

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
AUGUST 18, 2009**

CALL TO ORDER

Mayor Ferguson called the 2060th meeting of the Milwaukie City Council to order at 7:10 p.m. in the City Hall Council Chambers.

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

Staff present: City Attorney Bill Monahan, Community Services Director JoAnn Herrigel, Program Coordinator Beth Ragel, Code Compliance Officer Tim Salyers

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

None.

CONSENT AGENDA

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

- A. City Council Work Session Minutes of July 21, 2009;
- B. Resolution 51-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Paving of River Road;
- C. Resolution 52-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for Meeting Transcription Services for the Planning Department; and
- D. OLCC Application, Pizano's Pizza, 10843 SE Oak Street, Change of Ownership, new outlet.

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

AUDIENCE PARTICIPATION

Billy Blain, Milwaukie, requested that Milwaukie consider prohibiting roosters because of noise issues and adopt a regulation similar to the City of Portland.

Matthew Gerber, Milwaukie, discussed the economic burden of the recently-adopted solid waste rates and suggested the haulers could get by on less for now.

PUBLIC HEARING**A. Appeal of the Decision to Abate Nuisances at 5622 SE Willow Street**

Mayor Ferguson called the public hearing to order at 7:24 p.m.

The purpose of the hearing was to consider the protest of the abatement by Sherri Stockham. The applicable standards were found in Milwaukie Municipal Code Title 8.04, Nuisances. Mayor Ferguson reviewed the conduct of the hearing.

Staff reported no additional correspondence had been received other than what was distributed in the City Council packet.

Mr. Salyers provided the staff report and explained Ms. Stockham appealed the nuisance abatement at 5622 SE Willow Street within the time allotted in the Municipal Code. He requested that the City Council uphold the staff decision which would authorize the City or an authorized contractor to go on the property and remove the nuisances if compliance was not met by August 28, 2009. He reviewed the code compliance process which began in 2007 and included 5 citations. He briefly showed photos of the property from the right-of-way and adjacent properties taken in July and a similar set taken earlier today. It appeared that no work had been done. Mr. Salyers reviewed the applicable municipal code sections found in Chapter 8.04, Nuisances.

Councilor Barnes asked how much the City had spent so far on this nuisance process.

Mr. Salyers replied to this point costs incurred were staff time including municipal court appearances and postage. He did not know how much the abatement would cost since he could not enter the property but estimated it could be more than \$500. Similar abatements he recalled were approximately \$1,800.

Ms. Stockham stated the reasons for her protest. She did not deny the property was a mess, but both she and her friend Linda worked 16 – 24 hours a day, 7 days a week. They had a dumpster on their property for about 1-1/2 months that had to be removed because the neighbors complained. She acknowledged there was debris on the carport and overgrown blackberries. Now she and Linda were working fewer hours and had some time to clean up the property. She had hired a young man to help, and the motor home would be removed this coming weekend. They were trying their best.

Linda added it did not help that they no longer had a dumpster, and the rain just made the blackberries grow.

Ms. Stockham explained she and Linda did in-home nursing, and they only had Sundays off. She finally gave the motor home to a person in The Dalles to house homeless people. They will get another dumpster and hire a young man to help when he got back from church camp. Once cleaned up there would be no more mess. She had been fined but could not go to the hearings because of work. She was not making excuses. They were on vacation this week, and would get the work done.

There was no public testimony.

Mr. Salyers requested the City Council uphold the staff determination and declare the property a nuisance if not in compliance by August 28, 2009.

The appellant offered no rebuttal.

Mayor Ferguson closed the public testimony portion of the hearing on the nuisance abatement at 7:41 p.m.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to declare the property located at 5622 SE Willow Street, Milwaukie, a nuisance permitting abatement of the nuisance if not in compliance by the end of the day August 31, 2009. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [4:0]

City Attorney Monahan noted staff did not have the authority in the code to adjust the date without City Council's making the determination.

B. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.312.3

City Attorney Monahan briefly reviewed the history of the proposed amendments.

CITY COUNCIL REGULAR SESSION – AUGUST 18, 2009

APPROVED MINUTES

Page 2 of 5

It was moved by Councilor Chaimov and seconded by Councilor Loomis to continue the hearing on amendments to Milwaukie Municipal Code Section 19.321.7 and 19.321.3 to the regular City Council meeting on September 15, 2009. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [4:0]

OTHER BUSINESS

A. Event Permit Process

Ms. Ragel provided the staff report. There were 2 key questions: should the City modify its current temporary event permit process to reflect special review or considerations for use of the boat ramp at Milwaukie Riverfront Park and/or should the City create a separate process and policies specific to the boat ramp? She discussed the background of the temporary event permit process. This issue was brought to the City's attention because of concerns related to this summer's Cruisin' for Hope 2-day event in the downtown area that included boat races. Staff processed the application as it did all others including distribution to affected City departments, TriMet, and Clackamas Fire District #1. At that time staff determined the Coast Guard had jurisdiction over water, and the City had jurisdiction over the land. She discussed the Coast Guard criteria. It was determined the event would be permitted with conditions including notification of affected businesses and neighborhoods. Prior to the event residents expressed concerns about impacts to the boat ramp and wildlife, particularly the eagle and peregrine falcon nests and salmon. She referred to the packet material that included the USCG Categorical Exclusion Determination and correspondence from concerned residents, the Oregon Department of Fish and Wildlife, and the Portland Audubon Society. They felt the species would tolerate the event with some conditions. Noise readings were taken at the event and Ms. Ragel commented on the Milwaukie Daze fireworks display. She noted Milwaukie processed its events similar to other communities, and there was some discretion involved. She suggested the City send more formal referrals to the neighborhoods and businesses as the City of Portland did making that clear it was a responsibility of the sponsoring organization. Other agencies also asked to be informed earlier.

Carolyn Tomei, Milwaukie, Island Station Neighborhood founder who halted expansion of the Kellogg Treatment Plant, a member of the Friends of Spring Park and Elk Rock Island, and facilitator for the master planning process. When she first became involved with the City the only public access to the river was the boat ramp, and she became active in making sure Milwaukie bought as much riverfront property as possible. She was gratified when the Oregon Department of Transportation (ODOT) made improvements to McLoughlin Boulevard and opened up the views. She and others had invested a lot of energy into Milwaukie Bay and were very protective of the asset. She wanted to ensure that people understood she supported family-friendly activities. There were over 60 species of birds on Elk Rock Island including a family of eagles nesting just 2 blocks from her house. She wanted the City to be wary of setting precedents on not only the boat ramp but the entire riverfront. She commented on the issues of noise, air, and water pollution. To her this did not seem to be a family-friendly event, and it was difficult to follow. The sponsors did not notify residents until after the decision was made and even then it was not done directly. She felt it was important to take referrals through the neighborhood associations.

Lisa Batey, Milwaukie, generally agreed with the staff recommendations but wanted to separate notice to the neighborhood association and notice to impacted persons. The policy needed to be more specific in terms of timing, content, and scope. The process should not be limited to Riverfront Park, and she further questioned blanket exemptions for schools, churches, and nonprofits for big events. She commented on the noise

CITY COUNCIL REGULAR SESSION – AUGUST 18, 2009

APPROVED MINUTES

Page 3 of 5

ordinance which seemed to her to be pretty good in that it struck a balance. It clearly put the comfort and welfare of the community in the forefront. The noise ordinance established noise sensitive areas including neighborhoods. The noise level of the boat races, as Ms. Ragel reported, went from 73 to 103 decibels and exceeded the noise level in all parts of the City including industrial. Ms. Batey recommended including natural areas as being noise sensitive; including appropriate noise levels for active use parks; following the City of Portland's lead for shoreline decibel limits to accommodate boat races; and revising variance procedure in the noise ordinance to make more logical. She wanted to be on record to the City Council and staff that she requested a public hearing for any noise variance for Riverfront Park for the next 3 years.

Bill Hoelz, Milwaukie, thought it was a very good program with beautiful cars and boat races during the day. It was not that obnoxious. He attended the neighborhood meeting where Ms. Tomei's husband Gary Michael brought up boat races where the suggestion was made that he take her out of town for the weekend. It was discussed at the neighborhood meeting, and it was a very nice program.

Nick Raptor, Milwaukie, stated this was the second year for the Cruisin' for Hope, and he was director of the program. He was a cancer survivor, and the proceeds went to local families living under terrible conditions. This event was for the kids and to give them hope for survival. He noted the daily jet boat tour going by Milwaukie made a lot of noise. This was for the kids, and this was the first year for the boat races. The employees all donated their time, so there was no expense to the taxpayers.

Cindy Kauffman, Milwaukie, supported this community event and commented on how Milwaukie thrived on these special weekends. This event brought the community together and let people enjoy the riverfront. She stated the organization had followed the guidelines. She personally checked, and the eagles were still there. The event supported local families in need and brought positive attention to the City. Hopefully a few disgruntled people did not ruin things for others.

Mark Weidkamp, Milwaukie, founder of the Cruisin' decided to grow the event from last year to increase participation and use the Jefferson Street boat ramp to draw families to the riverfront. They had teamed up with the American Legion and brought in the Columbia Outboard Racing Association (CORA) which is a family-oriented club. The Milwaukie Police Department and Fish and Wildlife both concurred with the noise levels, and there was a considerable distance between the races and the eagle's nest. This event was enjoyed by many, and he hoped it would grow and be a catalyst for future boat ramp improvements.

Councilor Chaimov thought the Cruisin' was a wonderful event, and he hoped to see the rough spots smoothed. He supported all of the staff recommendations including the suggestions from Ms. Batey regarding timing, scope, and content of notices to affected residents and businesses.

City Attorney Monahan noted he was working with staff on the noise ordinance, and the concerns of special event noise levels and the process should be considered together.

Councilor Loomis believed it was a great event and appreciated Ms. Ragel's professionalism. People had worked to get the information out, and the proper authorities had been notified.

Councilor Barnes agreed Ms. Ragel had done a great job as staff liaison. This event was held for all the right reasons. She looked forward to working out a compromise with the Island Station representatives and hoped the riverfront could be enjoyed by all.

Mayor Ferguson thanked Ms. Ragel for her professionalism. He requested 2 months notice for the event and supported both Ms. Batey's and Ms. Ragel's recommendations. He also had concerns about the fireworks display and notification to Lake Oswego. He suggested an internal checklist accompany a citywide application. He did not want to limit activities and urged notifying the appropriate neighbors.

Ms. Ragel understood the City Council was supportive of the 4 staff recommendations, and she would prepare a more defined plan for a work session. City Attorney Monahan was working on the noise ordinance issues and was aware this was another aspect of that section of the code.

B. Council Reports

Councilor Chaimov attended the monthly Milwaukie Light Rail meeting and encouraged interested residents to attend because they can make a difference in the process.

Councilor Barnes credited Councilor Chaimov for his unique sense of wit and humor at the Chamber Legislative wrap up.

Mayor Ferguson attended the Clackamas County Fair opening and encouraged people to visit Pond House Books, attend free neighborhood concerts, and shop at the Sunday Farmers' Market. The Milwaukie Ledding Library was still collecting school supplies for local children in need.

ADJOURNMENT

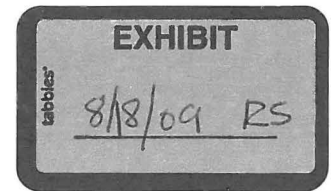
It was moved by Councilor Chaimov and seconded by Councilor Barnes to adjourn the meeting. Motion passed with the following vote: Councilors Loomis, Barnes and Chaimov and Mayor Ferguson voting "aye." [4:0]

Mayor Ferguson adjourned the regular session at 8:37 p.m.

Pat DuVal

Pat DuVal, Recorder

REGULAR SESSION



Lisa M. Batey
11912 SE 19th Avenue
Milwaukie, Oregon 97222

April 30, 2010

Mayor Jeremy Ferguson and City Council
Milwaukie City Hall
10722 S.E. Main Street
Milwaukie, Oregon 97222

RE: Proposed Hydroplane Races in Milwaukie/Portland, June 12-13

Dear Mayor Ferguson and City Council:

To borrow a question from various characters on a beloved kids show, “which of these things is not like the other?”

- Kellogg-for-Coho Initiative to remove the dam and restore Kellogg Creek, recipient of over \$1mil in past grants and subject of a unsuccessful proposal for \$12mil in stimulus money
- Johnson Creek Watershed Council plan for fish habitat enhancements at the mouth of Johnson Creek, estimated cost \$280,000 (grants being sought)
- Milwaukie Riverfront Park planning, including significant shoreline restoration efforts
- Ongoing working group efforts to draft the City’s Natural Resource Protection code
- Several years of volunteer efforts to improve habitat at the Elk Rock Island and Spring Park natural area
- Efforts to remove invasives and plant tree cover along Kellogg Lake in Kronberg Park
- Polluting boat races smack dab in the middle of it all

The Cruise-In is a fine event, and an appropriate water component could be a fine addition to it, as I proposed to the organizers last fall. But motorized boat races are completely inappropriate for the river habitat and for the community. I won’t repeat here the arguments made at length in the attached letter to the Coast Guard. The applicant’s materials which Beth sent out one week ago did not appear to include an application for a noise variance,¹ but I

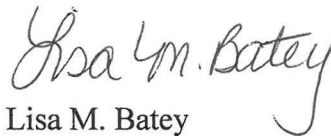
¹ I also believe there are a number of misleading statements in applicant’s materials and may have further comments on those, but did not want to further delay getting this letter to you, as I know the Coast Guard and copied parties have begun to receive it.

reiterate my request for a public hearing on the noise variance, as called for by section 8.08.120.B of the Milwaukie Municipal Code. Insofar as the races directly impact a Portland park, Elk Rock Island, and residents in unincorporated Multnomah County (Dunthorpe), I suggest a formal notice to those jurisdictions is also warranted.

In letters and testimony last year, the race organizers repeatedly touted the races at Newberg as their model. I encourage you to use the satellite photo feature at Google maps to have a look at the site of those races, Rogers Landing County Park. There is no comparison to Milwaukie's stretch of the Willamette – no designated natural areas, no deltas of salmon-bearing streams, no islands. The site sits next to a large quarry or industrial site of some type, and there are no residences along the river on either side. Rogers Landing Park is essentially one huge parking lot and a couple of ball fields – nothing like the lovely, and varied, park our Riverfront Board has worked so long to design. The Newberg site, in Yamhill County, is outside the Metro boundary, but I sincerely doubt it would qualify as Class A wildlife habitat, the Metro habitat designation that applies to the much of Willamette waterfront affected by these races.

A park like Rogers Landing is much better-suited to such races, but I don't believe Milwaukians want a park like Rogers Landing, or to see you set a precedent that becomes harder to break with each year these races take place.

Sincerely,

A handwritten signature in cursive script that reads "Lisa M. Batey". The signature is written in black ink and is positioned to the right of the typed name.

Lisa M. Batey

Lisa M. Batey
11912 SE 19th Avenue
Milwaukie, Oregon 97222
Phone: 503-353-1825
E-mail: lisabatey@msn.com

April 28, 2010

Capt. Frederick Myer, Captain of the Port
U.S. Coast Guard – Portland Sector
6767 N. Basin Avenue
Portland, Oregon 97210

RE: Proposed Hydroplane Race in Milwaukie/Portland, June 12-13

Dear Capt. Myer:

I understand from MST Sayers that the Coast Guard plans to publish in the Federal Register a notice of proposed rulemaking (NPRM) in connection with the proposed permit for hydroplane races off the Milwaukie boat ramp in June, but as the date of the races is less than seven weeks away, I thought I should enumerate my objections to this permit now. I will re-submit these comments (and possibly supplemental comments) pursuant to any instructions in the NPRM, when published

As outlined in more detail below, I contend that the races last year violated state law and Milwaukie and Portland ordinances, and hence issuing another permit is inappropriate. Moreover, the noise, fume and wake impacts races are not appropriate to the sensitive habitat in this area at the mouths of Johnson and Kellogg Creek, as well as the residential character of the area. The Willamette is a regional resource, and the process the Coast Guard has used for permitting such events without adequate consultation with all affected jurisdictions does not serve the public interest. Four jurisdictions come together at “Milwaukie Bay” – City of Milwaukie, City of Portland, unincorporated Clackamas County, and unincorporated Multnomah County.

As a threshold comment, I note that last year’s Categorical Exclusion document included numerous errors, some of which I detail in the appendix to this letter. Despite the fact that concerns were raised last year over noise impacts to wildlife and people, wakes both disturbing fish and causing erosion, boat emissions degrading both air and water quality, most of these impacts were not monitored at all, and noise monitoring was not done to professional standards. The failure to adequately assess the true impact of last year’s races makes issuance of another permit indefensible.

I. The 2009 hydroplane races violated state boating laws and local noise ordinances

The 2009 hydroplane races violated Oregon Administrative Rule 250-020-0032, which states:

Boat Operations on the Willamette River in Clackamas County

...

(3) No person shall operate a boat at a speed in excess of a "Slow -- No Wake" maximum 5 MPH speed on the following waters:

(c) Within 200 feet of a designated public launching ramp and/or marked swimming area

The race course for the boats clearly came within 200 feet – and probably within 100 feet – of the Jefferson Street boat ramp. Nothing in this rule says that exceptions are allowed or that the Coast Guard has any authority to waive this rule.

Moreover, the boat races violated several sections of the Milwaukie and Portland noise ordinances.¹ Milwaukie's noise ordinance establishes residential property as "noise-sensitive" with a daytime limit of 55 decibels at the property line. Several residences are closer to the race area than mine, but at my residence the sound reached 95 decibels on several occasions, and was well over 75 decibels for nearly every race.² The boats themselves also appear to be in violation of sections 8.08.070.F and O of the Milwaukie noise ordinance.

The loudspeaker constituted another noise violation, violating Milwaukie Municipal Code § 8.08.070.C which prohibits any amplifier which projects sound onto private property of another – the loudspeaker used at by race organizers was audible across a hundred or more residential properties on the east bank of the Willamette (including mine), and residents of the Dunthorpe neighborhood on the west side of the river report it was quite loud there, noting that crossing the water seems to amplify the sound.

It is unclear whether the Portland noise ordinance applies to the residential areas of Dunthorpe, but it certainly applies on Elk Rock Island, a City of Portland park. Unlike Milwaukie's ordinance, the Portland noise ordinance explicitly addresses boat noise, providing that "[n]o person shall operate a watercraft between the hours of 7:00 a.m. and 10:00 p.m. which exceeds 75 dBA as measured on shore." Portland Code § 18.10.040.A. This standard was violated throughout the two days of racing. Portland also establishes 55 dBA as the maximum

¹ In the Categorical Exclusion for the 2009 races, your office inexplicably cited Occupational Health and Safety Administration noise standards, which apply to industrial settings. The races take place in a setting that is surrounded entirely by residential and park land. The more appropriate federal standard would be that of the National Park Service, which sets noise limits at 60 dBA generally, and 75 dBA for boats. *See*, 36 C.F.R. 2.12 and 3.15.

