

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
APRIL 21, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2052<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:07 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Code Compliance Coordinator Tim Salyers, Resource/Economic Development Specialist Alex Campbell, Engineering Director Gary Parkin, and Human Resources Director Cynthia Trosino

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**Urban Renewal and Tax Increment Financing 101**

**Mr. Campbell** introduced **Jeff Tashman** who had worked in urban renewal for approximately 30 years. In the past his work with the City of Milwaukie included acquisition of Riverfront Park, one version of the regional center plan, and the Riverfront Plan.

**Mr. Tashman** explained urban renewal, widely used in the State, was a program to prevent and cure "blight" in targeted areas. A blighted area was one that was not developing to the objectives of the Comprehensive Plan and development code due to identifiable obstacles such as lack of infrastructure or poor streetscape. The finding of blight was up to the city or county adopting the urban renewal plan and was a locally controlled program. There were about 100 urban renewal districts scattered throughout the State. The main reason for urban renewal's wide use was its unique financing mechanism, tax increment financing. Tax increment financing was complex in its mechanics but relatively simple in concept. When an urban renewal plan was adopted it created an urban renewal district with specific boundaries. At the time it was created the assessor certified the assessed value within the district. In the future as the total assessed value grows, the property taxes on the increase go to the urban renewal agency. The initial assessed value was called the frozen base, and the growth above that was called the incremental assessed value. For the period of time tax increment financing was used the property taxes on the incremental assessed value would go to the urban renewal agency to finance the projects and programs in the urban renewal plan. He showed a diagram of the structure. The implication was that the urban renewal agency would be motivated to produce greater assessed value in the area, although property values could only increase by 3% assessed value because of Measure 50. In order to have money to work with, agencies look for projects that resulted in taxable private development and investment and was the principle behind the program. The process began with City Council's adopting an urban renewal plan that identified the area, listed the projects eligible for financing, and stated the maximum indebtedness or expenditure limit but for interest on debt. It represented how much money could be spent on projects and administration. When City Council considered

**CITY COUNCIL REGULAR SESSION – APRIL 21, 2009**

**APPROVED MINUTES**

**Page 1 of 7**

an ordinance to adopt an urban renewal plan notice of that consideration had to go to each household in the City stating the amount of indebtedness. Some of the considerations on defining the urban renewal area were that it must be blighted and no more than 25% of land area or assessed value could be in urban renewal for cities under 50,000 population. Typical projects were infrastructure and streetscape improvements, grant or loan programs to assist property owners or developers which had to be used for capital and public facilities such as parks, city halls, and police and fire stations. There was a best practices issue related to use for public facilities with a citywide benefit that the urban renewal share of the cost should relate to the urban renewal benefit. The City could also buy land and sites for development but could not use eminent domain or condemnation. There was no duration limit to an urban renewal plan which for many jurisdictions came down to a policy matter.

**Councilor Chaimov** had heard from people that they were concerned about urban renewal districts seeming to last forever. Was it possible to put into the organic documents that extending the life of the urban renewal district would require a super majority vote of the City Council?

**Mr. Tashman** thought that was possible.

**City Attorney Monahan** agreed. It could be put into the documentation when the City created the urban renewal plan that it could also be further restricted by a Charter amendment.

**Mr. Tashman** continued this was a feasibility study, and he discussed the process for adopting an urban renewal plan. He would be looking at developing a methodology for projecting how much development could occur in the study area, develop projections, and then work with staff to develop priorities and rationales for projects in the sense of what projects in their professional opinions could forward the goals of the urban renewal plan. Priorities were a policy choice for the City Council. Staff would rank projects in terms of investment value and make suggestions. If the City Council wished to proceed with a plan a lot of public involvement was required. The Planning Commission was generally the first place where any action was taken on a plan, so a lot of issues could arise not specific to the Comprehensive Plan. The Planning Commission would look at projected development in terms of the Comprehensive Plan and if there was policy to support certain types of development followed by a recommendation to Council. Public input can either be done by an advisory committee, public meetings, or both. He had found advisory committees worked well because once the committee was knowledgeable on the issues the members could go out and talk to the public. During that process the City would provide projections to affected taxing districts on the potential impacts of urban renewal to their revenues. Mr. Tashman commented there was a bill being prepared by legislative counsel that represented some limits on urban renewal if it were to pass. When the City Council got to the ordinance adoption phase of the process all individual households within the City had to be notified. There must be a public hearing and a second hearing for adoption. He cited resources for agencies in general.

**Councilor Barnes** asked if it was good to begin planning now in preparation for an economic upswing when people wanted to begin reinvesting in Milwaukie's downtown.

**Mr. Tashman** would be able to give a better answer once the feasibility study was done. Typically planning was done for the upcycle during the economic downturn.

**Mr. Campbell** said staff will provide a presentation to Planning Commission next week similar to this. The next phase would be to look at the list of projects that have come up through the Downtown and Riverfront Plan, the TSP, and previous CIPs and looking at development opportunity sites. That would take a couple of months. It was an iterative

process about what additional tax increment would that generate, so the model would be run a number of times. Staff would come back about mid-summer.

**Councilor Stone** asked if the 60 urban renewal districts were cities and counties combined.

**Mr. Tashman** replied some counties like Clackamas did have districts, but most of them were cities. There were currently 100 districts in Oregon.

**Councilor Stone** asked if urban renewal districts were always successful and asked for an example and description of one that was not.

**Mr. Tashman** replied a classic example was the City of Eugene that created a downtown pedestrian mall in the mid-1970's just as the first regional mall opened. It eventually did work for downtown housing and offices. Coos Bay had the same experience with a pedestrian mall. These were failures in that major investments were made that did not work. A number of districts had been very successful, and most were successful to some extent. In terms of a downtown project Medford and Tualatin were highly successful as was Hillsboro. Urban renewal was a tool, and success depended on how well it was used. The City's approach of focusing on what was the real market for development in Milwaukie was a good way to proceed.

**Councilor Stone** asked if it was always the protocol that the City Council moved forward or if the question went to the voters.

**Mr. Tashman** responded the City Council had to adopt the plan with a non-emergency ordinance, so it could be referred. Tigard, Gresham, and other cities had charter provisions that it would go to a vote. In any event the ordinance had to be referable.

### **Building Safety Week**

**Mayor Ferguson** read a proclamation naming May 3 through May 9, 2009 as Building Safety Week in the City of Milwaukie.

## **CONSENT AGENDA**

**It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt consent agenda items A – E as presented:**

- A. City Council Regular Session Minutes, March 3, 2009;
- B. City Council Regular Session Minutes, March 17, 2009;
- C. Resolution 21-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Kim Hutchinson to the Public Safety Advisory Committee as the Ardenwald Neighborhood District Association Representative;
- D. Resolution 22-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing David Hedges to the Public Safety Advisory Committee as an At-Large Member; and
- E. Resolution 23-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Dick Newman to the Milwaukie Planning Commission

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

## **AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3**

**Mr. Swanson** reported this action was considered the second meeting of each month. These two amendments related to community service uses and nonconforming uses had been continued for possible City Council adoption. He recommended that the City Council continue consideration of both code amendments to the second meeting of May. He noted the City Attorney was doing some additional work on the amendments.

**Councilor Barnes** asked that Mr. Parkin comment on information he received from the Citizens Utility Advisory Board (CUAB).

**Mr. Parkin** discussed the Partnership Agreement with language regarding a plan for decommissioning of the Kellogg Treatment Plant. The Board recommended that the City Council not sign either agreement without considering the impact to utility ratepayers.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to continue the hearing on the amendments to Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to May 19, 2009. Motion passed with the following vote: Councilors Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye" and Councilor Barnes voting "no." [4:1]**

## **OTHER BUSINESS**

### **A. Amendment to Milwaukie Municipal code Chapter 12.12, Sidewalk and Street Obstructions – Ordinance**

**Mr. Salyers** provided the staff report in which the staff requested approval of an amendment to Chapter 12.12. He discussed clearances over sidewalks and streets and maintenance responsibilities by adjoining property owners to maintain right-of-way. Currently there was an ordinance in Title 10 that addressed blocking views of traffic control devices as prohibited. The current code also had a somewhat outdated process for posting property and getting authorization to lien. The new code would require adjoining property owners to maintain the right-of-way so traffic control devices were not obscured. The amendment would clearly define restrictions and requirements and removed outdated language.

**Councilor Stone** asked where the table on page 35 of the staff report came from.

**Mr. Salyers** replied it came from the City of Portland, and he included speed signs in the middle column and changed the number of feet to be more standard.

**Councilor Stone** had a question about utility poles and clear vision. She was thinking of the corner on Harvey and 36<sup>th</sup>. By the time you inched out beyond the painted crosswalk to see you are in the east bound lane. What do you do about making areas like that safer? Who was responsible?

**Mr. Salyers** replied utility poles and trees were not in this section of the code and exempt from 30-inches above sidewalk grade for a clear view. Trees and utility poles were typically exempt.

**Councilor Stone** asked if this section of the code was this complaint driven.

**Mr. Salyers** responded typically the code enforcement process was complaint driven unless the street division, police, or code enforcement identified a safety problem. The property owner would be sent a letter.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance amending Chapter 12.12, sidewalk and street obstructions to include traffic control device obstructions. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

**ORDINANCE NO. 1999:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MILWAUKIE MUNICIPAL CODE CHAPTER 12.12 SIDEWALK AND STREET OBSTRUCTIONS TO INCLUDE TRAFFIC CONTROL DEVICE OBSTRUCTIONS.**

**B. Amendments to Milwaukie Municipal Code Chapter 8.04.200, Assessment of Costs**

**City Attorney Monahan** provided the staff report in which it was requested that the City Council approve the amendments. This was a follow up to the code enforcement process. In past year the City Council considered an action regarding an abatement of a nuisance, and there was a question at the time about the prevailing interest rate for such actions. Councilor Chaimov recommended the rate set by statute which was currently 9%. The proposed amendment would state that the interest rate be that allowed under Oregon Revised Statutes (ORS). It would also clarify the public hearing process.

It was moved by Councilor Barnes and seconded by Councilor Chaimov for the first and second readings by title only of the ordinance amending Milwaukie Municipal Code Chapter 8.04.200, assessment of costs. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]

**ORDINANCE NO. 2000:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 8.04.200 ASSESSMENT OF COSTS.**

**C. Identity Theft Prevention Program Adoption – Resolution**

**City Attorney Monahan** provided the staff report in which staff requested that the City Council adopt a program within the City structure to prevent identity theft as mandated by the State and federal governments. The Program allocated responsibility to ensure appropriate steps were taken to ensure that information was protected. It spelled out employee responsibilities and required mandatory steps if any breach of security occurred.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution adopting an identity theft prevention program.

**Councilor Stone** referred to page 54 under E and reporting by the public to the City of suspected identity theft in writing. Did that include email?

**City Attorney Monahan** replied forms would be available on line.

**Councilor Stone** thought some text was missing on page 55.

**City Attorney Monahan** would look at that and recommended that as the Program had to be adopted by May 1 that the City Council do so. Staff would come back with the modification to the text.

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

#### **RESOLUTION 25-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM (ITPP) TO COMPLY WITH THE OREGON IDENTITY THEFT PROTECTION ACT (2003), THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (2003) AND THE FEDERAL TRADE COMMISSION RED FLAG RULES OF 2008 PURSUANT THERETO.**

#### **D. City Manager Performance Review and Compensation**

**Mayor Ferguson** noted a modified version had been provided during work session, and City Council agreed it was appropriate.

**It was moved by Mayor Ferguson and seconded by Councilor Stone to adopt the City Manager's performance review, to extend the employment agreement with the City Manager for another year, and to modify the City Manager's employment agreement to incorporate the changes to compensation and benefits noted in the staff report prepared by human resources base on his outstanding performance over the past year. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye." [5:0]**

**Councilor Loomis** commented the original version had included a bonus which Mr. Swanson declined although it was deserved.

#### **E. Council reports**

**Councilor Loomis** attended Homewood Park grand reopening along with Mayor Ferguson and Councilors Chaimov and Barnes.

**Councilor Stone** attended several neighborhood association meetings as well as Secret Garden Tour planning meetings. She also attended the Citizen Advisory Committee (CAC) meeting.

**Mayor Ferguson** announced the Harmony Community Campus Master Plan public workshop on April 23 and the Portland-Milwaukie Light Rail monthly meeting on April 27.

**City Attorney Monahan** announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h), litigation.

#### **ADJOURNMENT**

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

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**Mayor Ferguson** adjourned the regular session at 8:09 p.m.

*Pat DuVal*  
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Pat DuVal, Recorder

# Urban Renewal and Tax Increment Financing 101

*City of Milwaukie*

Tashman Johnson LLC

# What is Urban Renewal?



- Local government program to prevent and cure “blight” in target areas.
- Essence of blight: lack of private investment in real estate development due to specific obstacles.

# What is Tax Increment Financing?

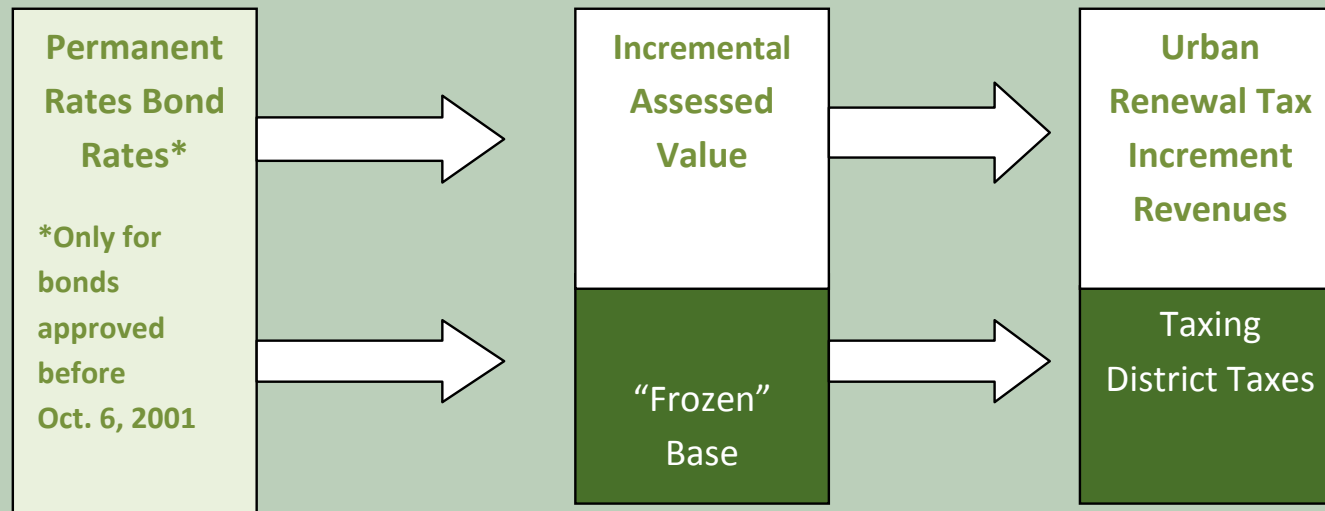


- Use of property taxes on growth in assessed value in urban renewal area to pay for urban renewal projects.
- Growth in assessed value is “incremental assessed value”. Initial assessed value is “frozen base”.

