

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
AUGUST 4, 2009**

CALL TO ORDER

Mayor Ferguson called the 2059th meeting of the Milwaukie City Council to order at 7:30 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Engineering Director Gary Parkin, Community Services Director JoAnn Herrigel, Code Compliance Coordinator Tim Salyers, and Code Compliance Assistant Sarah Lander

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Oregon Code Enforcement Officers Recognition Week Proclamation

Mayor Ferguson read a proclamation naming August 10 – 14, 2009 as Oregon Code Enforcement Officer Recognition Week and recognized Milwaukie staff Tim Salyers and Sarah Lander.

B. South Downtown Update

Mr. Asher provided an overview of the progress toward a revised South Downtown Concept Plan. He was joined by Ad Hoc Pattern Language Committee member David Aschenbrenner. Phases 2 and 3 were not quite finished and would be needed for a full-fledged report in September. He described the project area that included the new light rail station in Milwaukie and natural area connections. CES, with its holistic view, was the firm engaged to help the City design its place. He referred to the *Pattern Language for South Downtown* draft booklet and pointed out the diagram of what was emerging for the area. The pattern language talked about physical dimensions but did not give a picture of what would be built. The diagram indicated a plaza at the end of Main Street, a colonnade, the park, connection to Kellogg Creek, open space at the Cash Spot site, buildings, and a higher element like a tower visible from the northern end of Main Street. Most of the buildings would be no taller than 3 stories. There was a heavy pedestrian emphasis with auto traffic held to a minimum. There was a notion of connectivity to the light rail station which made the concept work. From CES' point of view this was an area that would be encouraged to develop in small increments. Part of the beauty was the smaller scale built by different kinds of people in an organic nature impossible to describe exactly in 2009. It was ambiguous and was a different way of working with many implementation implications. In the Plan Lake Road no longer connected to Main Street and Adams Street was closed and given over to this plan. However, the post office would appear somewhere because it was an important element of the downtown.

Mr. Aschenbrenner provided the public commentary and observations from the Group of 9 in crafting this wording. The Committee still had work to do on what some portions of the pattern language meant. Things he really liked were the terrace over the parking structure at the Cash Spot site, the walkway to McLoughlin Boulevard, and the

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APPROVED MINUTES

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colonnade. The committee was still looking for a feel of what was termed “northwest architecture”, and the connection to the light rail station was intriguing. There was a lot of talk about bike rental, maintenance, and valet to take advantage of local amenities.

Mr. Asher added volunteers were getting ready to take this out to the neighborhood and businesses, but it still needed to get to a point where it could be described for people.

Councilor Loomis asked why the City Council was not involved in the discussion groups.

Mr. Asher replied CES had some strong opinions about the composition and diversity of participants in the initial interviews. The membership was selected as spokespersons from non-political places and did not represent a constituency. Anything the citizen committee came up with would come before the City Council.

Mr. Aschenbrenner added this was not a decision-making process; it was about the pattern language. The Group of 9 reviewed the comments from the preliminary 35 interviews.

Councilor Loomis asked why it was not valuable for the City Council to understand the pattern language.

Mr. Aschenbrenner explained everyone would get involved and add to the work. It was up to the citizen committee to help explain the Plan.

Councilor Chaimov appreciated the good work.

Councilor Barnes wanted to see the draft pattern language to get more detail on what the community wanted for the purposes of Council goal setting. She asked for a future discussion on the land trust situation as it seemed key to this plan’s working. Had there been any discussion with downtown businesses and investors?

Mr. Asher replied those issues were related, and he would make sure Mr. Schmidt hit those areas when he updated the City Council in September. He would provide the booklet and noted it was not in final form.

Councilor Stone was disappointed the City Council was not involved in a discussion with CES, and she had expressed that to Mr. Schmidt at the first meeting. She felt the City Council’s ideas and visions would have been helpful. Those kinds of things could come up in goal setting, and she was disappointed an elected from the City was not represented on the group since there was a Metro Councilor. She asked how long the build-out would take because it seemed like there would need to be a target date or goal of some kind.

Mr. Asher replied this Plan would happen much more quickly if the south end light rail station was built and probably in the 5 – 10 year range. There were a lot of variables involved, and the City would have to be very active to make this happen. A lot would be market-driven by successful projects.

Councilor Stone asked how much more the City would have to spend on a subsequent contract with CES.

Mr. Asher replied the City needed to take a hard look at what had been accomplished and what still needed to be accomplished. The community including the City Council needed to get the pattern language to a place where everyone liked it. They might do something on the ground in that area. All of those things took resources. The City had been working with CES for about 1-1/2 years, and the City Council will have to make a decision after September to continue the commitment to spend more community development consulting service funds.

Councilor Stone did not realize the City would have to contract with CES for additional phases, otherwise she might have thought about it differently. It seemed like an open-ended use of taxpayer dollars. She did not want to spend another \$.5 million on a plan.

Mr. Asher agreed and wanted to note there was value in the contracts including suggestions on the light rail design.

Councilor Stone referred to staff report page 11 about restoring 25% of the boundary land surrounding the plaza to its natural state. She asked for clarification of how they came up with 25% and not more.

Mr. Asher replied in reading the draft he assumed that referred to the Kellogg for Coho project with the Creek going back to its natural state which was 25% of the perimeter.

Councilor Stone liked the idea of the terraced green roof on the parking structure on the Cash Spot site. She did not want a gargantuan structure that was an eyesore for those coming into the City. What did that mean for the parking structure?

Mr. Aschenbrenner responded they were not sure yet, but it would only be 2 floors. During business hours the parking would be limited to 1 or two hours and was not intended for use by commuters. Weekends might be treated differently. There was a suggestion that it be used for boat trailers. They did know they wanted to be able to expand the plaza and extend the space to the riverfront. There was not a lot of detail at this time.

Councilor Stone commented that when the City first contracted with CES she was concerned the firm did not look at the downtown holistically. They did walk the downtown and noted its assets, and she was pleased CES noted the plaza across the street from City Hall. She hoped they would see the downtown with two ends and a middle. She did not feel converging at one end was in the best interest of the neighborhood. She liked the notion of Milwaukie's being a walkable City. Hopefully one day there would be lots of things to walk to downtown.

Mr. Aschenbrenner commented on the colonnade design.

Mr. Asher added there was language about stone and wood and protection from the rain. There was a lot of work to be done, and the Plan was just at the point of going out to the community.

Mr. Aschenbrenner noted this pattern language set the tone of what could be done at the other end of downtown or other parts of the City. A lot of the patterns were seen everywhere and put into a form. It provided the framework for discussions.

Mr. Swanson addressed the comments by Councilors Stone and Loomis. He recalled when the group was selected after extensive interviews by CES they selected a group of 9 people who represented a diversity of perspectives. The City Council will get the final bite of the apple, and hopefully things will be honed down enough in order that a reasonable decision could be made.

Mr. Asher added this was a diverse group with disparate points of view. Now it was almost time to engage the City Council in the same kind of debates the Committee went through.

C. Smart Development Code Assessment

Ms. Mangle briefed the Council on the findings of a consultant evaluation of the City's zoning code. In 2008 the City received a Transportation Growth Management (TGM) Grant for the first phase of the project to help focus on code problems and identify alternative approaches. The work in the assessment phase would focus on residential design standards for both single- and multi-family residential; land use review criteria

and procedures; downtown standards and uses; and manufacturing zone standards and uses.

Mary Dorman, Angelo Planning Group, reviewed her qualifications and the elements of the TGM code Assistance Grant. TGM understood that codes went out of date, and the amendments were driven by community priorities and smart growth principles which were not mandated by the state. This was the first phase, and the prospects were good that Milwaukie would be funded for a second phase based on staff support and interest. She showed slides of houses that met requirements that included front doors facing the street and windows on the front façade. There was a menu of 12 design standards from which the builder had to choose 3 and included things like front porches, attached garages, and offset roof design. Other jurisdictions in the region had similar standards except for the fact that Milwaukie did not have any garage standards. The Planning Commission mentioned it would be open to looking at that in the second phase. Another issue identified by the Planning Commission had to do with new construction compatibility with the existing neighborhood. Right now the code dealt with the basics. The lot coverage standards in Milwaukie were relatively low, and people might be forced to build up. The City may want to explore other tools like building stepdowns. In terms of multi-family there were standards for the downtown zone but not in the other multi-family zones in other parts of the City. She discussed the feasibility of a multi-family design review as many other cities had. Some current regulations regarding accessory dwelling units included a burdensome process, and the Planning Commission was open to looking at that if the designs were right. The other option for flexibility was a duplex on a corner lot with an entrance facing each street. Manufacturing was straightforward, and the Comprehensive Plan supported employment. The manufacturing zone needed to be cleaned up in terms of what types of uses were allowed including transition areas. The Final issue was the Downtown Plan that has been in place for about 9 years that contained many specific requirements that were more stringent than other jurisdictions. Other communities allowed more flexibility on other uses while the market evolved. About 20% of the downtown uses were nonconforming and about 80% of the buildings were nonconforming to building standards. She suggested looking at the standards to encourage flexibility to gradually increase activity and land values.

Ms. Mangle explained the phase 2 grant would begin to identify solutions and what the City might wish to adopt. The next steps in phase 1 were to develop an action plan with the Planning Commission for City Council consideration in September. That action plan would be for the phase 2 grant that included significant community involvement.

Councilor Barnes asked why the Planning Commission identified the residential code as its highest priority. To her it would be the downtown in order to be ready when the economy turned.

Ms. Mangle replied the Planning Commission was concerned about experiences such as the residential treatment center on Balfour and wanted to be able to protect the community. The Commission did feel the downtown was a priority and wanted, like the City Council, to have high quality development and not go too far in reducing standards. She and Ms. Dorman felt there was a way to find a balance.

Councilor Stone added the City Council had seen problematic residential products come before such as disproportionate sizes, architecture, and uses such as adult foster homes in neighborhoods. That was important to look at in terms of impacts on livability and property values. She asked about Lake Oswego's variable lot coverage standards.

Ms. Dorman replied instead of a flat percentage, Lake Oswego specified a minimum footprint to deal with the issue of a mixture of lot sizes and keeping some proportions. Portland uses a similar approach.

Councilor Stone asked if other town centers were similar sizes.

Ms. Dorman felt Hollywood was comparable to Milwaukie where development was finally beginning to happen. It did not have a minimum 2-story construction but focused on being pedestrian friendly. There could be incentives for height. Lake Oswego felt similar in scale and used urban renewal funds to redevelop. Gresham was a regional center, but its Main Street had a similar feel. She discussed the Sellwood-Moreland neighborhood where pedestrian amenities were a focus. It was also less strict on height and ground floor retail.

D. Lake Road Multimodal Project Update

Mr. Parkin updated the City Council on the Lake Road Multimodal Project design. The project will be from Where Else Lane on the east end to the Oatfield Road intersection on the west end. There would be sidewalks on the south side, medians where they fit, and bio-retention facilities on the north side plus some sidewalk. He pointed out the design features of the project. The cost estimate completed as part of the 30% design plans showed a \$600,000 shortfall between the designed project and the budget. To overcome the shortfall it was decided not to touch the Oatfield Road intersection, and the existing sidewalk would be left in place from the south side of the Oatfield intersection to Guildford Drive. If the budget allowed or if the City was successful in getting a grant, those would be added back to the project. He showed a slide of a typical cross section. The right-of-way was limited to 60-feet, so the median, travel lanes, and bike lane sizes were reduced to avoid purchasing additional right-of-way. The sidewalks were generally 6-feet wide except in the area of the retaining wall. The next steps were to complete and submit the 70% plan to the Oregon Department of Transportation (ODOT) for final acceptance, and the environmental work for a categorical exemption was almost complete. The right-of-way phase will begin shortly and continue through the next year. Construction should begin fall 2010 or January 2011.

Councilor Chaimov asked if the work currently being done on Lake Road was related to this project.

Mr. Parkin replied some utility work was just beginning, and some frontage improvements were underway on Lake Road near 41st Avenue for the church driveway.

Councilor Barnes understood there would be some sidewalk on both sides of Lake Road near Rowe. She was concerned students would have to cross Lake and hoped there would be some kind of flashing light above the intersection.

Mr. Parkin discussed crosswalk improvements including blinking lights and raised crosswalks.

Councilor Barnes asked how additional traffic from Harmony Road would impact Lake Road.

Mr. Parkin responded the project added some capacity because of the turn lanes. Medians should help mitigate speeding, but this facility like the current one could handle a little more volume. Failures generally occurred at intersections, and according to estimates the current one at Oatfield would not go below a level of service (LOS) D.

Mayor Ferguson asked if there would be visibility improvements at the Shall Lane intersection as one exited onto Lake Road.

Mr. Parkin replied as the curve radius was built they would ensure plantings did not obscure vision. Much of the issue had to do with the slope.

Councilor Stone was pleased to see that the original project was down to \$4 million from \$20 million.

Mr. Parkin said the \$20 million took the original project from Kuehn Road to 21st Avenue. It had been shortened twice, but he hoped to find some savings to include the Oatfield Road portion. There would be partial sidewalks on the north side and a full run on the south side. He noted 20 year traffic projections were much less than he had anticipated and included future projects.

Councilor Stone commented on the Rowe crosswalk and planted median. In terms of possible problems for sight for pedestrians she asked Mr. Parkin if he had considered speed bumps on both sides and moving the median further down. She discussed traffic calming in school zones.

Mr. Parkin replied traffic calming would be discussed with the neighborhood. Improving the crosswalk had the effect of slowing traffic.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt consent agenda as presented:

- A. City Council Regular Session Minutes of June 2, 2009;**
- B. City Council Regular Session Minutes of June 16, 2009;**
- C. City Council Work Session Minutes of July 7, 2009;**
- D. City Council Regular Session Minutes of July 7, 2009;**
- E. OLCC Application, Rice Thai Cookery, 10614 SE Main Street, New Outlet; and**
- F. OLCC Application, Kimmy's Market, 3141 SE Harrison Street, Change of Ownership.**

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

AUDIENCE PARTICIPATION

John Otsyula, Milwaukie, addressed South Downtown planning in the context of light rail. He was an environmental scientist and national environmental policy specialist, held a Masters Degree in Public Administration, and was a business owner. The South Downtown decisions from all appearances seemed to have been made by City planning without specific input from the City Council. This impacted the same areas as light rail, and cumulative impacts needed to be considered. Both elements had been going on independently for some time. It appeared light rail was driving South Downtown planning. The same thing was going on with the Coho Initiative. This was all driven by TriMet and Metro. At the end of the day this was a democracy, and people were elected who hired staff. At the end of the day the electors would decide what they wanted. The people have not had an opportunity to vote on where they wanted light rail. People had voted the funding down twice. As a NEPA specialist he could say this was a fake public process putting the locally preferred alternative where it was now. He requested the City Council to ask staff to reconsider what it was doing otherwise there would be litigation.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

- A. Garbage Rage Increase**

Ms. Herrigel provided the staff report in which the City Council was requested to adopt a resolution increasing some residential and commercial garbage rates. Annually the haulers submitted financial information that summarized and assessed financial health and combined rate of return. The target rate by municipal code was 10%, and in 2008 it was 9.82%. Without any increases the anticipated rate of return for 2009 was 6.9% due mainly to increased Metro's tip fees and a depressed recycling market. Ms. Herrigel reviewed the proposed increases for all residential service levels, increased commercial can and cart rates, and increased drop box rates. She understood this was a difficult time to increase rates, and she felt strongly the haulers would not have brought his forward unless necessary.

Councilor Barnes understood the 6.9% was how much revenue was generated above expenses. She was concerned about pending wastewater rates and asked that the haulers come back with a new proposal. She suggested everyone should cut back.

Mr. Swanson responded the solid waste business in the state was a franchise business, and the City of Milwaukie established those franchise agreements. A franchise was a good thing both for the community and the haulers because it established a guaranteed rate of return and customers had a certainty about who provided the service. Milwaukie's ordinance provided for a rate of return from 8% to 12% with a goal of 10%. Two provisions were applicable that suggested the City also had a responsibility to require a study and determine if there was need for a change. One material change was an increase in the Metro tipping fee. It also suggested the City could initiate a study on its own. The City was bound by the ordinance, and the projection was that the rate of return would fall beneath 10%. The haulers were giving up some freedom in order to have a franchise system that gave reason and order to solid waste collection. He discussed the importance of reducing the waste stream. The City Council needed to make a decision based on its code.

Councilor Stone asked how the return on revenue was actually calculated.

Ms. Herrigel replied it was calculated on a calendar year, so the haulers anticipated costs including the increase in tipping fees in August.

Councilor Stone observed that Metro had increased its tipping fees 2 years in a row. Fuel prices were different today than they were last year. Prior to 2004 what were the average garbage bills for residents? What happened if the rates went up, and the rate of return was too high?

Ms. Herrigel would check on the rate history.

Mr. Swanson explained the rate of return range was established by code. Both parties, the customer and the hauler, gave up and gained in a franchise situation.

Mayor Ferguson asked what kind of documentation was provided to the City.

Ms. Herrigel replied the City received a detailed report from each hauler on expenses and revenues.

Mayor Ferguson asked if the roller carts helped control costs and asked if there were any public relations efforts the City could initiate.

Dave White, Oregon Refuse and Recycling Association, understood the question was one of being more efficient. He assured the City Council that the haulers worked with each community to contain costs and help the system to be more efficient. It was important for the haulers to buy and maintain equipment and have workers to drive them. It was a matter of getting through these economic times together and that the system stayed whole.

It was move by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution increasing some residential, commercial, drop box, and compactor garbage rates to reflect increases in disposal costs and decreases in recycling revenue. Councilors Stone, Loomis, and Chaimov and Mayor Ferguson voting "aye" and Councilor Barnes voting "no." [4:1]

RESOLUTION NO. 50-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INCREASING SOME RESIDENTIAL, COMMERCIAL, DROP BOX, AND COMPACTOR GARBAGE RATES TO REFLECT INCREASES IN DISPOSAL COSTS AND DECREASES IN RECYCLING REVENUES.

B. Council Reports

Councilor Stone commented on the incredible volunteer effort that went into making a successful Milwaukie Daze event.

Councilor Barnes reported there would be more information to the public soon on wastewater issues.

Mayor Ferguson echoed Councilor Stone's remarks about Milwaukie Daze and particularly thanked Alicia Hamilton, Tamara Huber, and Beth Ragel. He encouraged people to complete the Clackamas County Fire District's online survey on open burning. He read a list of upcoming events in the community.

Mayor Ferguson announced executive session pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

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 9:42 p.m.



Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL AUGUST 4, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2059th MEETING

REGULAR SESSION – 7:30 p.m.

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| B. South Downtown Update (Kenny Asher) | 3 |
| C. Smart Development Code Assessment (Katie Mangle) | 20 |
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| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 52 |
| A. City Council Regular Session Minutes of June 2, 2009 | 53 |
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| C. City Council Work Session Minutes July 7, 2009 | 66 |
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| E. OLCC Application, Rice Thai Cookery, 10614 SE Main Street, New Outlet | 73 |
| F. OLCC Application, Kimmy's Market, 3141 SE Harrison Street, Change of Ownership | 74 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |

5. **PUBLIC HEARING** *(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.)*

None scheduled.