² The noise report submitted by the race organizers was disappointingly amateurish and evidenced the lack of a reputable noise monitoring professional, who would have made measurements in both dBA and dBC ranges. But even by their own measurements, the races were far far in excess of allowable limits under Milwaukie or Portland noise ordinances.

allowable noise level for residential and park property. Portland Code § 18.10.010.A. In addition, the use of loudspeakers is limited by section 18.10.120.B of the Portland noise ordinance. In addition to Elk Rock Island and Dunthorpe, given the noise levels which sometimes exceeding 100 decibels for these races, it is likely that properties around the Waverley Country Club in the City of Portland also suffered noise impacts beyond the permissible 55 decibels.³

II. Hydroplane races are inappropriate to the sensitive habitat at the mouths of Johnson and Kellogg Creek, as well as inappropriate for a residential area

The proposed site for the hydroplane races is at a particularly sensitive junction with numerous special habitat areas. Two streams in which significant efforts are underway to restore salmon passage have their mouths right at the area of the races: Kellogg Creek and Johnson Creek. See, e.g., <http://www.ncuwc.org/watersheds/kelloggscreek> and <http://www.americanrivers.org/newsroom/press-releases/2009/american-rivers-and-noaa.html> and <http://www.jcwc.org/johnsonCreek/creek.htm>. Elk Rock Island is a City of Portland park, and the importance of the varied habitat there led to its inclusion in Portland's "Protect the Best" program. See <http://www.portlandonline.com/parks/index.cfm?c=47247>. Elk Rock, across the river from the race course, is a nesting site for peregrines and other birds.



³ A report from a neighbor who lives near the intersection of 20th Avenue and Lark Street indicates that excessive noise probably reached into unincorporated Clackamas County as well, as that is only a few hundred feet beyond his house. This neighbor, who lives two blocks *further* from the race course than the eagle's nest, and lives beyond a railroad embankment which should qualify as one of those objects said in last year's Categorical Exclusion to dissipate the sound, said that the noise was as if "someone down the block was using multiple chainsaws at once."

Although the race occurs after the salmon migration has tapered off, the impact on their habitat and those of other aquatic life is significant. As discussed in more detail in Attachment 1, the 2009 races created significant fumes and haze, both on the water and in the air. Moreover, the wakes created by the boats not only violated the state rule on wakes near a boat ramp, but most likely caused further erosion to the already bare coastline along Riverfront Park, at the mouth of the two creeks, and on the north end of Elk Rock Island. A photograph can't really capture the extent of the wake, but the photograph on the previous page gives some indication, showing geese and ducks huddling from the noisy boats back in the mouth of Kellogg Creek. They were bouncing on the wake, and the red edge at the water line indicates the presence of mud in the water owing to the water movement. Allowing an event like this, which exacerbates existing erosion problems, is at odds with efforts by the City of Milwaukie and the Johnson Creek Watershed Council to introduce new native plantings to better protect some of those bare areas.

In addition to salmon, eagles, and peregrines, discussed to some degree in last year's Categorical Exclusion, the area is host to numerous additional species, including a significant sturgeon "hole" and birds ranging from osprey to redtail hawks. On the first morning of the 2009 races, I saw five or six birds circling agitatedly over the mouth of Johnson Creek for an hour or more – I am not good at identifying birds, but it seems likely they were nesting in that mouth area and disturbed by the races. It is possible that they abandoned nests or young birds during the races.

It is noteworthy that hydroplane races such as those proposed here have been banned in both Seattle and Coeur D'Alene. In 1984, races were banned on Green Lake in Seattle after the death of a snow leopard cub in Seattle zoo, attributed to the noise impact on the mother. *See* http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=2678 Despite significant later efforts to bring back the races, Seattle officials made the ban permanent. *See* <http://www.seattlepi.com/neighbors/greenlake/bg7.html>. In Coeur D'Alene, Idaho, voters voted 2-1 to ban hydroplane races. *See* <http://news.google.com/newspapers?nid=1314&dat=19851106&id=eA0zAAAIAIAJ&sjid=M-8DAAAIAIAJ&pg=1594,3295103>⁴

The organizers of this race hold a big race every year at Newberg and seem intent on getting a similar event closer in to Portland. If not Portland itself, they get really close with the Milwaukie boatramp. But the situation in Newberg as shown on the satellite photos at google maps (search for "Rogers Landing Newberg Oregon") is much more appropriate for races than in Milwaukie – the utilized park has a boat ramp and massive parking lot and a few sports fields, but not much by way of other amenities. The race site sits next to a large industrial complex and warehouse area – there are only a handful of houses within a quarter mile inland from the river and no houses at all in the farmland across the river. There are no creeks feeding into the Willamette in the area and the map shows no other park areas along the Willamette in the vicinity. So perhaps hydroplane races are appropriate in Newberg, but the situation is not at all comparable to the confluence of natural and residential areas we have in Milwaukie.

⁴ If you have problems with this link, simply google "Coeur D'Alene voters hydroplane races" and the article will come up.

III. The Coast Guard and City of Milwaukie practices of issuing a permit without notice to all impacted communities and neighbors is improper

Your staff says the Coast Guard permit is only concerned with river navigability and safety. Milwaukie says they are only permitting use of the boat ramp and park. Those are two pieces of the puzzle, but more than half of the puzzle is missing. Something is broken in a system where one jurisdiction can hold an event which has such impact on a regional resource and directly on neighbors in three adjoining jurisdictions without formal notice to those residents and an opportunity to be heard.

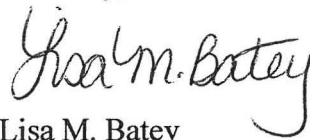
IV. The environmental impacts of hydroplane racing is not a uncontroversial issue, and so use of a categorical exclusion to bypass an environmental impact assessment under the National Environmental Protection Act is inappropriate

The Federal Register notice cited in your 2009 Categorical Exclusion document, 67 FR 48243, does not appear to address permitting of temporary events. I have asked your staff for a copy of the other cited authority, Commander's Instruction M16475.1, but have not yet received in. I may have further comments on this issue upon seeing that instruction. But in the Categorical Exclusion document for the 2009 races, Dean Amundsen and Constance Callahan of your staff certified four elements in support of the Categorical Exclusion. There are good arguments that three of the four were certified in error. And in the absence of any effective monitoring of last year's races, another Categorical Exclusion would be unfounded.

* * * * *

In sum, issuing a permit for these races is inappropriate, and frankly, indefensible. Please deny the permit.

Sincerely,



Lisa M. Batey

[cc list follows attachments]

Attachment 1: Errors in 2009 Categorical Exclusion (CE) Document

- Page 4: The CE says that emissions from the two-stroke engines would not degrade the quality of the river or the air quality. There are at least two errors in this discussion. First, the boats produced an enormous amount of hazy blue fumes that layered above the water, and also seemed to leave a blue sheen on the water. In eight years living along the river, I have *never* seen any boat or collection of boats leave anything near this amount of visible fumes. It is important to note that this segment of the river is surrounded by parkland and private residences. Although the water quality may be somewhat degraded already, it supports significant aquatic and bird life. And the air quality seems quite good – there are no industrial polluters in the area. Did any governmental entity perform any air quality assessments before and during last year’s races?

Second, one reason the CE gives for not anticipating a degradation is that “the racing boats would displace vessel traffic in the area.” This is an entirely false premise. On an early June weekend, the vessel traffic in the area is not significant. Spring fishing season is largely over, and in any event, fishing boats do not generally keep engines running and hence produce only minimal fumes. The water is too cold for most skiers and jetskiers until July. The number of boats – and certainly the number of cumulative minutes of operating boat engines – was far far more significant in this racing event than on the busiest summer weekend. And to make any comparison with the amount of traffic on the same June weekend absent the races is absolutely ludicrous.

- Page 5, noise issues: OSHA noise standards are created for workplace environments and have no relevance for residential or park areas.
- Pages 5-6 wake issues: Again, it is a false premise to compare these races with the level of traffic on the river on a June weekend. As discussed in the comments submitted on the proposed 2010 permit, during last year’s races the wake action was visible not only along the shoreline, but well into the mouth of Kellogg Creek. Moreover, the CE deceptively says the shoreline varies from unvegetated to armored, without acknowledging either (1) that the armored section is quite small, well under 10% of the impacted area, and (2) that the unvegetated section quite large, including Elk Rock Island, Riverfront Park, and the mouths of both Johnson and Kellogg Creeks. [Same error at Page 8, question 7]
- Page 7, question 2: While true that the City of Milwaukie issued a permit for use of Riverfront Park for the 2009 races, it is not true that the races did “not affect or interfere with continued use of the park for recreational purposes.” The races, their staging and maintenance area and attendant displays and vendors virtually precluded any other use of the park or the river by community members.

- Page 8, table 3: This list does not include sturgeon. There is a significant sturgeon “hole” off the north end of Elk Rock Island near the area of the boat races. *See, e.g.,* <http://yakfish.isaac-online.com/willamette-sturgeon/comment-page-1/> I do not know if this species of sturgeon is endangered, but I see that some are. I also note that the state has closed a very popular Oregon City fishing spot due to concerns about the distressed state of Willamette sturgeon. *See, e.g.,* <http://www.dfw.state.or.us/news/2010/march/031210.asp>

Similarly, the list does not include osprey, which I understand to be protected under the Migratory Bird Treaty Act. The osprey are regular residents of this area each summer, and a neighbor told me that she has seen and heard them in the past week.

- Page 9, question 9: As noted in the cover letter, this event violated both state law and relevant noise ordinances.

Attachment 2: Alternatives to motorized races not pursued

Message sent to "Cruisin for Hope" organizer last November. No response ever received.

----- Original Message -----

From: Lisa Batey

To: Mark Weidkamp

Sent: Wednesday, November 04, 2009 11:28 PM

Subject: ideas for Cruise-In river component

Mr. Weidkamp:

At the August 18th City Council meeting at which we both testified, Mayor Ferguson suggested that the Cruise-In for Hope organizers and those that opposed the boat races try to work together to find a compromise. So in the spirit of that recommendation, I wanted to reach out to you to volunteer my help with organizing a river component to the Cruise-In that does not involve noisy motorized racing boats.

I went back and watched the video of the testimony, and noted that Nick Raptor's main point was how much the kids enjoyed sitting in the boats, whether on shore or in the water. He said nothing about kids enjoying watching the races, and indeed, I walked around the races quite a bit and there were no kids really watching the races -- indeed, it seemed to me that no one other than race participants were really watching the races. So maybe a boating event that kids could participate in would be a better idea.

In any event, it seems there are a lot of different ways than motorized boat races to add a nice water/riverfront component to the Cruise-In for Hope. Here are some potential ideas:

- a. Dragon boat races: This is something Milwaukie has had before, for a couple of years as part of Riverfest. A large number of teams competed.
- b. Boat rides: perhaps either the sternwheeler or the jetboats would be interested in setting up a temporary dock and running a few daily trips out of Milwaukie during the Cruise-In. [Note: contrary to Mr. Raptor's testimony, the Willamette Jetboats, which we see on a daily basis in the dry months, are nowhere near as noisy as the CORA racing boats. And the Jetboats now have their storage/repair center in Milwaukie, so maybe they would be interested in joining in a community activity like the Cruise-In for Hope.]
- c. Kayaking/canoeing: whether it might be a racing event or just a nature-oriented paddling excursion, canoes and kayaks are more compatible than motor boats with the special habitat Milwaukie has at the confluence of Kellogg Creek, Johnson Creek, and the Willamette River. Perhaps a scouting organization, or Willamette Riverkeepers or some other association of rowers would be interested in planning a rowing event in conjunction with the Cruise-In.

There may also be ideas for companion events to the Cruise-In that use Riverfront Park but not the river - expanded boat exhibitions like last year, or some kind of activity that kids can engage in, like a skateboarding competition. There are undoubtedly more possibilities than I have thought of.

In any event, I hope you will give serious consideration to finding an alternative to the CORA boat races, and help Milwaukie avoid an acrimonious battle over a permit next spring. If you do, I am willing to commit a substantial amount of time to helping with the event. You can reach me at 503-353-1825 if you would like to discuss any of these ideas.

Thanks! --Lisa

cc: Mayor Sam Adams, City of Portland
Chair Jeff Cogen, Multnomah County Commission
Chair Lynn Peterson, Clackamas County Commission
Mayor Jeremy Ferguson, City of Milwaukie
Milwaukie City Council
Councillor Nick Fish, City of Portland
Zari Santner, Director, Portland Parks & Recreation
Paul Van Orden, City of Portland Noise Control Officer
Roy Elicker, Director, Oregon Department of Fish & Wildlife
Tom Byler, Executive Director, Oregon Watershed Enhancement Board
Travis Williams, Executive Director, Willamette Riverkeeper
Johnson Creek Watershed Council
North Clackamas Watersheds Council
Friends of North Clackamas Parks
Various Dunthorpe and Milwaukie residents

AGENDA

MILWAUKIE CITY COUNCIL AUGUST 18, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2060th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|-----------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 1 |
| A. City Council Work Session Minutes of July 21, 2009 | 2 |
| B. Contract Award for River Road Paving Project – Resolution | 5 |
| C. Contract with ABC Transcription Services, Inc. – Resolution | 10 |
| D. OLCC Application for Pizano's Pizza, 10843 SE Oak Street, Change of Ownership, New Outlet | 24 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |
| 5. PUBLIC HEARING <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i> | 27 |
| A. Appeal of the Decision to Abate Nuisances at 5622 SE Willow Street (Tim Salyers) | 28 |
| B. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 & 19.321.3 – Ordinance (Mike Swanson) | 33 |

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.)* **40**

- A. Event Permit Review Process (Beth Ragel)**
 - B. Council Reports**
- 41**

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.

3.

CONSENT AGENDA

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

JULY 21, 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, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff Present: City Manager Mike Swanson, Code Compliance Coordinator Tim Salyers, and Police Captain Steve Bartol

Discussion of Milwaukie Municipal Code Chapter 8.04.160 – Notices and Advertisements

Mr. Swanson introduced the topic having to do with notices and advertisements. This came up when Vance Voyles, owner of Zappo's Pizza, came to him with comments regarding the distribution of door hangers. The City of Troutdale allowed it through a permit process, which Mr. Swanson had concerns with allowing people to go on private property. The City of Lake Oswego prohibits door to door solicitation with signage. He spoke with the Police Department and Code Enforcement. They were not in favor as they often collect, and it gave the appearance that someone is not home and was a security issues. The Mayor asked for this to be scheduled for Council discussion to get direction from the Council. He received some emails, which he handed out to the Council.

Mayor Ferguson reviewed the emails he had received which were distributed.

Mr. Swanson added Councilor Chaimov had suggested an ordinance and public hearing. He asked if that was direction from the City Council. He noted the City used door hangers to notify residents of City projects and those scheduled to have their water shutoff. He spoke with the City Attorney and he thinks it is covered by the ordinance. The question was about advertising and what Council wanted to do about that.

Councilor Barnes wanted to hear from the police department and code enforcement to hear their concerns.

Captain Bartol said one reason not to loosen up on the ordinance was from the crime prevention aspect and having certain precautions in place when people were on vacation or away from their homes. Home owners have no control over a door hanger, and when left on the door they are a red flag that a resident is not home. Even if not on vacation it helped identify living patterns. They already get calls about aggressive door to door sales, and he suggested the City Council hear from the citizens on their feelings on that. The police department perspective was about crime prevention.

Mr. Salyers said sometimes the flyers left on doors blow away and litter the neighborhood. He researched our ordinance and the verbiage was similar to Bend, Beaverton, Gresham, Happy Valley and Estacada.

Councilor Barnes said if we change the ordinance it would not only impact Mr. Voyles but would also open it up to everyone. There was a potential for having more than one flyer on door steps.

Mayor Ferguson asked Mr. Salyers if he tracked complaints about door hangers.

Mr. Salyers those who know the code contact him such as the Hector Campbell Neighborhood. In the last year 4 or 5 complaints came from the Hector Campbell neighborhood. He thought there were more that occur than what he gets calls about.

Captain Bartol added if the City opens up door hangers advertisement it could open it up to other types of groups, including racial material, due to freedom of speech.

Councilor Loomis asked Mr. Salyers what he did when he got a complaint about a door hanger. He said he gets them all the time.

Mr. Salyers replied typically the flyers have a contact number on the door hanger and he calls the business and asks them to pick them up. If 2 complaints are received from the same business then a citation is issued.

David Hedges, Hector Campbell NDA and PSAC Chair. Door hangers were raised at PSAC meeting in September last year. The overwhelming view was this should be done and supported the current City code. It was a crime prevention problem and was a good way for people to see if a property was unattended. Either support current code or would like to see door hangers done away with completely. They had an issue with the City door hangers as well. There were plenty of other methods to advertise their pizza business, and PSAC asked the City Council not to consider amending the code.

Mr. Voyles, Zappo's Pizza responded to comments. He said he could have brought people with him representing several organizations that have positive ideas about door hangers. They had no reports that their flyers have contributed to crime. They conduct distribution in a conscientious manner, and he would be surprised if there was any substantial information that showed they contributed to crime. The broad statement that allowing flyer advertisements could lead to racial material being distributed he thought was interesting and had never heard of that before. Flyering takes place in the community and is not regulated. Many residents would tell you that they receive flyers and would continue to regardless of the outcome of this meeting. Zappo's had chosen to abide by the law, and will not flyer this area. He did not believe the City had the enforcement capacity to handle this. A more realistic approach would be to work with the businesses. He commented on the treatment of small businesses. He has stores in other jurisdictions and he advertises with door hangers there. The most effective advertisement is door hangers in terms of cost effectiveness and return on investment.

Mayor Ferguson asked if Mr. Voyles used flyers in other jurisdictions. He wanted to know if they knew how many coupon returns he received from that.

Mr. Voyles said no other advertisement methods have as good of a return of investment as flyers. They have done a lot of marketing research and flyers are one reason why they have been able to grow and have been able to compete. Customers count on receiving those coupons.

