

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
OCTOBER 6, 2009**

7616

CALL TO ORDER

Mayor Ferguson called the 2063rd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Planning Director Katie Mangle, Associate Planner Brett Kelder, Resource & Economic Development Specialist Alex Campbell

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Oak Lodge Sanitary Sewer General Obligation Bond Measure 3-348

Michael Read, Oak Lodge Sanitary General Manager, provided background on the District and the treatment project intended to serve customers for the next 50 years. Measure 3-348 will be on the November 3, 2009 ballot seeking district ratepayer approval of the sale of up to \$44 million in bonds.

B. Milwaukie Poetry Series Report

Tom Hogan, Poetry Series Project Manager and Library Board Chair, thanked the City Council, Poetry Committee members, and Paulann Peterson for their work on the project. He discussed the relationship with Milwaukie High School that included sponsoring youth writing workshops and open mic evenings. He offered an overview of the 3rd Season.

C. Natural Resource Overlay Code Amendment Project

Ms. Mangle and **Mr. Kelder** talked about the current project to update the zoning code related to natural resources.

Mr. Kelder stated the City already had one overlay zone that protected streams and wetland water quality by establishing a buffer in which certain activities were limited. The current project had to do with a new overlay that would expand protection to habitat, mostly upland, and establish effective wildlife corridors. This work was being done as the City and other groups were working on Kellogg Creek, Johnson Creek, and Minthorn Springs. Mr. Kelder discussed Metro's Nature in the Neighborhoods Program that involved sustainable development education as well as a regulatory element. Entities in Metro were required to show substantial compliance. The Metro model code and maps will be adapted for Milwaukie with the help of the Angelo Planning Group. He addressed the importance of public outreach efforts, the roles of the Advisory Group, and the City webpage. Staff hoped to have an open house shortly after the first of the year and looked forward to a summer 2010 adoption.

Councilor Barnes noted one of the identified areas was adjacent to her home and asked if there would be a conflict.

City Attorney Monahan noted this was very early in the process but should be declared at some time.

Mr. Kelder added some specific groups like the Wetlands Conservancy, North Clackamas Parks and Recreation District, and the 600 property owners were notified. The Advisory Group will be advisory to the Planning Commission and ideally be a microcosm of the community with diverse perspectives. The Group had porous boundaries with no firm barriers. He considered all who attended the meeting and those who wished to attend as members of the group. Meetings will be on an as-needed basis and specific site tours would be scheduled. The website will be the City's central point for information.

D. National Archives Month

Mayor Ferguson read a proclamation naming October as *National Archives Month* in the City of Milwaukie.

E. Bike or Walk to School

Mayor Ferguson read a proclamation naming October 7, 2009 as *Bike or Walk to School Day*.

F. High Speed Rail

Mr. Asher briefly reported on a meeting with the Cities of Lake Oswego, Tualatin, Oregon City, and Portland to discuss the possibility of high speed light rail particularly on the Oregon Electric line. Interest was generated during the summer when the Oregon Department of Transportation (ODOT) applied to the federal government for stimulus funds to make improvements to the existing Amtrak line and also do an Environmental Impact Study (EIS) looking at alternatives for future high-speed rail improvements. One of these alternatives would be what is known in Milwaukie as the Tillamook Branch. He reported there was consensus as to where future high-speed rail ought to go when considering land use. The Oregon Electric line goes through Milwaukie, Lake Oswego, and Tualatin downtown areas but misses Oregon City which had already made significant investments in its current Amtrak station. The consensus of the various staff representatives was that it should stay on the mainline and that information would be shared with their respective Councils. The City of Portland really had no other alternatives and was excited by the prospect of improvements resulting from high-speed rail in the corridor. Regionally it made sense but not at the expense of small downtowns. There was a meeting scheduled for early November that would include the City of Wilsonville and Metro which was interested in livability and preserving transportation corridors. There should be a response to the application by the end of the year. Wendy Hemmen was Milwaukie's coordinator in this effort.

Mayor Ferguson offered to attend meetings with other elected officials.

Councilor Barnes suggested contacting the City's congressional delegation.

Mr. Asher recommended waiting until there was more information, and staff would let the City Council know when it became critical.

CONSENT AGENDA

Councilor Chaimov stated under the circumstances it was better if he abstained from an agreement that involved a client which in this case was Clackamas River Water.