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **75**

- A. **Garbage Rate Increase – Resolution (JoAnn Herrigel)** **76**
B. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

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

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS

PROCLAMATION

WHEREAS, Code Enforcement Officers provide for the safety, health and welfare of the citizens in the community through the enforcement of the county or city's codes or ordinances dealing with such issues as building, zoning, housing, animal control, environmental and health and life safety; and

WHEREAS, Code Enforcement Officers often do not receive recognition for the job that they do in improving living conditions for residents and the appearance of neighborhoods; and

WHEREAS, Every day, assisted by support and program staff, they attempt to provide quality customer service to the public for the betterment of the community; and

WHEREAS, Too many times, their success stories and ability to achieve corrective action goes unnoticed, even though code compliance has been accomplished due to their efforts and expertise; and

WHEREAS, Code Enforcement Officers are dedicated, well trained, and highly responsible individuals who take their jobs seriously and are proud of their office and the local governments which they serve; and

WHEREAS, The Oregon Code Enforcement Association, known as OCEA, has requested that the second week of August 2009 be set aside by local governments to honor and recognize their Code Enforcement Officers.

NOW, THEREFORE, I, Jeremy Ferguson, by virtue of the authority vested in me as Mayor of the City of Milwaukie in the State of Oregon do hereby proclaim the week of August 10 through 14 as

Oregon Code Enforcement Officers Recognition Week

And ask our citizens to join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand this
4th day of August 2009.

Jeremy Ferguson, Mayor



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Community Development and Public Works Director

Subject: Update on South Downtown Planning

Date: July 22, 2009 for the August 4th Regular Meeting

Action Requested

None. This item is to provide Council with an overview of progress toward a revised South Downtown Concept Plan, and to gather questions and comments in preparation for an upcoming presentation to the Council by the Center for Environmental Structure (CES), the project consultant. Staff does seek to remind the Council of prior planning decisions to vacate Main Street south of Adams Street and to vacate Adams Street between Main and 21st (see Attachment 1, as adopted by Ordinance 1880, September 2000). The closure of these streets is assumed in both the South Downtown and Portland-to-Milwaukie light rail planning processes.

History of Prior Actions and Discussions

August 2008 – Approval of South Downtown phases two and three under the direction of the Center for Environmental Structure (Resolution 78-2008)

May 2008 – Selection of Lake Road as the future Milwaukie light rail station location (Resolution 51-2008).

April 2008 – Approval of first phase of work with the Center for Environmental Structure for studying the south downtown area and Milwaukians' hopes and aspirations for the area (Resolution no. 28-2008).

March 2008 – Work Session discussion to consider staff's intention to move the South Downtown planning effort to the next stage of development.

November 2007 – Work Session discussion to review a preliminary concept plan created by Gast-Hillmer urban design.

April 2007 – Work Session discussion to solicit council ideas for South Downtown.

November 2006 – Work Session discussion regarding the Cash Spot, Robert Kronberg Park and the need for coordinated planning at the south end of downtown.

Background

In the spring of 2008, the City of Milwaukie began working with the Center for Environmental Structure to better understand the redevelopment potential of the South Downtown Area, roughly including the area between Washington Street and Kellogg Lake, 21st Avenue to the east and McLoughlin Boulevard to the west. CES was selected from a large field of interested consultants because of the firms' long track record and experience with conducting innovative and context-sensitive planning and design processes. CES proposed a three-phased approach for answering the City's questions about the validity of the South Downtown Concept Plan. Council approved the first three phases of work in 2008. The first phase evaluated the south downtown area and a preliminary concept plan that was prepared in 2007, and included interviews with 35 people in Milwaukie to discover what was most cherished by the community in the downtown environment.

The second and third phases are approaching a close. In these phases, the following work was undertaken:

1. Generating a pattern language based on the information gathered from Milwaukie community members
2. Diagnosing the South Downtown area with the community to call out (with great specificity), the spots that need to be protected and those that need to be enhanced or repaired.
3. Designing a new concept plan based on the work in 1 and 2 above.
4. Drafting a guidebook for implementing the new concept plan.

Additionally, CES created a model and a diagram to experiment with the patterns in the pattern language, and to illustrate how the patterns might become built forms over time.

Spatially, the revised South Downtown concept plan features a plaza at the south end of Main Street, defined to the east by a long colonnade, open to the river views to the west, and connected to the light rail station by pathways. Adams Street and Main Street south of Adams are closed, as was adopted in 2000 with the Downtown and Riverfront Framework Plan Public Area Requirements, General Circulation Requirements. The buildings are 1-3 stories tall, and the uses are imagined to range from service retail, to live/work, to workshops and housing.

This update is to familiarize the council with the work from the past year, and to generally introduce the emerging concept. A complete update will be provided to Council by Randy Schmidt of CES within the next month or two, when the work products are complete.

Creating the Pattern Language

Attachment 2 summarizes the Pattern Language for the South Downtown area. It includes the Table of Contents, which lists the 13 Major Patterns, and a five page essay called "What Is a Pattern Language?" Rather than include the entire Pattern Language document, which will be available at the next presentation, staff recommends Council review these short summaries to begin digesting the non-traditional planning and design process that CES is employing in Milwaukie. The essay is particularly helpful for understanding what the Pattern Language is, how it's supposed to work, and how it should be used.

The Pattern Language was created in three major stages. Initially, CES interviewed more than 30 people with strong Milwaukie ties, eliciting their deepest feelings about downtown – the good, bad, etc. Next, CES translated this information and the firms' analysis of the South Downtown's physical space itself (i.e. the actual, geometrical shape of the land and buildings) into a draft Pattern Language for the South Downtown. Then, over two weekends in the spring of 2009, a committee of nine interviewees, along with CES and city officials, went through the patterns, one-by-one, asking

1. What elements of the pattern need further explanation?
2. How does this pattern support your hopes for Milwaukie?
3. What cautions do you have about the application of this pattern in the South Downtown?

After the group finished this work, CES compiled the responses to these questions and reformulated the Pattern Language, including a new section at the end of the document listing questions that can only be answered later, as the area develops.

Creating the "Armature" Model and Diagram

As the Pattern Language was being developed, CES created sketches and diagrams to experiment with the ideas in the Pattern Language. The firm also created a small working model that helped make visible the configurations that were being written and talked about. This model is referred to as the "armature." An armature is a skeletal framework on which plaster or clay sculptures are made, and similarly in this case, a system of streets, open spaces and fixed elements on which development can occur. A diagram showing the armature is included as Attachment 3.

Although the model and diagram are very incomplete, they are beginning to show how the development of the plaza, streets and buildings can create the qualities described in the Pattern Language. Even in this incomplete state, the model/diagram begins to provide a sense of the place as imagined. The whole idea is to create a coherent and beautiful whole that is built up gradually over a period of years.

Coordinating with Light Rail

During the same timeframe, CES has been instrumental in helping the City understand how early designs for light rail were being conceived for the south downtown area. At the City's request, CES has taken an active role in helping the City advocate for the best possible light rail design in the south downtown area. Thus far, that advocacy has helped Milwaukie reduce the size and height of the Kellogg/McLoughlin bridge structure, reconfigure the recommended platform arrangement at the downtown Milwaukie station (from a center platform to a side platform design)¹, and solicit a possible transfer of Union Pacific right-of-way to the project to allow the South Downtown to include new buildings on land that is currently unbuildable because of Union Pacific ownership.

CES contributions to the light rail project have been immensely valuable for the City, and are crucial to the realization of the South Downtown concept plan that is emerging.

Grappling with Implementation

The Pattern Language not only describes what is desired for the South Downtown, but how the desired elements should be built. It is immediately apparent, and is in fact noted, that the customary arrangement of real estate, capital and commercial construction will not deliver what Milwaukie wants for the South Downtown. CES has been working on an implementation strategy that begins to explain how the plan can become real. One idea is the creation of a land trust that would assemble the south downtown property and control its development to protect the area from development that would violate the spirit of what's being planned. Money flows, work flows and social questions all arise as one contemplates implementing the South Downtown plan as it is emerging. CES is still working on the Implementation Strategy document. Staff will of course review and share it when it is complete.

Concurrence

Although there is no action with which to concur, staff would point out the groups that CES has been working closely with. For starters, the nine people who have volunteered more than 40 hours each, are very much in support of the plan that is developing. Although they have questions about it still, the nine (David Aschenbrenner, Lisa Batey Scott Churchill, Carlotta Collette, Mark Gamba, Jeff Klein, Mike Miller, Dion Shepard and Sara Smith) are engaged with the work and are preparing to share it with their neighborhoods. CES has also met and shared the Pattern Language with TriMet light rail project staff, including the consulting architects on the light rail project, and that coordination continues under the management of the City's Community Development/Public Works Director. The draft Pattern Language document has also been shared with the City's urban renewal feasibility consultants. Three members of the

¹ This recommended change has not yet been approved by the light rail project committees, although it has received a favorable response from TriMet design staff. A final decision is expected in August.

Pattern Language committee are on the Planning Commission, two are on the budget committee, and one is on the Arts Committee. This fall, if Council is supportive, the idea is to share the plans with all of the City's NDAs.

Fiscal Impact

None, as no action is being requested. CES is under contract to complete phases 2 and 3 by the end of November. Continuing the planning effort will require a new contract, but Council is not being asked to consider a new contract at this time. Instead, staff is focused on bringing Council up to speed on the project, finishing the current phases, and considering possibilities for building on the work in the current fiscal year.

Work Load Impacts

The South Downtown planning effort is one of a handful of high priority Community Development work areas, along with Portland-to-Milwaukie light rail, the Kellogg plant/Riverfront issue, the Kellogg-for-Coho Initiative, the Jackson Street project and the NE Milwaukie sewer extension project.

Alternatives

Not applicable at this time.

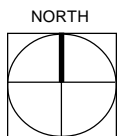
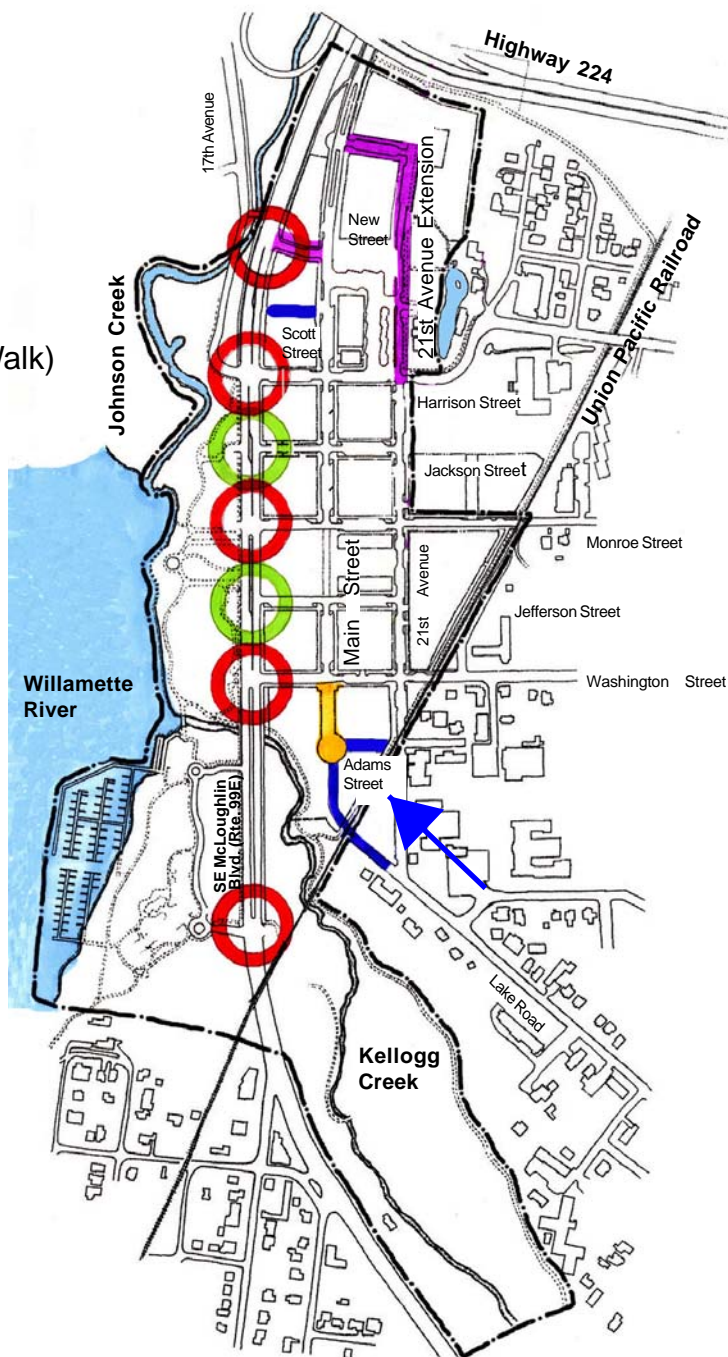
Attachments

1. *Milwaukie Downtown and Riverfront Plan Public Area Requirements, General Circulation Requirements - Streets Diagram*
2. *A Pattern Language for the South Downtown of Milwaukie, Oregon, Title Page, Table of Contents, Essay on "What is a Pattern Language?"*
3. Armature Diagram for the Geometry of the South Downtown (with color annotation)

General Circulation Requirements

1.2 Streets Diagram

-  Existing Roadways
-  New Public Roadways
-  Vacated Roadway
-  Pathway (Main Street Walk)
-  Signalized Intersection
-  "Right-In, Right-Out Only" Intersection (no signal)



FOR THE PURPOSES OF STUDY ONLY

A Pattern Language
for
THE SOUTH DOWNTOWN
OF MILWAUKIE, OREGON

JUNE 2009 DRAFT
FOR THE PURPOSES OF STUDY ONLY

CENTER FOR ENVIRONMENTAL STRUCTURE
Berkeley, California

In May of 2008, 35 people who live, work, or have interests in Milwaukie were interviewed by the Center for Environmental Structure (CES) team, as a first step to developing a Pattern Language for the South Downtown. In those interviews, we hoped to glean their deepest feelings about Milwaukie, and we are very appreciative of the information, hopes and dreams they shared with us. Our conversations with them tended to be about Milwaukie as a whole, and all of their comments were recorded in an earlier document we produced for the City of Milwaukie, entitled “WORKING DRAFT SUMMARY OF ISSUES AND INFORMATION RAISED BY MILWAUKIE COMMUNITY MEMBERS, June 20, 2008 (revised July 15 2008)”.

Following in this present document, is the Pattern Language that has been developed for the South Downtown of Milwaukie.

Center for Environmental Structure Staff

Christopher Alexander
Randy Schmidt
Maggie Moore Alexander
Bev Behrman
Howard Davis

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1. Relationship of the South Downtown to its surrounding areas.	page 11
2. A Major Plaza forms the core and focus of the South Downtown.	page 13
3. The Plaza lies at the head of Main Street.	page 19
4. From the Plaza there are views of the Willamette River and the western setting sun.	page 21
5. The Transit Station leads directly into the Plaza.	page 24
6. The Plaza is given its shape and character by a inner frontage ring of two-story buildings faced all along its length with a generous colonnade. The ring creates beautiful and comprehensible outdoor space.	page 29
7. There is a second, wider and deeper outer ring of land, containing more loosely placed one, two & three story buildings and open land. In the outer ring, especially, there is a tangled network of narrow lanes, residences, businesses, and open space.	page 32
8. As an additional support for the Plaza, 25% of the boundary land that surrounds the plaza will be restored to its natural state, preserved as an ecological area for Parkland, Fish and Wildlife.	page 36
9. The prevailing form of buildings in the SDT are Shop/Houses -- small mixed-use buildings, which contain both dwellings and workplaces on the same lot, and are owner occupied. In many cases adjacent buildings share party walls or floors. Each lot will include some commercial workspace, some domestic living space, and some outdoor work area or garden.	page 42

10. The overall building density in the South Downtown will be limited to a floor area ratio of 1.51 for the 119,000 sf of buildable land within the SDT perimeter. Thus the buildings in the SDT, in their aggregate, will be limited to 140,000 sf of built space. page 51
 11. All buildings (and exterior works) in the SDT will be built by individual craftspeople working in a masonry tradition that emphasizes brickwork and cast stone, with lesser amounts of stone, concrete, ceramic tile, plaster, and metalwork. Smaller buildings may be built in wood frame with exterior woodwork. page 53
 12. From very the start, owners and owner-occupiers will be strongly encouraged to ornament their own buildings, perhaps give them an individual touch. This also means that the construction management will be organized to allow individual and personal qualities to appear in each building that is built. Furthermore, a subsidized maintenance program will assist and encourage owners to look after their properties, and keep them in sparkling order. page 56
 13. Throughout the South Downtown, there is a web of connected paths, roads, cars, electric cars, incentives for electric cars which need small parking areas, small buses, mini-parking, bicycles, sidewalks, paved areas, and parkland. They work unobtrusively and work smoothly together. page 58
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What is a Pattern Language?

A pattern language is a word-picture that describes the wholeness of a place, envisioned as the place might and can become over time. It describes *what* the place can become, and also *how* it can become. Each pattern language is unique to the place for which it is constructed, but naturally shares some elements with other pattern languages created for other places – just as people’s desires for their neighborhoods are unique but also share certain universal desires with one other.

A pattern language is comprised of a series of patterns. Each pattern describes a certain element, or piece of the built environment, or a relationship between such pieces. It provides direction as to how that element or relationship should be generally configured. A pattern language taken as a whole is intended to convey and evoke the overall feeling that a place will have. It does not provide an overly detailed and highly specified picture (like, for instance, typical construction drawings or city plans do). That detailed level of configuration and differentiation is worked out through a careful process of adaptation at the time when each of the buildings and streets are built. As each thing is built over time, the detailed configurations are developed, evaluated, and modified to ensure that the proposed configuration for that building or street has both an overall feeling which stems from the pattern language, and which works in its particular place.

A pattern statement is the simplest expression of a quality that will help evolve a community toward greater and greater life and health. The simple statements string together, and gradually build a picture of what the place will be like. These statements are not intended to nail down details or establish rules. They are intended to capture elements that in combination comprise places in which people want to spend their time. As one contemplates each simple pattern

statement, one by one, the setting, the streets, the buildings, the environment take shape in the mind's eye.

The patterns range in scope from very large to very small. In other words, the piece of the built environment with which a particular pattern concerns itself might be large, small, or somewhere between. Certain patterns in a regional planning context might operate at the scale of miles. At another extreme, a pattern concerned with building and construction might operate at the scale of inches. So a pattern language always contains patterns at a variety of scales, working together, typically arranged within the pattern language nested from large to small.

The most essential thing in a pattern language is that it works as a whole – that it actually generates holistic structure for a specific place from its specific nature. This means the pattern language is capable of generating the large-scale and small-scale configurations, and the relationships between these elements, that will bring life to the place.

This cannot be done just by assembling a lot of small points. That approach would lead to a haphazard patchwork with no clear overall structure or coherence. Crafting a pattern language is a very difficult thing to do, because when we start by interviewing people – talking to them, listening to what they say, writing it down, studying it – the process which follows is not a straightforward one. We gradually and carefully distil people's expressed feelings and desires to arrive at global insights and craft them into statements that describe generative patterns and their interrelationships.

We have all the statements from the actual interviews, and they are very rich and wonderful. Almost all of them, are at the scale of about 100 feet or less. This is toward the small end of the range of scale of which urban structure is made. The pattern language, on the other hand, addresses several levels of scale, beginning with the largest ones. So in all pattern languages, there is an effort to arrive at the

global and wholeness structure, which stands on the many important details expressed by residents. The wholeness structure then, in turn, becomes an ongoing support structure to those details expressed by Milwaukie citizens.

The pattern language, and in particular its handful of top level large-scale patterns, has to be able to deliver a coherent whole, even if that whole is actually constructed piecemeal – project by project, over many years. The pattern language itself has to be able to tell you and show you how to gradually make a coherent whole out of the South Downtown that is nestled in the surrounds of Milwaukie.