Jeff Wright, Marketing Consultant for Quizno's and Pizano's Pizza. Flyer distribution would happen regardless and the City needs to set parameters to

control them. They work in conjunction with community groups to hand out their mailers, such as Ardenwald Elementary. Coupons are instrumental for small businesses to attract customers. In all of his experience he had not seen any issues related to crime. He did see standards set to regulate flyers with guidelines through a permit system. No solicitation signs can be posted for those that do not want the flyers. The current code is written so it had to be broken. The City needs to put in a system that allows for permits, and creates a penalty for those that don't obtain a permit.

Councilor Chaimov said at the time proposed he did not have a sense of the community, but he had a much better sense now that regardless of benefits to the businesses involved most did not want the hangers. He would like to see Mr. Voyles work with PSAC and come up with a proposal that secured community support, which would be appropriate to look at this point. Some time spent to refine a proposal would probably be useful to all concerned.

Councilor Barnes said her concern continues to be about the comments made from police, code enforcement, and PSAC. People in Milwaukie were loyal and would come out and support a business when a business comes out for the activities and those who give to the community. When she gets something on her door she generally recycles it. She did not support any code amendments. She would like City Attorney Monahan to look into concerns with freedom of speech.

Councilor Loomis felt that it was happening all the time and should be regulated so those who do it can do it responsibly and are allowed to do so. He wants to find a way to help small businesses. Those who abide by the laws lose and those who do not win. People can put up signs at their home that don't want the flyers. The best crime prevention is good neighborhood communication and looking out for each other. It seemed that door hangers were an integral part of Mr. Voyles staying in business. He liked the suggestion of working with PSAC; we are here for compromise.

Mayor Ferguson said he could understand Mr. Voyles' perspective, but he was one of the first people to call when he got a door hanger. There are a lot of people in his neighborhood and they have had their homes broken into when they have been on vacation. He didn't want to make a change to the ordinance, but he sees Mr. Voyles' perspective of that it will continue to go on. He asked Mr. Hedges if PSAC would be willing to talk with Mr. Voyles.

Mr. Voyles said he was fine with that.

Mr. Swanson said to grant a permit would be to allow people to go on private property. Code enforcement is complaint driven. They won't be spending a lot of time on enforcement if they are not part of a complaint.

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



To: Mayor and City Council

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

**From: Gary Parkin, Engineering Director
Brenda Schleining, Associate Engineer**

Subject: Contract Award for River Road Paving Project

Date: July 20, 2009 for the August 18, 2009 Regular Session

Action Requested

Authorize the City Manager to execute a contract for the paving of River Road from Lark Street to Highway 99E with Knife River, in the amount of \$96,650.00.

History of Prior Actions and Discussions

January 2007: The Street Surface Maintenance Program (SSMP) was developed during 2006 with extensive public outreach and input. The SSMP was formally adopted on January 2, 2007 by Ordinance No. 1966 and took effect on July 1, 2007.

Background

During the first two years of the Street Surface Maintenance Program, seven street sections (listed in the following table) were repaved. The Pavement Condition Index (PCI) was assigned during the program's initial assessment survey performed by the City's consultant. It represents the state of the asphalt surface on a scale of 0-100. A newly repaved street would have a PCI of 100. Maintaining a citywide average PCI of 75 is the goal of the SSMP as it optimizes maintenance funding.

Date	Street	Section	PCI	Treatment
Sept 2007	42 nd Avenue	Johnson Creek to Harvey	55	Grind & Overlay
Sept 2007	37 th Avenue	Lake To Hwy 224	53	Rehab & Overlay
June 2008	Washington Street	99E to Hwy 224	69	Grind & Overlay
Aug 2008	King Road	Hollywood to 43 rd	40	Reconstruction
Sept 2008	Oak Street	Hwy 224 to Monroe	55	Rehab & Overlay
April 2009	Logus Road	Stanley to 49th	60	Reconstruction & Grind/Overlay
June 2009	27 th Avenue	Lake Road to Washington	72	Grind & Overlay

River Road was originally scheduled for Year Six (2012/13) of the SSMP program. It was moved up to Year Three (2009/10) when additional SSMP funds were available due to savings on the King Road project. River Road was selected over other street sections for several reasons such as the project cost (\$100,000), the good condition of the public utilities, and the absence of storm drainage issues.

River Road had a PCI of 76 in 2004. The River Road project area is 1900-feet long and 30-feet wide.

This project went through a competitive bidding process per Chapter 30 of the City's Public Contracting Rules. The following table is a summary of all bid amounts and the engineer's estimate:

Contractor	Bid Amount
1. Knife River	\$96,650
2. Brix Paving	\$97,825
3. Eagle Elsner	\$98,682
4. Portland Road & Driveway	\$99,980
5. K.F. Jacobson	\$100,690
*** Engineer's Estimate	\$105,000

The lowest responsive, responsible bid amount is \$96,650 from Knife River. Knife River reconstructed King Road last summer and did an excellent job.

Traffic control will be a significant factor during construction because the Average Daily Traffic is 7000 vehicles in this area and the project will connect to Hwy 99E at River Road. The traffic signal loops will be impacted. The width of River Road will allow traffic to be diverted to one side of the one-way road during much of the paving. When the road needs to be closed, traffic will be detoured onto Park to Hwy 99E.

Construction should take about 5 days for roadway grinding and paving. Striping and pavement markings will be done about a week after paving. Construction should begin in early to late September. The City will use a full time on-site paving inspector hired on a contract basis for quality assurance and testing.

Concurrence

The Street Department and Finance Department concur with awarding this contract. The Community Services Department is aware of this project and has discussed it at the Island Station NDA Meeting. The City and contractor will coordinate with ODOT for detours onto Hwy 99E, paving into Hwy 99E intersection, the traffic signals, and traffic signal loops.

Fiscal Impact

This project is being awarded at \$7,350 under the \$105,000 budgeted amount.

Work Load Impacts

This work is part of the Engineering work plan and will require about 40 hours of staff time during construction. The Operations Department will spend about 30 hours on this job during construction, also within their work plan.

Alternatives

- 1) Do not award project (defer indefinitely)
 - If council wishes not to award the project and remove it from the CIP list.
- 2) Re-bid project without amendments.
 - If council approves of the project design but thinks the project should be re-bid for any reason.
- 3) Direct Staff to modify project and re-bid
 - If council does not approve of the project design and/or thinks that re-bidding could reduce cost.

Attachments

1. Vicinity Map
2. Resolution



Street Surface Maintenance Program 2009 - 2010
River Road Vicinity Map
RS PAGE 8



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPROVING THE AWARD OF CONTRACT FOR THE PAVING OF RIVER ROAD.**

WHEREAS, the Street Surface Maintenance Program was adopted January 2, 2007; and

WHEREAS, River Road was selected for treatment in year six of the program after analysis of the street system; and

WHEREAS, the project was approved for \$105,000 in funding in the 2009/2010 budget (year three of the program) as funds allowed and the River Road street section was best suited for inclusion in the 2009/2010 budget; and

WHEREAS, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted, and

WHEREAS, Knife River is the lowest responsive bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the paving of River Road with Knife River in the amount of \$96,650.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

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

From: Katie Mangle, Planning Director

Subject: Contract with ABC Transcription Services, Inc.

Date: August 7 2009 for August 18, 2009 Regular Session

Action Requested

Approve a three-year contract with ABC Transcription Services, Inc. to provide the City with meeting transcription services for Planning Commission and Design and Landmarks Committee (DLC) meetings.

History of Prior Actions and Discussions

None.

Background

Meeting minutes are an important permanent record of the public meetings held by the Commission and DLC. They document the discussion of and decisions on both legislative policy development and land use decisions that have legal implications for the City. Council and the public rely on Commission and the DLC meeting minutes to understand the recommendations and decisions that are made by these groups.

In 2006 the state of the meeting minutes prepared by the Planning Department was deficient, due to staff workload limitations and poor performance of the City's transcription contractor at the time. Minutes for meetings had not been completed or

approved for months, and, in some cases, years. Having no proper record of important land use and legislative decisions put the City at risk.

In 2007, the staff conducted an exhaustive search for a new contractor to provide professional transcription services for Planning Commission meetings. Following a search that included working with temporary employment agencies and publicly advertising the position, the City contracted with ABC Transcription Services, Inc. (“ABC”). For the past two years, ABC has provided excellent service to the City. During this time ABC has worked with staff to greatly improve the quality and timeliness of the minutes produced by the Planning Department.

In May 2009, the City posted an advertisement seeking qualified contractors to submit qualifications to provide transcription services. ABC was the only respondent.

Staff is requesting that Council approve a 3-year contract with ABC. This contract would have a cumulative value of up to \$45,000 (\$10,000 for the first year, \$15,000 for the two remaining years, subject to budget availability). The approved FY 09-10 budget for meeting minutes is \$10,000, an amount estimated to be sufficient to prepare minutes for all Planning Commission meetings and half of the DLC meetings.

This action would allow the Planning Department to contract with ABC at the start of FY11 and FY12 for transcription services, subject to availability of budget for the service in those years.

Concurrence

Planning Commission and DLC members, as well as the City Attorney, have provided staff with positive feedback on ABC’s performance. The Community Development Director and Administrative Supervisor concur with this request to continue the City’s relationship with ABC, and generally with the importance of having a reliable contractor provide this service to the City.

Fiscal Impact

Services through this contract would be paid for by the Planning Department’s Contractual Services budget. Over the past five years this line item has been funded at \$6,000 -15,000 per year.

Work Load Impacts

The services provided by ABC enables the Planning Department to provide high quality minutes. Without outside contractor assistance, staff would not be able to provide this

level of service. Preparing meeting minutes requires approximately three to five hours per hour of meeting time. For each meeting, meeting attendance and minutes preparation requires 10-15 hours of a transcriptionist's time. Since the Commission meets twice per month, and the DLC meets once per month, the Planning Department is continually preparing minutes. If Community Development administrative staff were required to prepare minutes, it would have significant impact on their other work and the work flow of the various Community Development departments. Other tasks and functions would have to be eliminated or delayed, and it is likely that the quality of the minutes would suffer as well.

Alternatives

1. Reduce the duration of the contract to be for a single year and for the adopted budget of \$10,000.
2. Direct the staff to advertise the position again to seek alternate contractors.
2. Not approve the contract. This would result in a drastic reduction in the quality and reliability of Planning Commission and DLC minutes and impact other aspects of the Community Development work program.

Attachments

1. Contract and scope of services
2. Resolution

ATTACHMENT 1

Contract # _____



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OR FOR PLANNING HEARINGS REPORTER

THIS AGREEMENT made and entered into this 1st day of September, 2009 by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and ABC Transcription Services, Inc., hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

Contractor agrees to complete work that is detailed in Exhibit A and by this reference made a part hereof. Contractor may have some contact with the public in the course of performing this contract and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the contract and to disqualify Contractor from future work for the City.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by June 30, 2012. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed Forty-five Thousand Dollars (\$45,000) for performance of those services described herein, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than

monthly. Payment shall be made only for work actually completed as of the date of invoice.

- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000

Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City.

Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City

F. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

G. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The

certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for (Name of project) . The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.

H. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

I. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

J. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Office of City Recorder
 City of Milwaukie
 10722 SE Main St.
 Milwaukie, Oregon 97222

Business Phone: 503-786-7504
 Business Fax: 503-653-2444
 Email Address: kwapichb@ci.milwaukie.or.us

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

City	Contractor
City of Milwaukie	Company: ABC Transcription Services, Inc.
Attn: Planning Department	Attn: Paula Pinyerd
6101 SE Johnson Creek Blvd, Milwaukie OR 97206	Address: 150 Depot St., Banks, OR 97106
Phone: 503-786-7600	Phone: 503-324-0198
Fax: 503-786-8236	Fax: 503-310-3482
Email Address: stoutenburga@ci.milwaukie.or.us	Email Address: abc4transcription@yahoo.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills, and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
 - 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
 - 3) If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. **ACCESS TO RECORDS**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. **FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic,

quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. **NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. **NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

17. **ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. **EXTRA (CHANGES) WORK**

Only the Katie Mangle, Planning Director, or her designee, may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. **ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

20. **GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

21. **COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours,

overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement

22. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

23. AUDIT

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

24. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

25. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE

CONTRACTOR

Signature

Signature

Printed Name & Title

Printed Name & Title

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR MEETING TRANSCRIPTION SERVICES FOR THE PLANNING DEPARTMENT.

WHEREAS, meeting minutes are an important record of City land use decisions and processes; and

WHEREAS, a contractor is able to provide a higher level of service than could otherwise be provided by staff without significantly disrupting other services; and

WHEREAS, funding meeting transcription services is included in the 2009/2010 budget; and

WHEREAS, the City advertised for qualified contractors and ABC Transcription, Inc. submitted the only proposal; and

WHEREAS, ABC Transcription, Inc. has provided high quality services to the City for two years;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a three-year contract for attending meetings and preparing minutes for Planning Commission and Design and Landmarks Committee meetings, in the amount of \$45,000.

Introduced and adopted by the City Council on August 18, 2009.

This resolution is effective on August 19, 2009.

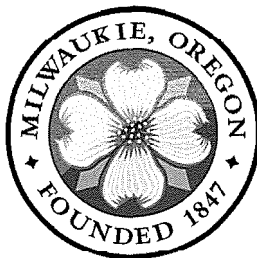
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police *[Signature]*
Date: July 28, 2009
Subject: O.L.C.C. Application – Pizanos Pizza – 10843 SE Oak Street

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Pizanos Pizza – 10843 S.E. Oak Street.

Background:

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



OREGON LIQUOR CONTROL COMMISSION
BUSINESS INFORMATION

Please Print or Type

Applicant Name: Pizanos Restuarant group LLC Phone: 503-305-8777

Trade Name (dba): Pizanos Pizza

Business Location Address: 10843 SE Oak St.

City: Milwaukie Oregon

ZIP Code: 97222

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 12⁰⁰ to 8:00
Monday 10:30 to 9:00p
Tuesday 10:30 to 9:00p
Wednesday 10:30 to 9:00
Thursday 10:30 to 9:00
Friday 10:30 to 10:00
Saturday 10:30 to 10:00

Outdoor Area Hours:

Sunday _____ to _____
Monday _____ to _____
Tuesday _____ to _____
Wednesday _____ to _____
Thursday _____ to _____
Friday _____ to _____
Saturday _____ to _____

The outdoor area is used for:

- Food service Hours: _____ to _____
- Alcohol service Hours: 10:30 to 10:00
- Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: Yes No If yes, explain: _____

ENTERTAINMENT

Check all that apply:

- Live Music
- Recorded Music
- DJ Music
- Dancing
- Nude Entertainers
- Karaoke
- Coin-operated Games
- Video Lottery Machines
- Social Gaming
- Pool Tables
- Other: _____

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday _____ to _____
Monday _____ to _____
Tuesday _____ to _____
Wednesday _____ to _____
Thursday _____ to _____
Friday _____ to _____
Saturday _____ to _____

SEATING COUNT

Restaurant: 52 Outdoor: _____
Lounge: 0 Other (explain): _____
Banquet: 0 Total Seating: _____

OLCC USE ONLY

Investigator Verified Seating: _____(Y) _____(N)

Investigator Initials: _____

Date: _____

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Angeline M. Macalvey-Frank Date: 6-22-09

1-800-452-OLCC (6522)

www.oregon.gov/olcc

(rev. 12/07)

5.
PUBLIC HEARING



To: Mayor and City Council

Through: Mike Swanson, City Manager
JoAnn Herrigel, Community Services Director

From: Tim R. Salyers, Code Compliance Coordinator

Subject: Appeal of the Decision to Abate Nuisances at 5622 SE Willow St

Date: 8/7/2009

Action Requested

Declare the property a nuisance, upholding the decision of City Staff, which would then authorize the City of Milwaukie's Code Enforcement Department to proceed with the abatement process to remove nuisances occurring on the property at 5622 SE Willow St, Milwaukie, OR 97222, Tax Lot ID 12E30DB04000, if the property is not in compliance by August 28, 2009.

History of Prior Actions and Discussions

None before City Council.

Background

The notice for abatement was posted on July 23, 2009 in accordance with Title 8 and Ms. Stockam has submitted in writing a protest of the abatement. The Milwaukie Municipal Code 8.04.180 states that, "Within ten days after the posting and mailing of the (Abatement) notice..., the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists...The owner or person in charge protesting that no nuisance exists shall file with the city recorder a written statement which shall specify the basis for so protesting."

Milwaukie Municipal Code requires that, City Council at its earliest meeting will have a hearing regarding the property. "...the council shall thereupon determine whether or not

a nuisance in fact exists..." The code continues, "If the council determines that a nuisance does in fact exist, the owner or other person shall within ten(10) days (August 28, 2009) after such council determination abate such nuisance."

Since the summer of 2007, the code enforcement department has received nuisance complaints regarding the property at 5622 SE Willow St in Milwaukie. The nuisances have included: offensive odors, overgrown weeds and blackberries, inoperable vehicles, and debris. Some other complaints have been made regarding rooster noise (issue was taken care of), overhanging trees, and animal neglect.

The following list describes the chronological events regarding this property:

- **April 24, 2007** the first notice was sent to the property owners listed. The letter spoke about inoperable vehicles, junk and debris, and storage of vehicles on front yard.
- **June 7, 2007**, the second notice was sent stating that no work that had been done. Also, the notice acknowledges that there were other circumstances regarding the estate.
- **June 7, 2007**, a separate notice was sent regarding noise caused by roosters.
- **July 31, 2007**, Code Officer Sarah Lander issued citation #206166 for prohibited noise- animals.
- **September 12, 2007**, Ms. Stockam appeared in court and entered plea of guilty and was fined a total of \$205. This is the only citation that was paid on and has been paid in full. The roosters have since left the premise
- **October 1, 2007**, a letter was sent regarding inoperable vehicles, junk and debris, and storage of vehicles on front yard. Also, the letter states that I requested documentation from the attorney handling the estate and have received nothing.
- **April 22, 2008**, citation #215001 was issued to Ms. Stockam for debris on private property.
- **May 28, 2008**, Ms. Stockam failed to appear on citation #215001 and was fined \$5,146.
- **July 28, 2008**, Officer Greg Elkins of the Milwaukie Police Department responded to an animal neglect complaint case # 08-2970. In the report it stated that cages containing rabbits and chickens were four to five feet off the ground and that below them feces had piled up to the bottom of the cage.
- **August 12, 2008**, Oregon Humane Society Investigator Austin Wallace and Code Officer Tim Salyers went to neighboring house and because chicken and rabbits are livestock animals care for them is less required. Oregon Humane Society notes said that he could visibly see feces piled under cage, but no animal neglect charges could be filed.