It was moved by Mayor Ferguson and seconded by Councilor Stone to adopt consent agenda items A, B, and C:

A. City Council Minutes of the August 4, 2009 Regular Session;

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APPROVED MINUTES

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- B. City Council Minutes of the August 18, 2009 Work Session; and
 C. City Council Minutes of the September 1, 2009 Work Session

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

It was moved by Mayor Ferguson and seconded by Councilor Barnes to adopt consent agenda item D:

- D. Resolution no. 59-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract with Clackamas River Water (CRW) for the Relocation of a Portion of Their Water Main that Conflicts with the Upcoming Northeast Sewer Extension Project.

Motion passed with the following vote: Councilors Stone, and Barnes, and Mayor Ferguson voting "aye" and Councilor Chaimov abstaining. [3:0:1]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. Logus Road Closeout/Budget Adjustments – Resolution

Mayor Ferguson called the public hearing on the proposed transfer of appropriations to order at 7:45 p.m. The purpose of the hearing was to consider public comment on the transfer of funds for the completion of the Logus Road Improvement Project.

Mr. Campbell provided background on the project. Staff anticipated completing the project in the previous budget year but given a number of circumstances that was not accomplished. The proposed resolution carried forward funds that were budgeted last year but not expended. It further increased the Street Surface Maintenance Program's contribution from \$75,000 to \$150,000 to address the discovery of a degraded base requiring excavation and reconstruction. An event was planned on October 15 to introduce some of the green development aspects of the project.

Correspondence: None.

Audience Testimony: None.

Questions from City Council: Councilor Stone asked for clarification the on maintenance reserve.

Mr. Campbell responded an element of the rain garden was the 4-year plant establishment period. It was typical for this type of project to include maintenance and was included as a bid item. Once the plants were established less maintenance would be required, and the City was committed to maintenance to the extent necessary to deal with stormwater. City staff had also discussed with residents their role in helping with the landscaping.

Closure of the public hearing: Mayor Ferguson closed the public testimony portion of the hearing at 7:53 p.m.

There was no further Council discussion.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution authorizing budget appropriation for the completion of the Logus Road Improvement Project. Motion passed with the following vote: Councilors Chaimov, Stone, and Barnes and Mayor Ferguson voting "aye." [4:0]

RESOLUTION NO. 60-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING BUDGET APPROPRIATION FOR THE COMPLETION OF THE LOGUS ROAD IMPROVEMENT PROJECT.

OTHER BUSINESS**A. Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities – Resolution**

Mr. Swanson reviewed the process and provisions of the agreement. Property tax revenue would come to the County in mid-November representing the first significant payment to the libraries. The City budgeted \$875,000 in revenue for FY 2009-2010. He noted the City maintained its commitment to the citizens by using the funds to increase hours, staffing, and programs. Although there were 2 outstanding issues, identifying a process for resolving service area disputes and timing of the closure of the 2 County branches, he recommended approval of the master library agreement. The third issue had to do with representation on the Library District Advisory Board which would be addressed in the next agenda item.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for adoption of the resolution approving the cooperative intergovernmental agreement between the Library District of Clackamas County and the member cities and authorizing the City Manager to execute the same.

Councilor Stone commented this was a wonderful thing for our libraries, but the District measure had been proposed based on the threatened loss of timber funds. What happened to the \$10,000 each library gave toward the campaign since Congress extended the timber monies? She thought it would be a wonderful gesture on the County's part to return those funds.

Mr. Swanson replied the County ran a success information campaign. He noted this ballot measure had postponed the problem of library funding but did not really solve it. A number of smaller cities would be faced with the issue of continued funding because this was a rate and would probably not keep up with expenses. He discussed future service area responsibilities and accompanying revenues.

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

RESOLUTION NO. 61-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE COOPERATIVE INTERGOVERNMENTAL AGREEMENT BETWEEN THE LIBRARY DISTRICT OF CLACKAMAS COUNTY AND MEMBER CITIES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME.

B. Amend Milwaukie Municipal Code Section 2.28.020 Regarding Appointment of a Library Board Member to the Clackamas County Library District Advisory Board

Mr. Swanson stated he felt this was an accurate reflection of the will of the voters and referred to language in the ballot measure explanatory statement. He recommended adding language to the Milwaukie Municipal Code Section 2.28.020 regarding the City's appointment to the Clackamas County Library District Advisory Board. The Library

Board would appointment one of its members, and the City Council would affirm the appointment to the District.