# Assessed Value in Urban Renewal Area



**Total Tax Rates**    x    **Assessed Value in**    =    **Tax Revenues**  
**Urban Renewal Area**



# Starting Urban Renewal



- Governing body adopts urban renewal plan which:
  - Defines urban renewal area
  - Authorizes urban renewal projects
  - States “maximum indebtedness”

# Urban Renewal Area



- Must be “blighted” – inadequate infrastructure, buildings unsafe or unfit, lack of public facilities.
- Can’t be more than 25% of land area or assessed value for municipalities under 50,000 population, 15% if over 50,000.

# Urban Renewal Projects



- Infrastructure.
- Development assistance.
- Public facilities that promote private investment.
- Land acquisition for redevelopment from willing sellers.

# Limits to Plan



- Maximum indebtedness equals tax increment revenue expenditures for projects and administration, everything except interest on debt.
- No duration limit required by law, but commonly is included.

# Approval Process: Planning Commission



- Must make a recommendation to governing body regarding the Urban Renewal Plan.
- Most important issue: how UR Plan conforms to Comprehensive Plan and implementing ordinances

# Comprehensive Plan Conformance Issues



- Is development projected in UR Plan permitted under Comprehensive Plan?
- Does municipality have a policy supporting public investment to promote private development?

# Adoption Process: Public Input



- Public Advisory Committee and/or
- Public meetings

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# Adoption Process: Taxing Districts



- Must provide information on the potential impacts of urban renewal to the affected Taxing Districts.

# Adoption Process: Notice to Citizens



- Must provide notice to all citizens of locality before adopting a Plan.

# Adoption Process: City Council Hearing



- Must have a public hearing on the proposed urban renewal plan. Any input from taxing districts must be considered by the City Council.
- If the decision is to adopt the Plan, this is done at a second, later City Council meeting.

# Current Issues in Urban Renewal



- Legislation being considered by 2009 Oregon Legislature SB 3056
  - Limits on maximum indebtedness
  - Sharing of tax increment revenues with overlapping taxing districts
  - Limits on increases in maximum indebtedness

# For Further Information



- Association of Oregon Redevelopment Agencies (AORA)

<http://www.orurbanrenewal.org/Resources/tabid/4074/language/en-US/Default.aspx>

- Oregon Dept. of Revenue

[http://www.oregon.gov/DOR/PTD/IC\\_504\\_623.shtml](http://www.oregon.gov/DOR/PTD/IC_504_623.shtml)

- ORS 457

Tashman Johnson LLC

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL APRIL 21, 2009

MILWAUKIE CITY HALL  
10722 SE Main Street

2052<sup>nd</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |   | Page #    |
|---|-----------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance   |           |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   | <b>1</b>  |
| <b>A. Building Safety Week May 3 – 9, 2009 -- Proclamation</b>  | <b>2</b>  |
| <b>3. CONSENT AGENDA</b> <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>   | <b>3</b>  |
| <b>A. City Council Regular Session Minutes, March 3, 2009</b>   | <b>4</b>  |
| <b>B. City Council Regular Session Minutes, March 17, 2009</b>  | <b>19</b> |
| <b>C. Resolution Appointing Kim Hutchinson to Public Safety Advisory Committee – Ardenwald Representative</b>   | <b>24</b> |
| <b>D. Resolution Reappointing David Hedges to Public Safety Advisory Committee – Member-at-Large</b>  | <b>25</b> |
| <b>E. Resolution Reappointing Dick Newman to the Planning Commission</b>  | <b>26</b> |
| <b>F. Resolution Authorizing the City Manager to Sign a Contract for the 55<sup>th</sup> Avenue and Carmel Court Water System Improvements</b>  | <b>27</b> |
| <b>4. AUDIENCE PARTICIPATION</b> <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** *(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.)*
  - A. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3 – Ordinance (Mike Swanson)**
  
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.)* **33**
  - A. **Amendment to Milwaukie Municipal Code Chapter 12.13, Sidewalk and Street Obstructions – Ordinance (Tim Salyers)** **34**
  - B. **Amendments to Milwaukie Municipal Code Chapter 8.04.200, Assessment of Costs – Ordinance (Bill Monahan)** **37**
  - C. **Identity Theft Prevention Program Adoption – Resolution (Bill Monahan)** **43**
  - D. **City Manager Performance Review and Compensation (Mayor Ferguson)** **57**
  - E. **Council Reports**
  
7. **INFORMATION**
  
8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluations of public offices and employees.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

**Stauffer, Scott**

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**From:** Kuenzi, Mike <MikeKue@co.clackamas.or.us>  
**Sent:** Monday, April 20, 2009 10:05 AM  
**To:** Milwaukie OCR  
**Subject:** Letter to Mayor Ferguson  
**Attachments:** Mayor Ferguson 04-20-09.pdf

This letter was faxed over to Mayor Ferguson this morning and emailed to Mike Swanson. I would appreciate it if someone from the Clerks office could forward this to each of the City Councilors or drop a hard copy in their mail basket. Thanks

**Michael S. Kuenzi, PE**  
Director, Water Environment Services  
Clackamas County Oregon  
Office (503) 742-4560  
Cell (503) 545-7394



Lynn Peterson  
Chair

Commissioners  
Bob Austin  
Jim Bernard  
Charlotte Lehan  
Ann Lininger

**BOARD OF COUNTY COMMISSIONERS**

April 20, 2009

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

Dear Mayor Jeremy Ferguson:

The Board of County Commissioners, acting as directors of Clackamas County Service District No. 1 (the "District"), invite you and your staff to attend an evening study session at 6:30 p.m., Monday April 27. The sole purpose of the study session is to gain a better understanding of the billing practices used to assess annual sewer unit charges to the City under the terms of the 1970 service contract and address the issue of alleged overpayment by Milwaukie which Milwaukie's city manager and others have publicly raised.

We take the City's assertion of overpayment very seriously. The Board is unanimous in believing it is in the best interests of the City, District, and region to resolve this matter as quickly as possible. The aid of an arbitration board might be necessary if we do not reach a common agreement on the facts or resolution of the issue.

The April 6, 2009 letter from Mr. Steve Wheeler discussed the findings of our professional staff. This letter will be the starting point for our work session. In particular, we will discuss the following issues:

1. What are the financial and governance terms of the 1970 agreement between the District and the City of Milwaukie?
2. Were the terms of the agreement consistently and appropriately applied between 1975-2008?
3. Were there amendments to the agreement that materially changed the way in which assessments to Milwaukie were made?
4. Were the calculations upon which annual assessment to Milwaukie made accurate?
5. Were there factors over the life of the agreement, such as regulatory mandates or technology innovations, that altered the way in which CCSD#1 calculated its assessments to Milwaukie for service?
6. Did regulatory or technology changes over the years alter, in any way, the manner in which assessments to Milwaukie were calculated or the terms of the agreement?
7. If the terms of the contract(s) appear not to have been adhered to, what is the best estimate of over or undercharges that might have occurred since 1975?

Mr. Wheeler's letter addresses most but not all of these points. To the extent desired, WES staff can provide copies of the relevant contracts and financial data to your city attorney and Mr. Swanson. Similarly, I would like to reiterate Mr. Wheeler's request for Milwaukie to deliver copies of documents Milwaukie staff used as the basis of its assertion of overpayment. Having those documents available for review and analysis by staff before the April 27<sup>th</sup> study session will allow a complete discussion of the issues.

We look forward to a full exploration of these issues at the work session on April 27. A common starting point on the facts and a forum for discussion will be a collective first step toward resolving a long-standing and difficult issue. The meeting will take place at the Development Services Building Auditorium, in Room 115 located at 150 Beaver Creek Road, Oregon City.

Sincerely yours,

Lynn Peterson  
Chair, Clackamas County Board of County Commissioners  
As the governing body of Clackamas County Service District No. 1

cc: Milwaukie City Council  
Mike Swanson, City Manager

2.

PROCLAMATIONS,  
COMMENDATIONS,  
SPECIAL REPORTS,  
AND AWARDS

# *Proclamation*

Building Safety Week 2009

May 3-9

**Whereas**, our state's continuing efforts to address the critical issues of safety, energy efficiency and sustainability in the built environment that affect our citizens, both in everyday life and in times of natural disaster, give us confidence that our structures are safe and sound, and;

**Whereas**, our confidence is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, laborers and others in the construction industry—who work year-round to ensure the safe construction of buildings, and;

**Whereas**, these guardians—dedicated members of the International Code Council—develop and implement the highest-quality codes to protect Americans in the buildings where we live, learn, work and play, and;

**Whereas**, the International Codes, the most widely adopted building safety, energy and fire prevention codes in the nation, are used by most U.S. cities, counties and states; these modern building codes also include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires and earthquakes, and;

**Whereas**, Building Safety Week is sponsored by the International Code Council and International Code Council Foundation, to remind the public about the critical role of our communities' largely unknown guardians of public safety—our local code officials—who assure us of safe, efficient and livable buildings, and;

**Whereas**, "Building Safety: Where You Live, Work and Play," the theme for Building Safety Week 2009, encourages all Americans to raise awareness of the importance of building safety; green and sustainable building; pool, spa and hot tub safety; and new technologies in the construction industry. Building Safety Week 2009 encourages appropriate steps everyone can take to ensure that the places where we live, learn, work and play are safe and sustainable, and recognizes that countless lives have been saved due to the implementation of safety codes by local and state agencies.

**Whereas**, each year, in observance of Building Safety Week, Americans are asked to consider projects to improve building safety and sustainability at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments and federal agencies in protecting lives and property.

**NOW, THEREFORE**, I, Jeremy Fergus, Mayor of the City of Milwaukie, Oregon, do hereby proclaim May 3 through May 9, 2009, as Building Safety Week. Accordingly, I encourage our citizens to join in Building Safety Week activities.

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Signature

3.

# CONSENT AGENDA

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
March 3, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2049<sup>th</sup> 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 Deborah Barnes, and Councilors Greg Chaimov, Joe Loomis, and Susan Stone.

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Finance Director Ignacio Palacios, Community Development and Public Works Director Kenny Asher.

**PLEDGE OF ALLEGIANCE**

**Mayor Ferguson** welcomed Troop 911 sponsored by Clackamas Fire District #1 who presented the colors.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**Clackamas County Fire District #1 Report**

**Fire Chief Ed Kirchhofer** said it was his pleasure to be here tonight to present an overview of the activities of the Fire District over the past year and to update the City Council on the challenges. He would give a brief presentation with an opportunity for any questions the Council may have of him. He would review the organizational structure of the District and vital statistics. They were served by the citizen Board of Directors that oversaw the activities of the Fire District and set general policy direction just as the City Council did. They were elected at-large from the citizenry of the Fire District. He provided a few vital statistics regarding the District. It was the second largest fire district in the State of Oregon. Tualatin Valley Fire and Rescue (TVFR) was the biggest. They bordered us on the west. This was an ISO Class 3 District-wide. It put this organization in the top 3% of fire departments across the nation. ISO rating classes were used to determine fire insurance premiums particularly in commercial buildings and also residential structures. To get a Class 3 district-wide was exceptional. There was a large rural area of the Fire District, and they all benefited from that Class 3 rating. All of the companies in the District were staffed with paramedics. They had over 157 sworn firefighters, and about 90% were paramedics. They were very proud of their EMS services which was a large part of what they did as an organization. They were funded by property taxes, and the permanent tax rate was \$2.40/\$1,000. In addition they had a bonded debt that totaled \$0.067/\$1,000. May 17, 2005 was a big day for the District and the City of Milwaukie. The City was annexed successfully with voter approval of 85.64%. That was pretty amazing for any question put before the voters and said something about the partnership with the City. The City Manager was very involved in the planning and campaigning and working toward educating the public. Personally he did a couple of presentations with Councilor Barnes and Councilor Stone at the time. It was a great effort. The Fire District Board of Directors was made up of citizens elected at large. One of the current Fire District Board members was Don Trotter who resided in the City of Milwaukie and was a former City Councilman.

They had 17 fire stations which sounded like a lot but when you spread it over 194 square miles they were spread pretty thin sometimes. Four of those stations served portions of the City of Milwaukie. At those stations they had 2 advanced life support (ALS) engine companies, 1 advanced life support rescue, 1 ladder truck that was a 105-foot aerial ladder, heavy rescue unit, and a battalion chief on duty 24-hours a day. The District served 194-square miles and a population of approximately 179,000 people. They provided services to 5 cities with the City of Milwaukie being one of them. At the 4 stations serving Milwaukie there were 17 fire fighters on duty today. That did not include the shift battalion chief or incident command. During 2008 they responded to 16,063 requests for emergency services. 5,004 were fire rescue responses, and 10,659 were medical in nature. That was exceptional in the trending of the types of incidents the District responded to. They were very active in trying to prevent fires. 2,092 fire inspections were conducted last year as well as 462 building plans were reviewed prior to construction. That was critical because for firefighter safety they wanted to build them better and build them safer for the public being served and for the firefighters going there for emergencies. You can see the trends illustrated in the graph. The blue bar illustrated EMS responses per year. You could see the upward trend. It was fairly consistent and continual over the last years. The fire responses were trending down slightly. That was a good thing as far as the District was concerned. It saved lives and certainly property, but it did change the face of services provided. You could see the activity for the 4 stations serving Milwaukie. The Town Center Station where his office was located in District Administration had 2,085 calls last year. The Milwaukie Station located in the Public Safety Building had 1,684 responses. The Oak Grove Station had 2,942, and the Lake Road Station had 1,347.

Chief Kirchhofer provided some highlights of the 2008 Fire District accomplishments. The Standards and Response Coverage document was updated. It was critical because they measured their performance in everything they did. When you measured performance, performance improved. They tracked response times on every call. They tracked patient outcomes. They tracked their successes. They tracked their failures to continually try to improve themselves. A remarkable accomplishment was that the Fire District was recognized as a Heart Safe Community. One community in the world was recognized every year as being a Heart Safe Community by the International Association of Fire Chiefs. Our Fire District and the communities it serves received that award last year for the impacts and changes in the EMS programs and the cardiac arrest patient survival rates. The automatic external defibrillators (AED) program has been instrumental in deploying over 150 AEDs in the community in the past 2 years. The training division was recognized by the Oregon Fire Chiefs' Association with a Meritorious Unit Citation Award for its excellence in training services. The Fire District was recognized as the District of the year by the State of Oregon by the Oregon Fire District Directors' Association. This was a very good year for the District.

