 1948 in Milwaukie and I have lived in the Milwaukie area since then. I will address my next few comments to the three-way stop on 42nd, which is the only three-way stop of the three that is in Milwaukie's jurisdiction. For many years, there were no stop signs at 42nd. Numerous accidents ranging from minor to life threatening or permanently disabling type of accidents occurred. The speed of vehicles and safety for those using JCB whether it was cars, bikers or pedestrian had always been a concern of the JCB residents, as well as concern for themselves. Vehicles from 42nd coming on to JCB east or west had a very dangerous entry. Going east was not so bad, but going west extremely dangerous. No one traveling on JCB would let you into JCB from 42nd. When Craig Lomnicki was Milwaukie's Mayor he found a letter from the previous Mayor Don Graf stating that something needed to be done. The safety accident topic kept coming up and it was a major concern. A three-way stop was temporarily put in for a trial six weeks. It worked so well, it became permanent. It has worked and continues to work daily. Everyone takes their turn, drivers slow down, and stop before continuing on both directions on JCB or turning off JCB.

We are told by Alan Snook, DKS Associates and others, Wendy, that the three-way stop needs a smart signal to replace it. Alan, Wendy and Art Pierce of Portland have had over four months to give us the location of the nearest smart signal, like the one they are proposing, not that we want one but we would at least like to see how it works. To date they have not provided this information. They have not been able to show us a smart signal that allows left turns from JCB onto 42nd from westbound, JCB with no left turn lane, nor have they been able to describe how such a scenario would work. There is no way that this signal will be a three-way signal because they have to allow driveway access in the intersection which means, it will be a four-way signal like the road at SE Bell Ave and King Rd. We have also asked about the cost of a smart signal. At a February 11, 2010 light rail meeting I mentioned that I had heard putting in just one signal was as much as \$420,000. At the monthly Milwaukie light rail meeting on February 22nd, I heard for the first time from Wendy that it would cost \$250,000 for signaling 42nd and JCB.

Stop signs are already in place and would cost the project zero dollars. Many of the budget requests for light rail have already been made. How much was officially requested for signals at 32nd and 42nd? But I digress, the three, three-way stops on JCB were specifically engineered to handle the traffic on JCB to reduce speeding for safety in the neighborhood

from the time of the JCB Phase 1, 2, 3, and 4 through to the completion and into the future 20 years as I recall.”

Mayor Ferguson interjected that she had exceeded her five minute allotted time; he could not make an exception but suggested someone else could finish reading her statement if they wanted to give up their portion of their time.

Donna Nyberg, 4253 SE Johnson Creek Boulevard, stated she is a newer resident to Johnson Creek Boulevard; her bedroom is about 20 ft from the road and has resided in that neighborhood for four years. It is a wonderful neighborhood, with great neighbors who all look out for each other, which is one reason they were here today. She stated that putting in stop lights instead of stop signs will allow traffic to move more quickly, would create more noise, and she herself would never get out of her driveway without having someone stand up with a sign saying “This lady needs to get out.” It is next to impossible to get out now. That was how it would personally affect her.

She continued reading Ms. Hatlelid’s statement as follows:

“Alan was asked if he had seen this material and he said no, which I assume means he has no knowledge of the commitments made in phases 1, 2, 3 or 4. This appears to me to be a huge mistake. It seems unrealistic that the computer modeling done during phases 1, 2, 3 and 4 would not provide the same data today. So JCB with the three, three way stop intersections should remain since the design was negotiated during phases 1, 2, 3 and 4. Mayor Jim Bernard’s appearance before the Portland City Council resulted in a commitment from Portland to do whatever was possible to accommodate the safety concerns requested by the Ardenwald/Johnson Creek (JCB) Neighborhood Association, and Milwaukie City Council.

This should mean that leaving the three, three-way stops at 32nd, 36th and 42nd is appropriate. It appears to me that with this background, Milwaukie City Council should stipulate in writing to all the responsible participants that the three-way stops must remain as they are now. As a part of the JCB Phase 1, 2, 3 and 4, there was mention of a signal at 42nd and JCB and it was agreed to and dismissed as being unnecessary by Ardenwald/JCB Neighborhood Association, Milwaukie City Council and appropriate Portland Staff. I believe that the possibility of a signal in the far distant future was an idea to be possibly readdressed but not to be written and set in stone, as Milwaukie City Council might be told to believe. Basically, the same scenario applies to a new signal at 32nd, even though the intersection is in Portland, it was agreed by all parties that a signal was not required. I believe replacing the three-way stop at 42nd with a signal will be ineffective, unsafe and a bad choice because it will cause more queuing, which is a fancy word for traffic backup. Do whatever is necessary to keep the three-way stop at 42nd and JCB. Sincerely, Linda Hatlelid”

Ms. Nyberg added that other things were discussed in the neighborhood meetings about speed bumps to slow down the traffic, but still allow it to move at a safe speed. She did not believe they have received the proper information to find out if those are feasible. She thanked the Council for their time.

Roger Haas, 8618 SE 36th Avenue, a Milwaukie resident for more than 45 years, stated the two primary issues with light rail were speed and volume. The light rail and program being prepared would encourage more traffic and higher speeds. Currently, some drivers fail to stop at the top of the street because of excessive speeds between 32nd and 36th. Milwaukie police do not issue tickets until speeds reach more than 10-mph over the speed limit. As President of the Ardenwald Neighborhood Association, they wanted a weight limit with the three-way stop, but the weight limit was removed. Without the three-way stops, traffic will be especially hazardous when the light is green. Vehicles could potentially travel at more than 40 mph, and he was extremely concerned.

While serving on the Committee of Phases 1, 2, 3 and 4, he recalled Milwaukie was pushed out. The SE Portland area was overloaded and Eastmoreland prevented Milwaukie from getting the Springwater Trail, which was a straight shot instead of the curvy road the City currently has on Johnson Creek Blvd. He demanded that City Council stand up and protect the citizens and residential areas by ensuring speeds will be curbed to the 25-mph or thereabouts; he reiterated the citizens needed the City Council's assistance.

Richard Cayo, 4203 SE Johnson Creek Boulevard, Milwaukie resident, read his statement into the record as follows:

"I gave this at the last light rail meeting at the Ardenwald Neighborhood School. I gave this [letter] to them; I expect no response from them. This happened before about three or four years ago and it all disappeared, everything I said at that meeting.

There are five items that are all related that I would appreciate a response on. These are things that I have seen with my own eyes that I have smelled, heard and felt.

Item 1: A little over 10 months ago Portland had SE 39th St between SE Glenwood and SE Woodstock repaved, a distance of six blocks. I was dismayed that a perfect city street with no ruts, potholes or divots would be repaved for no obvious reason. When SE Water St and SE Clay St, which were the only two streets into Portland's jewel, OMSI, that were so bad that one could not drive more than 15-mph so as not to damage their vehicle's front end. Clay St needs four blocks of new pavement and Water St needs approximately five blocks, south of the I-5 off ramp. Why did you do this?

Item 2: The sewage tunnel under the City caused a small amount of traffic and inconvenience and used up some of Portland's valuable surface land. We are going to have a tremendous earthquake before long in this area. Think of Chile, and when this happens, this tunnel will be history and the \$100 millions in costs would go down the toilet. Why are we doing this?"

He clarified that was not in the written statement, but he was adding an important point about the tunnel, which could not be filled with sewage until it was vented. If the vent is installed close to a citizen's house it would not be appreciated, but new laws in effect because of the Supreme Court, meant the City could do virtually what it wanted without recourse. He continued:

"Item 3: All construction taking place at Grand Ave and MLK Blvd right now is causing a lot of traffic congestion. Why in God's name don't you do the work at night between the hours of 10 p.m. and 6 a.m. when there is very little traffic? This would certainly be a God-send to all the drivers. Their wasted gas while sitting costs a lot of money.

Item 4: Light rail in the Portland Metro Area. John Stossel on FOX business about a week ago (he noted this letter was written almost a month ago) had a special on the Portland Light Rail line showing a coyote sitting on one of the train seats of a totally empty car. When he asked why a coyote, his guest said "Coyotes like to go where there are not a lot of people". The guest then explained that per passenger mile buses cost about 16 cents and light rail train rides cost over 60 cents per passenger mile. If a major catastrophe event occurred, such as a meteor strike or major earthquake, no one would jump on one of those trains because they do not go out of the city. Going out of the city to the countryside is maybe the only way anyone could survive. At the unbelievable cost to the citizens, the tax payers who subsidize these trains, and hardly ever use them, gives me a terrible headache when I think about this. Why are you doing this?

Item 5: Your proposal to mitigate, which makes us [inaudible 1:16:13] the traffic at JCB to help speedup car traffic to and from the new light rail line to Milwaukie from Portland makes me think of another new fiasco. Myself and the other people who live on this street are

basically happy with the way things are now, but we would be a lot happier with a new road in the gulch and do not want stop lights replacing the existing stop signs so the traffic can go back up to 60-mph during the non-rush hours. Stop lights would do absolutely nothing to move more traffic during the daytime as it is pretty solid now in rush hours. I called one of the engineering companies that designed some of the City's stop light systems and asked what they believed two proposed light systems would cost, and they said approximately \$850,000. This is a lot of money to spend to make our streets more dangerous. Why are you doing this? This money could be better spent on repaving the SE Clay and Water Streets into OMSI. I talked to my attorney about stopping the implementing of these proposed stop lights. He said the first things we must see are all the studies, plans, proposals and so forth.

The conclusion I have reached after seeing these Portland projects is you people don't know diddly, especially after reading about the covers you bought to go over the City's water reservoirs in the west hills and then scrapping them."