Relative to Milwaukie’s South Downtown, we have been charged with developing the plaza and connection to the train station there. Many of the residents’ comments did relate to that area, and those comments are included with the pattern they help describe.

There were also many comments that relate to Milwaukie as a whole. In the previous report mentioned above, these were listed as the Overall Feeling and Vision for Milwaukie, and they are the ground from which this pattern language has sprung. Here are some examples:

Keep the downtown pedestrian in feel. Lots of small businesses could come in without destroying the small town feel, if the town is kept pedestrian.

All day long there is activity, vibrance and life. And there is a reason to be here, not just a place to stop.

Create a safe environment where you feel happy to be there. You feel invigorated by all the stuff going on around you.

Things to do at night: I could come to Milwaukie after 6PM and there would be things going on here. Social dancing, indoors because of weather; some sort of community center; people coming together to talk; having coffee at outdoor cafes or the cafes that are already here.

An affordable place. The average person can get a good meal, or a boutique. Not an upscale feeling. It is a very blue collar city now; keep it that way. Be careful of gentrification. We do not want to be NW Portland or the Pearl District, which are too upscale. But, we do want some touches of it.

What is it that creates the small town feeling of Milwaukie? A bounded zone around the core of the downtown, so that it cannot sprawl outward.

It is a place with trees, shops, bookstores, galleries, and cafes, concentrated together. Milwaukie can be a beautiful place for people to come on a Saturday.

We need to maintain the good schools,
friendly neighborhoods.

People of all ages mixing downtown.

Families with strollers, people on their bikes,
bikes locked up to bike racks. In good
weather people are sitting outside in the
plaza and at sidewalk tables of little
restaurants.

All of Overall Feeling and Vision comments are listed in the
appendix of this document.

Down to earth comments like these are the basis for the work CES
has done to formulate this approach to building up the South
Downtown over time. You will see that Milwaukie citizens gave us a
lot of material that directly pertains to several of the patterns, and
these comments really help describe the spirit of the place.

In April 2009, the Ad Hoc Pattern Language Committee¹ evaluated
the patterns and suggested additions, changes, and detail that better
describe the place they and their neighbors want to see. Their
findings are reflected throughout this document. Please remember
that the document which now lies before you is a collectively created
document that currently has the consensus of the Ad Hoc Committee
together with that of the full architectural team. We hope, therefore,
that the present state of the document will satisfy most people in the
Milwaukie community, even those who have not yet seen it.
However, there will inevitably be some points which still need fine
tuning. As you discuss the draft document with the Committee,

¹ At this stage of the process, the work required broad representation of people, skills, and insight. In choosing the group of nine who agreed to form the Ad Hoc Pattern Language Committee, we carefully considered many criteria, and all the people who were interviewed in May of 2008. The criteria that served as the basis for selection included age and gender; where people live in town; skills; ability to access their deep reactions to natural areas and the built environment; that their involvement did not present potential conflicts of interest; ability to make time for frequent and lengthy meetings; their passion about their feelings for Milwaukie; that they knew what they were talking about and probably represented people their age to a fair degree; people who had lived in Milwaukie for varying lengths of time, so that the interests of the old-timers would be represented as well as the interests of the newly located; people with children, people without children, people from the Waldorf School, and others who were not. In the group of nine people who were selected, each one brought several different important elements to the challenging work they undertook. They were aware of the concerns of people throughout Milwaukie, and took the task to represent Milwaukie as a whole very seriously.

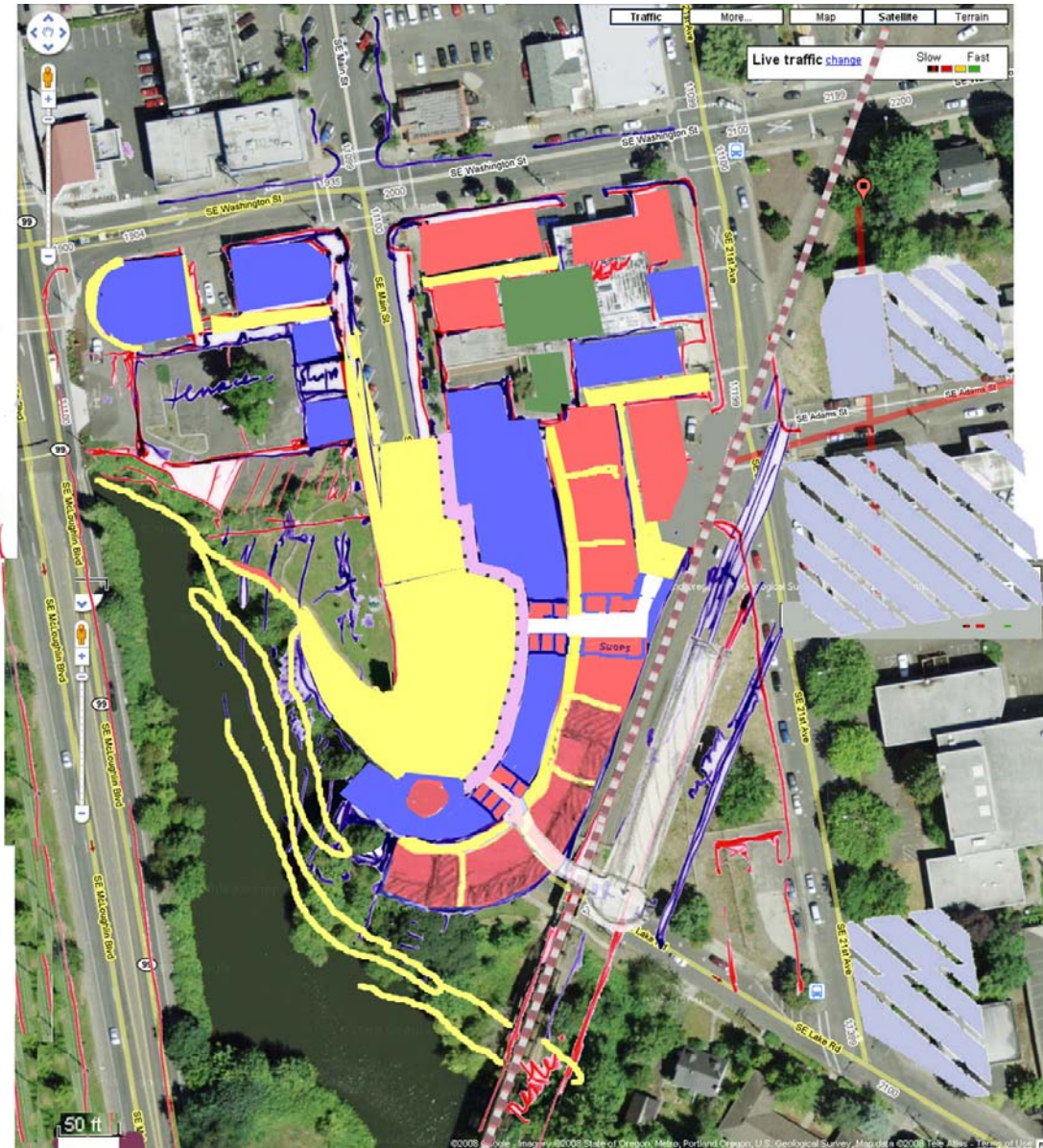
please keep your discussion within the spirit that the document contains. That will ensure your insights will be helpful to the community. Finally, please remember this is a working draft.

It is all of this together – the hopes and dreams of Milwaukie residents, the contents of this booklet, and the continuing exploration together of what this place can be – that makes up the pattern language for the South Downtown of Milwaukie.

Even after the forthcoming discussions, the content of the pattern language will still be open to change. As members of the community become involved in using the patterns, there will inevitably be a learning curve, as people encounter better ideas, or find flaws in the existing patterns. These opportunities for learning and for further improvement will only help to make the South Downtown better and better, as time goes by.

We at CES appreciate your commitment to making the best place possible for Milwaukie. The Ad Hoc Pattern Language Committee (Scott Churchill, Sara Smith, Dion Shepard, Jeff Klein, Dave Aschenbrenner, Mark Gamba, Mike Miller, Lisa Batey, and Carlotta Collette) have invested considerable time and effort in the evolution of this document so far. We look forward to your reactions to the material presented here.

I ARMATURE DIAGRAM FOR THE GEOMETRY OF THE SOUTH DOWNTOWN



This is a scale diagram of the SDT site, taken from a Google photo showing all roads and buildings

THE ARMATURE DIAGRAM PROVIDES THE BASIC GEOMETRIC SKELETON THAT WILL SUPPORT THE DEVELOPMENT OF EACH STREET AND BUILDING OVER TIME. IT IS A SPATIAL GUIDE TO THE DETAILS FULLY EXPLAINED IN THE PATTERN LANGUAGE.

Yellow indicates outdoor paved areas.

Blue indicates the arcaded buildings, the arcade itself shown lilac.

Blue indicated two story buildings occasionally going to three stories.

Red indicated parcels that include outdoor space (red), buildings shown in pencil shading. These buildings are one, two and/or three stories high.

We will provide further annotation in a later edition.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Director of Community Development and Public Works

From: Katie Mangle, Planning Director

Subject: Smart Development Code Assessment

Date: July 24 for August 4, 2009 Work Session

Action Requested

None. This is a briefing on the findings of a consultant's evaluation of the City's zoning code. This briefing will focus on identifying problems and potential solutions as detailed in the attached memorandum from Angelo Planning Group (Attachment 1).

History of Prior Actions and Discussions

May 5, 2009: Staff informed Council that the City received a grant from the State of Oregon to conduct an assessment of several parts of the Milwaukie Municipal Code related to zoning and development.

May 20, 2008: During a work session review of the Downtown Plan, council directed staff to continue to implement the vision outlined in the Plan, but to “refresh the code” to allow a little more flexibility.

Over the past few years, City Council, the Planning Commission, and staff have identified and discussed numerous problems with the City's code. These include outdated review procedures, confusing language, and lower standards for sign and building aesthetics than many in the community would like. Code amendment projects have consistently been on the Planning Department's work program, and staff have worked with the Commission and others in the community to methodically complete code improvement projects.

Background

In 2008, the City received a grant from the Oregon Transportation Growth Management (TGM) Code Assistance Program to fund a Smart Growth Code Assessment of Milwaukie's Zoning Code (Title 19). The TGM Program promotes smart development principles that enable communities to meet transportation needs while retaining their livability and economic vitality. These principles include: integrating land use and transportation planning, making efficient use of land and resources, designing human-scaled, walkable communities, assuring good connections between local destinations, and promoting pedestrian, bicycle and transit-oriented development.

Staff requested that the review focus on the following four key areas:

1. Residential Design Standards - A review of Milwaukie's minimum standards for height, lot coverage, relation to the street, and architectural features for single and multifamily residential buildings. It also addressed how the City limits the different types of housing that can be built.
2. Land Use Review Criteria and Procedures - A review of application processes and approval criteria. It included how Milwaukie considers special cases through variances, nonconforming uses, etc.
3. Downtown Zone Standards and Uses - A review of whether some of the City's regulations for specific uses and building form may be getting in the way of achieving the vision for a revitalized downtown.
4. Manufacturing Zone Standards and Uses - A review of whether the City's standards for land in the industrial zone support the goal of maintaining the areas for employee-intensive industry.

The grant has allowed an independent planning expert who has worked with development codes in many communities to evaluate Milwaukie's code, diagnose known and hidden problems, and suggest alternative approaches that could work for this community.

Code Evaluation Findings

The consultant working on this project, Mary Dorman with Angelo Planning Group, has completed the first task of this project - a memo documenting the findings of her evaluation of the four key areas listed above. The report on the findings of her evaluation is attached to this report as Attachment 1. In the memo Ms. Dorman outlines problems with the existing code and some alternative approaches the City could choose to adopt in the future.

Key findings of the evaluation are summarized below:

1. Residential Design Standards

- Milwaukie has basic standards for single family home design that are less restrictive than many other cities'. There are no specific standards for garages (location, length/percentage of façade), and the standards do not apply to significant expansions of existing homes.
- Milwaukie has standards relating to lot size, building setbacks and height, and lot coverage. The lot coverage standards are relatively restrictive – builders are incentivized to build up if they can not build out.
- The City should consider different approaches to make new buildings fit better into neighborhoods. Alternatives include variable lot coverage standards tied to size of the lot (used in Lake Oswego and Portland), or require a step-down in building height or larger side yard setbacks.
- The existing ordinance discourages a variety of housing types in single-family zones by establishing confusing standards and excessive process for Accessory Dwelling Units (ADUs) and duplexes.
- Milwaukie has no design standards for multi-family residential development (only height and setback standards).

2. Land Use Review Processes and Procedures

- Milwaukie lacks a traditional "development review" chapter that allows the city to review new development outside of the building permit process.
- The number of review types is complex and potentially confusing, and some applications use a level of review that is excessive relative to the type of project.
- Many important approval criteria, such as for variances, include language that is vague and ill-defined.
- Since many of the required review procedures are based in state law, the City should consider adopting all or part of the state's Model Code for Small Cities.

3. Downtown Zones

- It can be difficult to attract the desired higher density development and mix of uses that support more urban streetscapes if the market is not ready. Even though Milwaukie's long-term vision is codified through its zoning code, some requirements, such as the one insisting on ground-floor retail, may not be economically viable. This challenge is heightened if the City lacks the funds to invest in the public infrastructure of sidewalks and other downtown amenities.

- The code requires all buildings in the Downtown Storefront Zone to have retail or restaurant uses on the ground floor. In the Downtown Office zone, the code limits retail and restaurant uses on the ground floor. These types of use requirements are much more restrictive than those for successful Main Street areas in other cities.
- The minimum height requirement (35 feet/3 stories) for new buildings along Main Street is aggressive when compared with regulations that apply to other “Main Street” or “Town Center” districts in the region.
- Many existing uses and one-story buildings in the downtown zones are non-conforming with standards. This greatly constrains how existing buildings can be used until the property completely redevelops to meet the standards of the code.
- Since *all* of the sites in the Downtown Residential zones contain non-conforming uses and buildings, the code should provide better guidance about how to handle incremental changes in buildings and uses before an entire site is redeveloped.
- The zoning ordinance lacks graphics or photos to illustrate key standards and/or guidelines.
- Almost all forms of development and redevelopment undergo some kind of design review. However, the design guidelines do not provide sufficient direction to developers or review bodies to determine compliance with the guidelines.

4. Manufacturing Zone

- Given the lack of specific definitions for industrial uses, property owners, industrial users and the Planning Director often have to struggle with the challenge of trying to decide if a specific proposed use fits the very broad and general list of uses in the M zone.
- The existing ordinance does not include clear definitions or descriptions of permitted industrial uses or use categories.
- Section 19.103 (Definitions) includes definitions for some, but not all, uses listed in the Milwaukie Zoning Ordinance. However, there are no definitions for industrial uses such as manufacturing, processing, fabrication, packaging, assembly, etc.

The Code Evaluation memo includes potential solutions the City could consider to address each of the four focus areas listed above. Many of the problems could be addressed by adopting part of the state Model Development Code, which is a nationally recognized model. The memo also identifies regulations adopted by other cities that Milwaukie could use as a model.

The solution identification process is by no means complete. Some of the identified problems are relatively simple and will require very little, if any, discussion. Some, on the other hand, have broad policy implications and/or are technically complex and will require extensive staff discussion and analysis and policy direction from the Planning Commission and City Council.

Next Steps

The grant for this project stipulates that this phase of the project - code evaluation - be completed by August 30, 2009. The City is not required to take any action on the potential code amendments during this phase of the project. Once the assessment is complete, the City will be able to define which of the potential amendments to pursue, and the schedule for completing them. To complete the project, staff will work with the Planning Commission to develop an Action Plan for priority code changes.

It appears likely that in fiscal year 2009-10 the City will receive a similar TGM grant to undertake Phase II of this project - to draft code amendments to solve some of the problems identified in the Code Evaluation memo. To apply for such a grant, Council will need to endorse the Action Plan in September 2009.

Concurrence

The Planning Commission supported the grant application and has discussed the evaluation memo on July 14, the first of two work sessions on the topic. During that worksession, commissioners provided the following feedback:

- There is strong interest in considering alternative tools to manage building bulk and scale without dictating a particular architectural style.
- The Commission is generally open to considering more flexibility in housing types in at least some zones, as long as appropriate design standards are in place.
- The Commission is supportive of developing appropriate design standards for multi-family housing.
- Commissioners agreed that balancing downtown quality with economic reality is a challenging issue. More flexibility on uses might be appropriate without giving up on the desirability of retail along Main Street.
- There was not a clear consensus from the Planning Commission whether the downtown non-conforming use process was workable and appropriate to address transition issues, or whether the City should explore other tools that didn't carry the stigma of the "non-conforming" status.
- The Commission targeted work on the Residential Design Standards as their first priority for Phase II.

Fiscal Impact

The TGM Code Assistance program hires consultant firms with whom the TGM program contracts directly to provide assistance to local governments. Local governments are not required to provide cash or in-kind match, although City staff assists with meetings and provides other logistical support. TGM staff has indicated that it appears likely the City will receive a similar grant during the 2009-10 fiscal year to prepare plan and code amendments.

Work Load Impacts

This is a significant focus for Planning staff during 2009.

Alternatives

None.

Attachments

1. Code Evaluation Memorandum from Angelo Planning Group dated June 29, 2009 (attachments not included)

Memorandum

Date: July 2, 2009

To: Katie Mangle, City of Milwaukie
Susan Shanks, City of Milwaukie

From: Mary Dorman, AICP
Serah Overbeek, AICP

cc: Rachel Ferdaszewski, TGM Code Assistance Grant Manager

Re: Task 2 - Code Evaluation Memo

Development regulations, by their nature, are often complex and difficult to understand. Even planning staff, developers and planning commissioners, who regularly work with codes, often have problems with interpreting and implementing their local land use regulations. The TGM code assistance program is intended to help local jurisdictions modernize codes to address the principles of smart development and also help make a city's codes and procedures clearer and easier to understand and implement.

In early 2009, the state Transportation and Growth Management (TGM) program awarded Milwaukie a grant to fund a phased code review and revision project. The first phase of the project allows the City to strategically review several problematic sections of the zoning Code and identify options and priorities for potential amendments that the City could adopt in the future with anticipated Phase 2 funding from the TGM code assistance program.

The purpose of this memorandum is to provide an evaluation of specific areas of Milwaukie's Zoning and Land Division Ordinances to identify problems and options for improvements. The code review and this evaluation memo focus on the following key areas identified in the scope of work for the Phase 1 code assessment:

- Residential design standards
- Land use review criteria and procedures
- Downtown zone standards and uses
- Manufacturing zone standards and uses

For each area listed above, this memo provides an assessment of existing code language, a discussion of any problems or issues that were identified, and options for improvements. Where appropriate, examples from the Model Code and other jurisdictions are also provided in the Attachments.



I. Residential Design Standards

There are a number of areas within the city's residential standards identified as needing revisions and improvements.

- Single-family residential design standards
- Compatibility standards for residential infill and redevelopment
- Multi-family design standards
- Housing type variety and accessory dwelling units

Overview of Existing Single Family Residential Design Standards

Section 19.425 of the Milwaukie code contains design standards that apply to new single and two-family dwellings. These standards regulate main entrance orientation, street-facing windows, and require at least three building elevation features such as bay windows, recessed entry, porches, roof eaves, and certain exterior building materials.

There are also some standards located in the individual use zones in Chapter 19.300. These standards are more related to site layout than the design of the building. These standards regulate setbacks, building height, lot coverage and frontage, and vegetated areas.

Problems with Residential Design Standards

The existing residential design standards are minimal and do not always result in the type of aesthetic that is desired in single-family residential neighborhoods.