- **September 4, 2008**, a final notice was sent regarding an inoperable RV, an inoperable station wagon, a vehicle parked on grass or dirt, trees overhanging the street too low, junk around the property, overgrown blackberries and other vegetation, an offensive odor, and fecal matter that attracts rats.
- **September 22, 2008**, citation #215035 and #215036 were issued for debris on private property, weeds and noxious growth, overhanging trees and shrubs, and storage in front yard.
- **October 29, 2008**, Ms. Stockam appeared in court and entered plea of no contest.
- **January 7, 2009**, Ms. Stockam did not appear for the hearing. Trial took place and judge found the defendant guilty and was fined a total of \$1,930.
- **March 13, 2009**, a lien was entered onto the property for all outstanding court fines for a total of \$7,076. (Attachment C)
- **July 9, 2009**, citation #218276 was issued for debris on private property and weeds and noxious growth. Photographs were taken while at location. (Attachment A)
- **July 22, 2009**, failed to appear on citation #218276 and was fined \$1,806.
- **July 23, 2009**, a lien was entered onto the property for new outstanding court fines for \$1,806. (Attachment C)
- **July 23, 2009**, a memo was sent to Acting City Manager Pat DuVal and she signed the abatement notice. It was then posted on the property and sent certified mail the Ms. Stockam. (Attachment D)
- **August 3, 2009**, City Manager Mike Swanson received a voice mail protesting the abatement.
- **August 5, 2009**, written notice from Ms. Stockam was delivered, protesting the abatement. (Attachment A)

Fiscal Impact

If declared a nuisance, costs of abatement would depend on what work is done. The abatement could result in a bill to the property owner for more than \$500. Without obtaining a warrant and a bid from a contractor, costs are hard to determine. Staff is confident that the abatement fund in the FY 2010 budget is sufficient to cover the costs of this project.

If no nuisance is declared and if violations continue, costs are hard to estimate due to continued City of Milwaukie employees' time spent on ongoing violations related to the property.

Work Load Impacts

If declared a nuisance, workload would include: re-inspecting the property on August 31, 2009 and if violations are still occurring, setting up a contractor, obtaining a warrant from Judge Gray, agreeing on a contract with the contractor, towing of the motor home, supervising removal of blackberries and debris, and issuing a staff report (if bill is not paid) to City Council for another lien to be entered on the property, and closing current case.

If no nuisance is declared and if violations continue, workload would be hard to estimate due to continued City of Milwaukie employees' time spent on ongoing violations related to the property. Additional citations at a maximum of \$500 per day per violation, could cost the property owner more money in the long run than if abatement is done.

Alternatives

Declare that the property is not a nuisance.

Attachments

Attachment A- Protest Letter

Attachment B- Abatement Memo

Attachment C- Photographs from 7/9/2009

Attachment D- Memos to Ignacio Palacios requesting an attachment of liens to the property dated March 13, 2009 and July 23, 2009.

Attachment E- Aerial Photo of 5622 SE Willow St and surrounding area

Attachment F- Milwaukie Municipal Code Sections 8.04.010, 8.04.070B, 8.04.110A, 8.04.180.

ATTACHMENT A

To Pat and the City Council of Milwaukie,

My name is Sherri Stockam, and I reside at 5622 S.E Willow Street. This property was brought to the code ordinance of Milwaukie. For having code violations. I am not ~~disputing~~ ^{disputing} that there are violations, which I am trying to clear up.

I work five days a week and can only clean up the property when I have a Saturday or Sunday off. I was starting to clean up the property, I had rented a dumpster from Oakgrove disposal to get rid of the debris when people started complaining about the dumpster on my property. I have hired a young man to clean up the property for me.

The problem is he cannot get to it for two weeks. Also I know that this is an on going problem with me and my neighbor calling all the time. I will have the property cleaned up by the end of August. The Motor home was to go to my Aunt and Uncle who have not been able to come and take it. I think however I have found some one to take the Motor home.

There is just myself and my friend to clean this property, and we are doing are best. I hope that the City Council will let me state my side of this. I am not making excuses the property does need cleaned up. So I hope that even after all the time I have had that you give me a little more time to finally get it cleaned.

Thank you for your time in working with me.

Sincerely yours,

Sherri Stockam



MEMORANDUM

TO: Pat DuVal, Acting City Manager
FROM: Tim Salyers, Code Enforcement Coordinator
DATE: July 23, 2009
RE: Property Located at 5622 SE Willow St, Milwaukie, OR

Since the summer of 2007, the code enforcement department has received nuisance complaints regarding the property at 5622 SE Willow St in Milwaukie. The nuisances have included: offensive odors, overgrown weeds and blackberries, inoperable vehicles, and debris. Some other complaints have been made regarding rooster noise (issue was taken care of), overhanging trees, and animal neglect.

The following list describes the chronological events regarding this property:

- **April 24, 2007** the first notice was sent to the property owners listed. The letter spoke about inoperable vehicles, junk and debris, and storage of vehicles on front yard.
- **June 7, 2007**, the second notice was sent stating that no work that had been done. Also, the notice acknowledges that there were other circumstances regarding the estate.
- **June 7, 2007**, a different notice was sent regarding noise caused by roosters.
- **July 31, 2007**, citation #206166 was issued for prohibited noise- animals.
- **September 12, 2007**, Ms. Stockam appeared in court and entered plea of guilty and was fined a total of \$205. This is the only citation that was paid on and has been paid in full.
- **October 1, 2007**, a letter was sent regarding inoperable vehicles, junk and debris, and storage of vehicles on front yard. Also, the letter states that I requested documentation from the attorney handling the estate and have received nothing.
- **April 22, 2008**, citation #215001 was issued for debris on private property.
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- **July 28, 2008**, Police respond to an animal neglect complaint case # 08-2970.
- **September 4, 2008** a final notice was sent regarding an inoperable RV, an inoperable station wagon, a vehicle parked on grass or dirt, trees overhanging the street too low, junk around the property, overgrown blackberries and other vegetation, an offensive odor, and fecal matter that attracts rats.
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- **March 13, 2009**, a lien was entered onto the property for all outstanding court fines for a total of \$7,076.
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- **July 22, 2009**, failed to appear on citation #218276 and was fined \$1,806.
- **July 23, 2009**, a lien was entered onto the property for new outstanding court fines for \$1,806.

This property has been an ongoing problem. This was the 4th occasion where Ms. Stockam has been issued a citation. The City of Milwaukie has never gone through the abatement process at this address. This property and owner is a continuous violator for the Code Enforcement department. We have made every attempt to work with her on the issues, but compliance has never really been met. Two vehicles have left the property over the years and some trimming of branches and blackberries have taken place, but no real maintenance has taken place.

She currently owes the City \$8,882 in Court fines plus the 6% because of the liens. Also, if we do the abatement all those costs would be added to the bill.

The property is surrounded by nice homes and is nearly across the street from Ball Michel Park and within 125 feet of Seth Lewelling Elementary School's boundaries. With a newly developed park nearby and a school it is very detrimental to the overall character of the neighborhood and there are still ongoing violations occurring on the property.

Due to these reasons, the fact we continue to receive complaints on this property, the blatant disregard for following City of Milwaukie's rules and laws and since it is a violation still; I would strongly recommend that we post this property with a Notice to Abate the nuisance and follow it with an Administrative Search Warrant to allow City staff to abate the violations and minimize any potential dangers to the neighbors, surrounding ecosystem and the neighborhood livability.

Attached are picture from July 9, 2009. The property is in roughly the same condition today, except that the blackberries and weeds have had more time to grow.

Attachment "C"
Photographs taken on 7/9/2009



Interoffice Memorandum

To: Ignacio Palacios, Finance Director

From: Tim Salyers, Code Compliance Coordinator

Date: March 13, 2009

Re: Property at 5622 SE Willow St

The above listed property has been cited numerous times for various code violations. After each guilty finding the property owner, Sherri Stockam, has shown a history of not making payments, except for one instance.

Due to the repetitive nature and failure to make any payments since October 2007, I would request that we enter the full amount owed onto the City Lien Docket and place a lien for the below amount on the real property located at 5622 SE Willow St., Milwaukie, Oregon 97222- Tax Lot ID 12E30DB04000, which is in the City of Milwaukie, Clackamas County, Oregon.

<u>Citation #</u>	<u>Date</u>	<u>Violation</u>	<u>Fine</u>
215001-01	04/22/08	Debris on Private Property	\$5,146.00
215035-01	09/22/08	Debris on Private Property	\$ 653.00
215035-02	09/22/08	Storage in Front Yard	\$ 312.00
215035-03	09/22/08	Overhanging Trees	\$ 312.00
215036-01	09/22/08	Weeds and Noxious Growth	\$ 653.00
			\$7,076.00

Interoffice Memorandum

To: Ignacio Palacios, Finance Director

From: Tim Salyers, Code Compliance Coordinator

Date: July 23, 2009

Re: Property at 5622 SE Willow St

The above listed property has been cited numerous times for various code violations. After each guilty finding the property owner, Sherri Stockam, has shown a history of not making payments, except for one instance and not complying with the City of Milwaukie's Municipal Code

Due to the repetitive nature and failure to make any payments since October 2007, I would request that we enter the full amount owed onto the City Lien Docket and place a lien for the additional amount on the real property located at 5622 SE Willow St., Milwaukie, Oregon 97222- Tax Lot ID 12E30DB04000, which is in the City of Milwaukie, Clackamas County, Oregon.

<u>Citation #</u>	<u>Date</u>	<u>Violation</u>	<u>Fine</u>
215001-01	04/22/08	Debris on Private Property	\$5,146.00
215035-01	09/22/08	Debris on Private Property	\$ 653.00
215035-02	09/22/08	Storage in Front Yard	\$ 312.00
215035-03	09/22/08	Overhanging Trees	\$ 312.00
215036-01	09/22/08	Weeds and Noxious Growth	\$ 653.00
		Old Lien	\$7,076.00

<u>Citation #</u>	<u>Date</u>	<u>Violation</u>	<u>Fine</u>
218276-01	07/09/09	Debris on Private Property	\$1,153.00
218276-02	07/09/09	Weeds and Noxious Growth	\$ 653.00
		New Lien	\$1,806.00

ATTACHMENT E



RS PAGE 38

Attachment “F”

Milwaukie Municipal Code

Below are the code sections that directly apply to the abatement and hearing.

Title 8.04 Nuisances

8.04.010 Definitions.

Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following definitions shall apply:

D. “Inoperable vehicle” means any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purposes for which it was manufactured, and which has been in that condition for at least fifteen (15) days. Inoperable vehicle does not include any vehicle kept on an enclosed building or any vehicle kept on the premises of a business lawfully engaged in wrecking, junking or repair of vehicles.

8.04.070 Nuisances affecting public health.

No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

B. Debris on Private Property. Accumulations of debris, rubbish, manure, and junk, junk machinery or junk vehicles of any kind, inoperable vehicles, and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;

8.04.110 Weeds and noxious growth— Dead or decaying trees or tree limbs.

The following things, practices or conditions on any real property are nuisances. For purpose of this section, “real property” includes any portion of a right-of-way adjacent to the real property.

A. Grass, thistles cockleburrs, brambles, wild blackberry bushes, weeds or other noxious vegetation greater than eight inches in height, that have gone to seed or that are a fire hazard.

8.04.180 Abatement—By owner.

A. Within ten days after the posting and mailing of the notice as provided in Section 8.04.170, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

B. The owner or person in charge protesting that no nuisance exists shall file with the city recorder a written statement which shall specify the basis for so protesting.

C. The statement shall be referred to the council as a part of the council’s regular agenda at the next succeeding meeting. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the council and the council shall thereupon determine whether or not a nuisance in fact exists and such determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where a written statement has been filed as provided.

D. If the council determines that a nuisance does in fact exist, the owner or other person shall within ten days after such council determination abate such nuisance.

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager
JoAnn Herrigel, Community Services Director

From: Beth Ragel, Community Services Program Coordinator

Subject: Temporary Event Permit Process and Milwaukie Boat Ramp Policy

Date: August 18, 2009

Action Requested:

Provide staff with input and guidance as to the need for modification of the City's Temporary Event Permit process, specifically on the following key questions:

- Should the City of Milwaukie modify the current temporary event permit process to reflect special review or considerations for use of the boat ramp at Milwaukie Riverfront Park?
- Should the City of Milwaukie create a separate process and policies specific to the Milwaukie boat ramp?

History of Prior Actions and Discussions:

On April 5, 2006 City Council adopted the current temporary event code (Attachment A.)

Background:

In February of 2009, City staff received an event permit application for a "Cruise In for Hope" to be held in downtown Milwaukie and at the Riverfront on June 13 and 14. The event involved a car show to be held on Main Street and boat races to be held at the Jefferson Street boat ramp. Community Services staff, lead by Beth Ragel, coordinated the event permit review and approval process in conjunction with other City Departments and the Oregon Coast Guard. During the review process and subsequent event weekend, several comments were received from various community members and other parties regarding the impact that the boat races would have on wildlife, Elk Rock Island, and surrounding residences. As such, staff thought Council might wish to review the existing process and make recommendations regarding any modifications it feels might be warranted. A description of the Event Permit Process and related issues follows.

Current Temporary Event Permit Process:

The City's Community Services Program Coordinator is responsible for processing temporary event permit applications as they are received. When an application for a temporary event permit is received by the Program Coordinator it is forwarded to relevant City Departments and other regulatory agencies for their review. The temporary event permit application packet includes an application for a noise variance. Noise variances are processed by the Milwaukie Police Department (Attachments B and C.)

Every temporary event permit application that the City receives is automatically sent to the following City departments and outside agencies for review: Planning, Streets, Facilities, Police, Engineering, Community Services, TriMet and Clackamas County Fire District #1. As owner of Milwaukie Riverfront Park, the City has discretion as to who may use the Park and the boat ramp located there. Generally, the City notifies the Oregon Marine Board if the ramp will be closed to the public.

Where proposed events include activities in the Willamette River, applications are sent to the Coast Guard which has jurisdiction over all navigable waterways. The Coast Guard, in turn, consults with many regulatory agencies to review the proposed event for safety, compliance with the National Environmental Protection Act (NEPA), and impacts on local property, businesses, and other sensitive land uses. After determining approval, the Coast Guard announces the event and any ensuing waterway or boat ramp closures on the Marine Radio Channel and lists it on the Federal Register.

Once all City departments and consulted agencies have reviewed the temporary event application, the City Manager responds to the applicant with approval, approval with conditions, or denial. Our temporary event code provides discretion to the City Manager for final approval or denial and also allows for appeal by either the applicant or other parties. (Again, the City's temporary event permit code language is attached for reference—attachment A.)

Generally the City's Temporary Event Permit policy places the onus of notification to abutting or impacted property owners and residents on the applicant. (In the case of marine events the Coast Guard also provides notification via the Marine Radio Channel and the Federal Registry.) City staff gives applicants guidelines regarding the notification of abutting property owners—including who they should notify and within what time frame. Generally this process has worked well in the past. For the recent boat racing event the applicant reported that notification was posted at all public and private boat ramps from Milwaukie to Oregon City. It was also a condition of the City's event permit that fliers were to be distributed to the neighborhoods surrounding the Milwaukie boat ramp. The recent applicant reported having complied with this condition. Some neighbors in the Island Station neighborhood reported that they did not receive notification in a timely fashion.

Current Noise Code and Temporary Event Permits:

It has been suggested that the City consider revisions to its current noise code in consideration of large events conducted at the boat ramp and impacts to neighbors and wildlife. Several issues should be considered if this is to be pursued:

- If a noise variance is granted with approval to conduct a temporary event, then the noise code does not apply. Typically a noise variance is granted along with a temporary event permit. If a noise variance is not granted then the event must not exceed the noise granted within the zone.
- In reviewing the current noise code with the City attorney, staff has concluded that the noise code does not exempt activities such as boat races.

Section 8.08.100 of the Milwaukie municipal code states that "property generally used for such purposes, parks, schools, churches, athletic fields;" is exempt from noise limits in a residential zone." However, this section is intended to recognize that there is a certain level of noise that is generated from these facilities, primarily children playing, spectator noises and the operation of machinery used in caring for the grounds. Those sounds are exempted from the limitations of the noise ordinance. In the context of the boat ramp, one would expect certain noise related to taking a boat off a trailer, loading onto a trailer or exiting the water at the ramp. It is not clear that the code exemption can be extended to noise made by boats during a boat race as this is not generated on the park property.

- The specific section of the noise code that on initial review appears to create confusion is 8.08.080. This seems to allow motorboats without limitation. City attorney, Bill Monahan, reports that "I am not aware of the historical context of this code language when it was adopted but it appears that motorboats were added to the language to show the city did not plan to restrict motorboats, perhaps because the city did not want to restrict recreational use of the river. But, did the drafters of the ordinance intend to allow racing motorboats? It may be helpful to review the code language and draw a distinction between "recreational" motorboats up to a certain engine size or decibel level, restricting racing vehicles or those with certain size engines."¹

¹ **8.08.080 Recreational motor vehicles.**

No person shall operate or cause to be operated any recreational motorized vehicle off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the limits set forth in Table 8.08.080 as measured at or within the property boundary of a noise-sensitive land use. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or noncommercial racing vehicles, motorcycles, go-carts, campers and dune buggies, **but not including motorboats.**

8.08.100 Exceptions.

The following sounds are exempted from provisions of this chapter:

- A. Sounds caused by the performance of emergency work;
- B. Aircraft sound;

- If changes to the noise code or changes in policy as to how we permit events at the boat ramp are desired then consideration would need to be given to distinguishing between normal boat activity that occurs daily from concentrated boating activity that would be part of an organized event.
- The City's noise code is currently being reviewed by City Attorney, Bill Monahan, in an effort to make it less confusing and to address some recent issues that have arisen.

Notification and Coordination with adjacent properties and other agencies:

In the recent case, there were several neighbors living in the Island Station neighborhood that raised concerns about the noise that the boat races would bring—both as an irritation to humans living nearby and to animals nearby.

The Milwaukie Police Department received no complaints that weekend of the Cruise In regarding noise. One resident did call the City Manager and several other staff members to report that the boats were disruptive and annoying.

Spectators at the event reported that some boats were noticeably louder than others. This is discussed further below.

It should also be noted that some other agencies, such as Portland Parks and Recreation and the Willamette Riverkeepers, requested that they be notified of such events in the future. Staff has agreed to inform these and other stakeholder groups in the future for large events/activities at and near the boat ramp.