Mayor Ferguson thanked everyone for their statements, adding that he also had questions for staff. He believed the best approach would be to put them on an upcoming work session agenda. Questions from statements made tonight would be addressed later.

Edi Zumwalt, representing the Historic Milwaukie NDA, read his statement into record, as follows:

"Neighborhood associations early in the 1990's were dismembered, disarmed, totally disbanded. In 1996, they were reformed. It was after the recall of 1997 and there were not a lot of good feelings. The Neighborhood Associations were not held in very high esteem; we were not given much consideration in a lot of things. A bunch of us got together, Jean Michelle, Art Ball, David Aschenbrenner, Dolly Macken-Hambright, decided that if we could get together and get to the Council meetings and get a forum and be heard, we would help heal a lot of the things that were going on. At that time, the work session was on Monday night and the regular session was on Tuesday. We worked a deal so that we had 15 minutes to half an hour once a month at a work session to air our problems and have discussion. That worked good; a lot of time we came to the meetings and didn't even have anything on the agenda. That worked fine for several years until they combined the regular session and the work session on Tuesday nights like it is now. It was so crammed that we couldn't get in. Nobody cared for awhile, but in 2005, we started having monthly meetings every Saturday morning at the PSB. Those are very good sessions. There is a lot of knuckle busting and rap sessions going on and we got a lot settled. There was a really good rapport between the Council and the neighborhood associations and citizens. In 2006, they petered out, maybe because there were just too many meetings.

Now I think we need to do that again. We would like another forum. The audience participation is fine, but there is no conversing here. There is no back and forth. I am asking that we get another forum; once a month is too often, maybe once a quarter. If the Council deems something so important or problematic, perhaps they would want to call a special meeting. Right now I am getting a lot of flack and conversation from people, why cannot we do that again? I know we all have a lot of meetings, you people are all really good about coming to our neighborhood meetings, but they don't have the same feel. We don't get to address all of the problems we want." How did Council feel about that? He would be glad to call all of the [neighborhood] leaders for suggestions about how we could do it. Selective meetings would be good, and it would help build up a dialogue that would help in the long run. You cannot have good solid dialogue when you have problems in the City."

Councilor Chaimov liked the idea.

Councilor Barnes also agreed. She noted one reason the meeting phased out at the end was because the same problems were repeatedly rehashed without solutions. She recommended

that in order to encourage the most effective dialogues to resolve the matters and for those sessions to be effective, people coming forward with problems should also have possible solutions to recommend.

Mayor Ferguson said he would entertain the idea and proposed scheduling a meeting with the NDA leadership to discuss a public forum at a work session.

Councilor Stone agreed with Councilor Barnes. She had felt a little frustrated at times with the previous meetings because of the repetition of the same issues. She understood Mr. Zumwalt's frustration regarding the lack of dialogue, and suggested having something more informal but still a meeting, and possibly carving out some time for the public in a work session.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Comments on Wastewater Surcharge

Mayor Ferguson stated this was the first of hopefully many opportunities to discuss and share information regarding wastewater negotiations with the community and for the public to interact with the City Council.

City Attorney Monahan stated the agenda item regarded discussion of a settlement agreement to negotiate a short-term wastewater treatment rate with Clackamas County and also to resolve past billing differences with the County. The City had been a wholesale customer of Clackamas County Service District #1 (CCSD#1) since the 1970's. The issues concerned what rate the City should pay for continuing service. A recent breakthrough involved a settlement agreement established with the County that spelled out the process to be used to negotiate an agreement through a mediation process that could lead to arbitration to set rates and also resolve the outstanding billings over the last two or three years. The use of the settlement agreement had been somewhat misunderstood. Staff had not reached a point where a decision was made regarding long-term rates. That would be the process to be set in motion. The settlement agreement spelled out that within the month of March, mediation would begin between City and CCSD#1 representatives to attempt to resolve the issues of a short-term rate for the period of August 2009 through June 2012.

Additionally, there were some true-up issues. When CCSD#1 charged the City for services, they would estimate the monthly cost and submit a monthly bill to the City. At the end of the year, CCSD#1 would send a bill to true-up what were considered to be the proper costs for that prior service. There were current issues related to the fiscal years ending in July 2008 and July 2009, and possibly 2007. Those issues were part of the mediation discussion.

The City and CCSD#1 have finalized a negotiated deal on the mediation process, and if the mediation did not result in a rate in resolution of the true-up issues, it would go to binding arbitration to be completed by the end of May 2010. Another issue within this settlement agreement was discussion of resolving, between now and the end of 2012, a long-term rate for the City of Milwaukie. City Attorney Monahan was aware the Council had other ideas in mind to be discussed with CCSD#1 namely, the long-term function of the Kellogg Treatment Plant within the community. He advised that Council would take testimony on the settlement agreement and that process.

Mayor Ferguson stated he did not see any public testimony cards in that regard.

Councilor Barnes stated her concerns were clearly reiterated in Lisa Batey's email. Part of the problem for the community was that so much was done in Executive Sessions that very few people were aware of what had been discussed, why the City was at this place, how much

money had been spent and why. She believed it was time for the Council to have a meeting to give all citizens the same information at the same time, and broadcast it for individuals who could not attend to make them fully aware. It was the Council's responsibility to clearly explain why it was necessary to spend so much time in Executive Sessions to enable the community to help Council move forward with strength.

Mayor Ferguson reiterated that he was hoping to continue to move forward with sharing the relevant information with the public and have an open dialogue.

Councilor Barnes requested a community forum to bring citizens up to speed so that informed citizens could know what questions to ask. While the City had requested public input on three occasions, she heard from citizens that they did not know what to ask. She recommended working with the communications team and setting up a public forum to impart the relevant information and updates. Council needed to prepare the public for their bills as the City moves forward.

Mayor Ferguson asked Pat DuVal to help coordinate a forum through Council and involve relevant parties. He also suggested arranging ongoing wastewater open houses, rather than a public forum format.

Councilor Stone commented that City Council had added that item to the agenda tonight so members of the public could come to the meeting and ask those kinds of questions and receive some clarification, but nobody was present to comment. She recommended creating a page on the City's website to provide easy access for citizens to receive the information. She was not convinced a forum was necessary, but believed the website would be most effective. Perhaps the cable channel could be utilized to announce that the information was available online.

Councilor Barnes reiterated that this issue was important and it was even more important to let people know what was going on in the Executive Sessions. She felt it was time to post information, and perhaps have a wastewater open house, taking an opportunity for comments as a part of Council's on-going communication with the community.

Mr. Cayo noted the City already had a structure in place to receive community input with the neighborhood associations. He recommended setting long range goals, and contacting the neighborhood associations for their input. He suggested several ideas to address problems with noise pollution from the trains and was asked to submit his comments to the City.

B. Board and Commission Appointments

Councilor Barnes stated she would like to see active efforts to bring forward some new individuals to fill vacant positions. She volunteered to go out and recruit additional candidates. Milwaukie had many great people that had not been asked to participate.

Council concurred on re-appointments and to find a better way to communicate opportunities.

Mayor Ferguson said the City's website noted volunteer opportunities and current board and commission vacancies. He read the names into record to create a resolution for the next City Council meeting. Melissa Arne and Gabe Storm would be reappointed to the Budget Committee, Ed Zumwalt and Ron Rasch would be reappointed to the Library Board, Christie Schaeffer would be reappointed to the Park and Recreation Board, and Lisa Batey would be reappointed to the Planning Commission.

C. City Manager Recruitment Process

City Attorney Monahan reviewed the Municipal Code and City Charter requirements regarding the vacancy of the city manager office. He read City Charter Section 27.b related to city manager recruitment stating, "Upon any vacancy occurring in the office of manager, the Council shall at its next meeting adopt a resolution of its intent to appoint another manager." Mike Swanson's term as City Manager ended on Sunday, February 28, 2010 and this was the next

meeting after that vacancy occurred. The Charter also provides that City Council could appoint a manager pro tem while seeking a manager through a recruitment process. The Charter further provides that the appointment of a manager shall take place within a reasonable time after the adoption of the resolution of an intention to fill the position. He announced that this meeting would be the appropriate time for the Council to go through a process of identifying that a vacancy existed, the Council intended to fill that position through a recruitment process and designate a manager pro tem. He recommended that City Council liaise with the Human Resources Director to discuss the process to comply with this charter provision. He further advised that once Pat DuVal was appointed through this resolution as manager pro tem, she had the ability to delegate those responsibilities on a temporary basis during her absence.

It was moved by Councilor Barnes and seconded by Councilor Chaimov for adoption of the Resolution declaring a vacancy in the office of the city manager, appointing Pat DuVal as manager pro tem and expressing the Council's intent to recruit and appoint a City Manager. Motion passed unanimously with the following vote: Councilors Barnes, Chaimov, Stone, Loomis and Mayor Ferguson voting "aye." [5:0]

Mayor Ferguson wanted to have a discussion among Council members about the recruitment process for city manager and share ideas as to how to make the recruitment process open and transparent, and gather input from Council, community members, and staff.

Councilor Barnes suggested starting by clearly defining the qualities that City Council was looking for in a city manager, which was important because of previous circumstances with the last city manager.

Mayor Ferguson read a summary of his ideas. First, would be to clarify the role, review the current job description and job duties. Secondly, look at the type of candidate City Council was looking for as far as experience level, any specific qualifications, behavior characteristics and work ethic desired, and also solicit and gather input from the community and staff. Council should examine internal staff to see if an existing staff member could fit the profile, then select a recruiter and begin the recruitment process. Finally, move forward to the advertising stage, management of the applicants and application process.

Council agreed it would be appropriate to discuss this item at the next scheduled work session. The Human Resource Director's input would also be required.