1. The location of garages is not currently regulated in Milwaukie's code and can result in "snout house" development in which the garage dominates the street-facing elevation, both in bulk and in proximity.
2. In addition, staff has indicated that developers frequently choose not to provide roof eaves (which are one of the optional design features in Milwaukie's existing design standards) because the current definition of lot coverage requires that eaves be counted towards the maximum lot coverage standard. In order to maximize lot coverage, developers chose to omit roof eaves, which results in development that is typically considered less aesthetic and not visually compatible with surrounding homes.
3. The existing lot coverage standards for the lower density residential zones (R-10, R-7, and R-5) may be overly restrictive in terms of allowable building footprint. In order to maximize building square footage within a small building footprint, builders may be compelled to construct taller buildings that may be out of character with surrounding development.
4. Currently, the residential design standards only apply to new single-family development and not to exterior remodels or expansions of existing homes. Staff is concerned that un-regulated expansions may result in the same types of problems described above. Staff is considering whether or not residential design standards should apply to expansions as well as new development.



Discussion of Potential Solutions

Staff would like to consider options to supplement the existing design standards. This section provides examples of design standards and approaches used in other jurisdictions. A number of residential design alternatives are also discussed in the following section about infill compatibility and won't be repeated here.

Garages. As mentioned previously, the design and location of a garage can significantly affect the appearance of a house and its compatibility with surrounding houses. The city can control this affect by regulating the location and size of street-facing garages. Several example code approaches are provided below.

- The Model Code recommends establishing front, side and rear setbacks of 20 feet for attached and detached garages.
- The City of Portland Community Design Standards (Chapter 33.218) require that attached garages facing a street be no more than 40 percent of the length of the street-facing façade, or 12 feet, whichever is greater. The front of the garage can be no closer to the front property line than the front of the house. In addition, garage doors must be less than 75 square feet in area.
- The City of Beaverton requires all attached garages to be recessed at least four feet from the front of the building, not including porches, when facing a public street.
- The City of Canby code provides a number of options for garages that are intended to prevent garages from obscuring or dominating the main entrance of the house. If the garage standards are not met, then the developer must comply with additional design standards. The design “menu” offered is similar to Milwaukie’s except that it incorporates garage design and requires more design elements. Section 16.21.030 from Canby’s code is provided in Attachment C.

Roof eaves. The city could consider revising its current definition of lot coverage. The existing definition is:

“Lot coverage” means the footprint of a building or buildings on a lot, measured from the outermost projection of the structure expressed as a percentage of the total lot area.

The Model Code recommends lot coverage be defined as the total percentage of a lot “covered by building(s) or impervious surfaces, as allowed by the applicable land use district development standards.”

The City of Beaverton defines building coverage as “That percentage of the total lot area covered by buildings, including covered parking areas.” Furthermore, if the city wants developers to provide eaves, the code could be revised to require eaves rather than making them an optional design element.

Lot coverage. Additionally, the city may also want to reconsider the existing lot coverage standards, particularly in the lower density residential zones. Currently, the lot coverage maximums for the R-10, R-7 and R-5 zones are 30 and 35 percent. For a 7,000 square foot lot, the lot coverage standard of 30 percent would mean a building footprint no greater than 2,100 square feet, including any garage and accessory structures. This limitation may be compelling developers to build taller houses with more bulk in order to get the desired square footage within the allowable building footprint. The Model Code recommends a lot coverage maximum of 40 percent for single-family detached dwellings in the low density zones. Some jurisdictions allow as much as 50 to 60 percent lot coverage for single-family homes. The Model Code also allows greater lot coverage for duplexes (60 to 70 percent in low and medium density zones).



Increasing the lot coverage standard may also encourage a greater variety of housing types. More discussion about housing types is provided in the next section.

There are a number of other design standards that the city could consider to supplement the existing code language. Generally, the city will need to decide what level of regulation for single-family housing is appropriate for Milwaukie. Because the city does not require any land use review for single-family development, design standards should be clear and objective so that no discretionary review is necessary to determine compliance.

Single-family remodels. The city will also need to decide if design standards should be applied to single-family remodels. Currently, the code only requires design standards for “new one and two family dwellings” and does not address the issue of remodels that add square footage to a home. The Model Code recommends that residential development standards apply to major remodels, which are defined as projects that increase the floor area by 50 percent or more. In the City of Canby, remodels that add less than 50 percent of the existing floor area, or are not visible from a public street, are exempt from the design standards. If the city opts to require design standards for some remodels, it should specify whether or not the standards apply to the entire structure, or just that portion being remodeled.

Overview of Existing Residential Infill Standards

Section 19.416 of the Milwaukie code is intended to provide a transition area between multi-family, commercial, or industrial developments that are located within 100 feet of a lower density area. For example, these standards would apply when a new commercial development was proposed adjacent to a residential zone. The standards would require some kind of physical separation between the two zones, such as a roadway or open space. They may also limit the allowable density of the new development, based on the density of the lower-density zone. The code also contains a section of design standards for new one and two family dwellings, but the provisions have not been considered effective in terms of promoting compatibility.

Problems with Residential Infill

The transition area provisions mentioned above do not address compatibility between exiting residential development and new infill or remodel development within the same zone. Under the current code, developers tend to maximize the allowable building envelope which can result in new infill structures that do not “fit in” with surrounding development in terms of both bulk and design. This is especially true in neighborhoods that contain primarily older homes that were developed around the same time, and therefore have similar qualities (for example: front porches, setbacks, heights, and architectural features). Infill development often does not include these same qualities and can look incongruous with the rest of the neighborhood. The discussion below includes several examples of approaches that have been taken in other jurisdictions to address this issue.

Discussion of Potential Solutions

Model Code. The Model Code contains a section of residential infill standards that are intended to “ensure compatibility of new development and redevelopment in existing subdivisions.” These provisions focus on setbacks and building heights, but also include a statement about comparable architecture. The full text from this section of the Model Code is provided in Attachment A and summarized below.



-
- New single-family homes must have a building height and front yard setback similar to adjacent, existing single-family homes on the same side of the street.
 - The building design of the new home must follow, or borrow from, a recognized architectural style of the community (Craftsman, Bungalow, Tudor, Colonial, etc.). This includes elements such as color, materials, roof shapes, windows and doors, and other architectural details.

If the city were to implement a similar approach, it should consider how such standards would be implemented and reviewed, in particular the height limitations. It may be problematic to require a developer to assess existing building heights, and the measurements would need to be confirmed by city staff in order to ensure compliance. If building plans for the existing houses are not readily available, this could require a site visit and extra staff time and resources. Furthermore, the current height limit in Milwaukie’s residential zones is typically 35 feet, which generally allows for two stories. If a developer were limited to only one story because the adjacent existing houses were only one story, this may be perceived as unfair.

City of Canby. Canby’s development code contains provisions for infill homes that are intended to “promote compatibility between new development and existing homes, and to provide for the efficient use of residential land.” The standards apply to new infill homes and remodels of existing homes where the remodel increases the floor area by more than 50 percent, not including garage area. The following is a summary of the standards.

- For infill residences exceeding one story, the maximum allowable lot coverage is 35 percent, not including garages. This is a lower percentage than typically allowed in Canby’s residential zones (no lot coverage limit exists for the low density R-1 zone, and the lot coverage standards for medium and high density zones are 60-70 percent).
- Garages may be up to 50 percent of the length of the street-facing façade and may not be closer to the street than the primary residence.
- Front yard setbacks must be within five feet of the setback for the closest existing home on the same side of the street.
- Infill homes cannot exceed 28 feet in height.
- A height step-up standard applies so that building height at the interior and rear setback lines does not exceed one story.

City of Salem. The City of Salem’s Development Design Handbook includes design guidelines and standards for compact residential development that is intended to be used in established single-family districts with properties no larger than five acres. The purpose of the Compact Development overlay zone is to allow for a variety of housing types while assuring through design guidelines and standards that new development adapts to the established character of existing neighborhoods. The standards include provisions for landscaping, street trees, building orientation and articulation, private open space, and parking and circulation. To encourage compatibility between new and existing structures, the height of new buildings is limited to 28 feet at the required minimum setback. An additional one foot of building height is allowed per one foot of additional setback beyond the minimum (up to the maximum building height of the underlying zone). The full text from the design handbook is included in Attachment D.

It’s important to note that these standards only apply in areas the city has identified as having significant character that should be maintained and protected. The Compact Development overlay zone applies



primarily to single-family neighborhoods within the urban growth boundary. New construction in those areas must go through development design review and are subject to the design guidelines and standards. Applicants may choose to either meet the design standards (which require no public notice or hearing) or meet the design guidelines (which requires notice and discretionary review).

City of Portland. Portland’s Zoning Code contains a chapter (Chapter 33.218) of community design standards that can be applied in certain situations as an alternative to going through the design review process. The chapter includes objective standards that do not require a discretionary review by the city. Eligible applicants can chose to either meet the clear and objective standards in this chapter or go through the discretionary design review process. To be eligible for this option, the project must be located in a designated design overlay zone (Alternative Design Density Overlay, Design Overlay, Historic Resources Protection Overlay, and some plan districts). The stated purpose of the community design standards is to “ensure that new development enhances the character and livability of Portland’s neighborhoods.” Some highlights from the community design standards chapter are provided below.

- Neighborhood contact is required for proposals that create three or more new dwelling units.
- A vicinity plan is required and must show the footprint and lot lines of the proposed development, and footprints and lot lines of all abutting development on the same side of the street.
- Setbacks for the new development are based on setbacks of existing abutting development.
- Building elevations larger than 500 square feet must be divided into distinct planes by a porch, dormer, bay window, or recessed entrance.
- Buffers are required between new developments in higher density residential zones abutting existing development in lower residential zones.

Portland also uses varying lot coverage standards in conjunction with height and setback standards to control the overall bulk of structures in the single-family zones (Chapter 33.110). The standards are intended to ensure that “taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses.” Allowable lot coverage depends on the size of the lot. An example table from the Portland code is provided below.

Table 110-4 Maximum Building Coverage Allowed in the RF through R2.5 Zones [1]	
Lot Size	Maximum Building Coverage
Less than 3,000 sq. ft.	50% of lot area
3,000 sq. ft. or more but less than 5,000 sq. ft.	1,500 sq. ft. + 37.5% of lot area over 3,000 sq. ft.
5,000 sq. ft. or more but less than 20,000 sq. ft.	2,250 sq. ft. + 15% of lot area over 5,000 sq. ft.
20,000 sq. ft. or more	4,500 sq. ft. + 7.5% of lot area over 20,000 sq. ft.

Notes:

[1] Group Living uses are subject to the maximum building coverage for institutional development stated in Table 110-5.

Generally, smaller lots are allowed a higher percentage of lot coverage than larger lots. An alternative to this approach would be to regulate floor area ratio (FAR), which is discussed in more detail in the next section.

[Note: The City of Lake Oswego uses both lot coverage and FAR in the single-family residential zones.]



City of Redondo Beach, California. In a 2003 staff report by the Redondo Beach Planning Department, the issue of incompatible infill development was addressed through adoption of new residential design guidelines. The staff report contains a thorough evaluation of tools that can be used to address compatibility of new single-family homes in established neighborhoods. A summary of the staff report is provided below. Text from the Redondo Beach development code is provided in Attachment E.

- Floor-area ratio (FAR) is an effective tool for limiting the floor area of a building in proportion to the lot size. The city determined that a FAR of 0.60 to 0.70 resulted in homes that were visually compatible with the surrounding neighborhood. Some FAR bonuses are allowed for developments that include certain design elements such as an increased second-floor setback.
- The staff report notes that FAR helps to ensure that the buildable area of homes is proportionate to the lots size, but does not necessarily reduce the appearance of bulk from the public view. To address the issue of bulk, a second story setback can be used and can “soften the impact on adjacent existing single-story homes.”
- The report does not recommend the use of lot coverage standards because they may limit options for homeowners wanting to make a small addition to an existing one-story home. If the lot coverage maximum is already achieved, the only option for an addition would be to add a second story, which may be financially or physically unfeasible. Furthermore, it may limit the ability of homeowners to develop accessory structures on their lot.
- The location of a garage can significantly affect the compatibility of a new home with existing homes. Garages that are built close to the front property line and dominate the street-facing façade are often out of character with older homes, which tend to have detached garages located in the rear of the lot.

Overview of Existing Multi-family Design Standards

The existing Milwaukie code does not include any design standards for multi-family development outside of downtown zones. The code does contain some general development standards that would apply to multi-family housing such as yard requirements and height restrictions. Section 19.416 also contains some provisions that would apply to a new multi-family project being located adjacent to (within 100 feet) a lower density zone. Those transition provisions are intended to provide a buffer between developments in zones of differing densities. However, there are no standards to address design elements that are particular to multi-family developments, such as building mass, open space, and site layout requirements.

Problems with Multi-family Development

Multi-family development is permitted as a conditional use in the R-3 zone and as an outright permitted use in the R-2 zone. Multi-family developments tend to have larger building sizes, different architectural styles, taller building heights, different site layouts, and more parking when compared to single- or two-family developments. As such, new multi-family development located in an established single-family neighborhood can be inconsistent with its surroundings in terms of bulk and aesthetics. The transition area provisions mentioned above only apply when the multi-family development is in a different, adjacent zone; therefore, they are not effective at regulating compatibility between developments in the same zone, specifically the R-2 zone, the majority of which is developed at single-family residential densities.



Staff would like to consider code options for clear and objective design standards to apply to new multi-family developments in order to regulate aesthetics and compatibility with surrounding uses.

Discussion of Potential Solutions

Model Code. The Model Code provides a section of design standards for multi-family housing that may be suitable for adoption into Milwaukie's code. The design standards limit the allowable length or width of the building, require open space, and regulate building orientation and the location of parking areas. The full language from the Model Code is provided in Attachment A.

The Model Code also contains some standards intended to regulate attached townhomes when there are three or more attached dwellings. These standards require alley access for subdivisions consisting primarily of townhomes or duplexes. It also requires common areas to be maintained by a homeowners association. Milwaukie's existing code does not include specific design standards for attached housing, except two-family dwellings (duplexes). The city may want to consider including some of the Model Code standards for attached housing with the multi-family standards.

The Model Code also contains a section on building height step-downs that is applied to new multi-family development abutting an existing single-family residence. The intent of the step-down is to "provide compatible scale and relationships between new multi-story buildings and existing single-story dwellings". The language from the Model Code is provided in Attachment A.

City of Beaverton. The City of Beaverton Community Development Code contains some fairly prescriptive standards for building articulation and variety that apply to any attached residential development in any zone. These standards limit the length of any residential building to 200 feet, which is slightly higher than the Model Code recommendation. It also requires that any multi-family building visible from a public street have a "minimum portion of the elevation devoted to permanent architectural features designed to provide articulation and variety." Architectural features include windows, recessed doors, and changes in material types. The code regulates spacing between architectural features, as well as roof form, building entrances, building materials, and building orientation. The full text from Section 60.05.15 of the Beaverton code is provided in Attachment B.

City of Canby. The City of Canby provides a more flexible approach to regulating compatibility of multi-family developments. The code contains a matrix of design criteria that are intended to promote compatibility and aesthetics. Points are assigned to each design criterion and in order for a development to be considered compatible; it must "score" a certain percentage (65 percent) of available points. Some elements are required, and the rest are optional so long as the total score meets the minimum percentage. There are also bonus points available; however, bonus points cannot be counted towards the minimum 65 percent, so it is unclear if there is any incentive for developers to achieve points beyond the required minimum.

The benefit to this approach is that it provides a balance between prescriptive and flexible standards. Canby has identified elements that it considers critical to multi-family development and those elements are required. Other elements are optional and this allows the developer some flexibility and creativity in meeting the overall point requirement. The full text from Section 16.21.070 of Canby's code is provided in Attachment C.



Overview of Existing Housing Type and Accessory Dwelling Unit Standards

Accessory dwelling units. The city currently has two types of ADUs: Type 1 and Type 2. Type 1 ADUs are defined as being between 225 and 600 square feet in size, not exceeding 40% of the floor area of the primary structure, and meeting the requirements of Section 19.404. This section contains some site and design standards and requires that Type 1 ADUs be approved through a Type II Administrative Review process. Type 2 ADUs are defined as any unit other than a Type 1 ADU and permitted by Section 19.602.10 (conditional uses). Type 2 ADUs generally cannot exceed 50% of the floor area of the primary structure or be larger than 800 square feet in size.

Housing type. A review of the city's use zones in Chapter 19.300 indicates that the city identifies four dwelling types in the code:

- Single-family detached dwelling;
- Single-family attached dwelling, which is two dwelling units sharing a common wall on the same lot (duplex);
- Multifamily, which is either a condominium or apartment structure with three or more units on the same lot; and
- Type 1 and 2 ADUs, which are considered incidental and subordinate to a detached single-family dwelling.

The Milwaukie code currently has nine residential zones, including two mixed-use commercial/residential zones. The lower density zones allow single-family attached and detached dwellings; the medium and higher density zones (R-3 and up) allow multi-family development as well.

Type 2 ADUs are permitted as a conditional use in all the residential zones except the R-1, R-2.5, and mixed-use zones. Type 1 ADUs are not mentioned in any of the residential zones. However, the language in Section 19.404 states that Type 1 ADUs are permitted in all residential zones that allow single-family detached structures (which is true for all Milwaukie's residential zones).

Problems with Housing Type and ADU Standards

Staff would like to explore options for encouraging a greater variety of housing types. However, there are a number of areas in the existing code that could be acting as a barrier to housing type variety.

1. In the lower density zones (R-10, R-7, and R-5), the required lot sizes for duplex dwellings are excessive and may make duplex development infeasible. For example, in the R-7 zone, the minimum required lot size for a single-family detached home is 7,000 square feet. For a duplex, the lot size must be an average of at least 7,000 square feet per unit. This requires a fairly large lot for duplex development. Also, even if lot size is met, duplexes require conditional use approval in the R-7 and R-10 zones.
2. Outside of the downtown zones, there are no provisions for attached, zero lot line houses (townhomes or row houses). This type of housing is not defined in the definitions section of the code, and is not addressed in any of the residential use lists in Chapter 19.300. There is some language in some of the use zones that refers to "interior single-family attached units" that appears to be left-over from a previous version of the code. It is unclear what this language applies to.



3. Type 1 ADUs are not listed as permitted uses in the residential use zones. The language in Section 19.404 states that they are permitted in all residential zones, subject to the standards contained in that section. It would be clearer for the user if Type 1 ADUs were listed as permitted uses in each residential zone.
4. Type 1 ADUs are permitted through a Type II Administrative Review, which requires public notice with the option of a public hearing if requested. This may be an excessive amount of review and act as a deterrent for home owners who may otherwise like to construct an ADU on their property.
5. Type 2 ADUs are permitted as a conditional use in all residential zones except the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C). It is unclear if Type 2 ADUs were intentionally left out of these zones, or if it was done in error.
6. Requiring conditional use approval for construction of an ADU may be acting as a disincentive for property owners due to cost, time needed for review, and the ability of the planning commission to impose additional conditions on the ADU.
7. The language in Section 19.602.10, which contains standards for Type 2 ADUs, states that they are “allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition”. This implies that Type 2 ADUs must be attached to a single-family dwelling, rather than be a stand-alone structure. Again, this may serve as a disincentive to property owners who would like to build an ADU that is not attached to the primary residence (like above a detached garage).