Staff recommends that a formal notification process to the neighborhood association and/or business association is also in order for such a large event. In the recent case, staff required the applicant to notify the nearby residents and businesses. However, staff believes that a more formal referral to the neighborhood district associations and/or the businesses associations may be a good idea. Staff is working on a referral form, similar to that used by the Planning Department for land use applications that can be sent to the Neighborhood District Associations. There is a cost to mailing notifications. Staff suggests that the referral process only be used for

C. Sounds caused by organized athletic or other group activities, when such activities are conducted on **property generally used for such purposes, parks, schools, churches, athletic fields;**

D. Sounds made by warning devices operating continuously for three minutes or less;

E. Construction activities during the day-time period;

F. Church bells;

G. Sounds generated by agricultural activities. (Ord. 1528 § 7(A), 1982)

large events. Notification for small events such as neighborhood block parties does not seem warranted.

Environmental and Habitat Concerns:

The recent boat race event also raised concerns about impacts to various animal and fish species and their habitat. Staff understands that animals may be disturbed by noise and also by activities within their sightline. Hence, both noise and visual disturbances must be analyzed when attempting to minimize the impact of proposed events. (Attached are emails from biologists showing their analysis and recommendations).

In the recent case, there was concern about impacts on an eagle pair nesting on property near Spring Park in the Island Station neighborhood, Peregrine falcons nesting in the Dunthorpe area, and salmon potentially migrating near the mouths of Kellogg and Johnson Creeks. The Coast Guard did review the proposed event for compliance with the National Environmental Protection Act (NEPA) and determined that with some constraints the event complied and would not harm these sensitive species (Attachment D). Likewise, biologists with the Oregon Department of Fish and Wildlife did not think that the boat races would cause adverse impacts to migrating salmon, the nesting eagles, or to the falcons as long as a few conditions were met—which were incorporated as part of the Coast Guard conditions of approval and complied with by the boat racing group (Attachments E, F, and G.)

Whether or not the Coast Guard reviews an event for NEPA compliance, however, the City Council may wish to explore options for restrictions on loud events, such as boat races, with impacts to wildlife in mind. For example, seasonal restrictions could be an option. Fish migrate during certain times of the year and birds nest and fledge during certain seasons. (Salmon typically migrate through the spring and are out of this reach of the Willamette by mid-June.) It may also be desirable to limit how many of such events could take place in a given year or season.

The concerns raised about impacts to animals also raise the question as to whether or not a fireworks display is appropriate at the boat ramp. Research shows that fireworks are detrimental to animals. Not only are the decibel levels from fireworks very high (literally explosions), but fireworks include bright flashes of light which can scare animals and birds and fireworks leave debris and chemicals in the air and water. Precisely because fireworks displays are short they do not last long enough for animals to become accustomed to the sound and light. Fireworks can emit sounds of up to 190 decibels--higher than the noise from gunshots (140 decibels) and low-level flying jets (100 decibels).

If the City of Milwaukie wishes to modify its temporary event process or develop new policies regarding the boat ramp with respect to impact to wildlife, it should do so in a consistent manner. If concerns about impacts to animals and habitat are paramount then it seems inconsistent to place limitations on large boating events and not place limitations on other loud or visually disturbing activities at the riverfront such as fireworks.

Recent Boat Race Noise Levels:

The noise levels recorded at the recent boat race event varied depending on the class of boat. The Coast Guard permit required that the applicant, Colombia Outboard Racing Association (CORA), do noise monitoring at the event. Measurements were taken for all classes that raced (14 total).

The measurements were taken at the start of a heat when the boats were closely packed. A follow up measurement was taken if the boats were still in a pack after lap one. Boats ranged in distance from the measuring point approximately 80-200 feet, with the exception of the spot check max readings taken at launch where boats were as close as 5 -10 feet.

Measurements are shown as a Range indicating the db reading as they passed the measuring point, a peak db reading as they passed that point, and a max reading when the boats left for a heat.

Engines utilize an underwater exhaust (like non-racing outboards) and pump gas mixed with oil, except where noted.

J/AXS/KPRO/A

These classes use either 15 hp OMC two stroke motor last produced in 1992, or a 15 hp Mercury two stroke motor last produced in 1999. There are carburetor restrictor plates that limit horsepower from 10 hp on the low end (J) to about 18 hp with no restriction on the upper end (KPRO & A). There were seven classes (4 hydro, 3 runabout) for a total of 14 heats on the day for these motor types. There were 5-7 boats per heat. Range:73-77 db, 80 db peak, 85 db max. (Again, max was measured at 5-10 feet from the boats.)

20ss/C/OSY

These classes use primarily 400cc Yamato 102 & 302 two stroke motors produced over the last two decades in Japan (imported for racing only). There are carburetor restrictor plates that limit horsepower from 20 hp on the low end (20ss) to about 25 hp with no restriction on the upper end (C/OSY). There were 4 classes (3 Hydro, 1 runabout) for a total of 8 heats on the day for these motor types. There were 4-7 boats per heat. Range: 78-81 db, 85 db peak, 91 db max.

DSH

This class uses primarily the Mercury 44xs two stroke motor, though there was also a Tohatsu 50 and a Mercury 55h (pretty much a museum piece) at this event. All three generate approximately 50 hp. Only the Tohatsu is in current production (imported for racing only). There was one hydro class for a total of two heats. There were 5 boats. Range : 86-90 db, 92 db peak (no max measured). Note that the Mercury 55h used a chambered above water exhaust, yet appeared to be quieter than the other motors.

C Service

This class uses 70 year old antique opposable-piston two stroke motors (maybe 400-500cc) with open exhausts (one can actually see the pistons moving) fueled by methanol mixed with a castor oil lubricant. There was one class of runabouts with 4 boats for a total of two heats. Range: 95-98 db, 103 db peak, 109 max.

350cc/250cc

These classes (class name denotes engine displacement) use specialized racing two stroke motors with tuned pipe exhausts (one can actually change the length of the exhaust while racing) fueled by methanol mixed with a castor oil lubricant. There were two classes of hydros combined for 4 boats in a total of two heats. Range: 92-97 db, 103 db peak (no max measured).

The CORA representative also measured levels for the yellow display boat that trailer fired its motor over both days. In the lower part of the boat ramp parking area (below grade, 300 feet away), Range: 72-75 db 80 db peak. From the upper parking area (same level as the boat, about 150 feet away) Range: 85-89 db, 92 db peak. For these measurements, the peak reflects when they "goosed" the accelerator.

The readings were consistent for motors whether they were restricted or not. It was difficult to determine whether the number of boats in a heat caused more noise, or if more boats put the outside boat closer in distance to the monitoring device (thus leading to a higher reading). Once the heat progressed, and the boats spread out, single boat readings were consistently 3-7 db lower than listed above for each class.

A Milwaukie police officer also took some spot checks at the event. The highest db that they read at a 200 foot distance was about 90db.

As one can see, in the recent event, there were two classes that were over 100 decibels. Neighbors and spectators reported that these classes were noticeably louder than the other classes that raced. That said, they were still within OSHA standard of 140 dB for impulsive or impact noise or, for example OSHA standards for occupational exposures which assumes an 8-hour time weighted average (Attachment D.)

Other Jurisdictions Case Studies:

Staff reviewed event permit processes currently in use by the City of Newberg, City of Oregon City, City of Portland, and Rockaway Beach. A wider web search was also conducted.

After checking with other jurisdictions in the region as well as other jurisdictions in which CORA races have been held, staff has determined that Milwaukie's processes and policies regarding temporary events are similar to many jurisdictions in that they are discretionary.

In some jurisdictions the City Council reviews event permit requests and in other jurisdictions the events are reviewed by the Parks Board or the Parks Department staff.

Staff did not find any example of a jurisdiction with specific code language limiting boating activity. Rather, code language typically gives the governing body discretion over whether or not to permit the temporary event and issue a noise variance based on general criteria such as safety, noise impacts, and so forth. The Coast Guard has the most specific review in terms of objective criteria.

The City of Portland's temporary event process is similar to ours. Those applying to conduct events that are held in places zoned as public use or open space, such as in Willamette Park, must complete a temporary event permit form through the parks department. The temporary event coordinator with Portland Parks said that they have not had a motorized boat racing group conduct an event on the river while he has been the coordinator. They have had events on the water, which they let the Coast Guard review, but nothing that might have impacts similar to a boat racing event. The City of Portland does, however, refer all their temporary event permit applications to the neighborhood associations for comment. This is something that the City of Milwaukie could do like we do with land use applications. Again, staff thinks that a formal notification process would be in order for such a large event. Staff is working on a referral form, similar to that used by the Planning Department for land use applications, which can be sent to the Neighborhood District Associations when a temporary event application is processed. (Attachment H.)

Summary of Staff recommendations:

- Implement referral process to neighborhood district associations and business association for proposed large events
- Emphasize to event sponsors the importance of notification of impacted residents and businesses
- Begin including Portland Parks and Recreation; Willamette Riverkeepers; and other agencies when application for a large temporary event at the boat ramp is received.
- Research and develop criteria for restricting water-based events to seasons of the year that will minimize impact on fish and other wildlife.

Concurrence

The Milwaukie Riverfront Board and the Milwaukie Parks Board have both discussed the recent event and the event permit process in general. Attached are the minutes from their June meetings (Attachments I and J.)

The Riverfront Board expressed interest in being involved in any discussion of restrictions placed on events proposed at the boat ramp and Milwaukie Riverfront Park but did not feel strongly that it was their role (or interest) to call for a revision of existing event permit policy. The Park Board noted that a review of the existing permit process was in order and that Council (and staff) should consider the benefits of modifying the noise code language to restrict disruption near the River.

This report has been reviewed by Code Enforcement, Planning, Community Services Director and the Police Chief.

The Oregon Marine Board also requested the opportunity to comment on this issue. Attached is an email regarding (Attachment K).

Fiscal Impact

A referral system to the NDAs and businesses associations would require additional cost for mailings which would likely be minimal as there are generally only a few large events in Milwaukie a year.

Work Load Impacts

A referral system to NDAs, businesses associations, and other agencies would require additional time. Work load impacts would depend on the amount of feedback given from various stakeholders and the amount of coordination the event required.

Alternatives

- Keep the current system in place.
- Accept some of all of the proposed changes.
- Propose other changes.

Attachments

A: Temporary Event Code
B: Application for Temporary Event Permit
C: Noise Variance Form
D: Coast Guard CatEx
E,F,G: Emails regarding impacts to sensitive species
H: Draft temporary event referral form
I: Riverfront Board minutes June 2009
J: Parks and Recreation Board Minutes June 2009
K: Comment from Oregon Marine Board

Attachment A

Milwaukie Municipal Code[Up](#) [Previous](#) [Next](#) [Main](#) [Collapse](#) [Search](#) [Print](#) [No Frames](#)[Title 11 MISCELLANEOUS PERMITS](#)**Chapter 11.04 TEMPORARY EVENTS, PERMITS AND REGULATIONS**

11.04.010 Purpose

The purpose of these regulations includes the following:

- A. To define temporary events as those which generally do not exceed more than twelve (12) hours in any one day and do not exceed thirty (30) consecutive days and not occurring on a regularly scheduled basis within a year;
- B. To allow the orderly and safe conduct of temporary events including special events, block parties, and sales events held on public and private property;
- C. To minimize the potential adverse impacts on affected neighbors and public resources of temporary events;
- D. To allow for temporary events that are otherwise prohibited by the Milwaukie zoning ordinance. (Ord. 1960 § 2 (part), 2006)

11.04.020 Definitions.

Terms used in this chapter are defined in accordance with common and ordinary usage.

- A. "Adverse impacts" mean impacts to property and its environs that could result from a temporary event including, but not limited to, access and circulation, setbacks, parking, noise, hours of operation, fumes, odors, dust, and traffic. Hazardous activities such as the use of pyrotechnic devices, black powder or smokeless powder, and the use of guns are included.
- B. "Applicant" means a person who has filed a written application for a temporary event permit.
- C. "City manager" means the city manager of the city of Milwaukie or his/her designee.
- D. "Permittee" means the person or organization to whom a temporary event permit is granted pursuant to this chapter.
- E. "Person" means an individual, firm, partnership, corporation, association, or other legal entity.
- F. "Reimbursable costs" mean all costs and expenses incurred by the city for activities associated with staging of the temporary event, including, without limitation, the following:
 1. Utility services provided to the temporary event including all of the costs of installation, maintenance, connection, and removal;
 2. Food services inspection;
 3. Repair, maintenance and removal of facilities in the event of a failure of promoter;
 4. Repair of streets, alleys, sidewalks, parks, and other public property;
 5. Police protection;
 6. Fire protection;
 7. Emergency medical service;
 8. Garbage disposal and cleanup;
 9. Traffic control;

10. Other direct costs associated with the temporary event;

G. "Temporary" means lasting for a limited time, generally not more than twelve (12) hours in any one-day, not exceeding thirty (30) consecutive days, and not occurring on a regularly scheduled basis within a year. Garage sales, as defined in Section 5.08.110, shall not exceed seventy-two (72) consecutive hours and shall not occur more than twice within any one (1) calendar year.

H. "Temporary event" is any special event, block party, or sales event defined as follows:

1. "Special event" means a temporary event, or gathering, including, but not limited to, a parade, festival, exposition, show, concert or other similar activity that does not recur on a regularly scheduled basis within a year, is conducted wholly on public property or partly on public property, and is not a permitted use in the zone where it is occurring.

2. "Block party" means a party or celebration that involves the closure of a limited portion of a single local public street, that has attendance of not more than one hundred fifty (150) people, and does not include the sale or distribution of alcohol.

3. "Sales event" means a seasonal or occasional event involving the processing and/or sale of commodities and services. These activities include, but are not limited to, the sale of produce, firewood, fireworks, and Christmas trees. Garage sales are not defined as sales events and do not require a special event permit.

I. "Temporary event permit" means written approval from the city manager to hold a temporary event. (Ord. 1960 § 2 (part), 2006)

11.04.030 Authority, administration, and enforcement.

A. The city manager is authorized to administer provisions of this section and to review and approve temporary event permits based on following the procedures and regulations provided within this chapter. The city manager or designee may approve, approve with conditions, or deny applications for temporary event permits in accordance with applicable approval criteria.

B. The city manager may adopt administrative procedures and forms that are deemed necessary to administer these regulations.

C. City actions on temporary event applications do not constitute land use decisions or limited land use decisions as defined by the Oregon Revised Statutes. Temporary events that receive city permits are outright permitted uses and therefore not subject to land use review.

D. The city manager may authorize variances from the terms of this chapter if the city manager determines that granting the variance will not be contrary to the public interest or the general purpose of this chapter.

E. The provisions of this chapter are cumulative of all city ordinances or other applicable law. All other permits required by ordinance or other law for specific activities to be conducted in conjunction with or as part of the temporary events must be applied for separately in accordance with the application ordinance or law. (Ord. 1960 § 2 (part), 2006)

11.04.040 Exemptions.

The provisions of this chapter do not apply to:

A. Events that occur in parks owned by the city of Milwaukie and are maintained by the North Clackamas Parks and Recreation District with the exception of events that are sponsored by the city of Milwaukie;

B. Events sponsored or conducted by any school, religious, civic, nonprofit, or fraternal organization provided such events are held on premises specifically designed or constructed to house the organization and its

activities;

C. Funeral processions. Regulations and restrictions for funeral processions are contained in Section 10.28.060;

D. Garage sales or yard sales as described in Section 5.08.110;

E. League play or tournaments by athletic associations in parks or recreational centers intended for such activities;

F. Any event or activity that is otherwise permitted on the property under applicable zoning regulations.

Exemptions to the provisions of this chapter as listed above do not exempt any event from other permits that may be needed according to Milwaukie's zoning ordinance or other applicable law. (Ord. 1960 § 2 (part), 2006)

11.04.050 Temporary event permit application submission requirements.

A. A person desiring to hold a temporary event shall apply for a temporary event permit by filing with the city manager or his designee a written application upon a form provided for that purpose. The deadline for the submittal of a temporary event permit application to hold a special event or a sales event is thirty (30) days prior to the start of the special event or sales event. The deadline for submittal of a temporary event permit application to hold a block party is no less than seven (7) days prior to the start of the block party.

B. Only temporary event permit applications that are submitted at least two (2) months prior to the start of the temporary event will be eligible for appeal before city council as described in Section 11.04.110. (Ord. 1960 § 2 (part), 2006)

11.04.060 Application process and approval criteria.

A. Upon receipt of the completed temporary event permit application the city manager or his designee shall forward a copy of the application to various city departments and other organizations who shall review the application and return it, with any comments, to the city manager within five (5) working days of receipt. The city manager or his designee may solicit comments from affected neighborhood district associations and immediate neighbors of the proposed event at this time and may require the submission of additional information by the applicant.

B. The city manager or his designee shall issue, issue with conditions, or deny the temporary event permit based on the standards of this chapter. A temporary event permit to hold a special event will be issued for a period not to exceed fourteen (14) consecutive days.

C. The following criteria must be met before a temporary event permit is issued:

1. Structure. All temporary structures shall be removed within five (5) days of the termination of authorized operation, leaving the site in the same condition as it was prior to the placement of the temporary use. All structures shall also fulfill Milwaukie building code and all fire safety regulations of Clackamas County Fire District No. 1.

2. Access and Circulation. Provisions for access and circulation shall be reviewed and approved by the community development and public works department and, as required, the following: Clackamas County, the Oregon Department of Transportation (ODOT), and Milwaukie police department.

3. Setbacks. Setback requirements of the underlying zone shall apply to temporary structures.

4. Parking. Temporary events and structures in parking lots shall not displace or occupy required parking by more than ten percent (10%) of the parking spaces.

5. Noise. Noise levels generated shall not be in excess of levels allowable in the zone that the temporary use

is located within unless a noise variance has been approved by the Milwaukie police department.

6. Hours of Operation. Temporary events or structures used for the processing and/or sale of commodities shall maintain business hours that are not disruptive to the normal use of adjacent residential properties consistent with Milwaukie's noise ordinance, unless a noise variance is granted by the Milwaukie police department. Block parties may not be held before seven a.m. or after ten p.m.

7. Fumes, Odors and Dust. Temporary events that create noxious fumes, offensive odors, or excessive amounts of airborne dust shall not be permitted or shall be required to meet applicable state standards regarding the control of such nuisances.

8. Traffic. A traffic management plan shall be required for events expected to impact surrounding properties. Permits shall be denied if the traffic management plan does not adequately address potential traffic impacts.

9. Hazardous Activities.

a. The use of any pyrotechnic devices shall be prohibited on or in all city-owned property unless specifically approved in writing by a CCFD No. 1 fire marshal and Milwaukie's chief of police or his/her designee.

b. Gun shows at which gun sales are to occur shall have all firearms, including antique firearms made inoperable through the use of locks, "zip ties" or other devices to prevent the firearm from being loaded or discharged at the gun show. Sales by licensed firearms dealers may be permitted if permitted by the applicant. Sales by person who have not been issued a valid federal firearms license shall not be permitted on city property.