Council Reports: None

Mayor Ferguson announced upcoming events as follows:

- Representative Tomei would host a Town Hall meeting in the City Council Chambers from 10:00 a.m. to 11:30 a.m. on Saturday March 13, 2010. The Speaker of the House, Dave Hunt, would join Representative Tomei to discuss what was accomplished during the recent legislative session before having an open discussion session with those in attendance.
- The Ledding Library hosts the First Saturday Music Series featuring great live music for free on the first Saturday of each month at 2 p.m.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Stone and Mayor Ferguson voting "aye." [5:0]

Mayor Ferguson adjourned the regular session at 8:50 p.m.

Pat DuVal

Pat DuVal, Recorder

REGULAR SESSION

REVISED
AGENDA

MILWAUKIE CITY COUNCIL
MARCH 2, 2010

MILWAUKIE CITY HALL
10722 SE Main Street

2073rd MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|---------------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Police Department Recognition | 2 |
| B. Update on Proposed Harmony Road Improvements
Staff: Brenda Reiner, Associate Engineer | 3 |
| C. Fourth Preliminary Engineering Update on Light Rail
Staff: Wendy Hemmen, Light Rail Design Coordinator | 7 |
| 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> | 14 |
| A. Revised Planning Commission Bylaws – Resolution | 15 |
| B. OLCC Application for 7-Eleven, 6303 SE Harmony Road, Change of Ownership | 33 |
| 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> | |
| A. None Scheduled | |

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. **Public Testimony to Hear Comments from Milwaukie Citizens for Consideration during Negotiations with Clackamas County Related to Wastewater Treatment**
- B. **Board and Commission Appointments**
- C. **City Manager Recruitment Process**
- D. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive 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.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



CITY OF
West Linn

February 17, 2010

Pat Duval - Interim City Manager
10722 SE Main Street
Milwaukie, OR 97222

Ms. Duval,

On behalf of the City of West Linn we want to express our thanks to Chief Bob Jordan for conducting a complex investigation on our behalf. Because the investigation stemmed from allegations made by a West Linn Police Department employee, it was obvious that it would be necessary to have someone outside the department conduct the investigation to alleviate any perception of favoritism as well as give it the priority it was entitled due to the seriousness of the allegations. The complaint named upper management personnel and Chief Jordan volunteered to complete the investigation personally, something that is uncommon for a Chief of Police.

This investigation resulted in nineteen individual interviews and several pages of written reports and took several weeks to complete. Chief Jordan's report was thorough, factual and detailed. The West Linn City Attorney described his investigation as outstanding and left no questions unanswered. Chief Jordan's expertise and experience were evident throughout the entire investigation. We were very impressed with his professionalism and attention to detail.

The City of Milwaukie is extremely fortunate to have Chief Jordan leading the police department. He truly sets the example for others to follow. If there is anything the City of West Linn can do to help you in the future please do not hesitate to ask.

Terry Timeus – Chief of Police

Jeri Knudson – West Linn Human Resources Director



To: Mayor and City Council

Through: Pat DuVal, Interim City Manager
Kenneth Asher, Director of Community Development & Public Works
Gary Parkin, Engineering Director

From: Brenda Reiner, Associate Engineer

Subject: Update on Proposed Harmony Road Improvements

Date: February 19th for the March 2, 2010 Regular Session

Action Requested

None. This is an informational report to discuss Clackamas County plans for Harmony Road Improvements between 82nd Avenue and Linwood Avenue.

History of Prior Actions and Discussions

May 2009: Clackamas County reports that the Environmental Impact Study (EIS) for the Harmony Road project is discontinued. The discussion on a reduced scope focuses on plans that continue to call for the Sunnybrook extension between 82nd Avenue and Harmony Road (although narrower than originally scoped).

January 2009: Clackamas County and Clackamas Community College (CCC) representatives report on Harmony Road Campus, a lowering of the project scale, the Harmony Road project will incorporate the college campus, the park, and the neighborhood.

September 2008: Staff report on the status of the EIS for the Harmony Road project.

January 2008: Staff report on project recommendation from the Harmony Road Project's Policy Review Committee to develop more alternatives and provide more specific project impact information including traffic impacts.

December 2007: Staff report on the project alternatives recommended for further study by the Public Advisory Committee assembled for the project EIS.

July 2007: Staff report on the status of the Harmony Road project EIS. The scoping phase was just completing.

Background

Clackamas County had \$1.5 million in State Transportation Improvement Program (STIP) funds left over from the abandoned Environmental Impact Statement (EIS) for the Harmony Road/Sunnybrook Project. The County de-federalized the Harmony Road/Sunnybrook Project, thereby no longer needing an EIS. The County would like to have the left over funds recommitted in the STIP. The funds must be spent in the area of the original project, which is Harmony Road between 82nd and Linwood.

The County has drafted a list of improvements that will provide improved vehicular transit and pedestrian facilities within the existing street curb-to-curb width. These improvements include pedestrian improvements and improved signal operations. The signal improvements provide a small amount of vehicular traffic capacity improvement by changing or upgrading the signals. The County is seeking the City's input on which improvements are desired.

The proposed improvements are:

1. Sidewalks on the south side of Harmony from the park access road to Linwood with possible connections to Lake, Railroad and Linwood
2. Pedestrian enhancements to Harmony/Fuller, near LaSalle on Fuller, and other intersections as appropriate
3. Connect multi-use path along Sunnyside from the terminus at the Town Center boundary to the NE corner of 82/Sunnyside
4. Enhanced illumination along Harmony between 82nd and Linwood (infill gaps)
5. Fiber optic conduit/cable along this portion
6. Signal upgrades such as:
 - a. Install countdown pedestrian heads at the intersections of 82nd/Sunnyside, Harmony/Fuller, Harmony/park access, and Harmony/Linwood
 - b. Upgraded controller at Harmony/Linwood
 - c. Upgrade vehicle detection to video
 - d. Implement adaptive control at three intersections, Harmony at Sunnyside, Fuller, and Linwood.
 - e. Emergency vehicle preemption equipment upgrade

Cost estimates for the listed improvements were not provided by the County. City staff estimates the cost of a 6-foot curb tight sidewalk along Harmony at about \$600,000.

The majority of Harmony Road from 82nd Avenue to Linwood is under the jurisdiction of Clackamas County. A 560-foot section, from Cedarcrest Drive to Linwood Avenue, is

under the jurisdiction of the City of Milwaukie. The north side of the road is in the City from 71st Avenue to Linwood Avenue. The County will need to get a street right of way (ROW) permit for construction activities within the City's jurisdiction. If sidewalks are installed, a few smaller trees may be impacted just east of Linwood Avenue. For the area within the City's jurisdiction a tree removal permit will be required.

Included in the funding is \$30,000 paid by Clackamas Community College (CCC) to Clackamas County for signal modifications at Harmony Road and Linwood Avenue due to the 2007 expansion of the CCC Harmony Road Campus. Clackamas County is committed to use this money to install a right turn signal overlap to allow more green time for vehicles crossing the train tracks and turning east onto Harmony.

Separate from this proposed work, Clackamas County continues to work on the Sunnybrook Extension Project. That project is entering the design phase and is entirely funded with county money. According to County staff, there is no relationship between the Sunnybrook Extension Project and the proposed Harmony Road Improvements. The Harmony Road Improvements are being considered by Clackamas County independent of the Sunnybrook Extension Project.

In the EIS process, signal improvements were determined to be insufficient as a means to provide adequate vehicular capacity to this corridor. By inference, the signal improvements proposed at this time would not improve vehicular capacity enough to accommodate future forecasts.

Fiscal Impact

None. This project is funded by Clackamas County with money left over from an EIS study.

Concurrence

Staff will report back and ask for Council approval before moving forward.

Work Load Impacts

None

Alternatives

N/A

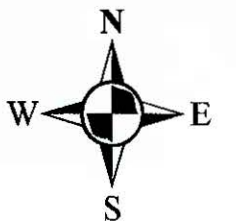
Attachments

1. Map showing project area



MILWAUKIE
Dogwood City of the West

Harmony Road
Linwood Avenue to 82nd Avenue





To: Mayor and City Council

**Through: Pat DuVal, Interim City Manager
Kenneth Asher, Community Development and Public Works Director**

From: Wendy Hemmen, Light Rail Design Coordinator

Subject: Fourth Preliminary Engineering Update on Light Rail

Date: February 12 for the March 2, 2010 Regular Session

Action Requested

None. This is an informational update on progress and issues related to Preliminary Engineering on the light rail project in the City of Milwaukie.

History of Prior Actions and Discussions

November 3, 2009 – Preliminary Engineering updates to the City Council; no action updates of project status.

September 1, 2009 – Preliminary Engineering updates to the City Council; no action updates of project status.

May 5, 2009 – Preliminary Engineering updates to the City Council; no action updates of project status.

2007- 2008 - Various actions and discussions related to the South Corridor Phase 2 Light Rail Project, also called Portland-to-Milwaukie Light Rail, including adoption of a locally preferred alternative and an Umbrella Agreement with TriMet regarding transit improvements and expectations in the City of Milwaukie over the next ten years.

Background

Timing Information

On March 31, 2009, the Federal Transit Administration (FTA) granted approval of Preliminary Engineering for the Portland-Milwaukie Light Rail Project. Because of the FTA's lengthy approval process, TriMet has ramped up efforts to complete the Preliminary Engineering (PE) in less time than originally planned. PE was 15% complete in July 2009. PE was 25% in December 2009. Preliminary Engineering will be complete at the 30% plan completion level early in March 2010. Engineering consultants, surveyors, biologists, and architects have continued to develop preliminary engineering plans for the 2008 Locally Preferred Alternative (LPA). Review comments have been made by local and state jurisdictions for the 25% plan set. TriMet and consultants are finishing the preliminary engineering design efforts and moving the project to 30% completion.