Discussion of Potential Solutions

Lot size for duplexes. The Model Code recommends a minimum lot size of 6,000-9,000 square feet for duplexes in low density residential zones. The city may want to consider allowing smaller per unit lot sizes for duplexes to encourage more of this type of housing development. Furthermore, duplexes could be permitted outright on corner lots in lower density zones (R-7 and R-10) or along higher classification streets in order to encourage more duplex development. For corner lot duplex development, each unit could be oriented to a different street to maintain the overall character of a single family dwelling.

Zero lot line housing. The city could consider revising the definitions section to include a definition for this type of housing. The Model Code defines a townhome as “a dwelling unit located on its own lot which shares one or more common or abutting walls with one or more dwelling unit. The common wall must be shared for at least 50 percent of the length of the side of the dwelling.” In addition, the city would need to revise the allowable use lists in the residential zones in order to permit townhome development where desired. As mentioned previously, the Model Code contains a section of development standards for townhome developments that could be used to regulate design and site layout.

ADUs. There are a number of revisions that the city could consider in order to clarify the ADU standards and encourage ADU development.

- For consistency, Type 1 ADUs should be listed as permitted uses within the zone use lists. The city may also want to clarify whether or not Type 2 ADUs are allowed as conditional uses in the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C) zones.
- The Model Code recommends permitting ADUs through a Type I procedure, which is an administrative decision that does not include public notice, public hearing, or opportunity for



appeal. The Model Code contains a set of clear and objective standards that must be met for ADU development. The Milwaukie code has some standards in place for Type 1 ADUs; however, the city may want to amend the standards to make them more objective and reduce the level of required review to Type I Administrative Review.

- There does not appear to be a significant difference between Type 1 and Type 2 ADUs, and the current approach may be resulting in unnecessary confusion for property owners. The city may want to consider re-evaluating the existing ADU standards and explore the option of combining the two types into one, amending the standards, and reducing the level of review required. The City of Portland has a chapter for ADU development standards that may provide a useful example. That chapter has been included in Attachment F.

II. Procedures

Overview of Existing Procedures

Section 19.1011 contains a list of procedure types for the city and describes the process associated with each procedure, including public notices, hearings, decisions, and appeals. Currently, the city has five procedure types: Type I Administrative, Type II Administrative, Minor and Major Quasi-Judicial, and Legislative. The procedure types apply to different types of application proposal based on the level of review that is necessary to ensure compliance with standards and regulations. The city currently has approximately 32 different types of applications, most of which have an associated approval procedure type.

Problems with Existing Procedures

A review of the city's land use and subdivision review procedures and criteria revealed a number of areas that are problematic and may benefit from some amendments and reorganization.

1. Approval procedure types are located in several different chapters of the code. Conditional use procedures are found in Chapter 19.600, public transportation improvement review procedures are in Chapter 19.1400, plan and map amendment procedures are located in Chapter 19.900, and general administrative procedures are in Chapter 19.1000. Additionally, the city reviews some projects under a Conditional Use application and some under a Community Service Use application. The distinction between the two applications is not clear and it may be possible to combine them for the sake of clarity and simplification. According to staff, these ordinances were implemented at different times in a "piecemeal" fashion, which has led to the lack of cohesive organization.
2. Milwaukie's existing code does not have a traditional development review chapter that allows the city to review new development beyond the building permit process. Many projects are captured under the Conditional Use or Community Service Use applications, or under the Transportation Plan Review application. However, under the current code, it would be possible for a new multi-family or commercial development outside of the downtown to skip land use review entirely and go straight to building permit. There may be certain circumstances under which this may not be desirable and the city would prefer to review the project through a land use process.
3. The existing code provides five different types of review: Type I Administrative, Type II Administrative, Minor and Major Quasi-Judicial, and Legislative. The Major Quasi-Judicial review



appears to be used solely for the purpose of reviewing zoning map or comprehensive plan map amendment requests. Having a separate procedure type for amendments may be unnecessary and overly complex. Additionally, the naming of review types is somewhat inconsistent and could lead to confusion.

4. It can be difficult to determine what review type is required for the various different kinds of approvals (conditional use, variance, partition, etc). There is no table or section in the code that contains a comprehensive listing of all development types and their associated review type.
5. Some applications are currently processed using a level of review and/or review criteria that may be excessive relative to the proposed project. Specifically, the review processes for ADUs, Transition Area Review, and Home Improvement Exceptions have all been identified by staff as being a higher lever of review than is typically necessary for those types of proposals.
6. Staff has indicated that the variance criteria in Section 19.702.1 are difficult to meet and that writing findings can be challenging. The criteria currently contain vague language using terms that are not well defined. Applicants have trouble interpreting the criteria and staff have trouble writing defensible findings for the criteria.
7. The table for determining review type within the city's land division ordinance is confusing. This issue is compounded by the language in Section 17.12.020.B, which lists a number of ways the review type can be changed by the planning director. The city could explore ways to streamline and clarify the land division review language.
8. The existing code does not appear to provide a process for modification of approved plans. It is unclear how an applicant could apply for, and receive approval to modify a plan that was previously submitted and approved by the city through a land-use process. The city may want to consider incorporating provisions for a modification process into the review standards.
9. The process for a Director's Interpretation is located in Section 19.1001.4 with other basic administration provisions and does not have a specific review type associated with it. For clarity, and to ensure a consistent procedure, this language might be more appropriately located with the other procedure types and have a specific review type associated with it (Type I or II).
10. Section 19.809.1 of Milwaukie's code contains provisions for a Director's Determination, which is used to establish the legal status of a non-conforming use, structure, or other zoning requirement. However, staff has indicated that they often "stretch" this definition to apply it in other situations. Furthermore, the current Type I Administrative review process for a Director's Determination is not always realistic due to the complexity of the determination to be made. The city may want to consider ways to revise the language in this section to apply to additional situations, and adjust the review process as necessary.

Discussion of Potential Solutions

Generally, it appears the city would benefit from consolidation and reorganization of its existing review procedures and criteria, along with some new code sections to address the gaps identified above. The Model Code's Article 4 - Administration of Land Use and Development provides a solid framework for a consolidated procedures and land use review chapter that would address many of the issues listed above. There are a number of other jurisdictions that also provide code examples of efficient approaches to land use review procedures. Because many of the procedures are established by Oregon state law, they tend to be similar from city to city. For the purposes of this memo, the Model Code is a good place to start and



will give Milwaukie staff a general sense of organization and content. As the city moves into the second phase of this project and considers code amendments, it may benefit from a more detailed evaluation of additional code chapters on procedures and applications from other jurisdictions.

The following is an outline of chapters contained within Article 4 of the Model Code. Due to its length, the full text of Article 4 is not included with this memo, but is available online from the TGM website¹.

Article 4 - Administration of Land Use and Development

4.1 - Types of Review Procedures

4.2 - Land Use Review and Site Design Review

4.3 - Land Divisions and Property Line Adjustments

4.4 - Conditional Use Permits

4.5 - Master Planned Developments

4.6 - Modifications to Approved Plans and Conditions of Approval

4.7 - Land Use District Map and Text Amendments

4.8 - Code Interpretations

4.9 - Miscellaneous Permits - Temporary Uses, Home Occupations

The Model Code also contains a chapter dealing with variances (Chapter 5.1) that may provide a useful example of variance criteria. The Model Code identifies three classes of variance. Class A variances are simple deviations from a numerical standard such as setbacks or landscape area. They are processed as Type I applications and the criteria are clear and objective. Class B variances apply to specific elements, such as a variance to housing density standard or a street tree requirement. Each type is listed separately and has its own set of criteria that are reviewed through a Type II process. Class C includes any variance that is not considered a Class A or B variance. Class C variances are processed through a Type III procedure and have more discretionary criteria. The full text from the Model Code is provided in Attachment A.

III. Downtown Zones

Overview of Existing Downtown Zones – Chapter 19.312

The City Council adopted the Milwaukie Downtown and Riverfront Plan (Plan) in 2000. The plan provides a framework for new development and redevelopment that recognizes and builds upon the character and history of the downtown and reconnects Milwaukie to the Willamette River. To implement the Plan, the City Council adopted five downtown zones to reflect the distinctions between different areas of the plan, and to focus pedestrian-oriented retail uses to the traditional downtown core along Main Street. Specific use and development standards, public area requirements, and design standards were adopted for the downtown zones to assure an active, attractive, and accessible environment for shoppers, employees and residents.

The City recently adopted Transportation Code Amendments which changed how the public area requirements are implemented in the downtown zones. Specifically, downtown and non-downtown projects are now treated the same with regard to impact-based triggers for transportation improvements.

¹ <http://www.oregon.gov/LCD/TGM/modelCode05.shtml>



Additionally, the fee in lieu of construction (FILOC) option is now available for projects in the downtown area as it is elsewhere in the city. The City is also evaluating the feasibility of an urban renewal district to provide a tool to support and leverage public improvements that can help attract and shape development in the downtown area.

Key provisions of the code relating to the Downtown Storefront (DS), the Downtown Office (DO) and the Downtown Residential (DR) zones are highlighted below. Attachment G includes the code figures that illustrate the applicability of the standards.

Downtown Storefront. The Downtown Storefront (DS) zone was established to preserve and enhance the commercial “Main Street” character of downtown Milwaukie. Along a five-block stretch of lots fronting on Main Street as shown on Figure 312-2:

- Ground-floor retail/restaurant uses are *required*
- Office and residential uses are *not allowed* on the ground floor but are permitted up upper floors
- Personal/business service uses are *limited* to a maximum of 25 percent of the ground floor area of individual buildings

The development standards for the DS zone require:

- A *minimum* building height of 35 feet for lots fronting on Main Street
- A *maximum* street setback of 10 feet
- Ground-floor windows and doors

Downtown Office. The Downtown Office (DO) zone was established to accommodate office, entertainment, and hotel uses along high-visibility arterial streets. Retail uses are limited to support the primary uses and encourage retail development along Main Street. Within the DO zones shown on Figure 312-1:

- Offices, entertainment and hotel uses are *permitted*
- Residential uses are *limited* to the second floor or above
- Eating and drinking establishments and retail trade uses are *limited* to 5000 square feet in floor area per use and may only be developed as part of a mixed use building

The development standards for the DO zone require:

- A *minimum* building height of 25 feet
- A *maximum* street setback of 10 feet
- Ground floor windows and doors along specific streets

Downtown Residential. The Downtown Residential zone was established to increase housing opportunities in close proximity to downtown shopping, transit, and open space amenities. The major types of new housing will be apartments and condominiums. Within the DR zones shown on Figure 312-2:

- A variety of housing types are *permitted*



- Office, personal/business services and retail trade uses may only be permitted as part of a mixed use building that includes housing. These uses are limited to the ground floor and may not exceed 5000 square feet in floor area

The development standards for the DR zone require:

- A minimum density of 30 units/acre for stand-alone multifamily apartment/condominium dwellings and senior/retirement housing
- Minimum densities of 10 units per acre for the downtown residential transition area
- 15% landscaping
- Off-street parking

Design Review. When the Downtown Zones were adopted, the City also implemented a design review process for major exterior alterations and new development that only applies in the downtown area. The design review process is outlined in Section 19.312.7 of the code. Key elements of the process are highlighted below:

- The code provides three different design review tracks based on the proposed use and the scale of the development (e.g., Type I for stand-alone residential and exterior maintenance; Type II for minor exterior alteration visible from public spaces; and Minor Quasi-judicial review for major exterior alteration and new development)
- Design standards are provided for walls, windows, roofs
- Specific types of windows and roofs are *prohibited* as are specific building materials
- The design guidelines used in design review are not included in the Zoning Ordinance but are instead adopted by resolution of the City Council
- The code does not include any illustrations of the design standards or guidelines

Problems with the Downtown Zones

The City is committed to the vision outlined in the Downtown and Riverfront Plan. However, after implementing the Downtown Zones for nine years, staff has found that the specific and prescriptive standards do not provide enough flexibility to accommodate a gradual transition between existing uses and buildings and the future vision.

Primary problems with the existing Downtown Zones are summarized below:

1. Many of the existing uses (such as offices) and one-story buildings in the Downtown Storefront (DS) zone are “non-conforming” with zoning regulations that require ground-floor retail uses and 3-story buildings.
2. The downtown zones are very prescriptive regarding use and are unclear as to what would constitute an allowed use in some instances, specifically:
 - a. The Downtown Residential (DR) zone is very restrictive of non-residential uses unless they are part of a mixed use building. Since *all* of the buildings in the DR zones have non-conforming uses and buildings, the code should provide better guidance about how to handle incremental changes in buildings and uses before an entire site is redeveloped.



-
- b. The ground-floor retail requirement in the DS zone and the limitations on personal and business services and office uses in the DO and DR zone have had the effect of preferring vacant storefronts over active uses.
 - c. The definition of “personal/business services” in Section 19.103 (Definitions) lists example uses, but doesn’t really define the broader characteristics of the use. This makes it difficult to determine if some proposed uses that aren’t listed as examples are permitted in the Downtown Zones.
3. The minimum height (35 feet/3 stories) for buildings fronting on Main Street in the DS zone is quite aggressive when compared with regulations adopted for other designated town centers within the region.
 4. The Design Standards section (Section 19.312.6) is difficult to follow and understand. The addition of tables and illustrations would be helpful. Also, the list of prohibited materials is highly restrictive.
 5. Major exterior alterations and construction of new buildings in the Downtown Zones must go through a discretionary design review process. The design guidelines do not provide sufficient direction to developers or review bodies to determine compliance with the guidelines.
 6. The public area requirements that apply only in the Downtown Zones may be acting as a disincentive to new private investment in the downtown area.

Discussion of Potential Solutions

Reactivating Main Street is a major focus on the Downtown and Riverfront Plan and the Downtown Zones. However, it can be difficult to attract the desired higher density development and mix of uses that support more urban streetscapes if the market is not ready. Even with a long-term vision that is codified through zoning as in Milwaukie, requirements for ground-floor retail may not be supported economically in the short to medium-term because an increase in land values and demand is needed to drive higher-density, mixed-use redevelopment projects. This challenge is heightened if cities lack the funds to invest in the public infrastructure of sidewalks and other downtown amenities.

Consider Type II review for change of use. Many of the existing buildings and uses in the downtown zones do not conform to the use restrictions and limitations or development standards of the existing ordinance. Section 19.312.3 states:

Existing structures and uses that do not meet the standards for a particular downtown zone may continue in existence. Alteration of a nonconforming use or structure that is not in compliance with applicable standards shall be subject to the provisions of Chapter 19.800, Nonconforming Uses.

Categorizing buildings and uses as “nonconforming” complicates financing for improvements and also provides a barrier to incremental and organic changes to existing buildings in the interim period before redevelopment is supported by the market. The City may want to consider providing a Type II review option distinct from the Nonconforming Use Chapter to provide more flexibility for a transition of uses in existing buildings that could help to activate the downtown area.

Consider more flexible approach to ground-floor uses. Many jurisdictions in the Portland region have backed away from rigid requirements for ground-floor retail uses, and have instead required new building spaces to be designed so that they can be adapted to active uses such as retail once the market is ready.



These more flexible standards seek to establish good “bones” for active uses such as high ceilings, large floor plates, specific construction types and transparent faces of the buildings fronting on public spaces.

Some code examples from other jurisdictions are summarized below, with example code language provided in Attachment H.

Portland. The City of Portland has adopted zoning ordinance standards for “active building uses” in several town centers, including Hollywood, St. Johns and Kenton. The standards typically apply to *new development* on sites with frontage on designated enhanced pedestrian streets (such as Sandy Boulevard in the Hollywood District). *Alterations or exterior improvements to existing development are exempt from the regulations.*

Portland’s zoning standards for town center districts focus more on the location and design of the building and are more flexible in allowing a range of ground floor office and personal service uses in addition to restaurants and retail that can help to activate pedestrian streets. Additionally, *Portland’s regulations do not limit ground-floor office or service uses to a specified square footage or percentage of the total floor area.*

Hillsboro. The City of Hillsboro has adopted standards for “street level uses” in Mixed Use Districts. The intent of these standards is to establish mixed use developments, with commercial storefronts, and create a vibrant pedestrian environment.

The range of uses permitted in Hillsboro’s Mixed Use Districts is considerably broader than the uses listed in the Milwaukie and Portland ordinances. For example, Hillsboro permits street level uses such as personal, business and consumer services, daycare, product repair or services for consumer and business goods, medical clinics, and community service uses in addition to retail and eating and drinking establishments. The “storefront” space dimensions are similar to Portland’s, with minor differences (12 foot height in Portland vs. 13 feet in Hillsboro; 25 foot depth in Portland vs. 30 foot depth in Hillsboro).

Gresham. The City of Gresham has adopted a Downtown Plan District that includes six specific sub-districts. The historic downtown core along Main Street is included in the Central Urban Core (CUC) sub-district. The range of uses permitted in the CUC sub-district is quite broad, and includes offices, clinics, retail trade, retail service, business service and mixed-use development. There is no specific requirement for ground-floor retail uses along Main Street in Gresham.

Lake Oswego. The majority of the downtown core area of Lake Oswego is included in the East End Commercial (EC) zone. A very broad range of uses are permitted in the EC zone, with some limitations on the size of individual uses. Permitted uses include but are not limited to retail sales and service, food markets, restaurants, personal services, business services, offices and medical clinics. Beyond the flexible approach to permitted uses, Lake Oswego has adopted very specific requirements for building design in the downtown area.

To complement basic zoning requirements, the City of Lake Oswego has successfully established active ground floor retail uses in its downtown district by making targeted public investments and leveraging their negotiating power through the use of urban renewal. In 1986, the Lake Oswego Redevelopment Agency (LORA) adopted an urban renewal plan for the downtown district, making tax increment financing available for new downtown projects. LORA then negotiated with developers to provide ground floor retail uses with various incentives. While the code does not explicitly prohibit non-retail uses from the ground floor, the standards help to foster a



building environment that is conducive to ground floor retail over other types of uses such as banks, hair salons and copy shops.

As development and redevelopment has occurred over the last decade with substantial investments in the downtown area and market demand, rents in the district have increased to the extent that ground floor space is not as affordable for non-retail uses such as personal service uses and offices. Through this process, market forces encourage non-retail uses to locate on the upper floors, while the ground floor use is reserved for retail businesses that are typically able to pay higher rents.

Reconsider minimum building heights. As noted earlier, the existing code requires a minimum building height of 35 feet for new buildings that front on specific blocks of Main Street in the Downtown Storefront zone. The purpose of the height standards is to promote a compatible building scale and establish a consistent streetscape. Buildings fronting on other streets in the DS zone shall be a minimum height of 25 feet.

Many jurisdictions in the Portland region have backed away from rigid requirements for *minimum* building heights in town centers and corridors, and instead have focused on providing targeted incentives for taller buildings in appropriate areas. Also, some jurisdictions have written code standards to require that new 1-story buildings be designed to accommodate later addition of a 2nd or 3rd story.

Code examples from other jurisdictions are summarized below, with excerpts of code text provided in Attachment I.

Portland. The Portland Zoning Code does not require a minimum building height in any of the designated town center or corridor plan districts. As noted above, Portland has instead taken the approach of providing incentives for taller buildings in specific locations. The Commercial Storefront (CS) zone is applied along many of the traditional corridor streets in Portland, including streets such as Division, Fremont, Belmont, Clinton, etc. A maximum Floor Area Ratio (FAR) for this zone is set at 3 to 1, with a maximum building height of 45 feet. Additionally, a minimum of 50% of the site area must be covered by a building.

Portland's zone standards focus on maximum building setbacks, ground floor window standards, and no requirements for off-street parking to reinforce an active pedestrian environment. However, there is no requirement that new buildings be constructed to a minimum height or include a minimum of 2 stories.

Gresham. The table of Development Standards in Gresham's Downtown Plan identifies a minimum building height of 2 stories for the Central Urban Core (CUC). However, the code also includes flexibility for expansion of existing buildings and also provides an option to build a 1-story building that can accommodate later installation of a second floor.