City Attorney Monahan added this issue had been raised in a number of District meetings and memos, but the County Counsel was fixed in his position.

Councilor Stone understood the City Council of Milwaukie would still appoint Library Board members and subsequently affirm to the District the name and the City's District representative.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Section 2.28.020 regarding the appointment of a member to the Clackamas County Library District Advisory Board as amended. Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov and Mayor Ferguson voting "aye." [4:0]

Mr. Swanson read the ordinance two times as corrected.

Ms. DuVal polled the Council. **Motion passed with the following vote: Councilors Stone, Barnes, and Chaimov and Mayor Ferguson voting "aye." [4:0]**

ORDINANCE NO. 2008:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MCC SECTION 2.28.020 REGARDING THE APPOINTMENT OF A MEMBER TO THE CLACKAMAS COUNTY LIBRARY DISTRICT ADVISORY BOARD

C. Council Reports

Councilor Stone encouraged people to participate in the Ardenwald Walk or Bike to School event and the Milwaukie High School Dance Team fundraiser at the Davis Graveyard.

Councilor Chaimov attended the light rail station planning event which was well-attended by a cross section of the community.

Mayor Ferguson recognized those who volunteered for the City on boards and commissions and in the neighborhoods. He announced vacant positions on various boards and commissions and encouraged people to apply

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 8:22 p.m.

Pat DuVal

Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL OCTOBER 6, 2009

MILWAUKIE CITY HALL

10722 SE Main Street

2063rd MEETING

REGULAR SESSION – 7:00 p.m.

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Presenter: Michael Read, Oak Lodge Sanitary General Manager | |
| B. Milwaukie Poetry Series Report
Presenter: Tom Hogan, Milwaukie Poetry Series Director | |
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Presenters: Katie Mangle, Planning Director, and Brett Kelper,
Associate Planner | 2 |
| D. National Archives Month Proclamation
Presenter: Mayor Ferguson | 9 |
| 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> | 10 |
| A. City Council Minutes of the August 4, 2009 Regular Session | 11 |
| B. City Council Minutes of the August 18, 2009 Work Session | 19 |
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| D. Letter of Engagement with Clackamas River Water for Waterline Work in the Northeast Sewer Extension Project Area – Resolution | 28 |
| 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>	44
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Presenter: Alex Campbell, Resource and Economic Development Specialist		
6. OTHER BUSINESS	<i>(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.)</i>	51
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7. INFORMATION

8. ADJOURNMENT

Public Information

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

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



To: Mayor and City Council

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

From: Katie Mangle, Planning Director
Brett Kever, Associate Planner

Subject: Natural Resources Overlay Code Amendment Project

Date: September 29, 2009, for October 6, 2009, Regular Session

Action Requested

None. This is an informational item, an update on the Natural Resources Overlay code amendment project.

History of Prior Actions and Discussions

July 7, 2009: Council reviewed the Planning Commission work program, which included this project as a priority for the 2009-10 fiscal year.

May 5, 2009: Staff mentioned this project during a Council discussion of the Harmony Vision planning project.

2002: The City of Milwaukie adopted its Water Quality Resource (WQR) regulations (Milwaukie Municipal Code Section 19.322) to comply with Title 3 of the Metro Functional Plan. The WQR regulations protect wetland and riparian areas that are shown on the City's Zoning Map by requiring development to avoid the resource area and minimize and then mitigate adverse impacts.

Background

As an institution and as a community, Milwaukie is working to do a better job as a steward of the natural environment. City staff is currently working on several projects related to this goal, including restoration of Kellogg Creek through the Kellogg-for-Coho Initiative and using best practices to manage stormwater and improve water quality. The

Natural Resources Overlay project is one more example – it will consider how to best protect habitat in the City’s riparian corridors, including Mount Scott Creek, Kellogg Creek, and Minthorn Creek.

Now, work is underway on a planning project that was initiated by Metro in 2006 through regional adoption of the “Nature in Neighborhoods” program into the Urban Growth Management Functional Plan. Also known as Title 13, the program is designed to protect fish and wildlife habitat. It requires Milwaukie and other jurisdictions in the region to revise their comprehensive plans and implementing ordinances to protect habitat areas alongside and upland from the region’s waterways, and to complement Title 3 (Water Quality, Flood Management, and Fish and Wildlife Conservation) of the Metro Functional Plan.