10. Signage. All event signs shall comply with Milwaukie's sign code (Title 14).

11. Health Standards. All events must comply with the FDA Food Code and all other applicable standards as set forth by the public health division of Clackamas County.

12. Other Permit Requirements. The city may require proper insurance, indemnification, and hold harmless agreements as described in Section 11.04.080. Building permits, electrical permits, food establishment permits, alcoholic beverage licenses, permits to use parks, permits needed for impacts to county streets or roads, permits needed for impacts to state owned streets or roads and all other permits required by ordinance or other law for specific activities to be conducted in conjunction with or as part of the temporary events must be applied for separately in accordance with the application ordinance or law. No alcoholic beverages shall be permitted for sale or consumption at a temporary event without first obtaining a liquor license from the Oregon Liquor Control Commission. (Ord. 1960 § 2 (part), 2006)

11.04.070 Permit fees and deposits.

A. The city manager may establish fees as needed. Depending on the nature of the event, the city manager may require fees to be paid prior to the issuance of a permit. The city manager shall take into account the amount of staff time potentially involved with the event and potential for damage to any public property, including inadvertent damage. The city manager may use the established fee list for the city, or other reasonable means to arrive at any required fees.

B. The city manager may require reimbursable deposits. Depending upon the type of event, the city manager may require a deposit prior to issuing a permit. (Ord. 1960 § 2 (part), 2006)

11.04.080 Indemnification and insurance requirements.

A. An applicant for a temporary event permit must execute a written agreement to indemnify the city and its officers and employees against all claims of injury or damage to persons or property, whether public or private, arising out of the temporary event.

B. An applicant for a temporary event permit must have general liability and property damage insurance that protects the sponsor, the city, and the city's officers, agents, and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the activities covered in the permits. Types of insurance that must be carried include commercial general liability, including products and completed operations liability, auto liability if applicable, liquor liability if applicable and professional liability if applicable. A certificate of insurance evidencing these requirements including an endorsement naming the city, and the city's officers, agents and employees as an additional insured must be presented to the city five (5) days prior to the event. Failure to provide such evidence will result in the delay or denial of an application. The insurance shall provide coverage for personal injury to each person, coverage for each occurrence involving property damages; or a single limit policy covering all claims per occurrence. The limits of the insurance shall be no less than the following and are subject to review by the city manager.

Coverage	Limit
General aggregate	\$1,000,000.00
Products—completed operations aggregate	1,000,000.00
Personal and advertising injury	1,000,000.00
Each occurrence	1,000,000.00
Fire damage (any one fire)	50,000.00
Medical expense (any one person)	5,000.00

(Ord. 1960 § 2 (part), 2006)

11.04.090 Permit denial.

The city manager or his designee may deny a temporary event permit if:

- A. A permit has been granted for another temporary event at the same place and time;
- B. It will occupy any part of a federal highway;
- C. It will unreasonably disrupt the orderly flow of traffic and no reasonable means of rerouting traffic or otherwise meeting traffic needs is available;
- D. The applicant fails to adequately provide for the protection of participants, maintenance of public order in and around the temporary event location, crowd security, taking into consideration the size and character of the temporary event, or emergency vehicle access;
- E. The applicant fails to comply with, or the proposed temporary event will violate a city ordinance or other applicable law;
- F. The applicant makes a false statement of material fact on an application or other permits are required;
- G. The applicant fails to provide proof that he or she possesses or is able to obtain a license or permit required by city ordinance or other applicable law for the conduct of all activities included as part of the temporary event;
- H. The applicant has had a temporary event permit revoked within the preceding eighteen (18) months;
- I. The applicant has committed, within the preceding eighteen (18) months, two (2) or more violations of a condition or provision of a temporary event permit or this chapter;
- J. The applicant fails to pay any outstanding reimbursable costs owed to the city for a past temporary event; or
- K. The applicant fails to submit the required deposit and/or fails to agree in writing to reimburse the city for the estimated costs for the proposed temporary event. (Ord. 1960 § 2 (part), 2006)

11.04.100 Permit revocation.

The city manager or his designee may revoke a temporary event permit if:

- A. The applicant fails to comply with or the temporary event is in violation of a condition or provision of the temporary event permit, an ordinance of the city, creates a hazardous condition, or any other applicable law; or
- B. The permit holder made a false statement of material fact on an application; or
- C. An unforeseen circumstance occurs prior to or during the event that greatly diminishes the safety and security of the proposed event. This could include, but is not limited to, inclement weather such as a snowstorm, flood, or windstorm, fire, or another catastrophic event. (Ord. 1960 § 2 (part), 2006)

11.04.110 Appeal from denial, revocation or approval of temporary event permit.

A. The decision of the city manager may be reviewed by the city council upon an appeal by any person who disagrees with the decision of the city manager. Such appeal shall be filed with the city recorder within five (5) working days from the date of the decision of the city manager or his designee. The city recorder shall schedule a hearing of such appeal to the city council no later than the second regular session following the filing of the written appeal and shall notify the applicant of the date and time that he or she may appear either in person or by a representative. The city council may grant, grant with conditions, or deny a temporary event permit during such an appeal.

B. Ample time is needed for the city recorder to schedule an appeal to the city council, therefore, the option to appeal a decision is forfeited should a temporary event permit application be submitted less than two (2) months prior to the date of the temporary event. (Ord. 1960 § 2 (part), 2006)

ATTACHMENT B

City of Milwaukie - City Hall
Attn: Beth Ragel
10722 SE Main Street
Milwaukie, OR 97222
(503) 786-7568 PH
(503) 653-2444 FAX
ragelb@ci.milwaukie.or.us



Temporary Event Application for Permit

Permit, if issued, authorizes the applicant to conduct the temporary event that is described herein paying close attention to any conditions of approval that are attached.

- ◆ At least two (2) months prior to your temporary event, mail your complete application to the above address.
- ◆ Deadline: An application submitted for review less than one (1) month prior to the event will be denied.

I. Applicant Information

Applicant Name: _____

Applicant Organization (If any): _____

Address: _____ City: _____ State: _____ Zip: _____

Day Phone: _____ Eve Phone: _____ Fax: _____

Email: _____

II. Event Information

This Event is a (check all that apply):

- Parade Festival Concert Sales Event Other _____

Name of Event/Purpose: _____

Description of Event: _____

Date/s of Event: _____ Starting Time: _____ Ending Time: _____

Estimated attendance per day: _____

List all streets that you propose to close (Attach additional sheets if needed):

Note: You must provide a Site/Transportation Map clearly showing which streets will be affected and where barricades, signs, and traffic control personnel will be stationed. See the attachment for an example of a traffic control plan map.

ATTACHMENT B

List Street's Blocked/Closed:

Street (Indicate cross streets also)	Closing Date and Time	Opening Date and Time
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do you intend to use a city-owned parking lot? ___ Yes ___ No

If yes, please give the location _____

Is a county or state owned street or road affected by your event? ___ Yes ___ No

If so, you must contact the Clackamas County Dept. of Transportation at 503-650-3452 and/or the Oregon State Dept. of Transportation at 503-653-3086.

III. Further Considerations

1. Will food be served ___ and/or prepared ___ at your event?

If so, you must obtain a Food Handler's License from Clackamas County by calling (503) 650-3659.

2. Will alcoholic beverages be available at your event? Yes ___ No ___

If so, you must obtain an OLCC (Oregon Liquor Control Commission) permit by calling (503) 872-5000.

3. Will there be any live entertainment or music at your event? Yes ___ No ___

If so, what times will the performances take place each day?

Date	Start Time	Finish Time
------	------------	-------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Regardless of your plans for music or entertainment, you are required to complete a Noise Control Variance form, which is attached to this application, describing what you intend to do at this event. The Police Department will determine if a variance is necessary or not.

4. Will additional electrical wiring be installed for your event? Yes ___ No ___

5. Will your event require restroom facilities? Yes ___ No ___

6. Have you arranged for security at your event? Yes ___ No ___

ATTACHMENT B

If so, who will be providing security: _____

7. Describe your plans for Emergency Medical Services: _____

At least one trained emergency services provider (Minimum Certification - Emergency Medical Technician 1) shall be present on-site throughout the temporary event.

8. Describe your plans for trash minimization and removal. Include information as to the number, types and locations of all trash receptacles, a schedule for monitoring and emptying trash receptacles, and plans for cleaning up debris not placed in trash receptacles. Include information on any persons or entities who will be providing trash related services. (Attach additional sheets if needed)

9. Does your event involve the use of a park? Yes ____ No ____

If so, what is the name of the park and where is it located? _____

Note: Please call North Clackamas Parks and Recreation District to inquire about the use of a park. They can be reached at 503-794-8002.

IV. Applicant is responsible for obtaining all additional permits, licenses, and insurance certificates required upon the issuance of this Temporary Event Permit. Please fulfill all of the obligations listed below before submitting this application. Once all of these obligations are complete you must place your initials in all of the designated areas marked with a () and then sign and date at the bottom.

() **CLEAN UP:** Applicant agrees to promptly clean up all paper or debris caused by applicant's use of the area and understands that if such clean up is not promptly undertaken the City reserves the right to do the cleaning itself and to charge the applicant for the actual time and expense incurred.

() **INSURANCE:** Applicant agrees to provide a policy of liability insurance. This insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. This insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the City of Milwaukie and its officers, agents, and employees. The sponsor agrees to maintain continuous coverage for the duration of the permit.

() **INDEMNITY:** Applicant agrees to defend, indemnify and hold the City of Milwaukie harmless from and against all claims, losses, and liability arising out of personal injuries, including death, and damage to property which are caused by applicant, or arising out of or in any way connected with the activities conducted pursuant to this application. The last

ATTACHMENT B

page of this application contains an agreement form that you must sign and date before this application is reviewed.

() **CITY CODES/PERMITS:** Applicant agrees to obtain all City permits and licenses that may be required, and shall comply with all other City laws and other conditions that the City Manager determines necessary. The Noise Control Variance form that is attached must be completed to fulfill this obligation. The Police Department will determine if such a variance is necessary after reviewing the variance application.

() **CONDUCT/NUISANCES:** Applicant understands that if the outdoor activity is conducted in such a way as to create a nuisance for any business or resident of the area, future permits may be denied for that reason alone. Applicant will be notified as soon as practical that the activity engaged in created a nuisance and may ask for a review of such determination.

() **SITE MAP: This application will not be processed unless a site map is included.** Indicate location of tents, stages, portable restrooms, fencing, food booths, alcoholic and non-alcoholic beverage booths, etc.

() **TRANSPORTATION PLAN MAP: This application will not be processed unless a transportation plan map is included.** Indicate where streets will be blocked and how they will be blocked including fencing, barricades, stages, tents, etc. *See the attachment for an example of a traffic control plan map.*

I have read all information contained within the City of Milwaukie's Temporary Event Permit Application Packet and agree to abide by the terms and conditions contained herein.

Applicant's Signature: _____ **Date:** _____

V. Indemnification Agreement for Temporary Event Permit

Note: All applicants must sign this Indemnification Agreement.

Grantee acknowledges and agrees as follows:

In consideration of the City's approval of this application for a temporary event permit, applicant accepts responsibility for the event and agrees to indemnify, defend and hold harmless the City of Milwaukie, its officials, employees, agents, volunteers, and assigns from and against any and all claims, suits, liabilities and expenses (including but not limited to, damages, attorney fees, and costs) that may be asserted against the City of Milwaukie arising out of or in any way related to the temporary event for which permission is sought.

ATTACHMENT B

Applicant acknowledges that applicant has carefully read the foregoing and understands its contents. Applicant warrants that applicant is authorized to sign this document and does so freely and without reservation.

Applicant Name (print or type): _____

Applicant Signature: _____ **Date:** _____

FOR OFFICE USE ONLY – Department Recommendations

Name of Event/Purpose: _____

Note: Please return a copy of this form to Beth Ragel (City Hall) as soon as you are done with your review of the application. You can send it by fax (503) 653-2444 or through interoffice mail.

___ This is a city-sponsored or supported activity. ___ This is an independent event.

Building Department (If applicable)

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____

Engineering Department

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____

Facilities Department

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____

Fire Department/Emergency Management

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____

Planning Department

Reviewed by: _____ Date: _____

___ Approved ___ Denied

ATTACHMENT B

Conditions of approval: _____

Police Department

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____

Streets Department

Reviewed by: _____ Date: ___ Continued on next page...

___ Approved ___ Denied

Conditions of approval: _____

Tri-Met (If applicable)

Reviewed by: _____ Date: _____

___ Approved ___ Denied

Conditions of approval: _____



City of Milwaukie Noise Control Variance

You must complete this variance application regardless of how much noise your event is expected to emit. The Milwaukie Police Department will review the entire Special Event Application and determine if a Noise Variance is required. If a variance is not necessary it will be noted on this application and reported to the event applicant. If a variance is necessary it will be noted on this application and reported to the event applicant along with an explanation of why it was or was not approved.

Variance Information

Person Applying for Variance: _____

Organization: _____

Contact Number(s): _____

Reason for the variance: _____

The time and duration of the emitted sound: _____

For Police Use Only

The physical characteristics of the emitted sound:

The geography, zone and population density of the affected area:

Residential Commercial Industrial Noise-sensitive

Population density: Light Medium Heavy

Is the public health and safety endangered by the noise: Yes No

Does the sound source predate the receiver: Yes No

ATTACHMENT C

Does the compliance with the standard(s) from which the variance is sought produce hardship without equal or greater benefit to the public:

Yes No

Is a Noise Variance Required for this Event: Yes No

(Note: If a Variance is required please complete the rest of the application, if not please sign on the next page where it reads "Authorized by" and return with other department recommendations.)

If a Noise Variance is required, is it granted: Yes No

Yes, but with conditions to follow

Please provide a brief description of why this application was approved or denied and if it is approved with conditions please list the conditions here:

Authorized by:

**USCG CATEGORICAL EXCLUSION DETERMINATION
FOR
ISSUANCE OF MARINE EVENT PERMIT FOR
CRUISIN FOR HOPE REGATTA HYDROPLANE RACES,
WILLAMETTE RIVER AT MILWAUKIE, OREGON**

The U.S. Coast Guard (Coast Guard) would issue a Marine Event Permit for the Cruisin for Hope Regatta Hydroplane Races, with an associated safety zone, for a portion of the Willamette River in Milwaukie, Oregon between mile markers 18 and 19. The races are scheduled to take place at the City of Milwaukie's Jefferson Street Boat Ramp and adjoining park between approximately 10 am and 6 pm on June 13-14, 2009. Approximately 40 outboard power boats are anticipated to compete. The Coast Guard has consulted with US Fish and Wildlife Service, NOAA Fisheries, and Oregon Department of Fish and Wildlife and has determined that the proposed action may affect but would not be likely to adversely affect any species or critical habitat afforded protection under the Endangered Species Act, Migratory Bird Treaty Act, or Bald and Golden Eagle Protection Act.

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the USCG, and the undersigned have determined that the action is categorically excluded under current USCG CEs 34.g and 35.b from further environmental documentation, in accordance with 67 FR 48243, and Section 2.B.2.b. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D, since implementation of this action will not result in any:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under Section 106 of the National Historic Preservation Act;
4. Inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.

3 JUN 09

Date

DEAN AMUNDSON
Environmental Preparer

Environmental Protection Specialist
Civil Engineering Div., MLC Pacific

3 Jun 09

Date

CONSTANCE CALLAHAN
Environmental Reviewer

Environmental Protection Specialist
Civil Engineering Div., MLC Pacific

In reaching my decision/recommendation on the USCG's proposed action, I have considered the information contained in this CED (and in any attached environmental checklists or other supplemental environmental analyses) on the potential for environmental impacts.

Date

KATHERINE JACKSON, LT
Responsible Official

Chief, Waterways Management Division
Sector Seattle

Environmental Checklist

NOTE: This checklist should be completed by the decision-maker in consultation with an **ENVIRONMENTAL PROTECTION SPECIALIST**. Please read the information on how to properly complete this checklist on pages 4-10 and make sure each question is answered using the accompanying explanations found on the pages cited after each question. Attempting to answer these questions without reading the accompanying explanations may result in an incorrect or incomplete environmental analysis.

***Project Description:**

The U.S. Coast Guard (USCG) proposes to issue a Marine Event Permit for the Cruisin for Hope Regatta Hydroplane Races, with an associated safety zone, for a portion of the Willamette River in Milwaukie, Oregon between mile markers 18 and 19 (see Enclosure 1). The races are scheduled to take place at the City of Milwaukie's Jefferson Street Boat Ramp and adjoining park between approximately 10 am and 6 pm on June 13-14, 2009. A ten minute break will occur each hour to allow escorted vessels to transit through the race course. Approximately 40 outboard power boats are anticipated to compete; however some would be expected to compete in multiple classes so there may be a total of approximately 80 entries in events. Note that hydroplanes taking part in the proposed event are outboard hydroplanes approximately 9-14 feet long, and not the larger Unlimited hydroplanes (see Photos 1 and 2 for examples of racing boats from races at other locations).

The racing boats are sanctioned under the Columbia Outboard Racing Association (CORA) and the American Power Boat Association. Racing heat races include as many as 12 boats at a time, unless the number must be reduced for safety reasons due to the width of the racing area available. The racing area must be at least 150 feet from any land-based spectator area, and 250 feet from any water-based spectator area. Spectator vessels are allowed but the sponsor hopes to limit spectator vessels to those sanctioned by the Cruisin for Hope organizer.

The purpose of the marine event regulations and associated safety zone is to ensure the safety of the spectators and racing personnel involved in the marine event. Due to the time constraints to close the river and hazards from the racing boats the time of the safety zone will be enforced for 11 hours with ten minute breaks each hour. The USCG will notify commercial and recreational boaters that they will need to remain outside the designated safety zone established around the race course on Saturday June 13 and Sunday June 14, 2009. Representatives from the USCG will be on scene to enforce the safety zone. Coast Guard Auxiliary and local law enforcement agencies will provide patrol vessels.



Photo 1.

Photo Source: CORA Website. <http://coraracer.com/>



Photo 2.

Photo Source: CORA Website. <http://coraracer.com/>

Activity Year: FY 2009

Part I. Checklist Analysis (see Instructions starting on page 4).