Lake Oswego. The Building Siting and Massing Standards for the EC zone require that new buildings be at least two stories tall. However, the code also provides some flexibility for one-story buildings for entry areas, outdoor restaurants, or as a step down to an adjacent one story viable structure or when a minimum height of 20 feet is maintained at the right-of-way or street side building edge.

Reconsider prohibited materials. Milwaukie's existing design standards for the Downtown Zones prohibit EFIS or other synthetic stucco panels and split-face or other masonry block at the street level of all buildings in the downtown zones. Additional materials are prohibited at all levels of buildings in the



downtown zones, including plywood paneling; vinyl or metal cladding; composite wood fiberboard or composite cement-based siding; metal panels, except at penthouse level.

Building materials are constantly evolving. Is it appropriate or necessary to prohibit specific building materials if a discretionary review process is required for new non-residential construction? The city may want to consider limiting the list of prohibited materials to stand-alone residential buildings and letting the developer make the case regarding durability, compatibility, etc. for specific materials that are subject to discretionary design review.

Consider changes to the Design Review Process. As described earlier in this memo, the Design Landmarks Committee (DLC) reviews major exterior alterations and new development in the Downtown Zones, and provides a recommendation to the Planning Commission for a final minor-quasi judicial land use decision. Because discretionary design review is only required in the Downtown Zones, the uncertainty and extra expense associated with the design review process may be a disincentive to private investment and new construction in the downtown area.

Design review decisions are subject to the 120-day clock for final local land use decision after an application has been accepted as complete. Scheduling a design review application for review by both the DLC and the Planning Commission can be cumbersome for an applicant and staff. Additionally, the role and responsibility of the DLC relative to the Planning Commission should be clarified.

The City might want to consider if it would be more useful for the DLC to provide design input to the applicant earlier in the process, perhaps shortly after a pre-application conference with staff. A more informal “design guidance” approach could be used to provide input and insights on key design objectives that should be addressed as more detailed plans are prepared for review by the Planning Commission. This could be a separate application, with a modest review fee.

The city could also consider if the minor quasi-judicial design review process should be limited to construction of new buildings only, with exterior alterations handled through a staff review. Additionally, photographs and/or simple illustrations could be included in the code or in a separate handbook to provide examples of the types of buildings that are considered consistent with the design standards and guidelines.

IV. Manufacturing Zone

Overview of Existing Industrial Zones

The Milwaukie Comprehensive Plan includes several goals, objectives and policies that support business retention and redevelopment to maintain local employment opportunities and the industrial tax base. The Milwaukie Zoning Ordinance includes two zones that implement the Industrial plan designation and policies for industrial land.

- Manufacturing zone (M) – Section 19.314
- Business Industrial zone (BI) – Section 19.324

The M zone is applied to the North Industrial and Johnson Creek Boulevard Industrial Areas. The BI zone is applied to the International Way Industrial Area located to the north of the Milwaukie Expressway. There are several key distinctions between the two industrial zones as summarized below:



- The purpose statements for the two zones are similar with a few subtle differences. The stated purpose for the M zone focuses on employee-intensive industrial uses, with commercial and office uses limited to accessory uses which serve the industrial area. The stated purpose for the BI zone describes a mix of employee-intensive industrial and office uses with associated services.
- Manufacturing, processing, packaging, assembly, warehousing and distribution of products are permitted uses in both the M and BI zones. However, the M zone requires that at least 25% of the total project involve an industrial use, while the BI zone allows business and professional offices including corporate headquarters with no minimum percentage requirement for industrial use.
- The M zone also includes a requirement that the combined uses shall provide at least ten (10) employees per acre. The BI zone does not include a specific requirement for employees per acre.
- The M zone is more restrictive than the BI zone in terms of prohibited uses. New residential uses, churches and public schools are prohibited in the M zone. The BI zone does not prohibit these uses.
- Small portions of the North Milwaukie M zone and the BI zone are mapped as Title 4 “Employment” areas. Retail uses greater than 60,000 square feet gross floor area per building or businesses are prohibited on all lots in mapped “Employment” areas in both the M and BI zones.
- The BI zone includes a broader list of limited retail and service uses and conditional uses relative to the M zone. Additional uses that are listed in the BI zone include retail outlets associated with manufacturing uses, banks, public and private community buildings and public storage facilities.
- “High-impact commercial businesses” are listed as a conditional use in the M zone but are not listed in the BI zone. As defined in Section 19.103 of the Zoning Ordinance, examples of these businesses include drinking establishments, commercial recreation, adult entertainment businesses, theaters, hotels, and motels.
- Site development requirements are the same for the M and BI zones for front yard setbacks (20 feet), height (45 feet), landscaping (15%) and site access (one curb cut of 45 feet maximum per 150 feet of street frontage). However, outside storage is prohibited in portions of the BI zone but is allowed with screening in the M zone. The BI zone also includes “principles” for site and building design that are not provided in the M zone.
- The M zone includes a requirement for a discretionary “Transition Area Review” for industrial projects proposed within 120 feet of areas zoned for residential development. The M zone is contiguous to residential zones to the east of the railroad and west of 17th Avenue. The BI zone does not include this “Transition Area Review” requirement.

Problems with Manufacturing (M) Zone

1. The existing ordinance does not include clear definitions or descriptions of permitted industrial uses or use categories.
2. Similar to many jurisdictions, the Milwaukie Zoning Ordinance is based on a traditional approach of listing uses that are permitted, limited, conditional or prohibited. If a use is not specifically listed, it is presumed prohibited unless the community development director determines that a use is “similar” to those listed. The director’s decision regarding similar uses may be appealed to the Planning Commission.



3. Section 19.103 (Definitions) includes definitions for some, but not all, uses listed in the Milwaukie Zoning Ordinance. However, *no* definitions are provided for industrial uses such as manufacturing, processing, fabrication, packaging, assembly, etc.
4. Given the lack of specific definitions for industrial uses, property owners, industrial users and the community development director often have to struggle with the challenge of trying to decide if a specific proposed use fits the very broad and general list of uses in the M zone. For example, would a HVAC business that involves a minor amount of on-site fabrication fit the category of “fabrication” and be considered a permitted use?
5. The M zone lacks clear and objective use and development standards to achieve the policy objective to retain the zone primarily for industrial employment. The existing zone only requires that at least 25% of the total project involve an industrial use.
6. The zone is not clear in defining what is considered the “total project” – is it gross site area, building square footage, number of employees? The zone does not provide guidance for defining the total project area when a site contains multiple tenants.
7. The zone does not provide guidance on what uses are considered in measuring 10 employees per acre. Is it just the industrial employees, or does it also include any combination of office and/or commercial employees which might be included in the total project? Is the 10 employee per acre measured relative to gross site acreage or building square footage? Additionally, it is not clear whether or how this employee density standard is monitored or enforced, particularly when a site contains multiple tenants.
8. The size limitations on retail uses that are included in the M zone to comply with regional Title 4 requirements only apply to a very small portion of the zone. The prohibition of retail uses larger than 60,000 square feet is not applicable to the portion of the M zone that is not within the Title 4 “Employment Area” boundary.

Discussion of Potential Solutions

Include definitions for general industrial uses in Chapter 19.103 (Definitions) or consider a “use category” approach. As noted above, the Milwaukie Zoning Ordinance does not include definitions or examples of general industrial uses that are permitted in the M zone. The City could standardize the terms for industrial uses listed in the M and BI zones and also include specific definitions for the industrial uses in Section 19.103 to provide better descriptions of the characteristics and examples of what is included in a general category such as manufacturing and production, industrial service, wholesale sales, etc.

As another option, the City could consider shifting to a standardized “use category” approach rather than relying on long lists of uses that may quickly become outdated. The *TGM Model Development Code* recommends the use category approach and provides a model chapter that cities can tailor to their needs. Each category (such as Industrial) includes descriptions of the characteristics of the uses, typical accessory uses, examples and exceptions. The City of Portland has adopted a use category approach that includes the following six categories for Industrial Uses:

- Manufacturing and Production
- Warehouse and Freight Movement
- Wholesale Sales



-
- Industrial Service
 - Railroad Yards
 - Waste Related

Excerpts from the Portland Zoning Code that describe the industrial use categories and the Use Table for the Employment and Industrial Zones are included in Attachment F to provide an illustration of how this approach is implemented in Portland. Based on our experience, we have found the use category approach to be clear, comprehensive and easy to understand. It is also helpful to have consistent use tables included in all of the zones rather than have widely different use lists.

However, transitioning from a detailed use list approach to a more generalized use category approach for all zones is not a quick or easy task. The city could consider “testing” the use category approach by first including it only in the BI and M zones.

Attachment J includes a Table of Permitted Use Categories for the two industrial districts in Gresham. Milwaukie may want to consider a similar approach to providing a more comprehensive description of use categories and example uses for the BI and M zones. Also, by presenting the use information for both zones in a single table, it would be easier to see the distinctions between the two industrial zones.

Clarify use and development standards for the M zone. There are options to improve the clarity of the M zone by organizing the sections in a more logical format and revising the text to describe the uses and development standards in clear and objective terms.

Rather than requiring the community development director to determine if a particular use is “accessory” to an industrial use, the City could consider adopting specific size limitations on retail trade uses similar to those that were recently adopted for Title 4 mapped “Industrial” areas. Under those amendments, individual retail trade uses are limited to a maximum of 5,000 square feet of gross floor area and multiple retail trade uses limited to a maximum of 20,000 square feet of gross floor area (whether in a single building or multiple buildings).

In Portland’s Heavy Industrial (IH) zone, Retail Sales and Service or Office uses are limited to a maximum of four per site, with up to 3,000 square feet per use. Conditional use approval is required to exceed this standard, and there is a prohibition of more than 12,000 square feet of Retail Sales and Service or Office uses on a site.

With a shift to more clearly defined standards for “accessory” uses in the M zone, and consideration of additional site development standards in proximity to residential zones (such as setbacks and screening/buffering), the City could consider deleting the requirement for a discretionary Transition Area Review.

Finally, the City might want to consider whether it might be appropriate to designate a larger portion of the Northern Industrial Area as a Title 4 Employment or Industrial Area. This would provide stronger recognition and protection of the industrial land base and could also open opportunities for targeted regional transportation investments to support freight movement into and out of the area.



To: Mayor and City Council

**Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director**

From: Gary Parkin, Engineering Director

Subject: Update on the Lake Road Multimodal Project

Date: July 22, 2009 for the August 4, 2009 Meeting

Action Requested

None. This is an informational update on progress and issues related to the Lake Road Multimodal project.

History of Prior Actions and Discussions

January 2008 – City and ODOT approve contract for OTAK Engineering to begin engineering design.

October 2005 – City receives federal earmark funding.

May 1997 – Lake Road Multimodal Plan adopted into the City’s Comprehensive Plan. The Lake Road plan is a product of many months of citizen and staff effort to identify the improvements desired for this transportation corridor.

Background

Based on the design features described in the Lake Road Multimodal Plan, a conceptual level cost estimate was developed for Lake Road from 21st Avenue to Kuehn

Road in April 2004. The plan included three traffic lanes (with medians), bike lanes, and sidewalks on both sides, and was estimated to cost \$20 million.

Several years after the Lake Road Multimodal Plan was adopted, the City began applying for grant funding. The City scaled back the design and project length to meet grant funding limits. A grant application for \$3.9 million was submitted to the federal delegation by the City in April 2004, and was approved for federal funding in October 2005.

The City submitted a project prospectus to define the project parameters in June 2006. The prospectus identified the project as a two lane street, with some turn lanes, bike lanes and some sidewalk infill on the south side of Lake Road from 21st Avenue to Kuehn Road. The cost estimate was \$3.6 million.

The project engineer/design consultant was selected in March 2007 and the project kickoff meeting was held in February 2008 at City Hall.

Public involvement for the project has included several meetings with the Lake Road NDA and a couple of project specific meetings. A project open house was held in October 2008 where design issues like median placement, sidewalk location, stormwater treatment location, the Oatfield intersection and the project terminus (now at Where Else Lane) were discussed with local residents. The residents in attendance expressed a desire for the project to include a left turn lane at Freeman Way. Staff agreed to accommodate the request by adding the pavement that would be needed for the turn lane.

A follow-up meeting to the open house, focusing on the Oatfield intersection, was held in February 2009. The group was provided a proposed intersection improvement that was scaled back from the prospectus (removing the added lane on Oatfield) along with a median plan that was revised because of comments received at the open house. Feedback was positive about reconfiguring the existing turn lanes from northbound Oatfield to Lake Road.

The project was discussed most recently at the June 10, 2009 Lake Road NDA meeting. This meeting provided information and gathered feedback on project changes that may be needed to address a project funding shortfall. The cost estimate completed as part of the 30% design plans shows a \$600,000 shortfall between the designed project and the budget. The primary reasons for the higher project cost estimate are:

- more extensive storm drainage needs than anticipated
- additional retaining walls
- and a more refined estimate based on engineered plans

The proposed adjustment was to remove the Oatfield intersection improvements (new signals, increased curb radii) and to leave the existing sidewalk in place from the south side of the Oatfield intersection to Guilford Drive. The NDA, while not happy with the project scope reduction, agreed that these were the most appropriate scope reduction measures. Staff continues to look for project savings and ways to bring the Oatfield intersection back into the project. The design and property acquisitions continue to assume the prior scope (Oatfield intersection reconstructed). If the cost estimates prove to be wrong and the work can be funded, the larger scope can be added back into the construction.

The project schedule anticipates the design phase to be completed by fall 2009. The Environmental phase is underway scheduled to complete later this calendar year. The Right of Way phase will start this summer and take about 15 months to complete and certify. Construction is expected to begin sometime between fall 2010 and early 2011.

Concurrence

None, as no action is requested at this time.

Fiscal Impact

None, as no action is required at this time.

Work Load Impacts

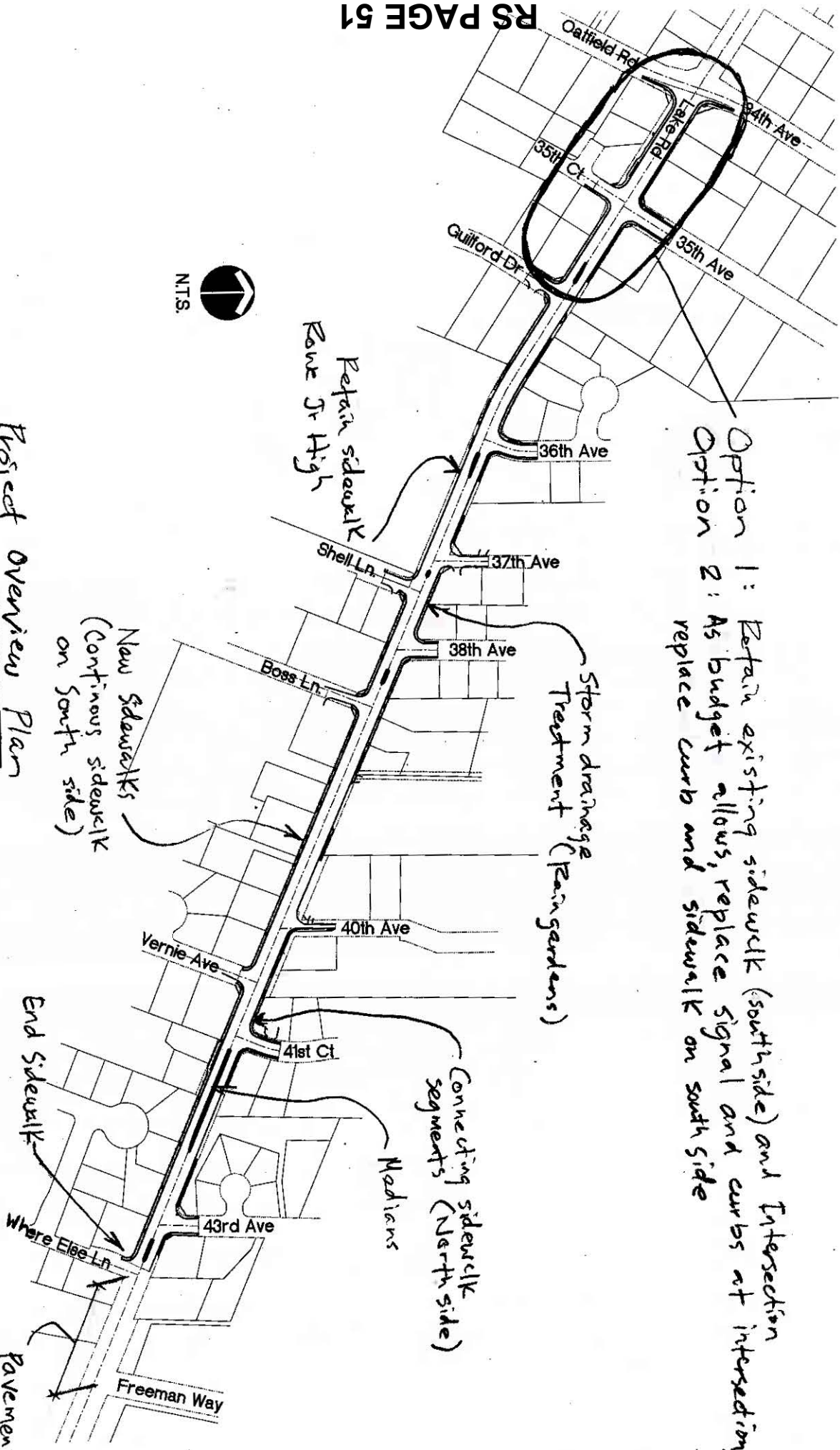
The Engineering Director is managing this project in collaboration with one Engineering staff person and plan review from several Community Development staffers. The work is within the City's work plan.

Alternatives

None listed, as this is a discussion item only.

Attachments

1. Project Overview Plan



Option 1: Retain existing sidewalk (south side) and Intersection
 Option 2: As budget allows, replace signal and curbs at intersection, replace curb and sidewalk on south side

Project Overview Plan

Attachment 1: Lake Rd Multimodal

Pavement Widened for Turnlanes

3.

CONSENT AGENDA

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 2, 2009**

CALL TO ORDER

Mayor Ferguson called the 2055th meeting of the Milwaukie City Council to order at 7:40 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Sr. Planner Susan Shanks, Planning Director Katie Mangle, Community Services Director JoAnn Herrigel, and Engineering Director Gary Parkin

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Principal Mark Pinder introduced Milwaukie High School Student of the Month Amy Aschenbrenner.

CONSENT AGENDA

Councilor Chaimov requested that in addition to tax lot numbers that maps be provided to the City Council in the future when property was involved such as the sewer extension project. He also requested information on OLCC applicants as he did not wish to vote on any he or his colleagues were representing.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt consent agenda as presented:

- A. City Council Work Session Minutes of February 3, 2009;**
- B. City Council Work Session Minutes of March 17, 2009;**
- C. City Council Regular Session Minutes of May 5, 2009;**
- D. City Council Regular Session Minutes of May 19, 2009;**
- E. Resolution 30-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Sherri Dow to the Milwaukie Park and Recreation Board;**
- F. Resolution 31-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Patty Wisner to the Design and Landmarks Committee;**
- G. Resolution 32-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Declaring the Need to Acquire and Approve the Purchase and/or Condemnations of Easements in the Dual Interest Area "A" for the Construction of the Northeast Sewer Extension Project;**
- Resolution 33-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Appraisal and Easement Acquisition Services Associated with Northeast Sewer Extension Project with Right-of-Way Associates, Inc; and**
- H. OLCC Application for River Road House, 11931 SE 22nd Avenue, Change of ownership.**

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

CITY COUNCIL REGULAR SESSION – JUNE 2, 2009

DRAFT MINUTES

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AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Adoption of Proposed Transportation Code Amendments, Land Use File ZA-09-02 – Ordinances

Mayor Ferguson opened the hearing on the legislative transportation code amendments to the Milwaukie Municipal Code initiated by the City that was continued from May 5, 2009.