The model ordinance that Metro has developed for local jurisdictions to implement Title 13 includes provisions that encourage habitat-friendly development, such as pervious paving options, alternative stormwater treatment facilities, transferable development rights, etc. The new provisions also regulate development activity within designated Habitat Conservation Areas (HCAs), which correlate closely with the areas currently regulated by the City’s Water Quality Resource (WQR) regulations. The WQR regulations, found in Milwaukie Municipal Code (MMC) Section 19.322, protect designated wetland and riparian areas and require development to avoid the resource area and minimize and then mitigate adverse impacts.

In fact, most of the land on taxlots (property outside of public right-of-way) that is designated as HCA in Milwaukie is either already protected by the more stringent WQR regulations or is in public ownership as parkland (see Attachment 1 for the Map of WQR and HCA Areas Within the City of Milwaukie). Of the total mapped HCA areas within Milwaukie:

- 51.1% are already protected by the City’s WQR overlay.
- 23.8% are within public ownership.¹
- 25% (43.85 acres) are on private property and are not currently protected.²

As these figures show, there remains a significant percentage of HCA-designated upland and wildlife habitat that is not covered by the WQR rules. The new HCA regulations will provide protections for the resources in these areas.

Staff has evaluated Metro’s HCA maps against aerial photography and existing site conditions and has determined that the City should verify the location of some specific HCA areas prior to adoption. Metro staff has agreed that the City may correct the maps

¹ The largest contiguous areas of unprotected HCA are located in public parks (Riverfront Park, North Clackamas Park, and Spring Park).

² These 43 acres are spread throughout the city’s five square miles, so that on many parcels the additional regulations (in addition to the WQR) would apply to slivers of land.

prior to adoption as long as the City follows the same methodology that Metro used to create the regional HCA map.

The deadline for compliance with Title 13 was January 2009. In June 2009, staff met with Metro staff to discuss Milwaukie's proposed approach to complying with Title 13 and received concurrence that implementing the project outlined in this report would fulfill Title 13 requirements. However, the City is required to comply with Title 13 in the interim. Though Milwaukie has not adopted HCA maps or code, in June 2009 the City was required to begin applying the Metro Title 13 Model Ordinance to regionally mapped HCAs.

Over the past year, staff conducted a thorough review of Milwaukie properties that contain regionally mapped HCAs and explored several options for achieving compliance with Title 13. The project to develop Milwaukie's approach to integrating water quality and habitat protection into development is now underway. It includes the following three aspects:

1. Replacement of the Water Quality Resource overlay zone (MMC 19.322)

A new Natural Resources Overlay zone will replace the City's existing Water Quality Resource zone. The new section will group and blend existing regulations that protect wetland and water features with new rules to protect habitat. Throughout the Zoning Code, staff will propose amendments to promote habitat-friendly development practices.

2. Changes to the Zoning Map

A new Natural Resources overlay zone will incorporate both water quality and habitat conservation areas in one zone that maps both Title 3 (WQR) and Title 13 (HCA) resources.

3. Public Involvement

There are approximately 730 property owners and residents that will be affected by the new regulations. Staff believes this project is an opportunity not only to involve these stakeholders in map verification and policymaking, but also to inform and educate them about their responsibility as stewards of natural resources on their properties. To do this, the City has already begun to implement an outreach program that includes targeted direct mailings, open houses, and formation of an Advisory Group to help shape the recommendations. See Attachment 2 for the Stakeholder Involvement Plan for this project.

The project timeline calls for a first meeting of the Advisory Group by the end of September 2009. A draft of the proposed code amendments should be ready for the Advisory Group to review in December 2009. Staff anticipates holding a public open house in January or February 2010 to gather additional feedback on the draft

amendments. The land use applications needed to approve the final amendments should be ready for submittal in March 2010, with a public hearing with the Planning Commission in May 2010, followed by a Council work session later that month and a Council hearing in June 2010. Council members are welcome to participate in the Advisory Group's tour of affected areas this fall and to attend the open house event in 2010.

Concurrence

The Planning Commission has had several briefings on this project over the past 18 months and concurs with the work program.

Fiscal Impact

This project has been budgeted within the Planning Department budget for FY 09-10. The costs include a contract with Angelo Planning Group for \$15,030 to prepare the draft code amendments. Additional costs will include expenses for direct mailings, mapping, and public meetings.