The Supplemental Draft Environmental Impact Statement (SDEIS) was completed May 2008. The Final Environmental Impact Statement (FEIS) work is underway and a first draft has been submitted to FTA and local jurisdictional partners with the exception of a few chapters. The FEIS must be complete and submitted to the FTA in May 2010 for the FTA to issue a Record of Decision (ROD) which will allow the project to progress to additional phases. The Record of Decision will be issued by the Federal Transit Administration around July of 2010. Final Design will begin September 2010 with PGE relocation and early Kellogg Bridge construction following in January 2011. Civil utility, grading, road and track construction will follow in 2012. The light rail line is anticipated to be complete and ready to serve passengers September 2015.

Preliminary Engineering Completion

The 25% comments have been reviewed and responded to. The top five City of Milwaukie outstanding issues from the 25% plan set are: parking, noise and vibration mitigations, McLoughlin Blvd. bridge structure height, station area design, and train speed in the downtown area of Milwaukie. The parking in downtown has a greater loss of spaces than initially thought. TriMet and the City are working to establish appropriate mitigation for the lost spaces, or minimize the lost spaces. The noise and vibration mitigations have not yet been shown on the plan set. TriMet and city staff are working together towards resolution of these items.

The McLoughlin Blvd. crossing structure had comments from ODOT's Motor Carrier group that a larger vertical clearance needs to be provided. The city is working with the project team and will be presenting to Motor Carrier and the local freight groups to discuss this. The station area design is critical and must be done correctly. The size,

shape, feel, and details to a successful area are key to Milwaukie's south downtown. The train speed in Milwaukie needs to be understood. What are the noise and vibration effects related to train speed? What is the train's stopping ability and visual clearance needs? What effect does the train speed have on the time assumptions for gate closures and traffic conditions? What is the travel time effect of train speed? What are the perceived issues of train speed in Milwaukie's downtown setting? Are there other issues with train speed? City of Milwaukie staff and TriMet staff are working together to understand the issues and resolve the design needs.

Other design issues include the connection from the Tacoma Station to Main Street, resolution of road crossings, utility relocations and replacements, and the platform configuration recommendation. These comments will continue to be addressed in the preliminary engineering and advanced preliminary engineering (after 30% completion).

The project underwent a value engineering process. Several items were identified for cost cutting. Overall, the consultant found that the project is already lean. TriMet is looking to incorporate several of the cost saving suggestions. The project is working through contingency management plans. This identifies project cuts, holds, and potential cuts to reach a balanced budget for the project. Very few of the items are identified in Milwaukie for deferral. The stairway connection to the Springwater Trail is one.

FEIS

The SDEIS was completed in May 2008. The FEIS work began in mid 2009 and a first draft has been submitted to FRA and local jurisdictional partners with the exception of a few chapters. The various FEIS studies include traffic, ecological, noise, vibration, visual, economic, historic, archaeological, cultural, acquisitions and displacements, community impacts, parks and recreation, geological, water quality and hydrology, air quality, energy, hazardous materials, utilities, public services, and safety and security. Initial comments have been provided by partners including Milwaukie. Mitigations identified in the FEIS are being worked into the 30% plan set. Additional FEIS reviews will continue for the incomplete sections. The FEIS must be complete and submitted to the FTA in May 2010 for the FTA to issue the ROD which will allow the project to progress to additional phases.

The noteworthy impacts identified in the FEIS relate to transportation, noise and vibration, visual, acquisitions, land use, utilities, parks, and ecological. City staff reiterated that the Minimum Operating Segment (MOS) has too great of impacts on Milwaukie and is not a viable community option, although it is included in the FEIS.

Community Outreach

TriMet and City of Milwaukie public outreach is ongoing. Light Rail meetings have been held where the City of Milwaukie and TriMet have presented updated information on the project. Monthly community outreach meetings continue on the third Monday of each month, the past several months the meeting was moved due to City observed holidays. Other public meetings will continue to be held in or near Milwaukie as necessary.

A follow up meeting for Tacoma/Johnson Creek Boulevard impacts and mitigations was held February 11, 2010. At this meeting the project team identified 32nd and JCB as requiring a traffic signal due to highway safety impacts on McLoughlin Blvd. Other potential mitigations identified include installation of traffic signals at the 36th Avenue and JCB intersection and the 42nd Avenue and JCB intersection as well as minor adjustments to timing and striping on the JCB corridor from 17th Avenue to 45th Avenue. The 36th and JCB intersection was evaluated and determined that existing stop signage can be retained with no major impacts on the corridor, the project is recommending retention of the stop controls on 36th Avenue. However at 42nd and JCB a one mile-long back up occurs in the afternoon if that intersection is left stop sign controlled. If the project retains the signage, cut through traffic is anticipated on Roswell, Filbert, Olsen, Harvey, 40th, Howe, and Logus Roads. With the installation of a signal at 42nd the JCB corridor will function for the existing traffic volumes. Milwaukie staff is working with City of Portland staff to develop and implement a traffic calming strategy for the JCB corridor, which the light rail project is expected to help fund.

Project Committees

The Project Management Group (PMG) continues to meet and make project decisions on a monthly basis. The Project Team Leaders (PTL) meet on a weekly basis addressing key issues and recommendations on a project wide basis. The Technical Advisory Committee (TAC) East Side meets twice a month and works through all issues on the east side making recommendations. In addition many specific issue meetings are occurring with the project team. The issues have been on both Portland and Milwaukie/Clackamas County sections. The Citizens Advisory Committee (CAC) continues to meet on a monthly basis. The CAC will continue to meet on a monthly basis to raise and track concerns from each members' constituencies. TriMet's Safety & Security Committee met and discussed the following Milwaukie issues: placement of ticket machines, emergency walkways on structures, discussion of Closed Caption TeleVision (CCTV), and the transit tracker digital display. Many more discussions are anticipated in the future that will review specific areas of concern on the entire alignment.

Conceptual Design Report

The CDR is a document that describes the project in pictures and words. TriMet staff will visit all of Milwaukie's NDAs in March to share the CDR and discuss aspirations for the project. This project has recently had open houses, February 22 and 25th, to discuss the project and the Conceptual Design Report (CDR). The CDR will be presented to Council at the next regular session by TriMet.

Stations

Due to requirements of UPRR TriMet has modified the station to a side/center configuration. This configuration will still allow the city to accomplish the goal of connecting the community to the side platform. Over the next 6 months, staff will be working with TriMet's urban designer to define the design of the project, especially at the station.

The Park Avenue Park and Ride was reduced in size to 600 spaces. The plan is to design the garage for expansion to 1000 spaces if the future necessitates it. The project saves in construction costs, traffic improvements, and acquisitions by the reduction in size. This garage is predicted to be a heavy bus transfer location, and used by the Oak Grove and Island Station area along with other parts of Clackamas County.

The Tacoma Park and Ride was also reduced in size by 200 spaces. This garage is predicted to be heavily used by Milwaukie, Sellwood, Moreland, and park and riders arriving from Highway 224. The size reduction equates to one less floor. The garage will be shorter in stature and less visible from the Ardenwald neighborhood. It will now be similar in height to surrounding structures.

Technical Information

The city's permit team met with the PC and DLC to discuss land use approvals, and permits that will be required of the project. LUFO is the Land Use Final Order given by Metro approving the South Corridor Light Rail Project. The land use approval for the light rail project currently exists. Land use approvals will be required for specific elements of the project by Milwaukie's Planning Commission and Design and Landmarks Committee. Staff presented to both the PC and the DLC discussing their roles for this project. TriMet will brief the PC and DLC at a joint meeting on March 9, 2010.

Pedestrian and bicycle connections are being studied by staff to accommodate various routes of travel through Milwaukie. The pedestrian link via the new Kellogg Bridge will be an important element for the city to add. Pedestrian links to connect with existing or

prepare for the future have been noted for Adams Street, 21st Avenue, at all downtown rail crossings, Washington Street at 25th and 27th, Harrison, and Mailwell Drive.

Union Pacific Rail Road (UPRR) negotiations continue to shape the location, size and design of the light rail system. The safety wall, Milwaukie Station design, track location, and crossings will adjust based on TriMet's ongoing negotiations with UPRR. Six-foot tall safety walls remain in the plan to intermittently separate freight trains from light rail trains from Mailwell Drive to Lake Road in downtown.

The Willamette River Crossing bridge type and width is set, and major design elements have been selected. Lighting, architectural detailing, pedestrian and bicyclist area delineation plans continue to be reviewed and selected. The Willamette River Bridge is out for design build 'request for proposals' to begin construction efforts. The East Side Portland Streetcar project was approved for funding and the designs are being done to integrate with the Portland-to-Milwaukie Light Rail. The new Portland streetcar is anticipated to use the same crossing and tracks as the LRT on the new bridge. The Steering Committee met December 1st and approved the design of the bridge.

Next Steps

The FEIS needs to be completed. The mitigations to the impacts identified are currently being specified. The designs will be furthered at the final design stage that will begin in October of this year.

Once the final design application is submitted at the end of March, the project will enter advanced PE. The project will further the design for critical items such as the Milwaukie Station, 21st and Adams intersection, light rail/freight rail crossings, quiet zone treatments, grading impacts, parking, and train speed.

The CDR will continue to be refined and issues that need to be described that are not yet described will be added to the document to work towards it's completion.

The rail street crossing designs will continue to benefit the Quiet Zone on the Tillamook Branch in Milwaukie. These rail crossings of Milwaukie's downtown streets are important with regard to scale, safety, and noise near the branch line and light rail. The crossing treatments and the draft rail crossing application to ODOT Rail will be continued over the next several months.