The District opened its 17<sup>th</sup> station which was remarkable and demonstrated the commitment to the citizens served everywhere. The District promised to open that station upon annexation of the City of Oregon City. Not only did the District keep that promise but also opened that station 7 months earlier than it said it would. The next slide demonstrated the District's commitment to improving its fleet. Fire apparatus today was very expensive, and it took planning to replace it. Last year they took delivery of 2 new fire engines and a new water tender. They had a 20-year apparatus replacement plan. It was important to plan because a new engine today costs about \$420,000 to \$430,000. A new ladder truck can cost from \$750,000 to over \$ 1 million. That was not the kind of thing you could buy at will. The District had to plan effectively and put money away and plan for the future to buy the correct apparatus. The physician supervisor, Dr. Craig Warden, an emergency room physician at Oregon Health Sciences University (OHSU) was named the Physician Supervisor of the Year

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and Medical Director of the Year for the State of Oregon. Another big step for the District was that it was completely retooling its volunteer program. Many citizens did not know there were volunteers or volunteer opportunities. They tried to stratify and customize the volunteer program to allow opportunities for citizens to volunteer at various capacities based on several things including physical fitness, time commitment, and desire and willingness to commit more time and resources and energy to the organization. They had really been involved in expanding the chemical, biological, radiological, nuclear, and explosive program (CBERNE) which was all tied with Homeland Security through the Urban Areas Securities Initiative. Through Homeland Security they got some grant funding to have better equipment for dealing with major disasters that would not just happen as a result of a terrorist attack but could be used for day-to-day responses for major medical emergencies to prepare an out of hospital medical care point or basically a M.A.S.H. unit to deal with mass casualty incidents whether it be a transportation incident, plane down, etc. or a major hazardous material incident. They were much better prepared to deal with that today than they were previously. Another big thing they received was a \$1.26 million federal grant specifically intended to enhance firefighter staffing. That put 2 additional firefighters on duty per day in the stations serving the City of Milwaukie. They now had 4 people on per day in the Milwaukie Station and 4 people on at the Town Center Station. There was a big difference when you think they have to work in teams of 2. A 3-person engine company did not divide by 2 very well. Having a 4-person crew enabled the crew to double its efficiency and effectiveness on significant incidents. They received a major grant for doing a very large and detailed hazardous materials planning and mitigation exercise coming up this spring.

What did the future hold and the challenges? Dealing with stability of services. All of us were feeling the impacts of the economy and the slowdown of the economy. The Fire District was largely funded by property taxes. Property values were declining as well as property tax collection rates. Fewer people were able to pay their taxes than have in previous years. In the current fiscal year the District had experienced about a 1.5% lower collection rate than anticipated. Every year they anticipated what they were going to receive in property taxes. What that amounted to in dollars was about \$565,000. The good news was that they recognized that early on. They tracked collection rates and revenues from the start of the fiscal year. Once property taxes started coming in they recognized the trend. They made steps initially, and the public being served should notice no differences in the services that they receive. Planning for the future was a big focus, and they wanted to have an emphasis on prevention and education rather than intervention. What that meant was every time someone called 9-1-1 because of a fire or a fall or other type of emergency in some way they may have failed the public they served. The District goal was to intervene before the emergency happened and try to impact those increasing number of emergency responses each year. Not just in fire prevention but also EMS and rescue prevention as well.

Some community risks that they talked about. They had a bike helmet program where each year they gave away helmets to kids that did not have them. The fire apparatus carried bike helmets on the rigs. If they saw a child riding a bike without a bike helmet they would give the child a bike helmet free of charge and send them on their way. They were looking at expanding that program. These programs were funded not by taxpayer dollars but through the foundation that was a 501C(3) tax-exempt foundation funded much by employee donations and other donations. To expand to include personal flotation devices which make an impact in reducing drowning in our communities. Some major community risks that we faced. They experienced a major ammonia leak in the City of Milwaukie. Throughout the Fire District and service area there was more ammonia in refrigerated buildings than any other communities in the State of Oregon. We had the most ammonia in the area. That was going to be the

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focus of the drill coming up this spring. Obviously they were always planning for disasters. One thing they were very proud of with the 5 cities it served, each one had an updated emergency operations plan, and each plan was consistent and interacted well with the County's emergency management plan. Obviously there was also the community risk of fire. The motto at the Fire District was, "We are your friend for life." We want to help improve the quality of your life through safe practices, quick and timely response in the time of need, and that was the District motto.

**Councilor Barnes** said it was clear Chief Kirchhofer should be commended for his leadership. The firefighters had been an awesome addition to our community. They were extremely professional and went out of their way to make sure when they responded they treated people with the utmost respect. She had heard that over and over again. Please return to all of those wonderful stations and tell the folks that we really appreciate that they are part of our community.

**Chief Kirchhofer** said they heard people were the District's greatest strength. One of the things which he was most proud of was the stories you heard from people the District responded on. They commented on the kindness. The empathy. The fact that people had gone above and beyond to just make a difference.

**Councilor Chaimov** asked if the organization had a list of items that should be in household or business disaster preparedness kits.

**Chief Kirchhofer** responded it was detailed on website, and you can also call the Fire District administration where they will hook you up with that information.

**Councilor Chaimov** asked what a heavy rescue vehicle was.

**Chief Kirchhofer** replied heavy rescue had very capable equipment for extricating patients from significant entrapment problems whether it be a train derailment or an auto accident involving major impact where the patient was really pinned in. They had lighter extrication equipment on every fire engine in the Fire District. Heavy rescue had the big stuff. It was really the intense equipment. Everything from cutting torches, very heavy duty hydraulic extrication tools, spreaders, cutter, rams, the whole gamut of rescue equipment.

**Councilor Chaimov** said one of the things the City was considering was implementing an urban renewal district. He knew that urban renewal districts were not the Fire District's favorite given it did have an adverse effect on revenues. Were there things the City could do when implementing an urban renewal district that would help the Fire District cope with added businesses, added buildings, at the same the time District was not getting money to deal with them?

**Chief Kirchhofer** responded urban renewal districts and specifically tax increment financing did present challenges to emergency service agencies such as this. They were property tax funded. When the assessed value was frozen at the time of an urban renewal district being formed they did not receive any additional tax revenue to serve the new buildings, the developing buildings, the remodeled buildings. They got the same tax dollars before all that new stuff was built. Specifically, to answer Councilor Chaimov's question there were things that could help mitigate impacts such as requiring fire suppression systems and sprinkler systems in any new occupancy built in an urban renewal area. Certainly having early detection capabilities made a big difference for the District. They wanted to do everything they could to reduce the emergency response impact. That did help with emergency medical response demands and so on which one could see was the increasing trend. They did recognize the importance of urban renewal as a tool for cities. There were very few tools available for funding infrastructure projects. The District was committed to working with the cities it served and with the County to help to mitigate the impact on emergency services. The bottom

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line was they had to serve the development community as well as the other communities they served.

**Councilor Stone** commented she had never met a fireman she did not like and had an opportunity to work with firemen from the Clackamas Fire District on the Helmets Are Cool Program. They did the start up with the District through a grant from the Traffic Safety Board she was on at the time. She was glad to know it was still operational and expanding perhaps to water safety. That would be really great.

**Councilor Loomis** commented he, his family, and neighborhood really enjoyed the annual food drive every year with Santa. How much was raised this year?

**Chief Kirchhofer** replied this was a tough year for them. More than half of the parades had to be cancelled because of weather, and the demand did not go down. They were challenged this year. They had to work with other agencies as well as really relying on the fixed-site collections. They were challenged with the food boxes that normally went out and the toys did not get out until after Christmas because of the winter storm event. It impacted all of us. The requests for service almost tripled during those days.

**Councilor Stone** asked how many AED units were in place and how they were funded. How did businesses get those units?

**Chief Kirchhofer** responded the goal was to saturate the community with AEDs because early defibrillation was proven to save lives. The District's cardiac survival rates were some of the best in the country, and they were very proud of that. The AEDs were funded through grants the Clackamas Emergency Services Foundation received. The program started with a \$40,000 grant from Clackamas County through its EMS System Enhancement funds. The District administered that program. They started out with the goal of putting them in every school both public and private in the County. They offered a \$500 grant to help fund that. Then they expanded with a smaller matching grant for businesses. It started out at \$200 for certain types of business, and \$300 for a little higher risk type of business. Now they increased to a \$500 across the board grant availability. The cost of a unit today had come down to just around \$1,000, so it was about a 50% match. You were starting to see them in dental and medical offices. Certainly they were in gyms and workout facilities around the District, assembly buildings, and churches.

**Councilor Stone** asked if there were any in the City.

**Chief Kirchhofer** knew for sure there was one in City Hall and one in the public safety building. The County Sheriff had started deploying them in some of their squad cars.

**Mayor Ferguson** understood the District served a population of 179,000 and asked how many employees there were.

**Chief Kirchhofer** replied there was a total of 201 employees, and 157 were sworn firefighters.

**Mayor Ferguson** asked Chief Kirchhofer if he thought that was adequate staffing for the number of responses.

**Chief Kirchhofer** replied it was what it was. The District was proud of its level of service. Could they use more staffing? He thought any public service agency would say they could always use more staff. The goal would be to have 4 firefighters on every fire engine District-wide. That was not fiscally doable at this time.

**Mayor Ferguson** understood the heavy rescue vehicle could help in the event of a train derailment and asked what kind of relationship the District had with Union Pacific. He knew sometimes it was difficult to get a good communication line established with railroads.

**Chief Kirchhofer** replied it was actually very good. They had done some joint training in the past particularly focused toward hazardous materials response along the railroad. Sometimes they were challenged when they had working incidents along the railroad right-of-way to get train traffic shut down for long periods of time because it was an economic disaster. They often times just slowed train traffic down to 5 mph past the emergency scene and made sure everyone knew it was happening. In general the communication was pretty good with the railroad. The concern was always the early moments of an emergency being able to ensure that rail traffic was stopped if there were a car disabled on the tracks. They had to make those notifications in a hurry.

**Mayor Ferguson** asked if there was a link to the Foundation website on the District's website.

**Chief Kirchhofer** replied there was information on District programs and how to make donations on the website.

**Mr. Swanson** had been around long enough to remember when a fire district and a city not only could not talk but oftentimes had more contentious relationships than that. What we had now was a very rich relationship with CCFD#1. Some of the things Chief Kirchhofer did not mention was that the District helped the City with 2 to 3 emergency operations exercises annually. There was one person the City coordinated with. When the City did an exercise they had 5 to 10 trained firefighters who followed Milwaukie people around and helped them understand what needed to happen during an emergency exercise. Chief Kirchhofer also mentioned the Foundation. It was supported by donations; not tax dollars. Firefighters were famous for showing up at an incident and finding out that maybe someone did not have diapers or food. The Foundation had a cashbox on each of the engines with about \$100. They also extended that to the Milwaukie police supervisors' cars, so it was also covered by the District Foundation and the money was used to help people out at an incident where there was a need. The City transferred 24 employees in 1997, and at the time there was a concern about Milwaukie folks being forgotten. Many of them were now in leadership positions within the District. They were officers. Rather than being forgotten they had actually prospered. He did consulting for 5 years, and 80% of his clients were fire departments throughout the United States. We were fortunate to have the most professional and best fire and life safety provider he came across in 5 years of consulting. It was an excellent organization that people can take great pride in and also great comfort because it was there and did a great job.

**Chief Kirchhofer** did not spend a lot of time talking about the community assistance fund, but it was something they were proud to do. It was donated dollars, and no tax dollars were involved. It was a chance for the firefighters and police officers in the City of Milwaukie to have an immediate positive impact on someone in need. They did not have to call a chief officer or supervisor. Each engine company had cash available to it that they could spend to make a difference whether it was buying groceries, a cab ride, or diapers for a single-parent in need. They did that on a regular basis, and it was huge. There were no taxpayers' dollars involved. It was all donations.

**Mayor Ferguson** noted Chief Kirchhofer had made him aware of the Explorer program.

**Chief Kirchhofer** replied troop 911 was sponsored by the Fire District and provided an opportunity to young people to get involved at an early age in scouting and learning about emergency services. Those interested in continuing to look at a career in fire and emergency medical services had the option of entering the Explorer program that focused on career counseling, guidance, and exposure to various programs. Many of the candidates go on to become volunteer firefighters and eventually firefighter paramedics for the District.

## **CONSENT AGENDA**

**Councilor Stone** asked if Council would get more information related to the actual costs of the Main Street sewer main grant program.

**Mr. Campbell** understood from Councilors' comments was that the program was not generous enough. He recommended staff provide a briefing after implementation. The resolution would set a baseline to provide information to the property owners.

That was the understanding of several Councilors.

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the consent agenda as presented:**

- A. City Council Regular Session Minutes of January 6, 2009;**
- B. City Council Regular Session Minutes of January 20, 2009;**
- C. Resolution 13-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing a Grant Program to Defray Private Sewer Reconnection Costs Associated with the Main Street Sewer Main Replacement Project; and**
- D. An OLCC Application for Latitude Bar and Grill, 10608 SE Main Street, Change of Ownership.**

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

## **AUDIENCE PARTICIPATION**

**Ed Parecki**, Milwaukie business owner. The City was in the midst of proposing code changes to public area requirements. In doing some research on past items brought up before the City Council he ran into something of great concern. He looked at the meeting minutes of December 17, 2007 and looked at some of the comments made back then. He compared the meeting minutes to the video that was taken of that meeting and noticed there was a lot of information actually left out of the meeting minutes. Pertinent information. Information directly related to the items at hand. He summarized, actually took verbatim the words that were said during the meeting and compared them to the minutes at that City Council meeting. Three sentences were inserted and about a page that was left out. There were a lot of problems with seeing meeting minutes that were not accurate. The history was not recorded properly. It brought to question was this portion of the meeting left out deliberately or accidentally? It brought up questions like were there other meetings and other minutes that were left out of the public record. He was concerned that he did not have the answers to any of those questions and would like to know if anyone did. He made a copy of the one item in question. It was directly related to the public area requirements and who was paying for them. Part of the reason this was coming up was that he kept being asked the question of who would pay for the public area requirements. He did not have a good answer for that except that the City set a precedent. He provided proof of that precedent at that hearing on December 17. That evidence was left out of the meeting minutes. That was the part that was really concerning him. He provided a copy of the actual versus the stated. First of all he wanted to have the meeting minutes amended so the actual verbiage said at that meeting was part of the record so that future people looking at this and wondering what happened on December 17, 2007 will have an accurate reading of the minutes. What the Council saw before it was verbatim including interjections, ums, and ahs and everything. That came from the video recording of that meeting. For the record he offered the proof in his testimony. In the documents he provided during that testimony. The City was right now on the hook for a \$738,000 loan for public area improvements. Citizens were the ones paying for it. It was in the budget. There was no question about it. The statement made by Councilor Barnes was

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correct. The \$650,000 was relating to the purchase of the property. The purchase and sale of North Main Partners. That statement was correct but ignored the fact that the \$738,000 was something the City was paying for and would be paying for the next 23 years. The loan was applied in 2004 for \$738,000. It was a 2.08% interest rate. It was fixed for 30 months. After 30 months it went to 4% where it was at right now. It was a 25-year loan. The final draw was taken out on March 8, 2007. Two payments had been made. One for \$33,026.54 and one for \$48,788.58. The current amount owed on the loan was \$707,527. Everything he said tonight for the record could be unconditionally substantiated. He had all the records needed to show this was all true. The answer to the question of who was going to pay for the public area improvements. He thought the answer was obvious and no one wanted to admit it. He hoped the least we could do was fix the meeting minutes of December 17, 2007 for the record and start from there. He was open for questions.