Work Load Impacts

In 2008, this project was identified as a priority for the Planning department. Planning staff is managing the project and will prepare the necessary land use applications for adoption. Staff from the Community Development, Community Services, Information Systems and Technology, and Engineering departments will also be involved in drafting the proposal and working with the public throughout the project.

Alternatives

If Council does not wish to pursue the project outlined in this report, staff may be able to identify alternatives measures for complying with Title 13. However, until the City established compliance with Title 13, the City Attorney has advised that it is the City's responsibility to implement Metro's model ordinance for Title 13 directly. Staff recommends that the City adopt local implementing ordinances as would result from the work described in this report. In addition, the current HCA maps provided by Metro include numerous inaccuracies that would remain unaddressed if this project does not continue.

Attachments

1. Map of WQR and HCA Areas Within the City of Milwaukie
2. Natural Resources Overlay Project, Stakeholder Involvement Plan

WQR and HCA Areas within the City of Milwaukie

(preliminary map provided by Metro)

Legend

 City Boundary

WQR Areas

 Vegetated Corridor


 Wetland Buffer

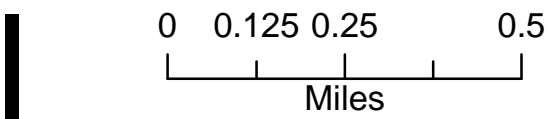
 Water Body

HCA Areas

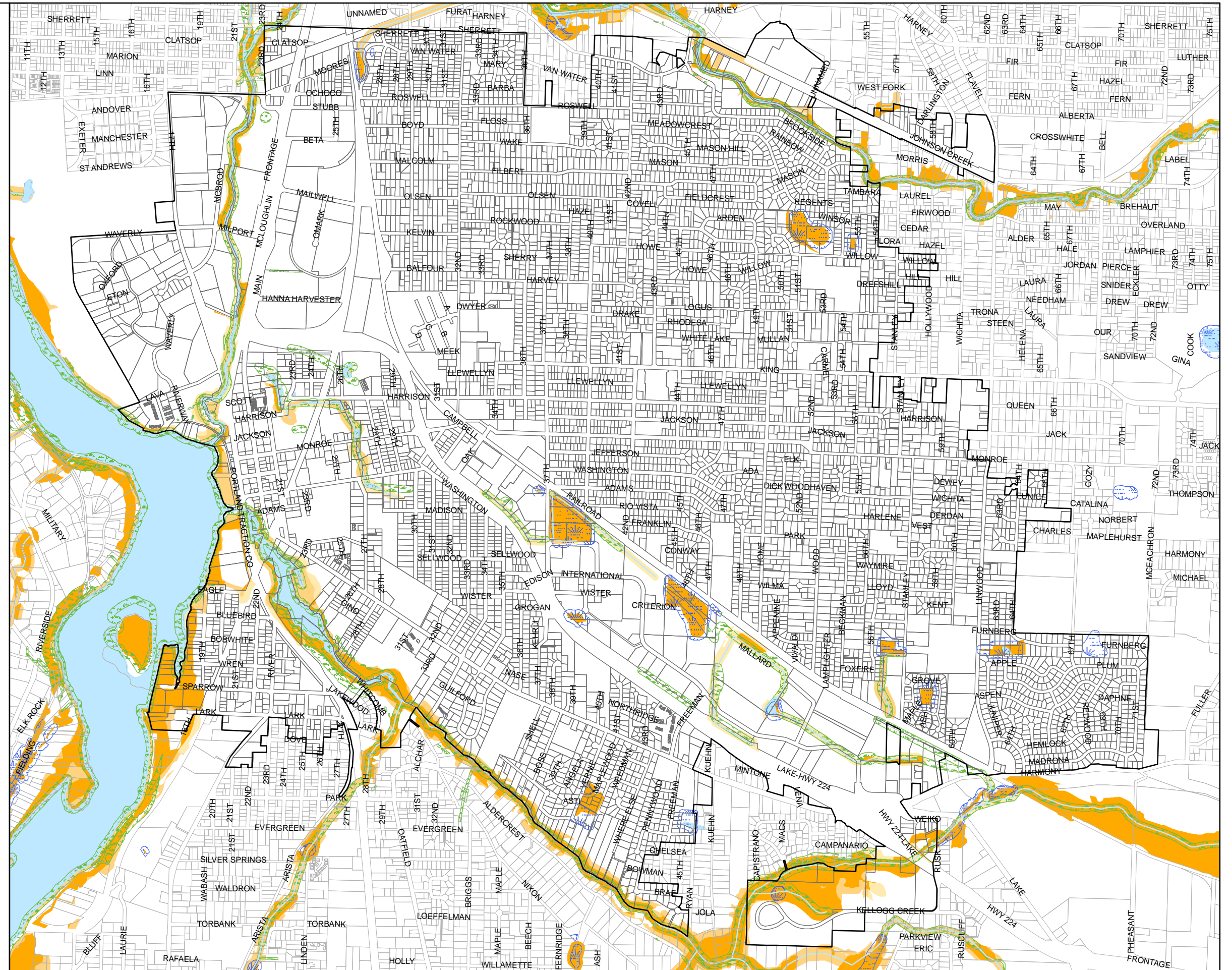
 High value

 Moderate value

 Low value



Author: City of Milwaukie Planning Department
 Revised: May 2009
 Source: City of Milwaukie GIS, Clackamas County GIS,
 Metro Data Resource Center
 All data depicted is approximate.
 Not suitable for building or engineering purposes.



Natural Resources Overlay Project Stakeholder Involvement Plan

As with any proposed amendment to the City's land use regulations, a public notification is required. In the case of the new Natural Resources rules, City staff believes it is important to conduct a more extensive effort that involves stakeholders in the process. The aim is to ensure that important resources and habitat are adequately protected without instituting an onerous or cumbersome process for affected property owners.

The project is expected to run from August 2009 through June 2010. Staff is taking the following steps to establish an effective public outreach program:

- **Advisory Group**

There are a number of agencies and organizations with expertise in natural resource management in the Milwaukie area. At the same time, the proposed new rules will affect property owners and residents who own property and/or live near an identified natural resource. The perspectives and input of both groups are critical in shaping the new overlay so as to provide protection for natural resources through a manageable process.

The Advisory Group will meet 4 or 5 times during the course of the project. Meetings will be facilitated by staff and will focus on reviewing drafts of the proposed code amendments and resource maps, identifying key issues for consideration, and providing policy guidance, with at least one tour of an affected resource area(s). The following is a list of the projected meetings:

1. **Late September 2009** – First meeting. Introduction to the project (goals, schedule). Identify/discuss key issues. Review proposed map to identify potential corrections.
2. **November 2009** – Meet to tour affected area(s) (with Planning Commission).
3. **First week of December 2009** – Discuss comments on and corrections to Draft 2.2 of proposed code amendments.
4. **First week of February 2010** – Discuss comments on and corrections to Draft 3.2 of proposed code amendments.

- **Mailings to affected property owners and residents**

The City wants property owners and residents who will be directly affected by the new regulations to be involved in the amendment process, both in shaping the policy itself and in learning how the new rules will impact the use of their property. Staff has developed a mailing list of approximately 730 owners and residents of properties that include identified Water Quality Resources and/or designated Habitat Conservation Areas, as well as of properties that are within 100 feet of a designated HCA.

At several points during the project, staff will use the mailing list to distribute information about the proposed amendments:

1. **Early September 2009** – Initial mailing to inform affected owners and residents about the project. Very simple letter, including address for City website where more information can be found.
2. **December 2009** – Invitation to Open House(s).

3. **March 2010** – Notice of public hearings for adoption of amendments.

- **Open House meeting(s)**

After the Advisory Group has met a few times to work on the new regulations, an Open House meeting will provide an opportunity for the larger public, including many more affected property owners and residents, to learn more about the project and see the proposed amendments firsthand. It has yet to be determined whether it will be necessary or useful to hold more than one Open House, perhaps based on proximity to certain key features (Kellogg Creek, Johnson Creek, Minthorn Springs, Spring Creek, etc.). The target window for an Open House meeting(s) is January 2010.

- **City website and educational materials**

The project will be advertised on the City's home page as a "Current Project," with a link to a page that describes the project, provides access to relevant maps, lists upcoming meeting dates, and gives contact information for staff. The project page will be updated throughout.

In addition, staff will develop an educational brochure that answers frequently asked questions about the WQR and HCA overlays and also explains the basic requirements for development projects on affected properties. The brochure will be available on the website, at the Open House meeting(s), and may also be mailed to affected property owners and residents during the adoption process as part of the public hearing notice.