Concurrence

None, as no action is requested at this time.

Fiscal Impact

None, as no action is required at this time.

Work Load Impacts

Not applicable.

Alternatives

None listed, as this is a discussion item only.

Attachments

None.

3.

CONSENT AGENDA



To: Mayor and City Council

Through: Pat Duval, Interim City Manager
Kenneth Asher, Community Development and Public Works Director

From: Katie Mangle, Planning Director
Bill Monahan, City Attorney

Subject: Revised Planning Commission Bylaws

Date: February 19, 2010, for March 2, 2010 Regular Session

Action Requested

Approve resolution to adopt the amended Planning Commission Bylaws.

History of Prior Actions and Discussions

1998: Planning Commission and City Council adopted the current version of the commission's bylaws.

Background

Over the past year, the Planning Commission has undertaken a review of the Planning Commission Bylaws that were adopted in June 1998. Milwaukie Municipal Code (MMC) section 2.10.050 A provides that the Council shall adopt bylaws for each City board, committee, or commission that will guide the conduct of "meetings and the performance of its duties." The code specifies that bylaws shall be reviewed and updated annually with revisions reviewed and accepted by the City Council.

Draft Revised Bylaws

Attached to this memorandum is a redline version (Attachment 1) and clean copy (Attachment 2) of the bylaws, reflecting the changes accepted by the Commission at its meeting on February 9, 2010. A number of editorial changes were made to provide for

consistency or to correct errors, but only the substantive changes are summarized below.

Article II. Purpose, Authority, and Objective

D. Open Meetings. New section added to note that all Commission meetings are open to the public and the Commission has the right to go into executive session when discussing legal challenges or other similar matters.

Article III. Membership

A. Appointment. Revise to be consistent with MMC 2.10.030 G, which states that the Mayor, with consent of Council, appoints Commission members.

B. Term of Office. The language has been revised to be consistent with the policy that applies to all city boards, commissions and committees (MMC 2.10.030 D. and G.).

Article IV. Officers and Staffing

B. Chair. New language has been added to show that the Chair is responsible for signing Commission documents.

Article V. Organizational Procedures

A. Meetings. New language provides for a target ending time of 10:30 p.m. and the process to extend a meeting.

B. Quorum. New language provides a process to follow when the Director knows ahead of time that a meeting must be cancelled because a quorum cannot be made. In addition, there is language added to state the process to follow when a tie vote occurs. The new process directs a commissioner to make a new motion seeking a majority decision. If that motion fails, and a tie vote remains, the tie constitutes denial.

C. Order of Business. New language was added to identify the order of agenda items.

D. Voting. New language clarifies that the presiding officer cannot make a motion, and requires that a member who abstains from voting cite the

reason. The voting order will vary through a rotation system with the Chair always voting last.

E. Reconsideration of Actions Taken. New language provides for how a vote can be reconsidered, in the rare event of a mistake or confusion during a vote, at the same meeting where the vote took place.

G. Repeal or Amendments. New language added to be consistent with the Municipal Code requirement of an annual review of the Commission's bylaws.

E. Parliamentary Authority. The bylaws will be the Commission's Rules of Procedure, instead of "Roberts Rules of Order Revised". The City Attorney advised the Commission that the old language had potential to create problems since it was not clear where the conflicts between local bylaws and Roberts Rules exist. The use of Roberts Rules is more appropriate in large legislative bodies rather than smaller settings such as the Commission. The City Attorney recommends that the Commission periodically review the bylaws to assure that they are as complete as possible.

Article VI. Duties of Officers

A. Duties of the Chair. The duties have been revised to reflect present practice.

Article VII. Duties of the Commission

A., B., C., E., and F. These sections now have headings for consistency with the remainder of the bylaws.

C. Site Visits. This section has been revised to add language to require that a Commissioner who visits a site report any observations gained from the visit that he or she plans to take into consideration that are in addition to or inconsistent with the packet materials.

D. Method of Handling Conflicts by Members. Language has been added to reflect the obligation that a Commissioner has under ORS 244.135 regarding conflicts of interest. This section of the statute details the method of handling conflicts by Commission members.

E. Meeting Preparation. The new language provides direction how a Commissioner must prepare to participate in a continuance hearing when

he or she did not attend the initial or subsequent hearing where evidence was presented.

Concurrence

The Planning Commission reviewed the bylaws at its meetings in April and November, 2009, and unanimously recommended that the proposed bylaws be adopted by City Council. The City Attorney recommends that the City Council review, accept, and adopt the Planning Commission's proposed revised Bylaws by resolution.

Fiscal Impact

None.

Work Load Impacts

The bylaws will formalize many of the Commission's current practices, and provide direction to a few unresolved issues. In both instances, having a written set of bylaws to guide staff and commission members will reduce inefficiencies.

Alternatives

1. Council may discuss the bylaws and propose further amendments to those prepared by the Commission. Staff recommends that substantive amendments be returned to the Commission for their review and concurrence.
2. Vote not to adopt the revised bylaws. This would have the effect of directing the Commission to continue to operate under the existing bylaws.

Attachments

1. Resolution
 - A. Revised Planning Commission bylaws, as approved by Planning Commission
2. Underline/ strikeout version of draft revised bylaws

ATTACHMENT 1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
REVISING THE BYLAWS OF THE PLANNING COMMISSION.**

WHEREAS, Municipal Code Chapter 2.10.050.A requires Commissions to review and update their bylaws annually ; and

WHEREAS, the duties of the Commission are set out in MMC 2.16.060, and its statutory role is set out in ORS 227; and

WHEREAS, the current bylaws do not adequately address current accepted practice and do not provide guidance for what to do in the event of a tie vote; and

WHEREAS, the Planning Commission drafted a revised set of bylaws to establish the rules and expectations of its membership in conducting the City's business;

WHEREAS, the Planning Commission of the City of Milwaukie, Oregon with a quorum in attendance at its regular meeting of February 9, 2010 voted to forward the revised bylaws to the City Council for adoption;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie adopts the Planning Commission Bylaws in attachment A.

Introduced and adopted by the City Council on March 2, 2010.

This resolution is effective on March 3, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 1A

MILWAUKIE PLANNING COMMISSION BYLAWS

ARTICLE I NAME

The name of this commission is the Planning Commission (Commission).

ARTICLE II PURPOSE, AUTHORITY, AND OBJECTIVE

- A. **Purpose.** The purpose of the Commission is to serve as an advisory body to, and a resource for, the City Council in land use matters.
- B. **Authority.** The Commission is authorized by ORS 227 and Milwaukie Municipal Code (MMC) Chapter 2.16.
- C. **Objective.** The Commission's objectives include articulating the community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.
- D. **Open Meetings.** All meetings of the Commission are open to the public. The Commission has the authority to conduct an executive session under ORS 192.660.

ARTICLE III MEMBERSHIP

- A. **Appointment.** Each Commission member shall be appointed by the Mayor with the consent of Council, consistent with MMC 2.10.030 G. Members shall serve at the pleasure of the Council.
- B. **Term of Office.** Terms are for a period of four years. Commission members may serve no more than two consecutive full terms, unless there is an interval of at least one term prior to reappointment. The Council may waive this limitation if it is in the public interest to do so.
- C. **Membership.** The Commission consists of seven members. No more than two members may be non-residents, and no more than two members shall be engaged in the same kind of occupation, business, trade, or profession. No member may be a City of Milwaukie officer, agent, or employee; and no more than two voting members of the Commission may engage principally in the buying, selling, or developing of real estate for profit as individuals; or members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling, or developing of real estate for profit.
- D. **Vacancies and Removal.** Vacancies are filled in the same manner as the original appointments. A member of the Commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.
- E. **Attendance.** Upon failure of any member to attend three consecutive meetings, the Commission may recommend termination of that appointment to the Council, and the

Council may remove the incumbent from the Commission and declare the position vacant to be filled in the manner of a regular appointment.

- F. **Compensation.** Commission members shall receive no compensation for their service, but shall be fully reimbursed for all duly authorized expenses.

ARTICLE IV OFFICERS AND STAFFING

- A. **Officers.** The officers consist of a Chair and a Vice Chair who shall be selected by the membership and who shall serve at the pleasure of the membership for one year. Nominations and election of new officers shall be taken from the floor at the Commission's first meeting of the calendar year. Officers may be re-elected. In the event that an officer is unable to complete the specified term, a special election shall be held for the completion of the term.
- B. **Chair.** The Chair shall preside at all deliberations and meetings of the Commission and call special meetings in accordance with these Bylaws and review Commission agendas with the staff liaison. The Chair shall sign all documents memorializing Commission actions in a timely manner after action by the Commission.
- C. **Vice Chair.** During the absence, disability, or disqualification of the Chair, the Vice Chair shall exercise or perform all duties and be subject to all the responsibilities of the Chair. In the absence of the Chair and Vice Chair, the remaining members present shall elect an acting Chair.
- D. **Staff.** The City of Milwaukie Planning Department will provide staff support to the Commission for: land use issues, meeting notifications, postponements, final disposition of matters, and other steps taken or acts performed by the Commission, which include administrative housekeeping functions such as word processing, minutes preparation, copying, and information gathering to the extent the budget permits.