**Councilor Chaimov** said given his line of work he dealt with lots of governments and lots of minutes. The minutes that this City produced were far and away more detailed and more accurate, more complete than any government he had ever seen. If there was a problem with the minutes they were provided as part of the packet for the time that they were reviewed and approved. If he saw items he thought were omitted bring them to us before they were approved. Once the Council all had a chance to read through them and use recollections of the event and approve the minutes, he considered the matter over.

**Mr. Parecki** also considered the matter over. The only reason this was coming up was that the code was being changed again. He reviewed some information from the past. Just because they were omitted and we all failed to see it did not make it right that it was omitted.

**Councilor Stone** would certainly review those minutes again and compare them. Maybe this was something the City Council needed to talk about if pertinent information and discussion was not included. She realized the minutes did not capture every single word. She thought they did try and did well in capturing the intent, if you will, of the dialogues. She would like to review the minutes and perhaps have a discussion at Council.

**Councilor Barnes** had no comments.

**Mayor Ferguson** did not know how far along we were for planning for the next meeting but in the next two meetings he would like to have something on the work session to discuss this particular topic. He wanted to specifically talk about the topic of the loan.

**Councilor Chaimov** said if there was a discussion of minutes he would like to have a discussion of minutes generally. It was an incredible waste of the city recorder's time to prepare minutes like this when you can click a button on the computer and watch everything that happened. All the legislative assembly produced was a tape log telling you who spoke in what order. There was no substance whatsoever. If you wanted to find out what you said then you go to those particular places and listen for yourself. He would just as soon have the city recorder doing things other than being a shorthand typist.

**Mayor Ferguson** thought certainly with Granicus that was very helpful to jump immediately to those points. He was not necessarily in favor of going back and modifying minutes. It was a topic he would like to review and have some more information before the next City Council meeting so he had a better idea of what was being discussed. He unfortunately did not have the experience of being on City Council when this took place.

**Mr. Swanson** would provide that information. These were verbatim minutes. He would take issue with the comment that there was an intentional omission. He would categorically state if there was an omission there was no intent. He would provide Mayor Ferguson with a recap of the North Main Village loan.

**Mr. Parecki** said most of the work was perfect but found it unusual that this clip was left out.

## **PUBLIC HEARING**

### **A. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 – Ordinance**

**Mr. Swanson** briefly discussed the proposed amendments and recommended continuing the hearing. He would bring issues back at the next meeting with additional information. Both amendments would affect the Kellogg Treatment Plan as negotiations continued.

**It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the hearing on the amendments to Milwaukie Municipal code (MMC) Section 19.321.7 and 19.321.3 to the April 21, 2009 City Council meeting. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0].**

### **B. Amend Milwaukie Municipal Code (MMC) Chapter 13.30, Reimbursement Districts**

**Mayor Ferguson** called the public hearing to order at 7:51 p.m.

The purpose of the hearing was to listen to public comment on the proposed amendments to Milwaukie Municipal Code Chapter 13.30 governing reimbursement districts.

#### Staff Report

**Mr. Palacios** provided the staff report in which staff requested a code amendment to extend the current reimbursement district from a 5-year period with a 10-year extension. The proposed amendment would establish the maximum base term at 10 years and gave City Council the ability to extend the reimbursement in 10-year increments as long as there were outstanding loans. He reviewed concurrence, fiscal impact, and work load impacts.

**Mayor Ferguson** reviewed the conduct of the hearing.

Correspondence: No additional correspondence was received.

Audience Testimony: None.

**Mayor Ferguson** closed the public hearing at 7:53 p.m.

Council Deliberations and Vote: **It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Chapter 13.30 of the Milwaukie Municipal Code governing reimbursement districts. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.”. [5:0]**

**Mr. Swanson** read the ordinance for the first and second times by title only.

**The City Recorder polled the Council: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

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**ORDINANCE NO. 1994:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.30 OF THE MILWAUKIE MUNICIPAL CODE (MMC) GOVERNING REIMBURSEMENT DISTRICTS.**

**OTHER BUSINESS**

**A. Milwaukie Municipal Code Amendments Chapter 2.10, Boards and Commissions Generally**

**City Attorney Monahan** provided the staff report and noted this was element of the ongoing code review. The proposed amendments added the word “committee” to the various sections. The changes took out reference to the Local Contract Review Board and added the Riverfront Board. Other amendments reflected current practices, technological changes, and changes to the Oregon Ethics Laws.

**Councilor Barnes** asked if the amendments also applied to the City Council.

**City Attorney Monahan** replied the Council had its own rules, and this particular chapter did not apply.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2.10, Boards and Commissions Generally. Motion passed with the following vote: Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**Mr. Swanson** read the ordinance two times by title only.

**The City Recorder polled the Council: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

**ORDINANCE NO. 1995:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER MILWAUKIE MUNICIPAL CODE CHAPTER 2.10, BOARDS AND COMMISSIONS GENERALLY.**

**B. Contract Approval for Federal Stimulus-Funded Street Improvements to Supplement the Jackson Street Bus Shelters Project**

**Mr. Asher** provided the staff report in which the City Council was requested to approve a resolution authorizing the execution of a contract with Harper Houf Peterson Righellis, Inc. for design services. This was a time-sensitive matter and was the first federal stimulus from which the City of Milwaukie might benefit, so he wanted to make sure the City Council had an understanding of the project.

**Mr. Campbell** provided a handout regarding the nearly trillion dollar American Recovery and Reinvestment Act (ARRA). There were a number of funding areas relevant to the City on a competitive basis, and on most there was no requirement for a local match. Milwaukie was not in line to be allocated any money like some larger entities. Additional money was being made available for programs such as community development block grants (CDBG) and transportation enhancement. One of the goals was to spend the money expeditiously, and there was a possibility that grant requests that were not

funded or fully-funded may have an opportunity. He discussed the various timeframes to obligate and complete expenditures. He noted obligation within a year could be a real challenge, and he discussed issues related to the Lake Road project which was greater than a year. Right-of-way acquisition in and of itself was estimated to take a year. There was a lot of uncertainty about stimulus funds that would be clarified in the upcoming months. He commented on facility and park projects for which he was still trying to find a niche. In the area of energy efficiency programs there were opportunities for vehicles and facilities, green infrastructure, and home improvements. There were community development funds for neighborhood stabilization and the COPS program which the City may wish to consider.

\$111 billion were available nationally for infrastructure and transportation including science. \$27.5 billion of that was for highways of which Oregon was allocated 1.25%, and he discussed how that was divided. \$38 million was allocated to Portland as a region, and it was decided it would be shared out. There was about \$7 million to the Clackamas County jurisdictions, and Milwaukie's share was approximately \$1 million. The number of projects was limited because of the timelines, and the Joint Policy Advisory Committee on Transportation (JPACT) was considering them this week. The City of Milwaukie was proposing \$700,000 for the Jackson Street bus shelter project to include a full streetscape and \$300,000 for the Linwood Avenue and River Road resurfacing projects.

**Councilor Stone** understood Jackson Street and the resurfacing projects were the only ones ready to go. She asked why Lake Road was not ready since it had been out there for many years.

**Mr. Asher** discussed the National Environmental Protection Act (NEPA) permitting for the Lake Road project which could take up to a year. He noted ODOT had not signed off on the design at this time. The second issue was the estimated 16-month right-of-way negotiation and acquisition process. He noted these processes could not run concurrently. The City only had this one project ready in the category of a significant economic stimulus project for the community and a number of resurfacing projects.

**Mr. Campbell** noted staff had also looked at implementing the railroad quiet zone, but that would have taken too much time as would the Monroe Street bike boulevard. He discussed environmental realities of being in the Pacific Northwest.

**Mr. Asher** had a list of other projects that included paving, projects that were cut back because of funding, and base projects like Jackson Street that could be enhanced. Milwaukie had certain financial constraints and noted the base project on Jackson would be built but it could be done with enhancements. He discussed taking advantage of an improved streetscape, the transit center improvement itself, and making use of this stimulus money. The discussions began with TriMet in 2006 and have gotten to the point that this project would be built and do away with stops and layovers on the east side of 21<sup>st</sup> Avenue. The basic project was funded and being designed, but it only went so far. The second opportunity was to do something about a downtown street and make it high quality using this kind of funding. This project was already underway, permits were minimal, there was no right-of-way, and it provided jobs and encouraged economic development. The difference between this and the base project was that although it provided nice shelters it fell short of making a great place. The enhanced project would include street lights, furniture, and underground utilities on the south side of Jackson Street. TriMet already had an engineer under contract for the base level project. He hoped to bring the enhanced package to the community on the same timeframe and build it out later this summer. TriMet was agreeable to the expansion, but there needed to be money for the additional design in the amount of about \$40,000. Mr. Palacios had expressed concerns about appropriating funds for something that was

not budgeted. Mr. Asher felt he had an obligation to look after planning and leveraging resources. The request was to approve the contract by transferring the \$40,000 and going after the federal stimulus funds for the Jackson Street shelter project.

**David Aschenbrenner**, Milwaukie, came wearing two hats. One was Budget Committee Chair, and he felt his Committee partners would be discouraged when they found out they had not been informed of any stimulus money. He asked if there was more coming. He did not really have a major problem with the money for engineering but was concerned this was making a commitment to keep Jackson as the transit center. Was there talk at one time about splitting it? He wanted to make sure the City was being careful but deferred to Mr. Swanson on this matter. He felt the Budget Review Board could be brought together quickly for a meeting to discuss the stimulus package and what may be coming later.

**Mr. Swanson** said this was only the first round of stimulus funds and suggested renaming the City as City of Milwaukie Bank in that the standards seemed to be different for the public and private sectors. When the budget was developed last spring he had not studied derivatives or sub-prime, and he was not sure we had seen the bottom of this. One of his main concerns was job creation. He took responsibility for the \$40,000 and not calling a meeting of the Budget Review Board. He did not see this as free money but as part of a responsibility to try to do something and do something quickly. He tended to consider the transit center issue in terms of what it looked like today and what it would look like in the future. He believed there had been changes. An investment of \$40,000 for \$600,000 was a good thing to do, and we should be proud to do it. Although he did not like to make many changes to the budget there was no way of knowing this would come up when the budget was adopted. This was an appropriate response.

**Mr. Asher** agreed this was certainly a commitment but was in line with policy. Jackson Street was being beautified to accommodate buses and pedestrians in line with what he heard during the Transportation System (TSP) process. One day TriMet will not make transfers on that street, but that will not be any time soon. This was the best way to make use of the street in the interim. There will be another set of bus stops when light rail is constructed, and the use of Jackson will decline. The plan is still to dis-aggregate the bus stations. This was a commitment for this street to function for that mode, and the improvements will make Jackson more attractive for other uses as well.

**Councilor Chaimov** asked if the odds were good that if by spending this \$40,000 the project would be funded.

**Mr. Asher** replied the odds were very high. There was a base project and designer who would complete the project in a few months. The north side of Jackson Street was publicly owned, and Dark Horse Comics and Key Bank owned property on the south side. Construction easements will be needed from both.

**Councilor Chaimov** asked if the beautification could continue on Main Street or west on Jackson if the project came in under budget and funds remained.

**Mr. Asher** replied it was a reimbursement program.

**Mr. Campbell** added there would be other rounds. Doing a good job with the first stimulus project or projects would make Milwaukie a better candidate in the future. The budget was generous and allowed the City to do what it would like to do on the street.

**Councilor Chaimov** asked if there was enough flexibility on the project to emphasize using local employers for the work.

**Mr. Campbell** replied it would be Davis Bacon and bid under federal standards.

**Mr. Asher** added the policy objective was under spend the money quickly, and he thought those kinds of things took a backseat. If they saw good numbers coming back, the scope would be expanded.

**Councilor Barnes** had been concerned about hanging the City out there. She was pleased to see the project would be pulled if the money were not awarded. She suggested convening the Budget Committee to look over the next round of money and possible projects. She encouraged brainstorming with groups such as the Riverfront Board to get a big picture of some the projects that could be proposed in the future.

**Mr. Asher** observed there were fewer strings with local money, and right now Milwaukie only did projects using federal money meaning it did not have projects in the queue.

**Councilor Stone** asked what the timeframe was for getting this money.

**Mr. Asher** replied when the projects were obligated and ready to go to bid.

**Mr. Campbell** replied JPACT would make its decision this week, so the City would have an answer quickly on whether to go ahead with the \$40,000 expenditure. Getting the money was on a reimbursement basis.

**Mr. Asher** added people were comfortable that the base project could be done in a couple of months this summer in a single phase. If split into two phases the schedule would lengthen.

**Councilor Stone** wondered why there was such a rush and asked when staff found out about this.

**Mr. Asher** found out within the last two weeks, and the region would vote this week. TriMet also had a timeline on the base project, but there may be a bigger project.

**Mr. Swanson** recalled the bill was signed on February 16.

**Councilor Stone** understood the City would be using the same contractor as TriMet. She was glad Key Bank and Dark Horse Comics had been contacted and asked the cost to the City for the construction easements.

**Mr. Asher** replied construction easements were temporary and did not tend to be appraised at a very high value.

**Councilor Stone** asked why TriMet was not required to do public area requirements. Why did the City have to grapple for funds?

**Mr. Asher** replied they were required to do some public area requirements at their shelters. Unlike private developers they were not adding trips to the system; they were part of the system. There will be a nicer street with the basic project. Some of this phase was coming out of regional flexible funding.

**Councilor Stone** observed they did add to the wear and tear on the streets even if they did not add trips. She wished Lake Road could be considered for future stimulus money because it was badly needed and had been on the backburner forever.

**Mr. Asher** replied Lake Road was being pushed as hard as possible. Many of the programs had not been defined yet, and there may be future projects. Right now it was about what can be built this year, and Lake Road was nowhere near that.

**Councilor Stone** wanted to see the downtown streets beautified but was not 100% behind location of transit center on Jackson Street. She feared it would never leave and would morph into having a full-blown transit center with light rail at the end of our downtown. She would like to see \$750,000 spent on something else other than beautifying streets for buses.

**Councilor Loomis** understood the project was going to happen anyway, and this would enhance it. We might as well have it look nice, and if the transit center moved, the downtown would have a nice street. He suggested sending a letter to TriMet asking it to pay half of the \$40,000. If the City committed tonight and did not get the money, would the contract go through?

**Mr. Asher** replied that if the amount was approved tonight and something went sideways on Thursday the signature process could be stopped. The City could back out. The greater risk was to get into the summer to discover the City had skipped a step because of poor project management. The City Council could certainly make that overture for the additional money but would likely receive a polite “no.” He discussed the public process.

**Councilor Loomis** suggested sending a letter in the spirit of partnership.

**Mr. Swanson** would call to find out if a letter would do any good.

**Mayor Ferguson** looked back through previous meetings regarding this project, and TriMet was agreeable to simply calling this Milwaukie rather than transit center or hub. He hoped this would help with perceptions. He discussed street trees and asked if those would be replaced 1:1. Could these be replaced with dogwood trees and would the Design and Landmarks Committee and Public Safety Advisory Committee review the street furniture choices using Crime Prevention through Environmental Design (CPTED) principles.