- **Planning Commission and City Council work sessions**

Staff will brief both the Planning Commission and City Council in work sessions prior to starting the adoption process for the proposed code amendments. Early on in the process (October 2009), staff will provide an introductory briefing to the City Council. As part of the code amendment drafting and revisions, staff and the consultant will meet with the Planning Commission in December 2009 and February 2010. Then, during the adoption phase of the project, staff will brief the Council again (May 2010).

PROCLAMATION

WHEREAS: the records of the City of Milwaukie, Clackamas County, the State of Oregon, and the nation are critical to our understanding of the past and in planning for our common future; and

WHEREAS: archival institutions have a responsibility to provide the public with access to their records, and it is a goal of these institutions to increase public awareness of the vital role they play in safeguarding knowledge of our intellectual, cultural, social, and governmental heritage and providing a forum for ensuring accountability to our citizens; and

WHEREAS: archival records document and provide context to our histories and evidence of our common and individual rights and obligations; and

WHEREAS: during Archives Month in order to acknowledge the value of the City of Milwaukie's public records and recognize those who maintain them;

NOW, THEREFORE, I, Jeremy Ferguson, proclaim October 2009 to be

ARCHIVES MONTH

in the City of Milwaukie and encourage citizens to join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand this
6th Day of October 2009

Jeremy Ferguson, Mayor

ATTEST:

Pat Duval, City Recorder

3.

CONSENT AGENDA

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

CALL TO ORDER

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

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

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

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Oregon Code Enforcement Officers Recognition Week Proclamation

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

B. South Downtown Update

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

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

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

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

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

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

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

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

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

Councilor Chaimov appreciated the good work.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Aschenbrenner commented on the colonnade design.

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

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

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

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

C. Smart Development Code Assessment

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

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

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

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

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

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

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

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

Councilor Stone asked if other town centers were similar sizes.

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

D. Lake Road Multimodal Project Update

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSENT AGENDA

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

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

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

AUDIENCE PARTICIPATION

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

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

- A. Garbage Rage Increase**

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

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

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

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

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

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

Ms. Herrigel would check on the rate history.

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

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

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

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

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

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

RESOLUTION NO. 50-2009:

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

B. Council Reports

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

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

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

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

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 9:42 p.m.

Pat DuVal, Recorder

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MILWAUKIE CITY COUNCIL WORK SESSION

AUGUST 18, 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 and Joe Loomis (arrived 5:39 p.m.)

Staff Present: City Manager Mike Swanson, Assistant Planner Brett Kelter, Engineering Director Gary Parkin, and Associate Engineer Jason Rice, Li Alligood, Planning Director Katie Mangle, and Community Development/Public Works Director Kenny Asher, Senior Planner Susan Shanks, JoAnn Herrigel, Beth Ragel, Grady Wheeler, Alex Campbell, Ryan Marquardt

Design and Landmarks Committee Work Plan for 2009 - 2010

Mr. Kelter introduced Design and Landmarks Committee (DLC) members Greg Hemer, Chair Becky Ives, Vice Chair Siri Bernard, and Patty Wisner.

Chair Ives updated the City Council on its meetings and work sessions. They had training in March, which helped them realize that they needed to have work sessions. They agree that site visits were important and were committed to putting pictures in the design review resource book. The ultimate goal was to be perceived as being consistent and fair when considering any and all projects.

Mr. Hemer thanked the staff and City Council for appointing a very diverse group of individuals able to contribute their own expertise.

Ms. Wisner discussed current projects that included a presentation on historic properties. They wanted to have something available that staff, citizens and developers could look at to get a feel for Milwaukie. Committee members were going to do some research at the Milwaukie Museum which they hoped to post on the City website for easy access. They planned to design the information so that it could be used for at least 10 years.

Ms. Bernard thought it was a good idea to provide an expectation and guidelines for developers coming into Milwaukie.

Chair Ives noted all of the DLC members attended the Main Street open house.

Councilor Chaimov appreciated the work and hoped the Committee would ask for help if needed.

Councilor Barnes suggested using clips from the interview videos done by Carolyn Tomei a couple of years ago.