QUESTIONS	YES	NO	NEED DATA
1. Is there likely to be a significant effect on public health or safety? (p.5)		X	
2. Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration? (p.5-6)	X		
3. Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion? (p.7)		X	
4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks? (p.7)		X	
5. Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration? (p.7)		X	
6. Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable future actions? (p.7-8)		X	
7. Is the proposed action likely to have a significant impact on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource? (p.8)		X	
8. Will the proposed action have a significant effect on species or habitats protected by Federal law or Executive Order? (p.9)		X	
9. Is there a potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment? (p.9-10)		X	
10. Is the action likely to have other significant effects on public health and safety or on any other environmental media or resources that are not specifically identified in this checklist? (p.10)		X	

Part II. Comments or Additional Information Related to Part I:

Question 1: *Is there likely to be a significant effect on public health or safety?*

Hazardous materials may be present as a result of the proposed action. Boats that would be participating in the event utilize two-stroke internal combustion outboard engines that carry less than ½ gallon of fuel. The fuel tanks are equipped with a vent so that, in the event of a boat capsizing, water entering the vent tends to keep fuel in the tank and out of the body of water. CORA prohibits fueling of the boats over the water and requires that any gearcase oil changes occur at a station with a tarp, oil pan, and disposal containers. CORA is also equipped with a full spill kit for both land and water spills. Boats used are not run in salt water so there are no flushing issues. The sponsor would clean up after the event, including removing course markers in the river.

Boats participating in the proposed event would result in air and water emissions. Two-stroke motors are generally more polluting than four-stroke motors. Pollution caused by two-stroke technology occurs because fuel is entering the combustion chamber from the carburetor while the exhaust is leaving the chamber. Mixing between the intake and exhaust gasses causes raw fuel to be passed directly out of the engine along with the cooling water. The Willamette River is a 303(d) impaired waterbody for various pesticides, biological criteria, fecal coliform, metals (iron, manganese, mercury), PAHs, PCBs, and pentachlorophenol. Boats operated in the proposed event would not contribute to further degradation of the river due to the limited duration of the event, the fact that the racing boats would replace vessel traffic in the action area, operational restrictions on the boats, as described in the previous paragraph.

The project area is in attainment for all criteria pollutants. The proposed event would not contribute to degradation of air quality or violation of a standard due to the limited duration of the event and the fact that the racing boats would replace vessel traffic in the action area.

Race boats don't have mufflers and produce noise levels up to 105 dB at 100 feet. According to race organizers, most race boats at the event would be expected to be under 80-85 decibels at 100 feet. Organizers anticipate that less than 10% of the racing heats on the weekend to exceed 85 decibels at 100 feet. As a condition of the permit, organizers would be required to monitor noise from the pit area and the starting dock during the course of the weekend.

Noise levels are measured in decibels which is a logarithmic scale of the noise energy. It is also assumed that noise energy dissipates in the air by approximately 6 decibels as the distance doubles. Noise is attenuated by objects (i.e., vegetation, walls, hills, buildings) and may be further affected by temperature, wind; however, the attenuation due to distance is the primary estimator of the drop in noise level in an outdoor setting. Noise levels from the proposed event, given engines producing noise in the range of 80-105 dB at 100 feet, would be approximately 74-99 dB at 200 feet and 68-93 dB at 300 feet. Organizers anticipate that very few boats in the high noise range would attend this event (approximately 4 heats) and therefore noise would be expected to be in the low end of the range.

Other than area residences, there are no sensitive receptors (i.e., day care centers, hospitals, nursing homes, schools) in the project area that would be affected (schools are present in the

vicinity of the event [i.e., Milwaukie High School, Portland Waldorf School, St John the Baptist School/Preschool] but these schools are at least 1,500 feet away from the event and would not be open at the time). The nearest nursing home is approximately 1 mile south of the event location. (Willamette View Community Services). Although noise levels from the event would be high, they would be short-term and would not exceed OSHA standard of 140 dB for impulsive or impact noise or, for example OSHA standards for occupational exposures which assumes an 8-hour time weighted average (see Table 1). Noise would be further dissipated by objects (i.e., vegetation, walls, hills, buildings) for any residences in the area. The proposed action would not result in any significant impacts to sensitive receptors.

Table 1. OSHA Criteria for Hearing Conservation Programs¹

A-weighted Sound Level (dB)	Reference Duration (hr)
87	12.1
88	10.6
89	9.2
90	8.0
91	7.0
92	6.2
93	5.3
94	4.6
95	4.0
96	3.5
97	3.0
98	2.6
99	2.3
100	2.0
101	1.7
102	1.5
103	1.4

Wakes generated by boats participating in the proposed event may cause erosion of the shoreline. Shoreline erosion is a process that occurs along all watercourses as a result of natural causes (i.e., currents, water levels) and human causes (i.e., removal of vegetation along the shoreline, wave action from passing boats). Shoreline erosion has many consequences on the aquatic environment, including habitat destruction, an increase in sedimentation and in turbidity of the water, and the release of nutrients (phosphorous and nitrogen) that promote algal blooms. Shoreline erosion can also result in the loss of land and affect shoreline property values. The extent of erosion varies and is closely linked to the nature of both the vessel producing the wake and the shoreline.

Wakes are the wave action produced by the wash of passing ships and boats that strike against the banks of rivers or channels. The extent of shoreline erosion caused by a boat's wake depends

¹ Occupational Health and Safety Administration. 2009. http://www.oshanoise.com/osha_standard.html. Accessed May 29, 2009.

on the energy of the wave, which in turn is related to the hull size, boat speed, distance from shore, and the depth of the water the boat is operating in.

Wake wave generation by different types of vessels is shown in Table 2. Although wave wake data is not available for the boats that would operate during the proposed event, it is assumed they would generate fairly small wakes since the boats are small with a very low displacement and, although they would run at high speeds, they would operate at planing speeds, when wake generation is smallest. It is assumed wake waves would be in the range of a fishing boat or at the low end of a medium power boat; 16-24 cm at 0-100 feet, 8-20 cm at 100-300 feet, and 4-10 cm at 300-500 feet.

Table 2. Maximum Wake Wave Height for Vessels²

Type of Vessel	Distance from Sailing Line		
	0 to 100 ft	100-300 ft	300-500 ft
Jet Skis	8 cm	4 cm	0
Fishing Boats	16 cm	8 cm	4 cm
Medium Power	24 cm	20 cm	10 cm
Large Cruisers	50 cm	40 cm	20 cm

The Minnesota Department of Natural Resources has shown that a wave that is 12.5 cm high does not cause significant shoreline damage.³ The course would be approximately 100 feet from the shoreline at the nearest points (north of Waterfront Park and near the Milwaukie wastewater treatment facility) and 200 feet from the shoreline at the nearest point to residential areas on the west side of the River.

Shorelines in the surrounding areas vary in susceptibility to wake erosion from unvegetated (most susceptible) to armored (least susceptible). Based on the low wakes produced by the boats, distance from the shoreline, varying shoreline conditions, the relatively short duration of the event, and the exclusion of other vessels that would otherwise produce wake effects, the proposed action is not likely to result in increased shoreline erosion or a significant impact on shorelines.

Repetition of race events would result in a repetition of wake generation; however, the effect is not likely to be greater than that which would normally occur on a weekend when recreational boats, many producing much larger wakes, would otherwise transit or use the area.

² U.S. Army Corps of Engineers. Undated. Effects of Recreational Boating on the Upper Mississippi River System.

³ State of Minnesota, Department Of Natural Resources. 1993. Mississippi River Bank Erosion and Boating, Facts and Solutions.

Question 2: *Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area or property requiring special consideration under 49 USC 303(c)?*

There is no prime farmland, wild and scenic rivers, wetlands, ecologically critical areas, or wildlife refuges in the vicinity of the proposed action. Historic and cultural resources are discussed under Question 7 below. Biological resources are discussed under Question 8 below.

The City of Milwaukie administers the Waterfront Park adjacent to the race site for recreational uses. Use of the waterway for the proposed event would not affect or interfere with continued use of the park for recreational purposes and, furthermore, use of the park for the event has been approved by the City of Milwaukie.

Question 3: *Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion?*

Implementation of the proposed action would not result in any effects that are highly controversial in terms of scientific validity or public opinion. The Coast Guard acknowledges that there is public controversy regarding the proposed action; however the Coast Guard has considered the elements of the proposed action and has not found there to be any potentially significant effects on the environment.

Question 4: *Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks?*

Implementation of the proposed action would not result in any unique or uncertain effects on the human environment.

Question 5: *Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration?*

Implementation of the proposed action would not establish a precedent for any future actions. Any future such events would be considered on a case-by-case basis and subject to separate permitting and NEPA compliance.

Question 6: *Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable actions?*

Implementation of the proposed action would not result in any impacts that would contribute to a cumulatively significant impact. Use of the waterway for boating varies seasonally and yearly. The proposed event would not add to cumulative impacts since the waterway would be restricted to race use and therefore, effects of the race would not supplement vessel effects in the area.

Question 7: *Is the proposed action likely to have a significant impact on a district, site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places (NRHP), or to cause the loss or destruction of a significant scientific, cultural or historic resource?*

There are no known cultural resources in the action area.⁴ Furthermore, because the event is of short duration, would not involve any long term changes to the area, and would not cause shoreline erosion (which could expose previously unknown cultural resources along the waterway) greater than under ordinary river traffic conditions, it would have no effect on any resources listed or eligible for listing on the NRHP.

Question 8: *Will the proposed action have a significant effect on species or habitats protected by the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and/or the Marine Mammal Protection Act?*

The proposed event would occur on the Willamette River. Special status species that may be protected by the Endangered Species Act, the Marine Mammal Protection Act, the Bald and Golden Eagle Protection Act, and the Migratory Bird Treaty Act may be found in the area, as listed below. The Willamette River is also designated critical habitat for many of the anadromous fish species. Table 3 lists endangered and sensitive species in the project area.

Table 3. Federally Listed Species Potentially Occurring in the Area

Species Name	Federal Status/ Critical Habitat
Avian	
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	Delisted
American Peregrine Falcon (<i>Falco peregrinus anatum</i>)	Delisted (but still monitored)
Fish	
Lower Columbia River Chinook Salmon ESU (<i>Oncorhynchus tshawytscha</i>)	Threatened/Critical Habitat
Upper Willamette River Spring-run Chinook salmon ESU (<i>O. tshawytscha</i>)	Threatened/Critical Habitat
Upper Columbia River Spring-run Chinook salmon ESU (<i>O. tshawytscha</i>)	Endangered/Critical Habitat
Snake River Spring/Summer run Chinook salmon ESU (<i>O. tshawytscha</i>)	Threatened/Critical Habitat
Snake River Fall-run Chinook Salmon ESU (<i>O. tshawytscha</i>)	Threatened/Critical Habitat
Columbia River Chum Salmon ESU (<i>O. kisutch</i>)	Threatened/Critical Habitat
Lower Columbia River Coho Salmon ESU (<i>O. keta</i>)	Threatened
Snake River Sockeye Salmon ESU (<i>O. nerka</i>)	Endangered/Critical Habitat
Lower Columbia River Steelhead ESU (<i>O. mykiss</i>)	Threatened/Critical Habitat
Upper Willamette River Steelhead ESU (<i>O. mykiss</i>)	Threatened/Critical Habitat
Middle Columbia River Steelhead ESU (<i>O. mykiss</i>)	Threatened/Critical Habitat
Upper Columbia River Steelhead ESU (<i>O. mykiss</i>)	Threatened/Critical Habitat
Snake River Basin Steelhead ESU (<i>O. mykiss</i>)	Threatened/Critical Habitat
Bull Trout (<i>Salvelinus confluentus</i>)	Threatened

The likely triggers for potential impact are considered to be vessel speed and noise. Vessel speed may be important because of the potential for collision with an organism, the effect of waves generated by the powerboats on shoreline habitats, and the churning of underwater vegetation and mud. The underwater sound should be important in terms of possible adverse

⁴ National Register of Historical Places. 2009.
<http://www.nationalregisterofhistoricplaces.com/or/Clackamas/state.html>. Accessed May 29, 2009.

acoustic impact to the health of fish, but also in terms of its role in frightening or stimulating fish to move away from the sound, thus protecting them from the boating activity.

Adolescent and adult salmon present in the action area at the time of the event may be exposed to noise from boats and boat wakes. Current reports of fish activity indicate that most (80%) of the salmon will have already migrated upstream at the time of this event.⁵ The salmon present in the area would be expected to mainly be running in the 1-2 hours directly after sunrise and 1-2 hours directly before sunset and, when not transiting, would generally remain in the deeper pools of water or staying fairly close to the shoreline.⁶ As the race is proposed for the center or close to the center of the river there would be a reduced potential for interaction and effect on salmonids. Furthermore, it is expected that fish would avoid areas where boats are present. Although somewhat louder and more concentrated geographically than typical vessel operation in the area, noise from the boats participating in the race would nevertheless be comparable with respect to effects on fish, especially since the river would be closed to normal vessel traffic. In consultation with Oregon Department of Fish and Wildlife and NOAA National Marine Fisheries Service staff, *the Coast Guard has determined that the proposed action may affect but is not likely to adversely affect any listed salmonid species or designated critical habitat.*

Bald eagles, which are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, are known to occur in the action area and a bald eagle nest is on Elk Rock Island (see Enclosure 2). Furthermore, the event would occur within the bald eagle nesting period approximately January 15 to August 15. USFWS Bald Eagle Management Guidelines⁷ suggest that there be at least 330 feet of separation between motorized watercraft and an active nest site. The race site is approximately 1,700 feet from the nest site and furthermore there is an obstructed view of the race site from the nest site.

Bald eagles in urban areas may be more tolerant of disturbance. The nest site in proximity to the proposed event is in an urban area and subject to similar types of noise (e.g., trains on adjacent rail lines, watercraft on the adjacent Willamette River, cars on nearby highway, typical noise from surrounding urban uses). In addition, once eagle chicks have hatched, as would be the case in the area during the time of the proposed event, it is very unlikely that an eagle pair would abandon that chick or chicks.

Nesting Peregrine falcon are also known to occur in the vicinity of a designated observation area for the proposed event (see Enclosure 2). Peregrine falcons are no longer listed on the federal Endangered Species Act; however, the Coast Guard would attempt to avoid impacts to nesting species and species protected under State law to the extent practicable. The nest site is approximately 2,000 feet from the race course and the peregrines have proven to have a high tolerance level to all the regular boat traffic that occurs in this section of the river.⁸ Race

⁵ Oregon Fish and Wildlife. 2009. Tom Murtagh. Telephone conversation with MST1 Jaime Sayers, USCG Sector Portland. 29 May, 2009.

⁶ NOAA National Marine Fisheries Service. 2009. Ben Myer. Telephone conversation with MST1 Jaime Sayers, USCG Sector Portland. 29 May, 2009.

⁷ US Fish and Wildlife. 2007. National Bald Eagle Management Guidelines. May 2007.

⁸ Oregon Department of Fish and Wildlife. 2009. Susan Barnes, Northwest Region Wildlife Diversity Biologist. E-mail to Jaime Sayers, USCG Sector Portland. 28 May, 2009.

observers are required to remain at least 250 feet from the race and behind the Outside Course Markers (Enclosure 1) and thus may be present in the area of the falcon nest. As a condition of the Coast Guard's permit for the proposed action, to avoid disturbance to nesting pergrines, race officials will instruct observers in boats to throw out their anchors and turn off the engines so that they are not continually idling in the area of the nest.

In consultation with the US Fish and Wildlife Service, NOAA Fisheries, and Oregon Department of Fish and Wildlife, the Coast Guard has determined that the proposed action of issuing a marine event permit, including indirect effects from the event permitted under *the proposed action, may affect but is not likely to adversely affect any listed species or habitat, nor would it affect any species protected under the Bald and Golden Eagle Protection Act or Migratory Bird Treaty Act.*

Racers will be reminded at the drivers' meeting Saturday morning to ensure that their boats, boat carts, and motors are clear of any vegetation to avoid introduction of any invasive species into the Willamette River.

Question 9: *Is there a potential for, or threatened violation of, a Federal, State, or local law or requirement imposed for the protection of the environment?*

The proposed action would not result in any potential violation of Federal, State, or local law for protection of the environment. The proposed event has been approved by the City of Milwaukie and the Oregon State Marine Board.

Question 10: *Is the action likely to have some other significant effect on public health and safety or on any other environmental media or resources that are not specifically identified in the checklist?*

The proposed action is not likely to affect other resources not specifically identified in this checklist.

Part III. Conclusions.

1. A CE is recommended for this proposed action. [X]

Comments:

34 (g) Promulgation of the following regulations: Regulations establishing, disestablishing, or changing Regulated Navigation Areas and Special Local Regulations.

35 (b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal state, or local government and for which the USCG determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

2. An EA is recommended for this proposed action. []

Comments:

3. An EIS is recommended for this proposed action. []

Comments:

Date	Dean Amundson Preparer/Environmental Project Manager*	EPS/MLCPAC Title/Position
Date	Constance Callahan Environmental Reviewer**	EPS/MLCPAC Title/Position

Ragel, Beth

Attachment E

From: Susan Barnes [susan.p.barnes@state.or.us]
Sent: Thursday, May 28, 2009 6:36 PM
To: jaime.a.sayers@uscg.mil; Mike Johnson; Ragel, Beth
Cc: Bob Sallinger; Chris Wheaton; Jeff Boechler; kevin_maurice@fws.gov; michael_green@fws.gov; Peg Boulay; MURTAGH Tom
Subject: Milwaukie CORA boat race

Jaime,

I am following up on our conversation earlier today regarding the boat race planned for June 13-14. I've seen Kevin Maurice's (USFWS) email to you dated 5/22/09 regarding bald eagles and I concur with his comments. As for listed fish, Tom Murtagh will be providing you with his comments regarding potential impacts of the race to listed fish. As for the active peregrine falcon nest site, it is located over ¼ mile from the planned race course. I don't anticipate that the race itself would disturb the nesting pair as they have proven themselves to have a high tolerance level to all the regular boat traffic that occurs in the section of the river. It does seem that the greatest potential disturbance issue for the nesting peregrines could be the "spectator fleet" and boat traffic that likely will accumulate at the southern outer course marker as they wait to be escorted through the race course. The nest site is approximately 1000 feet from the southern outer course marker as delineated on the map provided to me by Mike Johnson (CORA). A typical restricted activity zone around an active peregrine nest site extends up to 1,200 feet. Drastic visual changes and loud noises above ambient levels are a concern within this zone. The Audubon Society of Portland (contact: Bob Sallinger) is planning to conduct another monitoring session of the peregrine nest site this weekend. They will be trying to determine how close the peregrine young are close to fledging (leaving the nest). If the young have already fledged or are predicted to fledge prior to the race on June 13-14, potential disturbance would be a non-issue. If Audubon's monitoring this weekend determines that young are still likely to be in the nest on June 13-14, I recommend the following actions be implemented to avoid/minimize potential disturbances to the peregrines during the weekend:

- 1) Manage boat traffic at the southern outer course marker to avoid potential disturbance to the active peregrine falcon nest on located on the west side of the Willamette River across from Elk Rock Island - have boats move up toward the outer course marker closer to Elk Rock Island, have boats cut their motors and anchor.
- 2) Monitor the peregrine nest site during the boat race to see how the birds respond to the racing activities. Monitoring during the entire race is not necessary. Use a trained falcon monitor. Modify the racing activity if it is determined that peregrines are being disturbed, coordinating with ODFW and USFWS.