**Mr. Asher** replied the project would be weighed against adopted standards.

**Mayor Ferguson** referred to the scope of work on page 68 and recommended adding digital information display which was flat panel and more dynamic than LEDS. Another concern was ticket machine which the media identified as unreliable. He supported the proposed resolution and a letter from the Council seeking a cost sharing of the \$40,000.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt the resolution authorizing the City Manager to execute a design contract with Harper Houf Peterson Righellis Engineering to supplement the Jackson Street Bus Shelters Project. Motion passed with the following vote: Councilors Chaimov, Loomis, and Barnes and Mayor Ferguson voting “aye” and Councilor Stone voting “no.” [4:1].**

#### **RESOLUTION 14-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF A CONTRACT WITH HARPER HOUF PETERSON RIGHELLIS, INC., FOR DESIGN SERVICES TO SUPPLEMENT THE JACKSON STREET BUS SHELTERS PROJECT**

#### **Design and Landmarks Committee Appointment**

**Mayor Ferguson moved to appoint Frank Hemer to the Design and Landmarks Committee, and motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]**

#### **C. Council Reports**

**Councilor Loomis** along with all the other members of Council hosted the Clackamas Cities Dinner.

**Councilor Stone** would attend the light rail open house and Light Rail Steering Committee meeting.

**Councilor Chaimov** made a presentation at Clackamas Fire District #1 on the history of governance in the State of Oregon and would attend the March 11 poetry reading by Mary Szybist.

**Councilor Barnes** attended the wastewater open house. The search for the School District Superintendent continued, and she would meet with Ardenwald residents tomorrow night.

**Mayor Ferguson** attended the Clackamas Cities Dinner and wastewater open house. He would also attend the light rail open house at Rose Villa and encouraged residents to do likewise.

## **ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 9:13 p.m.

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
March 17, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2050<sup>th</sup> meeting of the Milwaukie City Council to order at 7:08 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Engineering Director Gary Parkin, Operations Director Paul Shirey, Community Services Director JoAnn Herrigel, Planning Director Katie Mangle, Senior Planner Susan Shanks, and Assistant Planner Li Alligood.

**PLEDGE OF ALLEGIANCE**

Members of Girl Scout Troop 41768 presented the colors.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**Milwaukie High School Student of the Month**

**Hannah Haugen** was recognized as the Milwaukie High School Student of the Month.

**CONSENT AGENDA**

**Councilor Stone** asked if the facilities condition assessment could be done in house, and **Mr. Swanson** understood the independent assessment would go beyond staff expertise.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda as presented:**

**Resolution 15-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract to Faithful+Gould, Inc. for Facilities Condition Assessment.**

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

**AUDIENCE PARTICIPATION**

**Bob Hatz** and **Beth Kelland** spoke on behalf of the Citizens Utility Advisory Board (CUAB). Mr. Hatz read a letter into the record dated March 17, 2009 from the Board to the Mayor and Council regarding the Board’s recommendation on the wastewater agreements with Clackamas County. After reviewing the Wholesale and Community Partnership agreements at two meetings, the Board recommended that the City Council not authorize signing the proposed documents. Treatment options should be investigated in conjunction with implementing land use action to reduce excess flows to the Kellogg Treatment Plant. Continuing operation under the existing wholesale agreement was preferable to signing the proposed agreements that obligated the City

**CITY COUNCIL REGULAR SESSION – MARCH 17, 2009**

**DRAFT MINUTES**

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for improvements of sewer systems outside and unrelated to the City. The Board did not believe affirming either agreement would be prudent.

**Ms. Kelland** agreed the City Council should not approve signing either agreement as the first priority was the ratepayers. She urged looking at other options such as Portland and Oak Lodge or purchasing the Kellogg Treatment Plant and partnering with neighbors to the east. She encouraged the City Council to adopt code that would prevent further building at the site.

## **PUBLIC HEARING**

### **Milwaukie Municipal Code Amendment ZA-09-01, Proposed Amendments to Title 19, Zoning – Ordinance**

**Mayor Ferguson** called the legislative hearing on the proposed zoning ordinance amendment , File No. ZA-09-01 to order at 7:19 p.m.

The purpose of the hearing was to consider an ordinance to adopt proposed amendments to the zoning ordinance to limit retail uses on regionally significant industrial land.

This was a legislative decision by the Council based on statewide planning goals, applicable federal or state laws or rules, any applicable plans or rules adopted by Metro, applicable Comprehensive Plan policies, and applicable provisions of implementing ordinances.

City Attorney Monahan reviewed the order of business. The City Council decision was the final decision of the City. All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submitted written comments or testified and signed the City Council Attendance sign-up sheet.

#### Conflicts of Interest

**City Attorney Monahan** asked if any member of the Council wanted to declare a potential or actual conflict of interest as defined in ORS 244. None were declared. He asked if any member of the audience wished to make any challenge to any Council member's ability to participate in the decision. There were no challenges.

#### Staff Report

**Ms. Alligood** provided the staff report. The City Council was requested to adopt the proposed amendments to Milwaukie Municipal Code (MMC) Title 19, Zoning Ordinance, with the recommended findings in support of the approval. She presented the proposed amendments to Title 19.

The City's current zoning ordinance allowed larger retail developments in mapped industrial areas than allowed by Metro Title 4, and adoption of the proposed amendments would bring MMC Title 19 into compliance. Metro concurred with the proposals as did Precision Castparts Corp. (PCC), the only affected property owner. After two public hearings, at its March 10, 2009 meeting the Planning Commission recommended City Council adoption.

Ms. Aligood provided background on Metro's role in regional planning and development that included a 20-year land supply for residential, commercial, and industrial use. She briefly discussed the Regional Framework and Functional Plans which were similar to cities' comprehensive plans and zoning ordinances. In 1995 the 2040 Growth Concept Plan was adopted in order to ensure efficient development in the urban growth boundary (UGB) by the designation of regional center, town centers, transportation corridors, light rail lines, and industrial and employment areas that encouraged certain kinds of development. It also stressed regional cooperation, and Milwaukie was at the heart. The City was designated a town center and was very accessible. She indicated the industrial and employment areas in Milwaukie and throughout the region.

The Milwaukie Comprehensive Plan recognized industrial land as the base for a balanced economy; however, it was often near transportation corridors making it also attractive to retail and commercial. She showed a map of the Metro Title 4 lands that were protected and adopted as an ancillary document to the Milwaukie Comprehensive Plan in 1999. She noted an exception was the mapped Title 4 industrial and employment areas in manufacturing (M) zones where retail and commercial uses were restricted to not more than 60,000-square feet. Although there were few mapped industrial areas in Milwaukie there were a number just outside the City limits which might be gained through annexation or some other type of growth.

In summary, the proposed amendments restricted retail outlet areas within mapped industrial areas to 5,000-square feet per individual use and 20,000-square feet for multiple trade uses on the same site bringing the code into compliance with current Title 4 restrictions. Proposed amendments were consistent with Comprehensive Plan that recognized the importance of economic development goals. The site indicated on the map was the PCC site most of which was in Portland. As she had stated earlier, this would address those areas just outside the City's current boundaries. Adoption would bring the City into compliance with Metro Title 4 goals and protect valuable industrial areas within the City.

Correspondence: None.

Testimony in support, Neutral Comments, or Testimony in Opposition: None.

Additional staff comments: City Attorney Monahan noted that a Precision Castparts representative testified at both Planning Commission hearings and was in support of the proposed amendments.

Closure of the public hearing: It was moved by Councilor Chaimov and seconded by Councilor Stone to close the public hearing. Motion passed with the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [5:0] Mayor Ferguson adjourned the hearing at 7:32 p.m.

Council discussion: None.

Council decision: **It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance amending Title 19 Zoning Ordinance to limit retail uses on regionally significant industrial land, File No. ZA-09-01 with findings. Motion passed with**

**the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye.” [5:0]**

**Mr. Swanson** read the ordinance for the first and second times by title only.

**The City Recorder polled the Council: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye.” [5:0]**

**ORDINANCE NO. 1996:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING ORDINANCE TO LIMIT RETAIL USES ON REGIONALLY SIGNIFICANT INDUSTRIAL LAND (FILE# ZA-09-01).**

LUBA appeal information

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals (LUBA) according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights. Questions may be directed to the planning department staff.

**OTHER BUSINESS**

**A. Sustainability Plan for the City of Milwaukie – Resolution**

**Ms. Herrigel** and **Mr. Shirey** provided the staff report in which the City Council was requested to adopt a Sustainability Plan for the City of Milwaukie. The City Sustainability Team (S-Team) was convened in 2007 and was made up of employees from all areas of the City. The focus of the Plan was on City buildings and equipment with the intent of getting the City’s house in order before going out to the community. The four major areas were waste reduction, energy and fossil fuel consumption, procurement, and outreach and education. She briefly reviewed the Plan format.

**Mr. Shirey** read from the section of the staff report which provided the background for and purpose of this requested action. He reviewed the overall goals identified by Ms. Herrigel and the performance measures.

**Councilor Stone** commented she was glad to see the City moving forward on this.

**Ms. Herrigel** noted one correction. Waste audits would be done once a year in March rather than once a month.

**Councilor Barnes** thanked staff for brining this together and suggested using the recycling days as a venue for educating the public.

**It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution adopting a Sustainability Plan for the City of Milwaukie. Motion passed with the following vote: Councilors Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye.” [5:0]**

**Ms. Herrigel** announced Down to Earth Day would be June 6.

**RESOLUTION NO. 16-2009:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A SUSTAINABILITY PLAN FOR THE CITY.**

**B. Council Reports**

**Councilor Stone** attended the Historic Milwaukie and Ardenwald Neighborhood Association meetings and encouraged people to get involved. She attended the Light Rail Steering Committee and reported on the FEIS process and bridge discussion. She was also concerned about neighborhood livability and costs if the light rail came in on a raised long stretch from Ochoco and Hwy 224.

**Councilor Chaimov** chaired The Chamber Public Policy Team meeting where Metro made a presentation on the high capacity transit plan. There was a link on the Metro website that looked at the options and costs and provided a feedback mechanism. He attended the Jackson Street Bus Shelter open house which was informative and helpful and commented on shelter design and amenities. He went to Chamber Day at the Capital.

**Councilor Barnes** attended the Linwood Neighborhood Association meeting and met K-9 Jag. She attended the recent CUAB meeting. The School District notified employees of a large number of requests coming in through the family support center located at Lot Whitcomb. There was a call out for personal toiletries, children's clothing, and basic food. Tomorrow she would meet with Phil Stose, a resident of dual interest area A, and Board of County Commissioners Chair Peterson and Commissioner Bernard. She would attend the regional Stand for Children meeting, the Regional Partnership meeting, and the Milwaukie Officer and Reserve Officer of the Year dinner.

**Councilor Loomis** attended the light rail open house at Rose Villa.

**Mayor Ferguson** attended the light rail open house. He was on a conference call with the League of Oregon Cities Metro Regional Team to discuss the federal stimulus package. He attended Sen. Ron Wyden's Town Hall, the Downtown Business Group meeting, Ardenwald NDA meeting, and the Jackson Street open house. Tomorrow he would volunteer for the Meals on Wheels program at Milwaukie Center.

**City Attorney Monahan** announced executive session pursuant to ORS 192.660(2)(h) for consultation with legal counsel concerning legal right and duties regarding current litigation or litigation likely to be filed and 912.660(2)(i) performance evaluations of public officers and employees.

**ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 7:54 p.m.

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Pat DuVal, Recorder

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING KIM HUTCHINSON TO THE PUBLIC SAFETY ADVISORY COMMITTEE AS THE ARDENWALD NEIGHBORHOOD DISTRICT ASSOCIATION REPRESENTATIVE.**

**WHEREAS**, a vacancy exists on the Public Safety Advisory Committee for an Ardenwald Neighborhood Association member; and

**WHEREAS**, Milwaukie Municipal Code Section 2.24.020(B) provides for appointment of members of the Milwaukie Public Safety Advisory Committee “by the council;” and

**WHEREAS**, Kim Hutchinson possesses the necessary qualifications to serve on the Committee and has indicated his desire to serve.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

**SECTION 1:** That Kim Hutchinson is appointed to the Milwaukie Public Safety Advisory Committee as the Ardenwald Neighborhood District Association representative by unanimous vote of the Milwaukie City Council on April 7, 2009.

**SECTION 2:** That his term of appointment shall commence on April 7, 2009 and expire on March 31, 2011.

**SECTION 3:** This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 21, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING DAVID HEDGES TO THE PUBLIC SAFETY ADVISORY COMMITTEE AS AN AT-LARGE MEMBER**

**WHEREAS**, a vacancy exists on the Public Safety Advisory Committee for an at-large member; and

**WHEREAS**, Milwaukie Municipal Code Section 2.24.020(B) provides for appointment of members of the Milwaukie Public Safety Advisory Committee “by the council;” and

**WHEREAS**, David Hedges possesses the necessary qualifications to serve on the Committee and has indicated his desire to serve.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

**SECTION 1:** That David Hedges is reappointed to the Milwaukie Public Safety Advisory Committee as an at-large member by unanimous vote of the Milwaukie City Council on April 7, 2009.

**SECTION 2:** That his term of reappointment shall commence April 7, 2009 and shall expire on March 31, 2011.

**SECTION 3:** This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 21, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
REAPPOINTING DICK NEWMAN TO THE MILWAUKIE PLANNING COMMISSION.**

**WHEREAS**, a vacancy exists on the Milwaukie Planning Commission; and

**WHEREAS**, Milwaukie Municipal Code Section 2.16.020(A) provides for appointment of members of the Milwaukie Planning Commission "by the council;" and

**WHEREAS**, Dick Newman possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Dick Newman is reappointed to the Milwaukie Planning Commission by unanimous vote of the Milwaukie City Council on April 7, 2009.

SECTION 2: That his term of reappointment shall commence on April 7, 2009 and shall expire on March 31, 2013.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 21, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Kenneth Asher, Community Development/Public Works Director  
Gary Parkin, Engineering Director

**From:** Zachary Weigel, Civil Engineer

**Subject:** 55<sup>th</sup> Ave. & Carmel Ct. Water System Improvements

**Date:** April 9 for April 21, 2009 Regular Session

### **Action Requested**

Authorize the City Manager to sign a contract for the construction of 55<sup>th</sup> Ave. and Carmel Ct. Water System Improvements (between King Road and Monroe Street), with Werbin West Contracting, in the amount of \$137,660.

### **History of Prior Actions and Discussions**

**June 2008:** City Council adopts the 2009-2013 Capital Improvement Plan, including the 55<sup>th</sup> Ave. and Carmel Ct. Water System Improvement project. City Council adopts the 2008/2009 Budget, including funding for the 55<sup>th</sup> Ave. and Carmel Ct. Water System Improvement project.