ARTICLE V ORGANIZATIONAL PROCEDURES

- A. **Meetings.** The Commission shall hold meetings as necessary at a time and place designated by staff consistent with Oregon Public Meetings Law. Typically, the Commission meets at least once a month on the second and/or fourth Tuesday at 6:30 p.m. at City Hall. Commission meetings shall end no later than 10:00 p.m., unless extended by majority vote of the Commissioners present and participating in the Agenda item that is under consideration at that time. An extension to 10:30 p.m. is allowed by Commission action. If a meeting has not concluded at 10:30 p.m., the Commission may vote on the Agenda item, consider another extension of up to 30 minutes, or vote to continue the item to the next available meeting.
- B. **Quorum.** A quorum is four of the voting membership of the Commission. The concurrence of a majority of the Commission members present shall be required to decide any matter. In the case of a tie vote, the matter is not complete. One new motion may be made. If a majority vote is not obtained on that motion the agenda item fails. If a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting shall be cancelled. In the event it is known by the Director prior to a meeting that a quorum will not be present at any meeting, the Director shall notify the Commission members. All items scheduled for the meeting shall be automatically

continued to a regularly scheduled meeting unless the Director determines that a special meeting is needed. The Director shall post notice of the continuance on the exterior doors of City Hall notifying the public of the continuance and specifying the date and time when the continued items will be before the Commission. The Notice shall remain through the evening on which the meeting is originally scheduled.

C. Order of Business. The Chair shall have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting. In general, the order of business will be as follows:

1. Call to order – Procedural Matters
2. Minutes
3. Information Items
4. Audience Participation
5. Public Hearings
6. Worksession Items
7. Planning Department Other Business/Updates
8. Planning Commission Discussion Items
9. Forecast for Future Meetings.

D. Voting. All members who are present at a Commission Meeting, including the Chair and Vice Chair, are allotted one vote each on all motions. A motion may be made by any Commissioner with the exception of the presiding officer. All Commissioners, when a vote is taken, shall vote unless he or she abstains from voting and cites the reason for the record. Staff shall call the roll, altering the order of members called. The Chair shall vote last.

E. Reconsideration of Actions Taken. A member who voted with the majority may move for a reconsideration of an action at the same meeting only. The second of a motion may be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration shall be made without unanimous consent of the Commission.

F. Minutes. A staff representative or designee shall be present at each meeting and shall provide for a sound, video, or digital recording, or written minutes of each meeting. The record of the meeting, whether preserved in written minutes or sound, video, or digital recording, shall include at least the following information:

- Names of the Commission members present;
- All motions and proposals, and their disposition;
- The results of all votes and the vote of each Commission member by name;
- The substance of any discussion on any matters; and,
- A reference to any document discussed at the meeting;

Written minutes need not be a verbatim transcript, but give a true reflection of the matters discussed at the meeting and the views of the participants.

Written minutes of a meeting will be made available to the public within a reasonable time after the meeting.

Minutes shall be reviewed and voted upon by the Commission at a regular meeting.

- G. **Repeal or Amendments.** The Commission may review these bylaws periodically and forward suggested revisions to the Council for approval. These bylaws may be repealed or amended, or new bylaws may be adopted by a majority vote of the Council on its own initiative, or upon a recommendation from the Commission.
- H. **Meeting Conduct.** The meeting conduct for this Commission is these bylaws except where superseded by or local, state, or federal law.
- I. **Statement of Economic Interest.** Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission.

ARTICLE VI DUTIES OF OFFICERS

- A. **Duties of the Chair.** The Chair or Vice Chair, in addition to the duties in Article IV, shall preserve the order and decorum of the meeting.
 - 1. The Chair may assess the audience at the beginning of the meeting, and, with the consent of the Commission, announce reasonable time limits.
 - 2. The Chair will direct the planning staff to summarize the issues to be addressed and the criteria to be applied by the Commission during its deliberations, following the conclusion of public hearing testimony.
 - 3. The Chair will summarize the hearing results and state the appeal process at the conclusion of the public hearing.
- B. **Requesting Response and Opinion.** The Chair will ask for response and opinion from the members of the Commission.
- C. **Appointments to Specific Projects on Committees.** The Chair may appoint Commissioners to specific projects or committees, and may select a Commissioner to be spokesperson for the Commission when the Chair or Vice Chair is unavailable.
- D. **Confer with Director.** The Chair or Vice Chair shall confer with the Planning Director (Director) on a regular basis outside scheduled meetings concerning the direction each expects of the Commission.
- E. **Orientation of New Members.** The Chair, in conjunction with the Director, shall orient new members.

ARTICLE VII DUTIES OF THE COMMISSION

- A. **Duty of Commissioner.** Commissioners shall address all those who come before the Commission in a formal and courteous manner.
- B. **Absence From a Meeting.** If a Commissioner is unable to attend a meeting, it is that Commissioner's responsibility to inform the Community Development staff and/or the Commission Chair of that fact prior to the meeting to be missed.

- C. **Site Visits.** Prior to Commission meetings, Commissioners are encouraged to visit sites that are subjects for land use actions. If a Commissioner visits a site, he or she shall report on the record any information gained from the site visit that is not consistent with the information included in the application or staff report.
- D. **Method of Handling Conflicts by Members.** In accordance with ORS 244.135: (1) A member of the Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest:
1. The Commission or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the Commissioner;
 2. Any business in which the Commissioner is then serving or has served within the previous two years; or
 3. Any business with which the Commissioner is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
 4. Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken.
- E. **Meeting Preparation.** Commissioners shall prepare for participation at a meeting by fully reviewing the staff report and materials provided by the Director. If a Commissioner is unable to attend a hearing on a quasi-judicial application that is continued to another hearing, the Commissioner shall not take part in the continuance hearing unless the Commissioner:
1. Reviews the staff report and materials provided by the Director as well as:
 - a. all materials submitted at the hearing, and
 - b. any additional materials prepared by the planning staff applicable to the application, and
 - c. either the audio recording of the hearing or the draft minutes of the hearing.
 2. Declares that they are prepared to participate.
- F. **Duties Assigned by Council.** The Commission shall carry out the duties assigned to it by Council relating to development, updating, and general maintenance of the Milwaukie Zoning Ordinance and the Milwaukie Comprehensive Plan.

ARTICLE VIII GOALS AND OBJECTIVES

- A. **Annual Goal Review.** The Commission shall review the Council goals annually for establishment of Commission goals which enhance and augment those of the Council.
- B. **Establishment of Commission Goals.** The Commission shall establish goals, at a minimum, annually.

ATTACHMENT 2

PLANNING COMMISSION BYLAWS

Article I. Name

The name of this commission is the Planning Commission (PC).

Article II. Purpose, Authority, and Objective.

- A. **Purpose.** The purpose of the Commission is to serve as an advisory body to, and a resource for the City Council in land-use matters.
- B. **Authority.** The Commission is authorized by ORS 227 and Milwaukie Municipal Code ([MMC](#)) Chapter 2.16.
- C. **Objective.** The Commission's objectives include articulating the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.
- D. **Open Meetings.** [All meetings of the Commission are open to the public. The Commission has the authority to conduct an executive session under ORS 192.660.](#)

Article III. Membership

- A. **Appointment.** Each Commission member shall be appointed by the Mayor with the consent of Council, [consistent with MMC 2.10.030 G](#). Members shall serve at the pleasure of the Council.
- B. **Term of Office.** Terms are for a period of four years. Commission members ~~shall~~[may](#) serve no more than two consecutive full terms. ~~The, unless there is an interval of at least one term prior to reappointment. ; provided that t~~[The](#) Council may waive this limitation if it is in the public interest to do so.
- C. **Membership.** The Commission consists of seven members. No more than two members may be non-residents, and no more than two members shall be engaged in the same kind of occupation, business, trade, or profession. No member may be a City of Milwaukie officer, agent, or employee, and no more than two voting members of the ~~commission~~[Commission](#) may engage principally in the buying, selling, or developing of real estate for profit as individuals, or members of any partnership, or officers or employees of any corporation, that engages principally in the buying selling or developing of real estate for profit.

D. Vacancies and Removal. Vacancies are filled in the same manner as the original appointments. A member of the ~~Planning~~ Commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

~~E.~~E. Attendance. Upon failure of any member to attend three consecutive meetings, the Commission may recommend termination of that appointment to the Council, and the Council may remove the incumbent from the Commission and declare the position vacant to be filled in the manner of a regular appointment.

~~F.~~F. Compensation. Commission members shall receive no compensation for their service, but shall be fully reimbursed for all duly authorized expenses.

Article IV. Officers and Staffing

A. Officers. The officers consist of a ~~chair~~Chair and a ~~vice chair~~Vice Chair who shall be selected by the membership and who shall serve at the pleasure of the membership for one year. Nominations and election of new officers shall be taken from the floor at the ~~Committee~~Commission's first meeting of the calendar year. Officers may be re-elected. In the event that an officer is unable to complete the specified term, a special election shall be held for the completion of the term.

B. Chair. The Chair shall preside at all deliberations and meetings of the Commission and call special meetings in accordance with these Bylaws and review Commission agendas with the staff liaison. The Chair shall sign all documents memorializing Commission actions in a timely manner after action by the Commission.

C. ~~C.~~ Vice Chair. During the absence, disability, or disqualification of the ~~Chairperson~~Chair, the ~~Vice-Chairperson~~ Chair shall exercise or perform all duties and be subject to all the responsibilities of the ~~Chairperson~~Chair. In the absence of the ~~Chairperson~~Chair and ~~Vice-Chairperson~~ Chair, the remaining members present shall elect an acting ~~Chairperson~~Chair.

D. ~~D.~~ Staff. The City of Milwaukie Community Development Department will provide staff support to the Commission for: land-use issues, meeting notifications, postponements, final disposition of matters, and other steps taken or acts performed by the Commission, which include administrative housekeeping functions such as, word processing, minutes preparation, copying, and information gathering to the extent the budget permits.