I will pass the results of the monitoring session onto you once I get them from Bob Sallinger on Monday. I'm not sure what the USCG's timeline for considering CORA's marine event permit, but perhaps it can be held off until Monday when we know more.

If you have any questions please let me know. I will be in the field much of the day tomorrow, but I will be reachable by cell phone: 503-887-2155.

Susan Barnes
 NW Region Wildlife Diversity Biologist

ODFW - Northwest Region
 17330 SE Evelyn Street
 Clackamas, OR 97015
 Tel: (971) 673-6010
 Fax: (971) 673-6070
 Email: susan.p.barnes@state.or.us

RS PAGE 77

7/13/2009

Ragel, Beth

From: Bob Sallinger [bsallinger@audubonportland.org]
Sent: Monday, June 01, 2009 2:35 PM
To: 'Susan Barnes'; Kevin_Maurice@fws.gov; Michael_green@fws.gov; Ragel, Beth; jaime.a.sayers@uscg.mil
Cc: 'Peg Boulay'
Subject: RE: Milwaukie CORA boat race

Hi All,

Unfortunately the Elk Rock situation is going to be more complex than I had hoped. It is very possible that the birds will still be nesting as of July 15th and we also have observations that indicated that they may be disturbed by boat activity on the river.

I contacted my volunteer monitors on Friday and learned that 1) it appears that the birds have failed in their first nesting attempt and 2) that they have observed behaviors that indicate they are responding to boat activity beneath the nest.

I spent four hours at the site on Sunday morning and I agree that it appears that the birds have failed and may have recycled. Based on prior observations the birds should be feeding young by now but there was no feeding behavior observed. I saw a lone peregrine several times but never observed two birds simultaneously, so it is possible that they have recycled and are now incubating eggs. I observed a single bird entering several ledges that could serve as potential nest ledges but the foliage is now so thick that it is impossible to see into the ledge. Observation was also made more difficult by high water which made island access impossible and made for a less than optimal vantage point. I will bring a kayak next weekend and try to nail things down more precisely. I did not observe any overt responses to boat activity other than the falcon clearly turning to watch and reposition itself in a tree when one of the sculling follow boats was using an amplified speaker system.

In terms of managing this event, I think we need to assume that the falcons will be nesting at the time of the event. This may not happen, but it would be prudent to prepare for the worst case scenario. If the birds recycled now, they would have young approximately 10-14 days old at the time of the event.

I suggest moving the activity as far as possible from the nest area and from Elk Rock Island. One thing to be aware of is that if you push activity east away from the cliff, you increase the disturbance in the actually natural area at Elk Rock Island which also is not desirable. The goal should be to push things as far downstream as possible. That includes the races themselves as well as the crowds of spectator boats. Consideration should also be given to ways to minimize impacts from folks coming and going to the races via boat.

I believe monitoring would also be advisable, not only on the days of the event but also between now and the races so that we can get a good handle on what the birds are doing. The sooner we can nail down what the falcons are doing, the more able we will be to advise folks on how to avoid impacts. Yesterday was on the house, but this will add significant unbudgeted monitoring to our workload. I would recommend the following:

2 four hour monitoring session prior to the races plus 2 hours travel time
 2 four hour monitoring sessions during the races to assess disturbance levels plus 2 hours travel time
 1 four hour monitoring session following the races to assess success plus 1 hour travel time

Total 25 hours @ \$29/ hour = \$725

If we determine that the birds are not nesting or fail again, this amount could be significantly reduced (ie no monitoring during or after the races would be necessary).

I would end by noting that monitoring is not the same as avoiding risk. By the time you document disturbance, it is often too late to avoid the impacts. The level of risk to the birds of actually harm occurring will depend on where they are in their nesting cycle--I would be much more worried for example if they are on eggs during the races or have very young nestlings as opposed to if their young were say 25 days old.

Ragel, Beth

Attachment F

From: Susan Barnes [susan.p.barnes@state.or.us]
Sent: Friday, June 05, 2009 2:20 PM
To: Bob Sallinger; Kevin_Maurice@fws.gov; Michael_green@fws.gov; Ragel, Beth; jaime.a.sayers@uscg.mil
Subject: FW: June 13-14 City of Milwaukie Hydroplane Boat Race

FYI – below are ODFW's comments on the hydroplane race. This was prepared and sent in response to a concern expressed by Rep. Tomei. Please note the comment regarding the need for better coordination on these types of events in the future.

Susan Barnes
 NW Region Wildlife Diversity Biologist

ODFW – Northwest Region
 17330 SE Evelyn Street
 Clackamas, OR 97015
 Tel: (971) 673-6010
 Email: susan.p.barnes@state.or.us

Attachment G

From: Chris Wheaton
Sent: Wednesday, June 03, 2009 10:39 AM
To: 'rep.carolyntomei@state.or.us'
Cc: Susan Barnes; Jeff Boechler; Manny Farinas; Curt Melcher; Roy Elicker
Subject: June 13-14 City of Milwaukie Hydroplane Boat Race

Dear Rep. Tomei;

You inquired about the proposed boat races scheduled for June 13-14 on the Willamette River near Milwaukie, with specific concerns regarding the Bald Eagle nest near the proposed race site. We have looked into the matter and provide the following information about the races, potential wildlife impacts, and Oregon Fish and Wildlife and other agency actions regarding this issue.

The proposed boat races are part of a fund raising event sponsored by Cruisin For Hope LLC™, which describes itself as;

“ Cruisin for Hope has been created by and produced by a group of friends, family, and community leaders who decided to make the difference in the life of a young people fighting illness.”

This organization has evidently sponsored fund raising events in the past, but this is the first year that they have had a boat race as part of their activities. The boat race is actually run by the Columbia Outboard Racing Association (CORA). As part of their process CORA filed an “Application for Marine Event” with the U.S. Coast Guard for the races. Since this event occurs below Willamette Falls, it is permitted by the Coast Guard and not by the Oregon State Marine Board. CORA sponsors other races in Oregon, including races on the Willamette River near Newberg.

Because this was a federal application process our Department was unaware of the race until you contacted us. At that point we became aware of comments previously provided to the Coast Guard by the U.S. Fish and Wildlife Service (USFWS) where they concluded that there were “no grounds

biologically to object” to the races. After getting your call Oregon Department of Fish and Wildlife (ODFW) Biologist Susan Barnes looked at the race application information and then determined that the eagle nest is in a snag located several hundred feet further south than marked on the aerial photo, which had already indicated that it was over a quarter mile from the proposed race. This puts the eagle nest even farther away from the main racing activities. Since the nest is in a snag the eagles will likely have a partial view of the racing activities. Frank Isaacs (Senior Faculty Research Assistant, Oregon Cooperative Fish & Wildlife Research Unit OSU) conducted an aerial nest survey on 6/2/09 and determined there is 1 eaglet in the nest at approximately 5.5 weeks of age (about 5.5 weeks remaining to fledge).

Kevin Maurice (The USFWS Wildlife Biologist who previously commented on the Bald Eagle nest) was not aware of the peregrine nest site when he commented on the bald eagle nest site on 5/22/09. Kevin Maurice and Mike Green (USFWS Peregrine Falcon Delisting Monitoring Coordinator) are of the opinion that the peregrines will tolerate the race and the nest location is far enough away from the racing activity. Mike Green agreed that the boat traffic at the southern end of the race course has the highest chance of causing disturbance. He supported trying to shift the boat traffic away from the nest ledge as much as possible and thinks monitoring is a good idea.

The nest site is being monitored by a Portland Audubon Society volunteer. A nest survey in May 2009 indicated that the nest was active. The volunteers indicated in field notes some level of disturbance to the birds from boat traffic. Bob Sallinger (Audubon Society of Portland Conservation Director) conducted a nest survey on 5/31/09 and determined that the peregrine nest site has likely failed and recycled. He predicted the nest site will be active during the boat race. He noted that the birds are curious about noises and boat activity below, but he did not observe any signs of distress related to existing boat activity. Bob Sallinger recommends shifting boat activities away from the nest and Elk Rock Island and monitoring the nest for disturbance just to be sure birds are not disturbed during the racing event.

Given these concerns, a summary of our comments to the race organizers and the Coast Guard is;

Bald Eagle Nest – ODFW concurs with the USFWS and does not believe that the hydroplane race will disturb the eagles. Eagles in urban areas are generally tolerant of human presence and noise. They can be particularly sensitive to land based disturbance and visual approach of humans to their nest tree and seem to be oblivious of ship and barge traffic. Nesting eagles can be more easily disturbed early on in the nesting or incubation process and may abandon the nesting attempt due to noise or visual disturbance. Once eagle chicks have hatched it is very unlikely that an eagle pair would abandon their chicks. Boat traffic should be kept out of the cove. ODFW has been told by the racing association that this will be done. ODFW is more concerned with human activity directly below the nest as we received recent reports of human disturbance related to fireworks.

Peregrine Falcon Nest – The Elk Rock peregrine nest is likely to be active during the boat race. Peregrines may tolerate increases in boat traffic at the southern outer course marker, but there is a chance they may not. While USFWS, ODFW, and Portland Audubon do not object to the planned boat race, they do recommend managing boat traffic in a manner that keeps boats as far away from the nest ledge as possible to be conservative. It is also recommended that monitoring of the nest site occur to determine how the birds respond to racing activities, if at all. Audubon has offered to monitor the nest during the race (for a fee).

Other Comment – USFWS, ODFW and Audubon all commented that better (and earlier) coordination is needed in the future between agencies and local jurisdictions and on these types of events to prevent potential conflicts with sensitive wildlife. We have recommended earlier contact in the future to the race organizers and the Coast Guard.

Outcome - Mike Johnson (Race Director, Columbia Outboard Racing Assoc.) and Beth Ragel (City of Milwaukie) have indicated willingness to accommodate these recommendations to some extent, in particular management of the boat traffic. Jaime Sayers (USCG) is seeking specific guidance from ODFW. We have provided that guidance and our hopeful that it will be included in any permit as a condition of issuance.

If you would like to discuss this further, please feel free to contact either Susan Barnes or myself at your convenience.

Thank you for your interest in Oregon's Wildlife.

Chris Wheaton
NW Regional Manager
ODFW
971 673-6007
503 705-1458 (cell)

Susan Barnes
Wildlife Diversity Biologist
ODFW
971 673-6010

DRAFT

NOTICE OF TEMPORARY EVENT APPLICATION

Date sent: _____

You are receiving this notice because temporary event has been proposed in your neighborhood. This proposed event may impact adjacent properties by generating noise, closing streets, or creating other temporary impacts. The proposal and information on how to respond to this notice are described below.

Location:	Downtown Milwaukie-Harrison St, Main St, and Lake Road.
Proposal:	The applicant proposes to conduct a parade which will close the following streets between ___time and ___time. (See map.)
Applicant/ Primary Contact Person:	Joe Brown (503) 999-9999
Neighborhood District Association(s):	<ul style="list-style-type: none"> • Lake Road NDA, contact Debbie Patten at (503) 653-7908 • Linwood NDA, contact Beth & Lynn Kelland at (503) 810-5742
Staff contact:	Beth Ragel Community Services Program Coordinator 10722 SE Main St Milwaukie, Or. 97222 (503) 786-7568 ragelb@ci.milwaukie.or.us

To learn more about a proposal: Call the staff contact assigned to the temporary event permit application.

To comment on a proposal: You are invited to comment on the proposal via email or written form sent to City Hall 10722 SE Main St.

The Neighborhood District Association, listed on the first page of this notice, may take a position on the proposed event and may also submit comments in writing.

ATTACHMENT I

Riverfront Board Meeting "Notes"
June 23, 2009

Attendees: Dave Green, Mitch Wall, Gary Klein, Jason Loomis, Michael Martin

Absent: Shane St. Claire, Mike Stacey

Staff: JoAnn Herrigel

Minutes: May minutes were not reviewed.

Event Permit Review

Klein noted that the events on June 13 and 14 had been very fun and the noise hadn't really been too bad from the races. He noted that he'd taken noise meter readings (as had his son) and they were below 90.

Green said he'd attended the events too and noted that there were a lot of police there and it had been very orderly. He said it definitely brought lots of people to downtown and said that this is "probably a healthy thing." He said he had thought the boats were going to be a lot larger and noisier. He didn't think they were any louder than the boats that are usually in the river. He did note that he is sensitive to the impact the races had on the birds in the area.

Klein noted that he thought the fireworks were more detrimental to the eagle nesting on shore than the boat races had been. He noted that in years past the eagle has been absent from the area for several days after the fireworks.

Herrigel noted that due to the number and tenor of the comments received before the races, staff would be discussing the event permit process with Council at an upcoming Council meeting. She asked how (and if) the Riverfront Board wanted to be involved in any amendment of the event permit process. Specifically, the group addressed the following question:

Does the Riverfront Board want to be involved in developing "Use Policies" for the Boat Ramp?

Wall said he just wanted to build the park. He said he did not feel that use policies were within the Board's scope.

Klein said that while he agreed with Wall he did feel that IF Use Policies were developed that the Riverfront Board should provide input.

Green said that he thought the biggest impact of this type of event was on the birds. He suggested that perhaps there was an argument to be made that "seasonal criteria" be developed which restricted this type of event during fish

ATTACHMENT I

migrations or certain nesting cycles. He said a partial solution might be the timing of the events.

Herrigel said she would ask the ODF+W about the impact of fireworks on nesting birds.

Klein said he was interested in St Clair's input on any impact this event may have had on other ships in the River.

Meeting Refreshments

Herrigel noted that she was tired of the complaints she and Hannah had received regarding the food served at the Riverfront Board meetings. She said that from now on, she planned to check with the "host" of the meeting before hand as to their preference for food and amount they would like to spend.

Green said he would "not complain about the food."

ATTACHMENT J

Park & Recreation Board
PARB
Tuesday, June 23, 2009
7:30AM
City Hall – Conference Room
10722 SE Main Street

DRAFT Minutes

Type of meeting: Regular

Attendees: Mart Hughes, Bob Cooper , Katie MacCready, Christie Schaeffer

Absent: Val Hubbard, Sherri Dow,

Staff: JoAnn Herrigel, Kevin Cayson

Minutes

April minutes were approved and no comments were suggested on “notes” from April meeting (where quorum was not achieved).

Park Board Code language

Herrigel and Hughes described the discussion with Council at the 16th work session regarding PARB – Council communication. They noted that Council has suggested that:

- When letters/memos are drafted by PARB which contain recommendations on Park and Rec facilities or services, they should be forwarded to Mike Swanson for his review. Mike Swanson will determine whether Council needs to provide input on the issue.
- The PARB Chair should continue to represent the City at the District Advisory Board meetings. Any issues of great import should be channeled through Mike Swanson to the Council for their input.
- The PARB Chair should consider meeting with Council on a quarterly basis to keep them apprised of issues and actions impacting Park and Recreation services in the City.

Based on this input, the PARB members discussed what further changes should be made to the Code. Ideas proposed:

- To get at the issue of the Park Board Chair “formally” representing the City Council at the DAB, it was suggested that “or designee” be inserted into the second line of the second paragraph after “City Council”.
- Add language to the code stating that “The Park Board will meet with Council more than once a year, as Council’s discretion.”

Herrigel said she would draft language and get it out o the Board for their review at the July meeting.

Chair Rotation

The group discussed the rotation of the Chair of the Park Board. MacCready noted that there is a “certain sense of articulation that’s required” that she feels the current Chair has.

After further discussion, the group requested that a general discussion of the Park Board “Policies” and “Work Plan” be placed on the July (and maybe August) agenda(s). Issues to be considered: annual chair/vice chair “election”, work plan, etc.

Boat Races

Herrigel noted that the “Cruise In for Hope” had taken place the weekend of the 13th and 14th. There was a Car show on Main Street and boat races at the Riverfront. She noted that the City had permitted the use of the boat ramp for the boat races but had relied on the Coast Guard to review the boat races, since the Willamette is their jurisdiction. The Coast Guard did seek the input of the Oregon Fish and Wildlife Dept regarding the impact of the races on fish, eagles and falcons in the area. The Audubon society also provided comments. Herrigel noted that Beth Ragel from Community Services had received a great deal of input (some, fairly negative) about the boat races. Herrigel said she and Beth planned to meet with Council on August 4 regarding the City’s current Event Permit process to see if Council felt the need to modify that process.

Herrigel asked if the group had any comments or input on the use of the Riverfront. Comments included:

- May need to develop a policy to encourage renewable resources
- Could the City have police reflect minimization of fossil fuel consumption?
- Can we change the noise code to remove the exemption for motorboats?

District Update (Kevin Cayson)

- July 4th tournament set for ____ ballfields
- Spring Park construction going well
- District budget is to BCC that day

City expenditure for 2009-10

Cayson said he’d gotten the quotes for the items the Board had asked about at the last meeting. He said the Watertower Park basketball court resurfacing would cost \$15,000; the picnic area (with pad would cost about \$1,000 and the drinking fountain at Century would cost \$3500. MacCready motioned that the drinking fountain be completed this year. Schaffer seconded and motion passed 5-0.

Cooper made a motion that the basketball court be completed at Watertower Park. Motion was seconded by MacCready and passed 5-0.

It was suggested that any funds left over be spent on picnic tables.

Cooper motioned to adjourn with MacCready seconding. Motion passed 5-0.

Ragel, Beth

Attachment K

From: June LeTarte [june.letarte@state.or.us]
Sent: Thursday, August 06, 2009 3:01 PM
To: Ragel, Beth
Subject: Marine Event Permits

Ms. Ragel,

It is the position of the Marine Board to permit organized water events of limited duration. We promote safety and sharing the waterway with diverse users for special events, i.e., jet boat races, wake boarding competitions, fireworks, rowing events and bass tournaments. Unless an event has the potential to create an extraordinary problem, we would anticipate local land managers and enforcement agencies to recommend approval. We always have the opportunity to place special requirements or conditions on an event, as we did with the Cruisin' for Hope event this past spring.

Thank you for the opportunity to comment.

June LeTarte
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