### **Background**

The current 2009-2013 Capital Improvement Plan identifies the 55<sup>th</sup> Avenue and Carmel Court Water System Improvement as a project to be completed in the 2008/09 fiscal year. Approximately 1180 lineal feet of existing 4" water main on 55<sup>th</sup> Ave will be replaced with 8" ductile iron water line. Also, approximately 220 lineal feet of existing 2" water main on Carmel Ct will be replaced with 6" ductile iron water line. The project includes installation of 3 fire hydrants, 32 water services, 2 water sampling stations, abandonment of an existing water line and transfer of 16 water services on Monroe Street between 52<sup>nd</sup> Avenue and 55<sup>th</sup> Avenue.

The existing 4" water line on 55<sup>th</sup> Ave. is listed as a high priority small diameter pipeline replacement project in the Milwaukie Water System Master Plan. High priority projects are those that upsize segments of water pipelines that are currently inadequate to meet existing peak day and fire flow demands. Increasing the line size on 55<sup>th</sup> Ave. provides better, more consistent peak hour water service by increasing available flow and improves fire safety by providing adequate fire flow to the neighborhood.

As part of the King Road Reconstruction project, the City of Milwaukie Public Works Operations Department constructed a water system intertie at the intersection of King Rd. and 55<sup>th</sup> Ave. The intertie project extended a new 8" waterline on 55<sup>th</sup> Ave. out of the intersection with King Rd. to prevent trenching in the new pavement when the 55<sup>th</sup> Ave. Water System Improvement was completed. As part of the design of the intertie, Engineering and Operations staff determined that the existing waterline on nearby Carmel Ct. was undersized. Although replacing the waterline on Carmel Ct. was missing from the Water Master Plan, Engineering determined that the existing line did not provide adequate service. As a result, extension of a new 6" waterline on Carmel Ct. out of the intersection with King Rd. was added to the intertie project. Because Carmel Ct. is short and the location is close to 55<sup>th</sup> Ave., Engineering added the extension of a new 6" waterline on Carmel Ct. to the 55<sup>th</sup> Avenue Water System Improvement Project.

The 55<sup>th</sup> Ave and Carmel Ct Water System Improvement project went through a competitive bidding process in accordance with Chapter 30 of the City's Public Contracting Rules. The City received 17 bids before the April 9, 2009 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer's estimate.

	<b>Contractor</b>	<b>Bid Amount</b>
1.	Werbin West Contracting	\$137,660.00
2.	HSC Harry Stanley Construction	\$142,654.00
3.	Rain Country Excavating	\$155,848.14
4.	D & A General Contracting	\$159,055.00
5.	Paul Lambson Contracting	\$164,000.00
6.	D.M. Excavating Company	\$168,385.00
7.	J.W. Underground	\$169,400.20
8.	Sonoma Pacific Construction	\$174,397.40
9.	Canby Excavating	\$177,199.00
10.	Civil Works NW	\$183,080.00
11.	Subcom Excavation & Utilities	\$183,173.58
12.	Folden Construction	\$185,810.00
13.	Excel Excavation	\$197,990.00
14.	George Schmid & Sons	\$200,143.64
15.	Dunn Construction	\$200,215.00
16.	Crestview Construction	\$216,915.00

17.	J. Ashe	\$224,116.00
***	Engineers Estimate	\$185,695.00

Selection of the Contractor was based on the lowest bid submitted in conformance with the Contract Documents. The lowest responsible bid was submitted by Werbin West Contracting, a construction firm out of Portland, Oregon. Although Werbin West does not have recent experience working with the City of Milwaukie, they are experienced in construction of water line projects similar to the 55<sup>th</sup> Ave. and Carmel Ct. Water System Improvements project having completed a number of water system construction projects for the Cities of Salem and Portland, and Tualatin Valley Water District.

Construction is expected to begin the first week of May. Time of completion for the project is 45 days, with an expected completion date at the end of June. During construction, the Contractor will maintain local access to properties within the construction limits at all times. There will be minimal disruption of traffic on Monroe St. during transfer of water services between 52<sup>nd</sup> Ave. and 55<sup>th</sup> Ave. Also, there will be minor interruptions of water service for short periods of time during transfer of water service to the new mains.

### **Concurrence**

Engineering staff coordinated with Operations on both concept and design phases of the project.

### **Fiscal Impact**

This project is a part of the 2008-09 CIP. The approved Water Fund budget includes \$156,000 for construction. The recommended bid for total construction cost for this project is \$137,660. Funding for this project is from the Water Capital and Reserve Fund.

### **Work Load Impacts**

Engineering staff will provide “in-house” inspections on this project. This will reduce the cost of the project and slightly increase the workload of the Engineering Staff.

### **Alternatives**

- 1) Do not award project (defer indefinitely)
  - If council wishes not to award the project and remove it from the CIP list.
- 2) Re-bid project without amendments
  - If council approves of the project need and design but thinks the project should be re-bid for any reason.

3) Direct Staff to modify project and re-bid

- If council does not approve of the project design and/or thinks that re-bidding could reduce cost.

Attachments

1. Resolution
2. Project Vicinity Map

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF 55<sup>TH</sup> AVENUE (KING RD TO MONROE ST) & CARMEL COURT WATER SYSTEM IMPROVEMENTS.**

**WHEREAS**, the waterlines on Carmel Court and 55<sup>th</sup> Avenue between King Road and Monroe Street are deficient in water quality and structure; and

**WHEREAS**, water system improvements were approved for funding in the 2008/2009 budget and 2009-2013 Capital Improvement Plan; and

**WHEREAS**, Werbin West Contracting is the lowest responsive and responsible bidder;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign a contract for the construction of 55<sup>th</sup> Ave (King Rd to Monroe St) and Carmel Ct Water System Improvements with Werbin West Contracting, in the amount of \$137,660.

Introduced and adopted by the City Council on April 21, 2009.

This resolution is effective on April 21, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

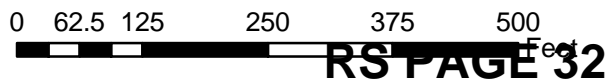
APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

Document9 (Last revised 09/18/07)

# Vicinity Map



6.  
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager  
Jo Ann Herrigel, Community Services Director

From: Tim Salyers, Code Compliance Coordinator

Subject: Amending Milwaukie Municipal Code Chapter 12.12 Sidewalk and Street Obstructions

Date: March 1, 2009

#### Action Requested

Approve an ordinance amending City of Milwaukie Municipal Code Chapter 12.12 to include traffic control devices and establishing specific guidelines for the maintenance of vegetation blocking traffic control devices.

#### Background

The City of Milwaukie's municipal code requires that vegetation in the right-of-way be maintained by the adjoining property owner. The municipal code clearly states that the adjacent property owner is to maintain vegetation over sidewalks and streets at a certain height (8 feet clearance above sidewalks and 12 feet clearance above streets), so it does not obstruct the safe passage of pedestrians and vehicles. The municipal code also requires that property owners maintain clear vision areas at intersections and other clear vision areas on their property and adjacent right-of-way for safety purposes. However, traffic control devices, such as stop signs, are not specifically addressed in these code sections. Consequently, Code staff currently has no legal authority to enforce removal of vegetation blocking the view of traffic control devices.

The only language which deals with visual obstruction of traffic control devices is found in municipal code section 10.44.030 Obstruction of traffic, which states, "no person shall place, park, deposit or leave upon any street or other public way, sidewalk or curb any article or thing or material which in any way prevents, interrupts or obstructs the free passage of pedestrian or vehicular traffic, or obstructs a driver's view of traffic or official traffic signs and signals." This particular code section is in Title 10 Vehicles and Traffic

and, unfortunately, does not clearly define vegetation growth as something that needs to be maintained.

In all the code sections in the City of Milwaukie that pertain to visual obstructions there is no clear definition of the sight distance required for traffic control devices. This new code language would clearly state the specific speeds at which a driver should be able to view a stop sign from a certain distance.

The City of Milwaukie's Streets Department currently is able to remove a small branch that is blocking a sign, but does not have the capability to do major vegetation removal.. Typically, vegetation that blocks street signs originates from the adjacent property and the City's budget is not flexible enough to maintain private property vegetation.

The City of Portland has similar regulations that require the adjoining property owner to maintain vegetation and include specific guidelines for compliance standards. Milwaukie's new code language includes some of Portland's code language and a slightly modified table that provides specific requirements for sight distance from a traffic control device.

#### Concurrence

The City of Milwaukie's Public Works and Engineering Departments have reviewed the code language and believe it is consistent with the City's polices and procedures. The City Attorney and Community Services Director have reviewed and commented on the new code language.

#### Fiscal Impact

None

#### Work Load Impacts

This new code language will not increase work load, and may actually reduce the time it takes to explain the previous, more general, code section.

#### Alternatives

Deny the code amendment and request staff to continue researching options for addressing this issue.

#### Attachments

A.) Ordinance

B.) Milwaukie Municipal Code 12.12- Strikethrough Version

ATTACHMENT A

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 12.12 SIDEWALK AND  
STREET OBSTRUCTIONS TO INCLUDE TRAFFIC CONTROL DEVICE  
OBSTRUCTIONS.**

**WHEREAS**, the City Council finds that vehicle, bicycle, and pedestrian safety are impacted by the transportation system; and

**WHEREAS**, the City Council finds that in the City of Milwaukie's Transportation System Plan, adopted by Ordinance 1975, "Safety" is goal number two; and

**WHEREAS**, the City Council finds that vegetation on private property and in the adjoining right-of-way can have an impact on the transportation system including traffic control devices; and

**WHEREAS**, the City's Municipal Code requires that vegetation be maintained by the property owner in clear vision areas and also above sidewalks and streets, but does not address vegetation obstructing the view of a traffic control device; and

**WHEREAS**, the City's Municipal Code requires that no person place an object that may block a traffic control device, but does not address a person who allows vegetation growth to obstruct the view of a traffic control device;

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

Section 1. Chapter 12.12, "Sidewalk and Street Obstructions", of the Milwaukie Municipal Code is hereby amended to read as follows:

**"CHAPTER 12.12"**

**Chapter 12.12 TRAFFIC CONTROL DEVICE, SIDEWALK AND STREET  
OBSTRUCTIONS**

**12.12.010 Overhanging vegetation in right-of-way.**

A. It is made the duty and routine obligation of all owners or occupants of land adjoining any improved right-of-way in the city to trim overhanging shrubs or trees and to remove any growth or fixed object which creates an unreasonable risk of harm to any person or property.

B. It shall be unlawful for the owner or occupant of any real property in the city to permit any tree, shrub, and any growth, or any fixed object located on the real property or the abutting right-of-way to overhang any sidewalk within the city at a height of less than eight feet; or to overhang any other traveled portion of any street or improved right-of-way within the city at a height of less than twelve feet. Trees, shrubs and any growth or fixed objects which are not trimmed or placed so as to meet these specifications shall be deemed to present an unreasonable risk of harm to persons or property.

Ordinance No. \_\_\_\_\_

**12.12.015 Visibility Standards for Traffic Control Devices**

It shall be unlawful for the owner or occupant of any real property in the city to permit any tree, shrub, or other growth, or any fixed object located on the real property or the abutting improved right-of-way to partially or wholly obstruct the visibility of any traffic control devices for drivers, bicyclists, or pedestrians. Trees, shrubs and any growth or fixed objects which are not trimmed or placed so as to meet the specifications in Table 12.12.015 shall be deemed to present an unreasonable risk of harm to persons or property. Wherever there is a conflict in traveling speed the higher speed and greater sight distance calculations shall be used.

Table 12.12.015

When the traveling speed limit is ...	Traffic Signals must be visible from ...	Stop, yield, speed, and crosswalk signs must be visible from ...	All other signs must be visible from ...
20	185'	125'	75'
25	210'	150'	90'
30	260'	200'	110'
35	310'	250'	130'
40	385'	325'	145'
45	460'	400'	165'

**12.12.020 Removal by city.**

If the owner, agent or occupant of any real property adjoining any street or sidewalk in the city fails, neglects or refuses to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property within the time designated, the city manager or designee may, for safety purposes, cause the trimming or removal to be accomplished and keep an accurate account of the cost of the labor and materials used, including legal, administrative and engineering costs, for each lot or parcel of land and shall make available a report containing such information upon the city council's request.

**12.12.025 Charges for removal by city.**

On completion of the trimming or removal by the city, the city manager or city finance director shall determine the cost as defined in Section 12.12.020. The city manager or city finance director shall send a bill for the costs, by regular mail, to the owner of the property or the owner's agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner's agent that within thirty days, the owner or owner's agent must pay the bill in full, otherwise the city's actual cost of the removal activity will be entered on to the City lien docket and assessed to the property owner at an interest rate determined by Title 3 of the Milwaukie Municipal Code.

**12.12.030 Liability of property owner.**

The owners of land adjoining any improved right-of-way in the city shall be liable to any person suffering injury by reason of failure to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. Said property owner(s) shall be liable

to the city for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by this chapter to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property.

**12.12.040 Enforcement.**

The provisions of Chapter 1.08, "Short-form Uniform Complaint and Citation Method and Code Enforcement Procedures" may be used to enforce this chapter.

**12.12.050 Violation—Penalty.**

Violation of the chapter is punishable, upon conviction, by a fine not exceeding one hundred dollars. When the violation is a continuous one, each day the violation continues to exist shall be deemed a separate violation.

Section 2. Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 3. Effective Date and Publication

This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

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

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis P.C.

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

# Attachment "B"

## Chapter 12.12 TRAFFIC CONTROL DEVICES, SIDEWALK AND STREET OBSTRUCTIONS

### 12.12.010 Overhanging ~~shrubs or trees~~ vegetation in right-of-way.

A. It is made the duty and routine obligation of all owners or occupants of land adjoining any improved right-of-way ~~street or sidewalk~~ in the city to trim overhanging shrubs or trees and to remove any growth or fixed object which creates an unreasonable risk of harm to any person or property.

B. It shall be unlawful for the owner or occupant of any real property in the city to permit any tree, shrub, and any growth, or any fixed object located on the real property or the abutting right-of-way to overhang any sidewalk within the city at a height of less than eight feet; or to overhang any other traveled portion of any street or improved right-of-way within the city at a height of less than twelve feet. Trees, shrubs and any growth or fixed objects which are not trimmed or placed so as to meet these ~~above~~ specifications shall be deemed to present an unreasonable risk of harm to persons or property.

### 12.12.015 Visibility Standards for Traffic Control Devices

It shall be unlawful for the owner or occupant of any real property in the city to permit any tree, shrub, or other growth, or any fixed object located on the real property or the abutting improved right-of-way to partially or wholly obstruct the visibility of any traffic control devices for drivers, bicyclists, or pedestrians. Trees, shrubs and any growth or fixed objects which are not trimmed or placed so as to meet the specifications in Table 12.12.015 shall be deemed to present an unreasonable risk of harm to persons or property. Wherever there is a conflict in traveling speed the higher speed and greater sight distance calculations shall be used.