Article V. Organizational Procedures

A. ~~A.~~ Meetings. The Commission shall hold meetings as necessary at a time and place designated by staff consistent with Oregon Public Meetings Law. Typically the Commission meets at least once a month on the second and/or fourth Tuesday at 6:30 p.m. at City Hall. Commission meetings shall end no later than 10:00 p.m., unless extended by majority vote of the Commissioners present and participating in the Agenda

item that is under consideration at that time. An extension to 10:30 p.m. is allowed by Commission action. One extension to no later than 10:30 p.m. is allowed. If a meeting has not concluded at 10:30 p.m., the Commission may ~~shall~~ either vote on the Agenda item, consider another extension of up to thirty (30) minutes, or vote to continue the item to the next available meeting.

B. ~~**B.**~~ **Quorum.** A quorum is four (4) of the voting membership of the Commission. The concurrence of a majority of the Commission members present shall be required to decide any matter. In the case of a tie vote, the matter is not complete. ~~An~~ New motions shall ~~may be made.~~ One new motion may be made. If a majority vote is not obtained on that motion the agenda item fails. If a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting shall be cancelled. In the event it is known by the Director prior to a meeting that a quorum will not be present at any meeting, the Director shall notify the Commission members. All items scheduled for the meeting shall be automatically continued to ~~a the next~~ regularly scheduled meeting unless the Director determines that a special meeting is needed. The Director shall post notice of the continuance on the exterior doors of City Hall notifying the public of the continuance and specifying the date and time when the continued items will be before the Commission. The Notice shall remain through the evening on which the meeting is originally scheduled.

C. **Order of Business.** The Chair shall have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting. In general, the order of business will be as follows:

1. ~~A.~~ Call to order – Procedural Matters

~~B.~~2. Minutes

~~C.~~3. Information Items

~~D.~~4. Audience Participation

~~E.~~5. Public Hearings

~~F.~~6. Worksession Items

~~G.~~7. Planning Department Other Business/Updates

~~H.~~8. Planning Commission Discussion Items

~~I.~~9. Forecast for Future Meetings.

D. ~~**C.**~~ **Voting.** All members who are present at a Commission Meeting, including the Chair and Vice Chair, are allotted one vote each on all motions. A motion may be made by any Commissioner with the exception of the presiding officer. All Commissioners, when a vote is taken, shall vote unless he or she abstains from voting and cites the reason for the record. ~~Staff The meeting recorder~~ shall call the roll, altering the order of members called. The Chair shall vote last.

E. **Reconsideration of Actions Taken.** A member who voted with the majority may move for a reconsideration of an action at the same meeting only. The second of a motion may

be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration shall be made without unanimous consent of the Commission.

F. **Minutes.** A staff representative or designee shall be present at each meeting and shall provide for a sound, video or digital recording, or written minutes of each meeting. The record of the meeting, whether preserved in written minutes or sound, video or digital recording, shall include at least the following information:

- Names of the Commission members present;
- All motions and proposals, and their disposition;
- The results of all votes and the vote of each Commission member by name;
- The substance of any discussion on any matters; and
- A reference to any document discussed at the meeting;

Written minutes need not be a verbatim transcript, but give a true reflection of the matters discussed at the meeting and the views of the participants.

Written minutes of a meeting will be made available to the public within a reasonable time after the meeting.

Minutes shall be reviewed and voted upon by the Commission at a regular meeting.

G. ~~**D.**~~ **Repeal or Amendments. ~~These bylaws shall be reviewed and updated annually by the Commission and forwarded to the Council for approval. The Planning Commission may review these bylaws periodically and forward suggested revisions to the City Council for approval~~ These bylaws may be repealed or amended, or new bylaws may be adopted by a majority vote of the ~~Milwaukie City~~ Council on its own initiative, or upon a recommendation from the Commission.**

H. ~~**E.**~~ **Parliamentary Authority Meeting Conduct. The meeting conduct parliamentary authority for this Commission is Robert's Rules of Order Revised; ~~these bylaws~~ except where ~~superseded by these bylaws~~ superseded by or local, state, or federal law.**

I. ~~**F.**~~ **Statement of Economic Interest. Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission.**

~~**G.**~~ **Duties of Members. Individuals being considered must be willing to dedicate to, at a minimum, two meetings per month for Planning Commission membership. ~~The Planning Commission shall meet at least once a month, on the second and/or fourth Tuesdays at 6:30 p.m. at a place designated by staff. These meetings may be set aside upon agreement of a majority of the Commissioners and upon compliance with applicable land use laws and procedures.~~**

Article VI. Duties of Officers

- A.** ~~A. Duties of the Chair.~~ The Chair or Vice- Chair, in addition to the duties in Article IV, shall preserve the order and decorum of the meeting.
1. The Chair may assess the audience at the beginning of the meeting, and, with the consent of the Commission, announce reasonable time limits.
 2. The Chair will direct the planning staff to summarize the issues to be addressed and the criteria to be applied ~~at~~by the Commission during its deliberations, following the conclusion of public hearing testimony.
 3. The Chair will summarize the hearing results and state the appeal process at the conclusion of the public hearing.
- B.** ~~B. Requesting Response and Opinion.~~ The Chair will ask for response and opinion from the members of the Commission.
- ~~C. The Chair may mentor the Vice Chair.~~
- C.** ~~D. Appointments to Specific Projects on Committees.~~ The Chair may appoint Commissioners to specific projects or committees, and may select a Commissioner to be ~~spokesman~~spokesperson for the Commission when the Chair or Vice Chair is unavailable.
- D.** ~~E. Confer with Director.~~ The Chair or Vice- Chair shall confer with the ~~Community Development~~Planning Director (Director) on a regular basis outside scheduled meetings concerning the direction each expects of the Commission.
- E.** ~~F. Orientation of New Members.~~ The Chair, in conjunction with the ~~Community Development~~ Director, shall orient new members.

Article VII. Duties of the Commission

- A.** ~~Planning~~Duty of Commissioner. Commission members shall address all those who come before the Commission in a formal and courteous manner.
- B.** Absence From a Meeting. If a member is unable to attend a meeting, it is that member's responsibility to inform the Community Development staff and/or the ~~Planning~~ Commission Chair of that fact prior to the meeting to be missed.
- C.** Site Visits. Prior to ~~planning~~ Commission meetings, Commissioners are encouraged to visit sites that are subjects for land use actions. If a Commissioner visits a site, he or she shall report on the record any information gained from the site visit that is not consistent with the information included in the application or staff report.

D. Method of Handling Conflicts by Members. In accordance with ORS 244.135: (1) A member of the Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest:

- ~~(a)~~ 1. The Commission or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the Commissioner;
- ~~(b)~~ 2. Any business in which the Commissioner is then serving or has served within the previous two years; or
- ~~(c)~~ 3. Any business with which the Commissioner is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
- ~~(2)~~ 4. Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken.

E. Meeting Preparation. Commission members shall prepare for participation at a meeting by fully reviewing the staff report and materials provided by the Director. If a Commissioner is unable to attend a hearing on a quasi-judicial application that is continued to another hearing, the Commissioner shall not take part in the continuance hearing unless the Commissioner:

- (1) Reviews the staff report and materials provided by the Director as well as:
 - a) all materials submitted at the hearing, and
 - b) any additional materials prepared by the planning staff applicable to the application, and
 - c) either the audio recording of the hearing ~~or~~ the draft minutes of the hearing.
- (2) Declares that he or she is prepared to participate.

F. ~~D. The commission~~Duties Assigned by Council. The Commission shall carry out the duties assigned to it by the ~~City~~ Council relating to development, updating, and general maintenance of the Milwaukie Zoning Ordinance, and the Milwaukie Comprehensive plan.

Article VIII. Goals and Objectives

- A. **Annual Goal Review.** The ~~Planning~~ Commission shall review the ~~City~~ Council goals annually for establishment of ~~Planning~~ Commission goals which enhance and augment those of the ~~City~~ Council.
- B. **Establishment of Commission Goals.** The ~~Planning~~ Commission shall establish goals, at a minimum, annually.

Document comparison by Workshare Professional on Wednesday, November 04, 2009
11:44:21 AM

Input:	
Document 1 ID	file://C:/Documents and Settings/ced.JSRLAW/Desktop/161494_1.doc
Description	161494_1
Document 2 ID	file:///JSDATA/VOL1/apps/prolaw/matters/49979-36738/161494_3.doc
Description	161494_3
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	104
Deletions	60
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	166



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police
Date: February 9, 2010
Subject: **O.L.C.C. Application – 7-Eleven – 6303 SE Harmony Road**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from 7-Eleven – 6303 SE Harmony Road.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

6.

OTHER BUSINESS



To: Mayor and City Council

Through: Pat Duval, Interim City Manager

**From: Bill Monahan, City Attorney
Kenneth Asher, Community Development and Public Works Director**

Subject: Settlement Agreement to Negotiate a Short Term Wastewater Treatment Rate and Resolve Past Billing Differences with Clackamas County (CCSD1)

Date: February 22 for the March 2, 2010 Regular Session

Action Requested

None, other than to call for public testimony related to upcoming negotiations between the City of Milwaukie and Clackamas County Service District No. 1 (CCSD1 or Clackamas County) regarding the provision and pricing of prior and future wastewater treatment service.

History of Prior Actions and Discussions

January 2010: City Council adopted a temporary wastewater service surcharge to protect the Wastewater Fund from financial uncertainties caused by Clackamas County's contract cancellation.

September 2009: Staff briefed Council on various wastewater-related issues facing the City, including the County's decision to unilaterally terminate the longstanding wastewater treatment service contract with the City and demand that the City pay \$25 a month, per EDU, for wastewater treatment service. City customers have been paying approximately \$11 a month for this service.

Background

The City of Milwaukie and Clackamas County signed an agreement on February 19, 2010 establishing a framework and a timetable for negotiating a new sewer rate, past payments due and a new services contract.