City Attorney Monahan reviewed the purpose and procedure of the hearing. No conflicts of interest were declared, and there were no jurisdictional challenges from the audience.

Ms. Mangle provided background on the requested amendment to the zoning ordinance which regulated development. This package was about transportation planning and was one of many ways in which applications were reviewed for traffic impacts and community frontage needs for multimodal access, safety, and beauty. The City did not wish to allow development which the transportation system could not support, so the intent of these amendments was to strengthen and clarify the link. Development triggered certain improvements according to tax lots and did not apply to the Capital Improvement Plan (CIP) or projects of other public agencies. The amendments would apply to City properties. This effort was not transportation planning or promotion of City streets but rather impacts to the transportation system brought about by development.

Ms. Shanks provided the initial staff presentation. The action requested was for the City Council to adopt amendments to Milwaukie Municipal Code Title 19 Zoning, Title 17 Land Division, Title 15 Building and Construction, and Title 12 Streets, Sidewalks, and Public Places. Additionally there was a related fees schedule for transportation applications. All proposed changes were described in more detail in the commentary draft. Ms. Shanks provided project background which City staff with the assistance of the Angelo Planning Group had been working on for over one year. The project was about this one section of the City's development code and was not a street improvement program. The City developed a detailed scope of work, identified problems, and scheduled stakeholder meetings. Broadly the project goals were to develop fair, consistent and constitutional requirements, to implement the Transportation System Plan (TSP), and to develop a user-friendly code for the public and staff. The proposed amendments addressed legal obligations, improvement triggers, street design standards, the review process, and fee in lieu of construction (FILOC).

City Attorney Monahan stated in order to meet legal obligations the improvements had to relate to and be proportional to development impacts created by the project. These amendments brought the code up to date, and the attorney's office was part of the project team. He was satisfied the effort brought the code into legal compliance and was defensible. It replaced the value-based triggers with impact-based triggers, and he believed the rationale in the proposed code better served the objective of developers contributing to the infrastructure in an equitable manner. It better defined the FILOC program. It recognized the City's responsibility to perform the impact analysis each time there was a land use application that could impact the transportation system. In addition the responsibilities of the City and development community were defined along with identifying the criteria that needed to be applied on a consistent basis.

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DRAFT MINUTES

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Ms. Shanks discussed the change to the impact-based approach that looked at whether additional lots would be built, if floor space was added, and if there was a new dwelling unit. Single-family residential development interior remodels and expansions under 200-square feet would not trigger the code. Since the last work session discussion staff recommended that expansions between 200 and 1,499 square feet would trigger right-of-way dedication if needed. If the addition was larger than 1,500-square feet, the approximate size of a single-family residence in Milwaukie, the property owner would be responsible for full street improvements if needed on that street. She discussed the importance of right-of-way acquisition and how property owners would contribute to completion of City streets in the future. Staff also looked at improving the review process to help people understand key points. She discussed the flowchart and code reorganization that made for a more understandable and transparent process. During the TSP process staff heard citizen express interest in more flexibility in street design standards based on the built environment. The community wanted structure with some discretion based on real world situations. Ms. Shanks discussed the fee in lieu of construction in the neighborhoods other than the downtown zone. The new code defined the program and provided guidelines for its administration. It was clarified that the money would be spent in the neighborhood in which it was collected so there was a benefit to both the property and the neighborhood being impacted.

Goal #2 of the project was how the amendments would implement the TSP in terms of safety, livability, and quality of design by completing streets as development occurred, design flexibility, design alternatives, and safe and adequate access standards. The code amendments would continue to require development to construct street improvements when there were impacts. Ms. Shanks reviewed the elements of design flexibility and showed a slide of the recent Logus Road improvements. New code allowed for different design elements such as horizontal separation, storm treatment facilities in the right-of-way, and bicycle boulevard applications. Finally safe and adequate access had to do with clear vision and access management.

Mr. Parkin addressed safe and adequate access related to clear vision and access management. A property may have a circular drive as long as the access points are 50-foot apart. The driveway width was changed from 18- to 20-feet.

Ms. Shanks discussed Goal #3 which was to make the code user friendly with flowcharts and updated references. She summarized the proposal. Public outreach included the development community, neighborhood leadership, and the Downtown Business Association. Generally there was overall support for the 3 main changes: the impact based approach, more street design flexibility, and a streamlined review process. The Planning Commission recommended approval of the amendments which did not include the residential expansion matter the City Council identified.

Councilor Barnes appreciated residential facility compromise.

Councilor Stone found herself still not agreeing with the compromise. She had a hard time believing because someone built a larger house that there would be more impacts and that the property owner should be responsible for street improvements. That did not resonate with her on a practical level. She did not agree with the idea that an increase in the size of the home or doing a remodel would sufficiently impact the streets. She was happy it was impact-based rather than value-based. She discussed fee in lieu of construction and asked if it applied to residential as well as commercial.

Ms. Shanks replied that it did.

Councilor Stone asked if a person on a narrow lot would be restricted from having a circular driveway and noted there was one on Tacoma Street where the circular drive seemed like a good idea due to traffic volumes.

Mr. Parkin replied there were restrictions. It did make sense in some situations on busy streets. This was a general application and also took into consideration the streetscape and amount of pavement.

Ms. Shanks added this was a situation with competing goals. More driveways resulted in more curb cuts and less on-street parking and created more potential conflict points. It was referenced in the old code and written in new code that property owners on local streets can back out of their driveways. There was a new provision that would require properties to contain all the backing movements on the property, so drivers can pull forward out of their driveways. The engineering department balanced on-street parking with safety and access.

Councilor Stone did not want to be too limiting.

Ms. Shanks noted the property owner could have a hammerhead turn, and there were a number of design possibilities.

Correspondence: Ms. Shanks summarized the additional correspondence received from Teresa Bresaw, Planning Commissioner, that addressed size of the remodel, a summary of her meeting with Greg Hemer, Design and Landmarks Committee member, who supported the single-family residence expansion proposal, dedication of right-of-way, and street improvement funding, and e-mail from Bruce Goldson, Compass Engineering, thanking staff for the information, and emails Alicia Hamilton discussing residential expansion.

Mayor Ferguson reviewed the conduct of the hearing and called for public testimony.

Teresa Bresaw, Milwaukie, spoke representing the Planning Commission. She noted walking in Milwaukie could be dangerous, and she liked sidewalks. A 1,500 square foot expansion was large, and could impact traffic now or in the future. She felt this was a conservative approach. The Planning Commission supported this change in standards.

Sara Overbeck, Angelo Planning Group, Portland. She worked with staff as a consultant and provided technical assistance to the planning and engineering departments. She felt this was a thoughtful and thorough job that addressed the City's unique circumstances. The amendments made for a smoother and more efficient document for applicants and City staff.

David Aschenbrenner, Milwaukie. From the Budget Committee perspective he expressed appreciation for the work done on FILOC administration. From the neighborhood side of things he appreciated being able to design streets and sidewalks that addressed neighborhood needs and character. He felt these amendments gave staff the tools they needed. He and others had been contacted for input, and he supported adoption of the proposed amendments.

Ed Parecki, Milwaukie business owner. He wanted to bring up some sore points this process had taken although he felt most of it was exceptional. He agreed with most of it. He discussed the constitutionality of the code he commented on during his 2007 renovation of the Main/Monroe Building. Most of what he mentioned at the time was being enacted. He asked for a look back at what happened in 2007 on his project and for a release from the 10% fee, \$12,500, imposed on him.

Ms. Shanks reviewed the staff recommendation. The existing code was not very legally defensible. She discussed the impact-based approach in single-family residence expansions that served the City's goals and preserved dedicated right-of-way to facilitate future projects. She discussed data used from the ITE Manual related to single-family residences specifically. A traffic study for each new single-family residence would be too onerous, and the ITE Manual was considered the standard. In

some cases impacts were not seen immediately, and it was important for the City to take its legal opportunity. She commented on the Main Street Program.

Councilor Stone asked if the FILOC would include the cost of dedicated right-of-way. Would the land offset the dollar amount?

Mr. Parkin replied the dedicated right-of-way would not be in the cost. The process did not work that way. The City would prefer the frontage be developed, and the FILOC was collected only in cases where it could not be done.

Councilor Stone used an example in the Waverley area and piecemeal sidewalk projects.

Mr. Parkin explained the dedication was not part of the cost, and there was no credit for it.

Ms. Shanks added the right-of-way dedication was a separate piece and was related to the impacts of that expansion. The impact approach was being applied in an sensible, equitable way manner. The right-of-way dedication would help mitigate those impacts.

Mr. Parkin pointed out 60th Avenue where some properties had dedicated right-of-way and others had not. Dedications were very important to the whole process. Unless it was a unique situation, such as a right-of-way dedication impacting setback requirements, the City would get the right-of-way it needed.

Ms. Shanks explained very large expansions would still pay FILOC along with dedicating right-of-way.

Councilor Stone asked how the City dealt with privately maintained roads if they were expanded.

Ms. Shanks replied the City had a number of private roads and those which were there by easements. Legally because of the need to have a relationship between what the City required and the project impact it could only require frontage improvements. In the case of a private road the City did not have jurisdiction, so there could only be requirements that addressed safety. Staff concluded the City was restrained legally and could only require FILOC.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to close the public testimony portion of the hearing. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

Mayor Ferguson closed the public testimony portion of the public hearing at 8:57 p.m.

Councilor Loomis thought the low square footage was a hindrance for those who wanted to improve their property. He appreciated the changes that staff made since the work session. What happened with total tear down with one wall left standing?

Ms. Shanks replied the code addressed scrape offs specifically when one wall was left standing. That situation was subject to new construction standards.

Councilor Chaimov found it gratifying to see how well staff carried out City Council's direction to help make a better city.

Councilor Stone could not vote in support of these amendments. She felt the City would recoup money from the higher assessed value and did not want to set a policy that would deter people from making property improvements. She acknowledged that staff did make a concession related to square footage. She loved the ITE Manual but did not agree a larger building necessarily had greater impacts just because someone

wanted to be in a bigger house. She would not vote in favor of the ordinance unless there were changes.

Mr. Swanson commented the higher values would certainly impact the property tax revenues going into the general fund; however, higher values would not affect the transportation piece. The City's ability to address traffic issues would not change.

Councilor Stone replied it did not seem constitutional to her that one living on an unimproved street was subject to this. She did not care for piecemeal improvements. It looked a lot better to do a street completely. She agreed with Mr. Aschenbrenner's comments about design and noted Logus Road had turned out beautifully.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Title 17 Land Division and Title 19 Zoning and implementing Transportation System Plan policy recommendations. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye" and Councilor Stone voting "no." [4:1]

Mr. Swanson read the ordinance for the first time by title only.

Mayor Ferguson announced since the vote was not unanimous the second reading of the ordinance would be set for June 16, 2009.

It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only of the ordinance amending Title 12 Streets, Sidewalk, and Public Places and Title 15 Buildings and Construction. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye" and Councilor Stone voting "no." [4:1]

Mr. Swanson read the ordinance for the first time by title only.

Mayor Ferguson announced since the vote was not unanimous the second reading of the ordinance would be set for June 16, 2009

It was moved by Councilor Chaimov and seconded by Councilor Loomis to approve the resolution setting fees for services. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 34-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING FEES FOR SERVICES.

City Attorney Monahan read the Land Use Board of Appeals (LUBA) information.

OTHER BUSINESS

A. Council reports

Councilor Barnes hoped the Milwaukie Police officers involved in the shooting today would find the strength to get them through the ordeal. She attended the Volunteer Appreciation Brunch and announced the Milwaukie High School Graduation and Milwaukie Recycling Day event.

Mayor Ferguson thanked Milwaukie High School staff and contractors who built the new performing arts center and extended his appreciation to the volunteers who dedicated thousands of hours to the City.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 9:09 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 16, 2009**

CALL TO ORDER

Mayor Ferguson called the 2056th meeting of the Milwaukie City Council to order at p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Planning Director Katie Mangle, Resource/Economic Development Specialist Alex Campbell, Finance Director Ignacio Palacios, Community Services Director JoAnn Herrigel

Municipal Court Judge Ron Gray presented the certificate of election and administered the Oath of Office to Mayor Jeremy Ferguson.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

The City Council and Ms. Herrigel recognized Ray Harris for his service to the community as a member of the Milwaukie Park and Recreation Board.

Mayor Ferguson announced upcoming community events.

CONSENT AGENDA

It was moved by Councilor Stone and seconded by Councilor Barnes to adopt consent agenda as presented:

- A. City Council Regular Session Minutes of February 3, 2009;
- B. City Council Work Session Minutes of April 21, 2009;
- C. City Council Work Session Minutes of May 5, 2009;
- D. Resolution 35-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Accepting the Public Safety Advisory Committee Bylaws;
- E. Resolution 36-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting City of Milwaukie's Addendum to the Clackamas County Natural Hazards Mitigation Plan;
- F. Resolution 37-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; Classifying the Fees Imposed by This Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution; and Providing for Cost of Construction Indexing of System Development Charges;
- G. Resolution 38-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Certifying Election Results for the May 19, 2009 Special Election; and
- H. Resolution 39-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Execute the Fifth Amendment to Personal Services Contract with Jordan Schrader Ramis PC Establishing New Rates for Service Effective July 1, 2009 and Making Other Amendments.

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

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. 2009 – 2010 Budget Hearing

Mayor Ferguson called the public hearing on the 2009 – 2010 Budget and 5-Year Capital Improvement Plan to order at 7:12 p.m.

The purpose of the hearing was to consider resolutions required to effect the adoption of the FY 2009 – 2010 budget and CIP and to hear public comment.

Mr. Swanson provided the staff report. This hearing was the culmination of the budget process that started in January and followed three Budget Committee hearings. Three actions had to be taken, and the first was that the City had to enact a resolution stating its election to receive state revenue sharing and be certified by the City Recorder.

There was no testimony on that matter and no correspondence.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution declaring the City’s election to receive state revenue sharing. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 40-2009:

A RESOLUTION DECLARING THE CITY OF MILWAUKIE’S ELECTION TO RECEIVE STATE REVENUE SHARING

Mr. Swanson reviewed the second resolution which certified services for state revenue sharing. There was no testimony on that matter and no correspondence.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution certifying services for state revenue sharing. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 41-2009:

A RESOLUTION CERTIFYING SERVICES FOR STATE REVENUE SHARING.

Mr. Swanson reviewed the third resolution that adopted the budget and Capital Improvement Plan (CIP) and declared and categorized taxes for fiscal year 2009 – 2010. The budget process began in January 2009 and included three Budget Committee hearings. The goal was to maintain services and not reduce the number of employees. That goal, however, did come at a cost as contingency and reserves were reduced. The City’s permanent rate was \$6.5379, but as the City promised in the Fire District annexation measure, it collected only \$4.0660. The City also levied \$594,595 for the Public Safety Debt Service. The street fund proposed a smaller amount of revenue from gas tax. The goal of this budget was to retain services, and in one case the City was able to enhance services because of a voter-adopted library district in 2008. The Ledding Library will increase its availability to the public by 14 hours per week along with adding more programs and staff hours in other key areas. The Street Surface Maintenance Program met and in some ways exceeded the planned

improvements. **Mr. Swanson** reviewed the completed projects and noted stimulus funds made it possible to move certain projects forward in the schedule.

Mayor Ferguson called for public testimony.

Mike Miller, Milwaukie resident and Budget Committee member expressed appreciation to staff and hoped the City would not have to make serious cuts in the future. He encouraged the City Council to adopt the budget as he believed it met the public's expectations and to begin working on the 2010 – 2011 budget as soon as feasible.

Mayor Ferguson closed the public hearing at 7:26 p.m.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution adopting the budget and capital improvement plan, making appropriations, and declaring and categorizing taxes for fiscal year 2009 – 2010. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 42-2009:

A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING APPROPRIATIONS, AND DECLARING AND CATEGORIZING TAXES FOR FISCAL YEAR 2009 – 2010.

B. 2008 – 2009 Supplemental Budget

Mayor Ferguson called the public hearing on the 2008 – 2009 supplemental budget to order at 7:28 p.m.

The purpose of the hearing was to consider a resolution approving the supplemental budget and to hear public comment.

Mr. Palacios provided the staff report. He briefly reviewed the proposed transfers in the fiscal year 2008 – 2009 budget.

There was no testimony on that matter and no correspondence.

Mayor Ferguson closed the public testimony portion of the hearing on the 2008 – 2009 supplemental budget at 7:33 p.m.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution approving the 2008 – 2009 supplemental budget. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

RESOLUTION 43-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING TRANSFERS OF FY2008-2009 APPROPRIATIONS AND APPROVING A SUPPLEMENTAL BUDGET.

C. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson provided background on the proposed code amendments and recommended continuation of the hearing to July 21, 2009.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to continue the hearing to the regular City Council session of July 21, 2009. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

D. Code Table Clean-Up Amendments, File ZA-09-03

Mayor Ferguson called the public hearing on the legislative amendments to the Milwaukie Municipal Code initiated by the City to order at 7:36 p.m.

City Attorney Monahan reviewed the purpose and procedure of the hearing.

Ms. Mangle provided the staff report in which the City Council was requested to adopt amendments to Municipal Code Titles 14, the Sign Ordinance, Title 17, Land Division Ordinance, and Title 19, the Zoning Ordinance with the recommended findings. This was in preparation of the code republication project, and she discussed the importance of this project to customer service. The proposal met approval criteria for amending the zoning code.

There was no testimony on that matter and no correspondence.

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

Mayor Ferguson closed the public testimony portion of the hearing at 7:43 p.m.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings and adoption of the ordinance amending Title 14, the sign ordinance, Title 17, the Land Division Ordinance, and Title 19, the Zoning Ordinance with the recommended findings to make tables more consistent with the zoning ordinance text. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

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

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

ORDINANCE NO. 2001:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 14 SIGN ORDINANCE, TITLE 17 LAND DIVISION ORDINANCE, AND TITLE 19 ZONING ORDINANCE TO MAKE ZONING ORDINANCE TABLES MORE CONSISTENT WITH ZONING ORDINANCE TEXT (FILE #ZA-09-03)

E. Amend Milwaukie Municipal Code (MMC) Chapter 13.30, Reimbursement Districts

Mayor Ferguson called the public hearing to order at 7:46 p.m.

The purpose of the hearing was to consider public comment on the proposed amendments to MMC Chapter 13.30, Reimbursement Districts.

Mr. Campbell provided the staff report in which the City Council was requested to adopt the ordinance setting the base term of a reimbursement district at 10 years and allow the City Council to extend the district in 10-year increments.

There was no testimony on that matter and no correspondence.

Mayor Ferguson closed the public testimony portion of the hearing at 7:47 p.m.

It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal code Chapter 13.30, Reimbursement Districts. Motion

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

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

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

ORDINANCE NO. 2002:

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

OTHER BUSINESS

A. Adoption of Proposed Transportation Code Amendments Land Use File ZA-09-02

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the second reading by title only and adoption of the ordinance amending Title 17 Land Division and Title 19 Zoning and implementing Transportation System Plan Policy recommendations. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye” and Councilor Stone voting “no.” [4:1]

Mr. Swanson read the ordinance for the second time by title only.