Table 12.12.015

<u>When the traveling speed limit is ...</u>	<u>Traffic Signals must be visible from ...</u>	<u>Stop, yield, speed, and crosswalk signs must be visible from ...</u>	<u>All other signs must be visible from ...</u>
<u>20</u>	<u>185'</u>	<u>125'</u>	<u>75'</u>
<u>25</u>	<u>210'</u>	<u>150'</u>	<u>90'</u>
<u>30</u>	<u>260'</u>	<u>200'</u>	<u>110'</u>
<u>35</u>	<u>310'</u>	<u>250'</u>	<u>130'</u>
<u>40</u>	<u>385'</u>	<u>325'</u>	<u>145'</u>
<u>45</u>	<u>460'</u>	<u>400'</u>	<u>165'</u>

## Attachment "B"

### ~~12.12.015 Notice of overhanging trees or shrubs.~~

~~———— If the owner or occupant of any real property adjoining any street or sidewalk in the city fails to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property, it shall be the duty of the city manager, the office engineer or a designee to mail to the property owner a notice entitled "Notice to Remove Street or Sidewalk Obstruction." The notice may also be posted on the property adjoining the street or sidewalk.~~

~~———— Such notice shall direct the owner, agent or occupant of the property to immediately trim overhanging shrubs or trees and to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property according to specifications prescribed by the city. The person mailing, and if applicable, posting, the notice shall file with the city recorder an affidavit of the mailing (and posting) of such notice, stating the date, to whom the notice was addressed, the address to which the notice was mailed and place of posting, if applicable. The notice shall be sent to the last known address of the owner or agent, as shown on city or county records, and to the attention of the occupant at the property's street address. A mistake in the name of the owner or agent, or a notice sent in the name of other than the true owner or agent of such property, or any mistake in address, shall not invalidate the notice. The owner, agent or occupant of the premises shall cause the trimming or removal to be accomplished within the time specified by the notice.~~

### **12.12.020 Removal by city.**

If the owner, agent or occupant of any real property adjoining any street or sidewalk in the city fails, neglects or refuses to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property within the time designated, the city manager or designee may, for safety purposes, cause the trimming or removal to be accomplished and keep an accurate account of the cost of the labor and materials used, including legal, administrative and engineering costs, for each lot or parcel of land and shall make available a report containing such information upon the city council's request.

### **12.12.025 Charges for removal by city.**

A. On completion of the trimming or removal by the city, the city manager or city finance director shall determine the cost as defined in Section 12.12.020. The city manager or city finance director shall send a bill for the costs, by regular mail, to the owner of the property or the owner's agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner's agent that within thirty days, the owner or owner's agent must pay the bill in full, otherwise the city's actual cost of the removal activity will be entered on to the City lien docket and assessed to the property owner at an interest rate determined by Title 3 of the Milwaukie Municipal Code. ~~Upon approval by the city manager or city finance director, the owner or owner's agent may sign an agreement to pay the bill in installments. The installment program will allow applicants to make installment payments with interest for a period not to exceed five years. The city finance director shall administer the installment program and may adopt any rules, regulations or forms necessary to~~

## Attachment "B"

~~administer the program. Beginning thirty days from the date of mailing of the bill, any unpaid bill will accrue interest at the current local government investment pool rate plus a two percent administrative fee until paid.~~

~~B. Thirty days from the date of mailing of the bill, the city manager or city finance director is authorized to place a lien on the property.~~

~~C. Foreclosure proceedings may be initiated to collect any lien due for more than sixty days.~~

~~D. The city may also use any other remedies available to it to recover any unpaid bills, the interest thereon and any costs or penalties.~~

### **12.12.030 Liability of property owner.**

The owners of land adjoining any ~~improved right-of-way street or sidewalk~~ in the city shall be liable to any person suffering injury by reason of failure to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. Said property owner(s) shall be liable to the city for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by this chapter to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property.

### **12.12.040 Enforcement.**

The provisions of Chapter 1.08, "Short-form Uniform Complaint and Citation Method and Code Enforcement Procedures" may be used to enforce this chapter.

### **12.12.050 Violation—Penalty.**

Violation of the chapter is punishable, upon conviction, by a fine not exceeding one hundred dollars. When the violation is a continuous one, each day the violation continues to exist shall be deemed a separate violation.



To: Mayor and City Council  
 Through: Mike Swanson, City Manager  
 From: Pat DuVal, City Recorder  
 Bill Monahan, City Attorney  
 Subject: Amendments to Milwaukie Municipal Code Chapter 8.04.200 Assessment of Costs  
 Date: April 6, 2009 for April 21, 2009 Regular Session

#### Action Requested

Adopt an ordinance amending Milwaukie Municipal Code (MMC) Chapter 8.04.200, Assessment of Costs.

#### History of Prior Actions

- June 1964, Ordinance 1028 was adopted and included provisions for assessing abatement costs and setting the interest rate on a nuisance
- August 2008, City Council adopted Resolution 71-2008 assessing abatement costs on a nuisance, and at the time Councilor Chaimov asked that staff look into amending the interest rate
- November 18, 2008, work session update on project by City Attorney and City Recorder

#### Background

Chapter 8.04 of the Milwaukie Municipal Code addresses nuisances, and subsequent sections describe responsibilities of property owners or persons in charge and staff in the abatement process. The Council considered a resolution at its August 5, 2008, meeting that assessed abatement costs of a nuisance and entered the same on the City lien docket. Pursuant to MMC 8.04.200.D the interest rate was set at 6%<sup>1</sup>. Councilor Chaimov suggested at the time that 6% may not be an appropriate rate, and staff agreed to research the Oregon Revised Statutes. It was determined the current

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<sup>1</sup> Ordinance 1028, adopted June 29, 1964 and codified as 8.04.200

allowable interest rate under ORS 82.010, Legal Rate of Interest, was 9%.<sup>2</sup> If the proposed amendment is adopted the rate of interest on judgments in the Municipal Code would remain consistent with State Statute even though there may be fluctuations in the allowable amount. In reviewing this section of the Code the City Attorney further recommended clarifying language about how objections were filed by the property owner or person responsible and when a hearing before the Council was in order.

#### Concurrence

The proposed amendments were reviewed by the City Attorney's Office, Finance Director, Code Enforcement Division of the Community Services Department, and Municipal Court Judge Ron Gray.

#### Fiscal Impact

There would be slight increase in the amount of interest collected when abatement costs are assessed.

#### Work Load Impacts

None.

#### Alternatives

Council may decide not to adopt the proposed amendments to MMC Chapters 8.04.200.

#### Attachments

1. ORS 82.010, Legal rate of interest; effect of violation
2. Redline code sections
3. Proposed ordinance

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<sup>2</sup> 82.010 Legal rate of interest; effect of violation. (2) Except as provided in this subsection, the rate of interest on judgments for the payment of money is nine percent per annum.

## INTEREST

**82.010 Legal rate of interest; effect of violation.** (1) The rate of interest for the following transactions, if the parties have not otherwise agreed to a rate of interest, is nine percent per annum and is payable on:

(a) All moneys after they become due; but open accounts bear interest from the date of the last item thereof.

(b) Money received to the use of another and retained beyond a reasonable time without the owner's express or implied consent.

(c) Money due or to become due where there is a contract to pay interest and no rate specified.

(2) Except as provided in this subsection, the rate of interest on judgments for the payment of money is nine percent per annum. The following apply as described:

(a) Interest on a judgment under this subsection accrues from the date of the entry of the judgment unless the judgment specifies another date.

(b) Interest on a judgment under this subsection is simple interest, unless otherwise provided by contract.

(c) Interest accruing from the date of the entry of a judgment shall also accrue on interest that accrued before the date of entry of a judgment.

(d) Interest under this subsection shall also accrue on attorney fees and costs entered as part of the judgment.

(e) A judgment on a contract bearing more than nine percent interest shall bear interest at the same rate provided in the contract as of the date of entry of the judgment.

(f) The rate of interest on a judgment rendered in favor of a plaintiff in a civil action to recover damages for injuries resulting from the professional negligence of a person licensed by the Oregon Medical Board under ORS chapter 677 or the Oregon State Board of Nursing under ORS 678.010 to 678.410 is the lesser of five percent per annum or three percent in excess of the discount rate in effect at the Federal Reserve Bank in the Federal Reserve district where the injuries occurred.

(3) Except as provided in ORS 82.025, no person shall:

(a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made; or

(b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made.

(4) Any person who violates subsection (3) of this section shall forfeit the right to collect or receive any interest upon any loan for which a greater rate of interest or consideration than is permitted by subsection (3) of this section has been charged, contracted for or received. The borrower upon such loan shall be required to repay only the principal amount borrowed. [Amended by 1959 c.365 §a; 1973 c.198 §1; 1975 c.61 §1; 1977 c.791 §1; 1979 c.655 §1; 1979 c.794 §1; 1981 c.412 §1; 1987 c.215 §18; 1987 e.873 §26; 2003 c.774 §1]

## Proposed Amendments

### 8.04.200 Assessment of costs.

A. The city recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

1. The total cost of abatement including the administrative overhead;
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty days from the date of the notice;
3. That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the city recorder not more than ten days from the date of the notice.

~~B.~~ 4. If an objection is filed by the owner or person in charge of the property within ~~Upon the expiration of~~ ten (10) days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed.

~~C.~~ B. If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.

~~D.~~ C. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the ~~rate of six percent per annum~~ statutory amounts as allowed by ORS 82.010(2). Such interest shall commence to run from date of entry of the lien in the lien docket.

~~E.~~ D. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 1028 § 21, 1964)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 8.04.200 ASSESSMENT OF  
COSTS.**

**WHEREAS**, Chapter 8.04 addresses nuisances and subsequent sections outline processes and responsibilities of the affected parties including provisions for the manner in which objections are filed and costs assessed;

**WHEREAS**, it was determined clarifying language regarding the filing of objections by the owner or person in charge is desirable;

**WHEREAS**, a rate of interest allowed at statutory amounts pursuant to ORS 82.010(2) was advantageous to identifying a fixed percentage in the Milwaukie Municipal Code; and

**WHEREAS**, all other sections of Chapter 8.04.200 remain as written;

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

Section 1. Section 8.04.200.B is amended to read as follows:

4. If an objection is filed by the owner or person in charge of a property within ten (10) days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed.

Section 2. Section 8.04.200.C is amended to read as follows:

B. If the costs of the abatement are not paid within thirty (30) days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.

Section 3. Section 8.04.200.D is amended to read as follows:

C. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the statutory amounts as allowed by ORS 82.010(2). Such interest shall commence to run from date of entry of the lien in the lien docket.

Section 4. 8.04.200.E is amended to read as follows:

D. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property

Section 6. All other sections of Chapter 8.04.200 remain as written

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

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



To: Mayor and City Council  
Through: Mike Swanson, City Manager  
From: Pat DuVal, City Recorder  
Bill Monahan, City Attorney  
Subject: Adoption of Identity Theft Prevention Program  
Date: April 10, 2009 for April 21, 2009 Regular Session

#### Action Requested

Approve a resolution adopting an Identity Theft Prevention Program (ITPP) for the City of Milwaukie.

#### Summary of Relevant Facts and Other Information

Oregon's law, the Identity Theft Protection Act, specifies direction and expectations to ensure the safety of sensitive data. The law contains standards to shield Social Security Numbers, notify consumers in case of a security breach, and safeguard personal identifying information. The Department of Consumer Business Services is charged with enforcing this law as well as providing educational materials.

In addition to the Oregon law, and pursuant to the Fair and Accurate Credit Transactions Act (2003), the Federal Trade Commission in 2007 adopted Red Flag rules requiring the adoption of an identity theft prevention program ("ITPP") for covered accounts, including municipal utility accounts. By May 1, 2009, all municipal utilities that provide services for which payment is deferred until a future date (i.e., water or sewer), need to have written procedures in place to help protect consumer identity and fight theft of consumer account information. Businesses and government agencies are required to develop, implement, and maintain reasonable safeguards to ensure the security, confidentiality, and integrity of the information. Safeguarding also means properly disposing of information.

To implement both the state and federal regulations, the Records and Information Manager, who is the designated Program Administrator, will take the following steps:

- Obtain Council approval of the initial Identity Theft Prevention Program

- Ensure oversight of program development, implementation and administration as set forth in the ITPP document
- Annually report to the City Manager on the effectiveness of the program, provide an explanation of “significant events” and recommendation for programs due to evolving risks and methods of identity theft
- Train appropriate personnel to implement the program
- Oversee service provider (for example, a vendor hired to perform activities on City utility customer accounts) arrangements since the “covered entity” (in this case the City of Milwaukie) is responsible to make sure the provider has and is following a theft prevent plan (the ITPP)

The proposed resolution represents the ITPP for the City of Milwaukie. Staff will be working to continue to compile internal resource information, provide program training, and continue development of internal procedures as dictated by State and Federal laws and rules governing the program.

Other Alternatives:

Amend the proposed resolution

Attached: Proposed Resolution

Identity Theft Prevention Program document.



## Personnel and Administrative Policy and Procedure

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**SUBJECT: Identity Theft Prevention Program (ITPP)**

**Effective Date: May 1, 2009**

### **Purpose**

To set forth the purposeful protection of personal information in compliance with the Oregon Consumer Identity Theft Protection Act (2007) and the Fair and Accurate Credit Transactions (FACT) Act (2003), and to implement a Program for detection, prevention and mitigation of Identity Theft in connection with municipal utilities and other deferred payment accounts, as set forth by the Federal Trade Commission Red Flag Rules (2007).

### **Policies**

City employees are responsible for protecting personal information from unauthorized access. Access to personal information shall be restricted to a "need-to-know" basis and be available only to those individuals authorized to use such information as part of their duties and with the requirement that they keep the information confidential and use it only for authorized business purposes.

Departments that collect and store personal data shall develop written procedures to help prevent, detect, and respond to Identity Theft of consumer account information through identification of "Red Flags".

### **Definitions**

Identity Theft: The Red Flags Rule defines "Identity Theft" as "fraud committed using the identifying information of another person."

Personal or Identifying information: For these purposes personal information will be considered a person's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or data elements are not encrypted or when the data elements are encrypted and the encryption key also has been acquired, or when either the name or the data elements are not redacted:

- Social Security number
- Driver's license number or state identification card number

- Identification number issued by a foreign nation
- Passport number or other United States issued identification number
- Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.
- Date of birth
- Alien Registration Number
- Employee or Tax Identification Number
- Computer Internet Provider Protocol Address or Routing Code

Red Flags: A "Red Flag" is a pattern, practice, or specific activity that indicates the possible existence of Identity Theft, including but not limited to:

- Notification and warnings from credit reporting agencies
- Suspicious documents (i.e. documents that appear to be forged, inauthentic, or altered)
- Notice from law enforcement authorities or victims of identify theft about possible compromise of covered accounts
- Suspicious personal identifying information
- Suspicious account activity
- Unusual use of account.

## **Scope**

All City employees are required to adhere to the ITPP policies with respect to preventing Identity Theft. The policies apply both when handling City employee and/or citizen data, and include existing accounts as well as accounts to be opened that are covered under the Red Flag Rules. The ITPP guidelines, policies, and scope encompass both the State of Oregon requirements and the Red Flag requirements under the United States Code.