Referred to as a "Settlement Agreement," the deal stops short of setting a long term rate for Milwaukie's wastewater treatment service, and does not address issues relating to the future of the Kellogg Treatment Plant. The agreement simply provides a process for the City and County to work out a short term rate and resolve past billing differences. Long term rate increases and the fate of the plant will be addressed in future negotiations that will eventually result in a new wholesale service contract.

The County and City have been disagreeing on rates and payments for more than two years. Last summer, the County cancelled its contract with Milwaukie for wastewater treatment service, and then began charging Milwaukie twice as much money for the same service, explaining that Milwaukie could either accept the new rate or face possible service termination by 2015. The County imposed a February 28, 2010 deadline for Milwaukie to decide.

The City elected to seek legislative relief during the current session in Salem. A legislative amendment, sponsored by Rep. Carolyn Tomei on behalf of the City, was introduced, which would have stripped the County of its ability to threaten service termination and would have forced the rate question to be arbitrated.

The bill passed unanimously on the floor of the House and was due to be heard in a Senate committee earlier this week. Under pressure as a result of the legislative efforts, the County conceded and agreed to enter into negotiations in exchange for a new amendment that would release the County from statutory directives.

The agreement will allow the parties to mediate the dispute in March, with a binding arbitration process scheduled to begin on April 1 if agreement is not reached. The issues needing agreement are a short-term treatment rate for Milwaukie, and resolution of outstanding billing issues. The three-year wholesale rate will be decided no later than May 31, 2010. The terms of that agreement will be retroactive to August 2009 and will extend through June 30, 2012. The agreement stipulates that once these issues are settled, negotiations will begin on a long-term wholesale treatment service contract.

Other terms of the agreement include:

- The county agreeing to drop the February 28, 2010 deadline for a new wholesale agreement with Milwaukie. Previously the county had held that it would serve notice to Milwaukie that CCSD1 would no longer treat Milwaukie's wastewater if the deadline wasn't met. Any such notice of termination will not be considered again by the District before July 1, 2013.

- Milwaukie agreeing to drop efforts to classify the Kellogg Treatment Plant a nonconforming use during the length of the agreement.
- The cities of Happy Valley, Damascus, and urban unincorporated CCSD #1 ratepayers will be allowed to provide testimony during arbitration hearings regarding the establishment of Milwaukie's short-term treatment rate.

Fiscal Impact

None, as there is no action requested other than the solicitation of public testimony. The results of the upcoming negotiations will have a fiscal impact on the City in the form of potentially higher wastewater rates for city residents and businesses. The Council is well-advised to solicit public input about these negotiations at this point in time.

Concurrence

None, as there is no action with which to concur.

Work Load Impacts

None.

Alternatives

Not applicable.

Attachments

1. Settlement Agreement dated February 19, 2010, between the City of Milwaukie and CCSD1 regarding resolution of Outstanding Issues.

SETTLEMENT AGREEMENT

In a letter dated July 23, 2009, and signed by Chair Lynn Peterson, Clackamas County Service District #1 indicated that unless certain circumstances developed on or before February 28, 2010, the District intended to terminate its processing of City of Milwaukie wastewater at the Kellogg Plant as of June 30, 2015.

Clackamas County Service District No.1 and the City of Milwaukie have been engaged in continuing discussions regarding the provision and pricing of wholesale wastewater management services. Each has been represented by legal counsel in those discussions and negotiations. In an effort to reach a mutually acceptable resolution to outstanding issues, the Milwaukie City Council, governing body of the City of Milwaukie (the "City") and the Clackamas County Board of Commissioners, acting as the Board of Clackamas County Service District No.1 (the "District") (collectively, the "Parties"), agree as follows:

1. The City and the District desire to reach a mutually agreeable resolution to certain Outstanding Issues regarding prior and future provision and pricing of wholesale wastewater treatment services and agree that this Agreement establishes a process for doing so.

2. In consideration of the mutual promises herein, the District agrees not to give notice before July 1, 2013 to suspend or terminate wastewater management services to the City. The City likewise agrees not to initiate legal action against the District, including claims for declaratory relief and damages, relating to the District's heretofore stated intention to terminate the processing of City of Milwaukie wastewater at the Kellogg Plant until July 1, 2013. The City agrees not to move forward between this date and July 1, 2013 with the pending comprehensive plan amendments that would make the Kellogg Plant non-conforming.

3. The Parties agree that they will not initiate legal action against one another regarding the matters addressed herein (the "Outstanding Issues"), but will rely on the dispute resolution process outlined below. The Outstanding Issues are:

- a. Establishment of a short-term wholesale sewer service rate for August 1, 2009 through June 30, 2012.
- b. To resolve any outstanding true-up issues.

The Parties will negotiate a long-term wholesale treatment services contract by June 30, 2012.

4. The Parties agree to select a mutually acceptable mediator by no later than February 25, 2010. The Parties agree to work with this mediator to achieve a settlement of the Outstanding Issues. The Parties agree to share mediation costs equally.

5. The mediator will conduct professional mediations between the Parties beginning no later than March 1, 2010, and concluding no later than March 31, 2010. The goal of the mediation is the resolution of the Outstanding Issues.

If the Parties have not resolved the Outstanding Issues through mediation by April 1, 2010, the Parties agree to submit all remaining Outstanding Issues to binding arbitration, to be conducted by a three-person panel, two of whom will be attorneys, mutually agreed upon by the Parties by April 15, 2010. The third panel member will be chosen by the other two and may be a lawyer or may be a nonlawyer with professional credentials in the utility rate-making field. The arbitrators so selected shall be instructed and empowered to conduct the arbitration in such manner as the arbitrator deems to be most consistent with fairness, expedition, and economy, and shall generally be guided by, but to the extent permitted by law may freely depart from, the Oregon Rules of Civil Procedure and Evidence and Oregon statutes pertaining to arbitrations among private parties. Any award of the selected arbitrator may be challenged pursuant to ORS 190.800 and not otherwise.

If, within twenty business days of the request of either party that a claim or dispute be arbitrated the parties have not been able to agree upon an arbitrator and have not agreed to extend the time to select one, then the dispute or claim will be arbitrated pursuant to ORS 190.710 et seq. and not otherwise.

6. The Parties will share the costs of the arbitration panel equally.

7. The arbitration panel will be empowered to establish a "Short Term Wholesale Sewer Service Rate" for the City of Milwaukie for a period ending with the fiscal year on June 30, 2012 (the "Short Term Contract"). The arbitrators' ruling will be delivered to the Parties no later than May 30, 2010. The District has the opportunity to call any witnesses it wants, including the City of Happy Valley, the City of Damascus, and urban unincorporated District ratepayers.

8. The Parties agree to use their best efforts to negotiate a contract with a duration equal to or exceeding the term of the District's outstanding revenue obligations ("Long-Term Contract"). The Parties agree to discuss what would happen in the event of a catastrophic failure or major regulatory change.

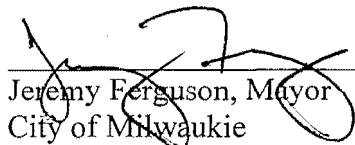
9. A goal of the process described in this Agreement is to resolve the Outstanding Issues in a cost efficient, expedient manner. Another goal is to increase the track record of successful collaboration between the Parties, which will help support effective negotiations on rates and successful collaboration on other issues into the future. In furtherance of these goals, the Parties will strive to maintain positive, constructive communications regarding activities covered under the Agreement in communications between the Parties and with third parties.

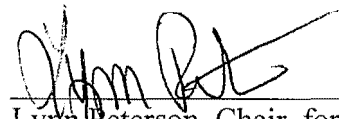
10. In the event of any dispute or claim between the City and the District arising out of or relating to the enforcement of this agreement or the award granted as

provided hereunder, the Parties agree that they will jointly select an arbitrator to resolve the matter. The arbitrator so selected shall be instructed and empowered to conduct the arbitration in such manner as the arbitrator deems to be most consistent with fairness, expedition, and economy, and shall generally be guided by, but to the extent permitted by law may freely depart from, the Oregon Rules of Civil Procedure and Evidence and Oregon statutes pertaining to arbitrations among private parties. Any award of the selected arbitrator may be challenged pursuant to ORS 190.800 and not otherwise. If, within twenty business days of the request of either party that a claim or dispute be arbitrated the Parties have not been able to agree upon an arbitrator and do not agree to extend the time to select one, then the dispute or claim will be arbitrated pursuant to ORS 190.710 et seq. and not otherwise.

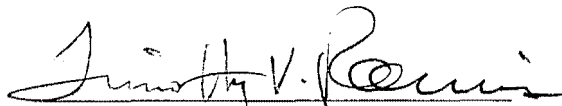
City acknowledges that as an inducement to the District for entering into this Agreement, it will request that -4 HB 3617 be removed.

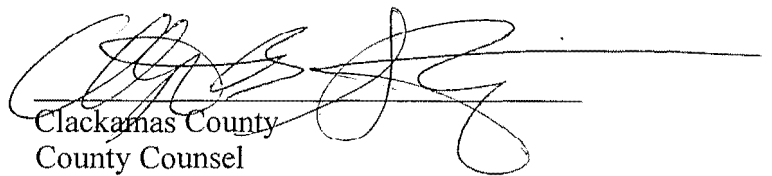
Agreed to this 19th day of February, 2010.


Jeremy Ferguson, Mayor
City of Milwaukie


Lynn Peterson, Chair, for the
Board of County Commissioners
Acting as the Governing Body of CCSD#1

Approved as to form and enforceability:


City of Milwaukie
City Attorney


Clackamas County
County Counsel