Ms. DuVal polled the Council: Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye” and Councilor Stone voting “no.” [4:1]

ORDINANCE NO. 2003:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FOLLOWING TITLES OF THE MILWAUKIE MUNICIPAL CODE: TITLE 17 LAND DIVISION AND TITLE 19 ZONING. THE AMENDMENTS IMPLEMENT TRANSPORTATION SYSTEM PLAN POLICY RECOMMENDATIONS RELATED TO STREET DESIGN, STREET SAFETY, AND MULTI-MODAL TRANSPORTATION FACILITIES (FILE #ZA-09-02).

It was moved by Councilor Barnes and seconded by Councilor Loomis for the second reading and adoption of the ordinance amending Title 12 Streets, Sidewalk, and Public Places and Title 15 Buildings and construction. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye” and Councilor Stone voting “no.” [4:1]

Mr. Swanson read the ordinance for the second time by title only.

Ms. DuVal polled the Council: Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye” and Councilor Stone voting “no.” [4:1]

ORDINANCE NO. 2004:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FOLLOWING TITLES OF THE MILWAUKIE MUNICIPAL CODE: TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES AND TITLE 15 BUILDINGS

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AND CONSTRUCTION. THE AMENDMENTS ARE PRIMARILY IN RESPONSE TO RECENT TRANSPORTATION-RELATED AMENDMENTS TO CHAPTER 19.1400 OF THE MILWAUKIE MUNICIPAL CODE (FILE #ZA-09-02).

B. Council reports

Councilor Barnes thanked those who sponsored the Cruisin for Hope this past weekend.

Councilor Chaimov attended the Cruisin for Hope and Ardenwald Secret Garden Tour.

Councilor Stone attended the Ardenwald Neighborhood Association meeting and announced upcoming light rail meetings.

Mayor Ferguson volunteered at clean-up day, participated on the Citizens Utility Advisory Board tour conducted by Bob Hatz, and attended the Cruisin for Hope.

Mr. Swanson announced the Madalaine Bohl Memorial Fund and the Friends of the Ledding / Library Foundation matching grant program.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:02 p.m.

Pat DuVal, Recorder

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
JULY 7, 2009

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

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

Planning Commissioners Present: Jeff Klein, Lisa Batey, Teresa Bresaw, and Scott Churchill

Staff Present: City Manager Mike Swanson, Planning Director Katie Mangle

Planning Commission Annual Joint Meeting

The Commissioners introduced themselves, and **Ms. Mangle** outlined the role of the Planning Commission.

Mr. Klein discussed his pride in being a part of the group and camaraderie.

Ms. Batey commented briefly on the code amendments in the work plan. She was hoping those things would help fix the code to make some of the more problematic issues not possible in the future.

Ms. Bresaw was interested in the pragmatic end result and the importance of an informed public.

Mr. Churchill said it would be interesting to know what Council wanted from the Planning Commission and to know how they could support the Council's vision.

Councilor Stone suggested a work session with the City Council and discussed the need to be proactive by setting some goals.

Councilor Chaimov thanked the members for their service. He asked what the Council could do to help the Planning Commissioners do their jobs more easily.

Mr. Churchill replied when looking at applications it would be nice to understand the Council's general thoughts or history on a particular site.

Mr. Klein said goal setting would be beneficial because that would give them reinforcement or direction and commented on the South Downtown Planning efforts.

Ms. Batey asked on the goal setting piece if that was what this work session was for. They were there to discuss the work plan and she thought that was what this meeting was about.

Councilor Chaimov understood the Council and Planning Commission talking about something like the Downtown Plan. He did not have any concerns when looking over the work plan. It looked like a good plan given the amount of available resources. He wanted to know what the available resources were.

Ms. Mangle understood matters like the aesthetics of the sign code were important but the resources were not available. There were resources to

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address some issues, but not all of them. She discussed the upcoming code assessment funded by a Transportation and Growth Management (TGM) grant on such matters as residential design standards. She thought it would be good to get guidance from Council on what was of importance. There were grants available to fund those changes and that could be something addressed in a goal setting session.

Councilor Loomis appreciated the work the Planning Commission did and like the group's diversity, which often times forced compromise. It would be good after Council had a goal session to get together with Planning Commission.

Ms. Bresaw thought design standards were important.

Ms. Mangle added the scope of design standards was single- and multi-family residences.

Ms. Batey commented on areas ripe for redevelopment and said they should be considering design standards on commercial space in addition to residential.

Councilor Stone asked how involved the Design and Landmarks Committee (DLC) was with the design standards.

Ms. Mangle replied that the DLC was a subcommittee to the Planning Commission and there would be joint work session in the future.

Mr. Klein said the DLC was a good group that made good decisions and suggested bringing them in on other projects outside of the downtown.

Councilor Stone added to her initial comment on goal setting. The goal setting could be between the City Council and staff and as the liaison they could give the direction.

Ms. Mangle wanted feedback on appeal situations so the Planning Commission could prepare better in making decisions prior to City Council deliberations.

Councilor Chaimov said to extent of when there were disagreements between Commission members on an application or decision it would be helpful to get a summary of those points to get a sense of the discussion.

Mayor Ferguson added that he wanted communication before making decisions.

Councilor Chaimov said he would like a discussion of what we wanted the City to look like.

Mayor Ferguson said the work plan looked good, but he hoped to have some time for discussion to work through issues and questions.

Councilor Chaimov asked about the status of the South Downtown Project.

Mr. Klein provided an update and said how cool it was.

Mr. Churchill commented on his experience with the Christopher Alexander group, but still had some questions about the financing plan.

Ms. Batey was impressed with the process and the diversity of the working group. They were all engaged in the process.

Ms. Bresaw expressed some concern about the expense and the ability to see the plan through.

Mr. Klein said that was what this plan did. It was build as you go. It set a structure, design and a vision for what we ultimately wanted to achieve.

Ms. Mangle said Randy from CES would be coming in August to talk about the plan.

Mr. Klein discussed the Pattern Language Approach. There are ideas, and they should not get lost. He hoped Council would be open-minded about the project. He asked Council how it thought the Planning Commission was doing since it did not have a great track record with appeals.

Councilor Stone said sometimes she had the notion that maybe the Planning Commission expected Council to endorse every decision that came along. She did not want the Commission to take it personally if the Council did not agree. She appreciated all of the hard work and time the Planning Commission puts in.

Mayor Ferguson announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h) consultation with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Ferguson adjourned the work session at 6:11 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 7, 2009**

CALL TO ORDER

Mayor Ferguson called the 2057th meeting of the Milwaukie City Council to order at 7:09 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Code Compliance Assistant Sarah Lander

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mayor Ferguson read a proclamation naming July 2009 as Oregon National Guard Month.

Mayor Ferguson announced Councilor Barnes was excused from the meeting.

CONSENT AGENDA

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

- A. City Council Work Session Minutes of April 7, 2009;
- B. City Council Work Session Minutes of May 19, 2009;
- C. City Council Work Session Minutes of June 2, 2009;
- D. Resolution 44-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Jason Loomis to the Milwaukie Riverfront Board; and
- E. Resolution 45-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign and Renew the Intergovernmental Agreement with Clackamas County for a Grant to Maintain the Juvenile Diversion Program.

Motion passed with the following vote: Councilors Loomis, Chaimov, and Stone and Mayor Ferguson voting "aye." [4:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Parking Code Amendments and Parking Fines – Ordinance and Resolution

Ms. Lander provided the staff report. She requested approval of the ordinance clarifying parking regulations in the downtown area and establishing legal language for

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enforcing the block rule. She described the education and enforcement methods and reviewed the fine increase that was intended to encourage employees to use off-street parking. The monthly permits would be lowered to \$20 which was less than one parking ticket and hopefully providing the needed incentive to downtown employees. She briefly described the downtown parking chapter in the 2008 Transportation System Plan (TSP) in which data was gathered and policies outlined. In her research she found these amendments consistent with other municipalities.

Councilor Stone understood lowering the permit fee and increasing the amount of the bail was intended to be an incentive. The cost of the permit was certainly not unreasonable, and she asked if staff had considered increasing the bail to \$30 and keeping the permit fee at \$25 per month.

Ms. Lander replied downtown employees felt the \$25 permit fee was a lot so instead moved their cars throughout the downtown area to avoid the expense of purchasing a permit. Feedback indicated people were more likely to purchase a \$20 permit and wanted to do so online. There was a balance between motivating employees and not discouraging customers. The lower permit fee had already been adopted in the annual fee resolution. Information was gathered during the TSP process and comments and observations in the field. Parking location information was available on the City website.

Councilor Stone asked how much the signage would cost and what kind of information they would provide. Could an alternate description like "customers only" be used instead of the code language?

Ms. Lander would paraphrase code language and inform people about application of the block rule.

City Attorney Monahan explained the City was legally obligated to inform people how the block rule applied. Staff was also working on a public information piece. Signage was an important element for those who do not regularly come into the downtown area.

Councilor Stone wanted to avoid sign overkill and was concerned about aesthetics.

Ms. Lander explained it would be a sign for sign replacement.

Councilor Stone was curious as to why this model code language was chosen.

Ms. Lander had personal knowledge of City of Petaluma signs and how that kind of language might be applied in Milwaukie. The City of Medford had almost the same designation, so she used those cities' regulations as models.

Councilor Chaimov understood the program would be implemented in one year.

Ms. Lander replied the code language could be adopted now, but it could not be implemented without signage and public education. The cost of changing out all signs was approximately \$6,000.

Councilor Chaimov assumed the City might want to implement the block rule before one year, and downtown businesses would appreciate the City's spending \$6,000.

Mr. Swanson explained the funds were budgeted in the current fiscal year, and staff could probably make sign installation happen sooner if City Council wished.

Mayor Ferguson asked how many signs needed to be changed and if there could be any contract issues if installation was done by someone other than City workers.

Ms. Lander responded there were approximately 120 signs in the downtown.

Mr. Swanson discussed scheduling the work and felt the City crew could probably schedule the work.

Councilor Chaimov commented it would be nice if the program were implemented in less than a year, and he was satisfied if it was moving forward at a reasonable pace.

Ms. Lander provided examples of multiple citations in one day.

Mayor Ferguson asked if the new citation system printed a courtesy ticket that was more of an informational piece and if so could those warnings be tracked.

Ms. Lander replied a warning could be tracked in the system and a scofflaw list generated.

It was moved by **Councilor Chaimov** and seconded by **Councilor Loomis** to adopt the resolution updating the bail amounts for code violations pertaining to parking offenses. Motion passed with the following vote: **Councilors Loomis, Chaimov, and Stone** and **Mayor Ferguson** voting “aye.” [4:0]

RESOLUTION 46-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, UPDATING THE BAIL AMOUNTS FOR MILWAUKIE CODE VIOLATIONS PERTAINING TO PARKING OFFENSES.

It was moved by **Councilor Chaimov** and seconded by **Councilor Stone** for the first and second readings by title only and adoption of the ordinance amending Title 10, Section 10.20.080 and 10.20.090. Motion passed with the following vote: **Councilors Loomis, Chaimov, and Stone** and **Mayor Ferguson** voting “aye.” [4:0]

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

Ms. DuVal polled the Council: **Councilors Loomis, Chaimov, and Stone** and **Mayor Ferguson** voting “aye.” [4:0]

ORDINANCE NO. 2005:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 10 OF THE MILWAUKIE MUNICIPAL CODE TO CLEARLY DEFINE WHEN A PERSON MAY BE CITED FOR VIOLATING 10.20.080(B) AND (C) AND STRENGTHENING ENFORCEMENT OF REPEAT VIOLATORS OF PARKING REGULATIONS (10.20.090)

B. Election of Council President

City Attorney Monahan described the code requirements.

It was moved by **Mayor Ferguson** and seconded by **Councilor Stone** to elect **Councilor Chaimov**. Motion passed with the following vote: **Councilors Loomis and Stone** and **Mayor Ferguson** voting “aye” and **Councilor Chaimov** abstaining. [3:0:1]

C. Council reports

Councilor Stone attended the Light Rail Steering Committee meeting and encouraged residents to attend other upcoming meetings.

Mayor Ferguson announced the Historic Milwaukie NDA noon concert at Scott Park, the Friends of the Library Book Sale, Rep. Tomei’s Town Hall with guest Speaker of the House Dave Hunt, light rail community meetings, Milwaukie Daze Festival, and Farmers’ Market.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Councilors Loomis, Chaimov, and Stone and Mayor Ferguson voting “aye.” [4:0]

Mayor Ferguson adjourned the regular session at 7:42 p.m.

Pat DuVal, Recorder



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police
Date: July 16, 2009
Subject: **O.L.C.C. Application – Rice Thai Cookery – 10614 SE Main Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Rice Thai Cookery – 10614 S.E. Main Street.

Background:

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



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Steve Bartol, Captain
Date: July 20, 2009
Subject: **O.L.C.C. Application – Kimmy’s Market – 3141 SE Harrison Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Kimmy’s Market – 3141 S.E. Harrison Street.

Background:

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

6.
OTHER BUSINESS



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Garbage Rate Increase
Date: July 6, 2009

Action Requested

Approve a resolution increasing some residential and commercial garbage rates to reflect increases in disposal costs and the recent downturn in recycling markets and increasing drop box rates to move toward cost of service.

History of Prior Actions and Discussions

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

Background

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

The City determines the solid waste franchise system's health based on what is called the "return on revenues" (ROR). Chapter 13.24 of our municipal code states that rates should be adequate to provide a ROR equal to 10% of the composite gross revenue. In practice, a ROR between 8% and 12 % is considered acceptable, while 10% is the target return.

For 2008, the haulers' consolidated ROR was 9.82 %. The projected ROR for 2009, however, is 6.90 %. This low rate projection is based on two major factors. First, Metro recently approved a tip fee increase of \$5.00 a ton, effective August 6, 2009. Second, markets for secondary materials have suffered a great deal over the past year, resulting in a significant decrease in revenues from the sale of recyclable materials. Recycling revenue, prior to the downturn, directly offset over 20% of direct expenses attributed to the collection of recyclables.

The three main collection service sectors are residential, commercial and drop box. The haulers' financial information indicated that the rate of return for the residential sector for 2008 was below 5% and is expected to be below zero for the coming year (negative rate of return). For drop box service, the ROR for last year and the coming year was at the low end of the acceptable range (near 8%). Finally, the ROR for commercial services appeared to be very healthy both during the past and coming years.

In 2007 staff attempted to bring most of the City's garbage rates in line with Clackamas County's. While staff continues to support this move toward consistent rates, this year's return rates and the general economic downturn required us to suspend this effort in some cases. Staff will attempt, in the future, where appropriate and fiscally responsible to equalize the rates.

After reviewing the financial figures for 2008, conferring with Clackamas County Solid Waste staff, and meeting with the garbage haulers and their financial consultant, City staff developed the following rate increase proposal:

- Increase residential rates for all service levels to reflect the Metro tip fee increase and the suppressed recycling market health.
- Increase commercial can and cart rates only to reflect tip fee and secondary market suppression but do not increase container (Dumpster) rates this year. (Note: While Clackamas County plans to increase their commercial container rates this year, City staff feels that the ROR was too high for this service level to substantiate a similar increase)
- Increase drop box rates to move toward cost of service levels and achieve parity with Clackamas County rates. This rate modification has been postponed for several years,

pending discussions with the haulers about drop box service activities and is long over due.

The following table shows the proposed rates for various service levels compared to existing rates:

Residential Commercial Can +Cart Current Rate	Service Level	Proposed	Adjustment \$
\$ 21.75	20 gal cart	\$ 22.95	\$ 1.20
\$ 25.00	32/35 gal	\$ 26.35	\$ 1.35
\$ 33.25	60/65 gal	\$ 34.75	\$ 1.50
\$ 38.80	90/95 gal	\$ 40.55	\$ 1.75
\$ 11.65	On call customers	\$ 12.00	\$ 0.35
\$ 11.65	Monthly	\$ 12.00	\$ 0.35
\$ 19.50	Court Apartments	\$ 20.85	\$ 1.35
\$ 21.05	Commercial 32 can	\$ 22.40	\$ 1.35
	Commercial 60/65		
\$ 31.20	gal	\$ 32.70	\$ 1.50
	Commercial 90/95		
\$ 33.50	gal	\$ 35.00	\$ 1.50

Drop Box Current Rate	Service Level	Proposed	Adjustment \$
\$ 81.98	10/20 Cu Yd	\$ 110.00	\$ 28.02
\$ 104.38	30 Cu Yd	\$ 127.00	\$ 22.62
\$ 120.62	40 Cu Yd	\$ 144.00	\$ 23.38
\$ 2.30	Mileage fee	\$ 2.70	\$.40

Compactors Current Rate *	Service Level	Proposed Serv Level	Proposed Rate
\$ 98.73	< 18 Cu Yd	< 25 Cu Yd	\$ 125.00
\$ 6.12 /CY	18-29 Cu Yd	25-34 Cu Yd	\$ 165.00
\$ 5.40/ CY	30-39 Cu Yd	34+	\$ 191.00
\$ 4.78 CY	40+ Cu Yd		

* Total compactor charges are the above charges added to the cost of the disposal.

For compactor services, staff is proposing changing both the method and the rate that is charged. As seen above, the current method of charging for compactors involves, in some but not all cases, applying a per cubic yard charge to a range of compactor sizes. The new system would apply a flat rate to all ranges of compactor sizes. This new rate system will align the City and county rates and simplify billing for the haulers, while bringing the rates more closely in line with the cost of service.

Concurrence

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

Fiscal Impact

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

Work Load Impacts

None.

Alternatives

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

Attachments

- Consolidated financial information
- Rate Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INCREASING SOME RESIDENTIAL, COMMERCIAL, DROP BOX AND COMPACTOR GARBAGE RATES TO REFLECT INCREASES IN DISPOSAL COSTS AND DECREASES IN RECYCLING REVENUES.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE adopting new rates for garbage service in the City, effective September 1, 2009.

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

WHEREAS, the franchised haulers have reported a collective rate of return for 2008 for residential, some commercial and drop box services that is lower than the target return of 10% and projections for 2009 suggest an even lower return for the coming year, and

WHEREAS, effective August 6, 2009, Metro’s Transfer Station tip fee will increase by \$5.00 per ton, and

WHEREAS, revenues from the sale of recyclables have decreased precipitously, leaving no offset of the cost of collecting recyclables and

WHEREAS, the proposed rates are comparable to local jurisdictions in the Metro area and will generally maintain equality with those of Clackamas County, as achieved by the City in November, 2007,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON that the City Council of the City of Milwaukie, Oregon determines that the rates for garbage and recycling, herein attached as “Proposed Garbage and Recycling Rate Changes Effective September 1, 2009,” are effective on September 1, 2009, and

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

Introduced and adopted by the City Council on _____, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment A

**Proposed Garbage and Recycling Rates
Effective September 1, 2009**

Residential Commercial Can +Cart Service Level	Proposed
20 gal cart	\$ 22.95
32/35 gal	\$ 26.35
60/65 gal	\$ 34.75
90/95 gal	\$ 40.55
On call customers	\$ 12.00
Monthly	\$ 12.00
Court Apartments	\$ 20.85
Commercial 32 can	\$ 22.40
Commercial 60/65 gal	\$ 32.70
Commercial 90/95 gal	\$ 35.00

Drop Box Service Level	Proposed
10/20 Cu Yd	\$ 110.00
30 Cu Yd	\$ 127.00
40 Cu Yd	\$ 144.00
Mileage fee	\$ 2.70

Compactors Service Level	Proposed Rate
< 25 Cu Yd	\$ 125.00
25-34 Cu Yd	\$ 165.00
34+	\$ 191.00