## **Guidelines**

- The Program shall be adopted by City Council.
- The Records and Information Management Director is designated as the Program Administrator to coordinate implementation of the ITPP Information Security Program with the Information Security Program Coordinator ("ISPC"), and the department directors.
- Each department must put in writing procedures to meet the requirements of this policy and place those procedures on file with the Program Administration as coordinator of this Program.

## **Responsibilities**

### Information Security Program Coordinator

- Monitor procedures developed by departments to ensure compliance.
- Retain procedures and make available to other employees and any citizens that may request such information.

### Department directors

- Ensure that procedures are established for all personal data as outlined under the guidelines section.

### Supervisors

- Audit department operations and note when personal data is being gathered and how it is being stored and disposed of.
  - Inventory all computers, laptops, disks and other equipment to note where and how personal data is being stored. Make sure all storage is secured.
- Scale down any collection of personal data where possible. For example employee numbers have been changed from using the last four digits of a person's social security number to a randomly generated number.
  - Audit forms and procedures to determine how the data is being collected and handled.
  - Eliminate any unnecessary collection and transmission of data.
  - Use social security numbers only for required and lawful purposes such as payroll reporting of employee taxes.
- Make sure there are proper protections and locks on all stored data whether stored in hard copy or electronic format.
- Properly dispose of any stored personal data that is no longer needed.
- Train all employees on the proper collection and storage of personal information collected by your department.

### All Employees

#### **Data Collection**

When collecting any protected personal information from an employee or citizen, implement and maintain reasonable safeguards to protect the security and confidentiality of the information. This also includes the proper disposal of information.

- Be knowledgeable of agency safeguards and follow all procedures and processes established to protect information assets and personal information.
- Protect personal information from unauthorized viewing.
- Properly secure personal information both when in use and when stored. This includes when filed electronically or in printable format (such as paper, discs, removable storage devices).
- Obtain written permission to transport personal information outside of the physical boundaries of City facilities. This includes not storing data on portable computers or storage devices that will be taken outside of City facilities, unless there is a business necessity for doing so such as the use of mobile data terminals in Police cars.
- Encrypt personal information when appropriate and feasible.
- Have a valid business purpose to send personal information over the network. Only use secure networks to transmit information.

- Have prior written approval to download personal information to any portable or removable device.
- Only use the last 4 numbers of an identifying document when possible. For example, only record the last 4 digits of the ID (such as driver's license) presented when notarizing someone's documents.
- Do not print Social Security numbers on cards or documents mailed or publicly displayed or otherwise post a social security number. Exceptions include requirements to complete and process W2s, W4s, and other records that are required by law to be made available to the public, for use of internal verification or administrative processes, for legal requirements, or for enforcing a judgment or court order.
  - Other exceptions include: Rules adopted by the courts and copies of records possessed by a court, the State court Administrator or the Secretary of State.

### **Specific Program Elements and Confidentiality**

For the effectiveness of the ITPP, the Red Flag Rule envisions a degree of confidentiality regarding the City's specific practices relating to Identity Theft detection, prevention, and mitigation. Therefore, under this Program, knowledge of such specific practices are to be limited to the ISPC or any committee formed pursuant to the Red Flag Rules, and those employees who need to know them for purposes of identifying Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general Red Flag detection, implementation and prevention practices as specifically required by the Red Flag Rules are shown in this document.

## **II. ITPP IMPLEMENTATION**

This ITPP was developed with oversight and approval of the Milwaukie City Council. It is the policy of the City of Milwaukie to protect personal information by complying with the legal authorities acknowledged above. After consideration of the size and complexity of the City's utility services operations and account systems (the "Utility"), in conjunction with the security procedures implemented earlier in response to State of Oregon and Federal rules, and particularly the nature and scope of the Utility's activities, the City Council determined that this Program was appropriate for the City of Milwaukie, and therefore adopted this Program on April 21, 2009.

### **A. Fulfilling Requirements of the Red Flags Rule**

Under the Red Flag Rule, every financial institution and creditor, in this case the City of Milwaukie as a provider and collector of fees for certain utilities, is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. Each Program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the Program is updated periodically, to reflect changes to customers or to the safety and soundness of the creditor from Identity Theft.

#### **B. Red Flags Rule Definitions Used in This Program**

“Identity Theft” and “Personal or Identifying Information” are defined at the beginning of this document under I. IMPLEMENTATION. Definitions.

According to the Red Flags Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too are to be considered creditors.”

All the Utility’s accounts that are individual utility service accounts held by customers of the utility whether residential, commercial or industrial are covered by the Rule. Under the Rule, a “covered account” is:

1. Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

“Identifying Information” is defined above under Definitions, Personal or Identifying Information”.

### **III. IDENTIFICATION OF RED FLAGS.**

In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Utility identifies the following red flags, in each of the listed categories:

#### **A. Notifications and Warnings from Credit Reporting Agencies**

##### **Red Flags**

1. Report of fraud accompanying a credit report;
2. Notice or report from a credit agency of a credit freeze on a customer or applicant;
3. Notice or report from a credit agency of an active duty alert for an applicant; and
4. Indication from a credit report of activity that is inconsistent with a

customer's usual pattern or activity.

## **B. Suspicious Documents**

### **Red Flags**

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
3. Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
4. Application for service that appears to have been altered or forged.

## **C. Suspicious Personal Identifying Information**

### **Red Flags**

1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates);
2. Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a credit report);
3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
4. Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
5. Social Security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law Social Security numbers must not be required);
8. A person's identifying information is not consistent with the information that is on file for the customer.

## **D. Suspicious Account Activity or Unusual Use of Account**

### **Red Flags**

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;
3. Account used in a way that is not consistent with prior use (example: very high activity);
4. Mail sent to the account holder is repeatedly returned as undeliverable;

5. Notice to the Utility that a customer is not receiving mail sent by the Utility;
6. Notice to the Utility that an account has unauthorized activity;
7. Breach in the Utility's computer system security; and
8. Unauthorized access to or use of customer account information.

**E. Alerts from Others**

**Red Flags**

1. Notice to the Utility from a customer, Identity Theft victim, law enforcement or other person that is has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

**IV. DETECTING RED FLAGS**

**A. New Accounts**

In order to detect any of the Red Flags identified above associated with the opening of a **new account**, Utility personnel will take the following steps to obtain and verify the identity of the person opening the account.

**Detect**

1. Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
2. Verify the customer's identity (for instance, review a driver's license or other identification cards);
3. Review documentation showing the existence of a business entity; and
4. Independently contact the customer.

**B. Existing Accounts**

In order to detect any of the Red Flags identified above for an **existing account**, Utility personnel will take the following steps to monitor transactions within an account:

**Detect**

1. Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
2. Verify the validity of requests to change billing addresses; and
3. Verify changes in banking information given for billing and payment purposes.

**V. PREVENTING AND MITIGATING IDENTITY THEFT**

In the event Utility personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag, in accordance with other department operating procedures.

### **Prevent and Mitigate**

1. Continue to monitor an account for evidence of Identity Theft;
2. Contact the customer;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify the Program Administrator for determination of the appropriate step(s) to take;
8. Notify law enforcement; or
9. Determine that no response is warranted under the particular circumstances.

### **Protect Customer Identifying Information**

In order to further prevent the likelihood of Identity Theft occurring with respect to Utility accounts, the Utility will take the following steps in conjunction with its internal operating procedures to protect customer identifying information.

1. Ensure that its website is secure or provide clear notice that the website is not secure;
2. Ensure complete and secure destruction of paper documents and computer files containing customer information;
3. Ensure that office computers are password protected and that computer screens lock after a set period of time;
4. Keep offices clear of papers containing customer information;
5. Request only the last 4 digits of Social Security numbers (if any);
6. Ensure computer virus protection is up to date; and
7. Require and keep only the kinds of customer information that are necessary for utility purposes.

### **VI. NOTIFICATION OF A BREACH**

- Employees must immediately report any suspected breach of personal information to a supervisor.
- The City must notify any affected party as to which files were affected and what personal information has been subject to a security breach.

#### **Risk Manager and HR Director:**

- In the event of a possible breach, the risk manager and HR director will in consultation with Council, investigate to determine the severity of the potential harm, including assessment of the confidential information involved, potential victims, and level of risk. An action plan will be developed based on the findings.

### **VII. PROGRAM UPDATES**

The Program Administrator will periodically review and update this Program and if necessary internal procedures to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. In doing so, the Program Administrator will consider the Utility's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in Utility's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

## **VIII. PROGRAM ADMINISTRATION**

### **A. Oversight**

Responsibility for developing, implementing and updating this Program lies with the City Manager, who will be responsible for the Program administration, for ensuring appropriate training of Utility staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

### **B. Staff Training and Reports**

Utility staff responsible for implementing the Program shall be trained with by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected. Training will occur with designated employees on a need to know basis according to job responsibilities and be documented in the personnel file upon employment, and on an on-going basis to ensure employees are kept up-to-date on new issues. Staff will provide reports to the Program and the effectiveness of the Program.

### **C. Service Provider Arrangements**

In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the Utility's Program and report any Red Flags to the Program Administrator.

### **D. Responding to Notices of Address Discrepancies.**

1. The City of Milwaukie will furnish a confirmed address to the consumer reporting agency (CRA) under the following conditions:

- The City of Milwaukie can form a reasonable belief the customer report relates to the customer in the City of Milwaukie's records.
  - The customer under review is a current customer with an active account.
  - The request involves a customer opening a new account.
  - CRA provides the request in writing.
  - Utility has established a relationship with the CRA.
2. Confirmation of address will be provided by the City of Milwaukie to CRA in writing within 14 days of request.

**E. Properly Handling Reports of Suspected Identity Theft.**

1. When a customer suspects Identity Theft, they must notify the City of Milwaukie in writing, completing the Federal Trade Commission ("FTC") Affidavit. Instructions for completion are a part of the form.
2. The Customer must submit a copy of affidavit with police report to the City of Milwaukie.
3. Customer Service staff will make a copy of the customer's photo ID and record the receipt of the documents.
4. Copies of the FTC affidavit, police report and photo ID will be submitted to the City of Milwaukie to ensure reporting to proper organizations.

**F. Conducting Information Technology Audits to Monitor Risk for Identity Theft.**

1. The City of Milwaukie will develop a Program checklist to audit and evaluate internal and external Identity Theft risk in information technology security.

**G. Ensuring the Confidentiality of Medical Records.**

1. The City of Milwaukie will treat all medical information pertaining to the customer as confidential.
2. Medical information is information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer that relates to:
  - The past, present, or future physical, mental, or behavioral health care to an individual;
  - The provision of health care to an individual; or
  - The payment for the provision of health care to an individual.
3. Medical information will not be used in the determination of a customer's eligibility for services.
4. The City of Milwaukie will not release medical information to third parties.
5. Rescue squads and government entities that require the location of citizens on ventilators for planning purposes will be provided the information upon the written permission of the customer.

**H. Disposal of records under protective procedures.**

1. The City of Milwaukie will collect and protect documents and data through the appropriate retention periods, until the time of destruction.
  - Paper including Faxes: The exposure of customer's secured information in the office will be monitored by the City of Milwaukie management. Examples are shredding any documents containing secured information before disposal and locking documents in secured storage until disposal time.
  - Electronic records will be erased.
  - Compact disks (CDs) will be broken.
2. The City of Milwaukie will maintain records of data destruction to include content, date and method of destruction.
3. monthly basis to minimize possible exposure of information as well as excess storage of records.

On a continual basis, the city shall review any new regulations or criteria on the issue of Identity Theft Prevention and make any necessary changes to the rules and procedures created to detect, prevent, and mitigate Identity Theft.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM (“ITPP”) TO COMPLY WITH THE OREGON IDENTITY THEFT PROTECTION ACT (2003), THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (2003) AND THE FEDERAL TRADE COMMISSION RED FLAGS RULES OF 2008 PURSUANT THERETO.**

**WHEREAS**, Recognizing the pervasive crime of identity theft, the State of Oregon adopted the Fair and Accurate Credit Transactions Act (FACT) (2003) and the Oregon Consumer Identity Theft Protection Act (2007); and

**WHEREAS**, in 2007 the Federal Trade Commission passed the Red Flags Rules (“Rules”) requiring businesses extending credit to establish an ITPP; and

**WHEREAS**, the Rules apply to municipalities specifically, as businesses that through their utility services and billing practices maintain personal identifying information and allow customers to defer payment until after services are delivered; and

**WHEREAS**, the City has written an ITPP policy document in response to the State and Federal mandates referenced above; and

**WHEREAS**, the initial written program must be approved by the governing body by May 1, 2009.

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

**Section 1.** This City Council hereby adopts the Identity Theft Prevention Program attached hereto as Exhibit A.

**Section 2.** This Resolution is effective immediately.

Introduced and adopted by the City Council on April 21, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



To: Mayor and City Council  
From: Human Resources  
Subject: City Manager Performance Review and Compensation  
Date: April 21, 2009

Action Requested

Add a monthly \$75 cell phone allowance, rolled directly into Mike Swanson's, City Manager, salary. Increase the monthly car allowance to \$350 and roll the car allowance into salary. Also provide a \$2,000 bonus if the City Manager meets the following conditions: 1) Takes at least two weeks of vacation in which he is only contacted by City staff or council in emergent situations, 2) The vacation time must be scheduled in at least a one-week block, and 3) The bonus will be paid once Mike has met the two-week vacation requirement.

Background

Mike continues to do an excellent job as City Manager and Council feels that his performance is fully effective in all areas. Mike has assembled an excellent staff and trusts their judgment to make decisions for their departments. He is fiscally responsible and approaches the spending of discretionary funds from a conservative perspective. The one area noted to address would be his communication with staff and with council. Staff noted they would appreciate more frequent communication with Mike. Staff requests consistent department head and one-on-one meetings. Council would also request to meet with Mike individually on a weekly basis.

The Council noted the following items are working well:

- Mike's dedication to public service and sincerely wanting to better the community.
- Mike's political insight including his ability to think strategically and foresee the upcoming issues
- High ethical standards
- His ability to assemble a high quality leadership team

Some accomplishments this past year include:

1. Continuing work on the Kellogg Treatment Plant
2. Support of the Emergency Operations Plan
3. Support of the Pond House and the Ledding Library Book Store
4. Encouraged the revitalization of downtown
5. Efforts on the Quiet Zone
6. Helped ensure the ballot for a Clackamas County Library District passed
7. The city is now in the midst of several controversial projects – including light rail and sidewalk improvement requirements. In spite of the stress caused by these issues, Mike has managed to keep the staff, the Council, and the community working together.
8. Building consensus and effective teams with external partners to define courses of action for Light Rail, Sewage Treatment, and partnering with Metro.

The Council has held goal setting sessions within the last two months and will be communicating those future goals to Mike once they have are finalized.

Concurrence

The City Attorney agrees with the above stated terms. Mr. Swanson has agreed that the proposed terms are acceptable to him.

Fiscal Impact

There is an increase cost of \$4,730/year.

Work Load Impacts

None

Alternatives

Not recognizing the excellent performance of the City Manager. This would run the risk of losing his talents and having to recruit for a new City Manager at possibly a higher rate of pay to attract someone of equal caliber.