Update on the NE Sewer Extension Project

Mr. Asher provided the opening comments. They were waiting on approval for one more EPA form and planned to go out for bid about September 1. It is a \$4.5 million project and affected 270 properties. He indicated the area on the

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map. They bid opening would be the third week of September. Staff would come to City Council to initiate annexation of the streets. He reminded Council they were not annexing properties until people wanted to hook up to sewer. They would like to see the contract awarded by Council on October 6 and hopefully establish the reimbursement district. During the second meeting in October they hoped to complete annexation and transfer jurisdiction and they would like to be under construction late October or early November taking 9-10 months to complete with the first hookups at the end of 2010. Some hookup issues still needed to be worked out.

Mr. Campbell reviewed the financial picture. People would pay their share when they connected. The majority of the costs would be funded by the Clean Water State Revolving fund. Approximately 50% would be a forgiven loan or grant from the federal government using stimulus funds. The other \$2 million would be a 0%, 20-year loan. The previous assumption was that the City would borrow the full amount slightly below market rates. The \$4 million would pay for design, easement appraisal, acquisitions and construction costs. The easement acquisition payment was not eligible and they were talking to DEQ about how far beyond the trench patch they can go with some overlay. Another project element was the new pump station funded out of system development charge (SDC) collections. For the non-eligible costs they had assumed an internal loan, and the improvement district would pay back the fund. From the property owner perspective the first cost was the reimbursement cost. The proportional share for a typical single-family residence was based on a flat cost of \$6,000, the lateral, and square footage charge. With stimulus funding the City would provide a discount and NCRA subsidies of about \$3,300 that are available to all properties within the revitalization area.

Mr. Asher said there was less risk for City and less cost to property owners because of stimulus funds. Milwaukie was closely matching the County costs, and he commented on pending intergovernmental agreements.

Councilor Barnes asked for an example of what a typical homeowner would have to pay.

Mr. Campbell responded an example for a home on an 8,000 square foot lot would be a \$6,000 base (flat fee) \$1,750 lateral, and \$3,500. Including the square footage costs and with the discount it would cost \$6500. Everyone that comes in the first year can come in and pay over 10 years at 0% interest.

Mr. Asher added they were doing research on incentive programs.

Mr. Rice updated the City Council on contracts with Century West for design and Right-of-Way Associates for easement appraisal and acquisition. Century West has been paid about ½ of the contract and a little over ½ the work was done. Plans were finalized with a few exceptions. He discussed permitting, including connection to the Lents Interceptor and the removal of 2 trees as they were crossing the Springwater Corridor. Title 13 permits were required by the County, and the City would do mitigation through the Watershed Council by planting 70 trees and 350 shrubs. There were conditional use permits from the County and DEQ was reviewing from the beginning. They will update the plan to ensure criteria were met. A month ago the City sent out of flyer to residents asking where they wanted their lateral and received responses from almost 50%. Staff updated the project plans based on these responses. Most appraisals were done, and the City had 14 of the 34 easements needed for both permanent and temporary uses. They would be meeting to discuss how Right-Of-Way Associates would negotiate.

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Mr. Parkin discussed taking over jurisdiction of about 3 miles of County road which the County was more than willing to relinquish. He discussed the process that would take about 1-1/2 months. The condition of the roads was generally poor, and although he did not have a PCI number he guessed that area was about 50. The average for Milwaukie was 68.

Councilor Loomis asked if there was a plan to upgrade those streets. That would be important.

Mayor Ferguson knew of at least one road that was not even paved.

Mr. Parkin said there were several roads in the area that were not maintained, and some might remain gravel. The gas tax did not fund streets very well, and the City was only looking at a \$40,000 increase. They were looking at extending paving with the project perhaps using reimbursement district funds.

Mr. Asher said when they applied for stimulus funds the City asked for more than it received. The City asked for enough to repave all of the streets. The awards were capped \$4 million, and a full overlay was not defined as part of sewer project.

Mr. Campbell added that if a street was gravel it was presumed that it would remain gravel and not be paved. Those costs were not added into the project.

Mr. Asher said they were not ready to presume what people wanted. Some people did not want pavement and cherished the rural nature of the area. He thought there should be a discussion with residents about paving. If they hear that people want paved streets then the City might find a way to do it.

Councilor Loomis thought it was important to pursue the paving matter.

Mr. Asher added they were also looking for storm water opportunities.

Mayor Ferguson asked for a comparison of maintaining paved street versus gravel street.

Mr. Rice replied maintenance on paved streets was not much more.

Ms. Shanks discussed street annexation. Streets would provide for easier annexation of properties in the future and provided the contiguous framework. In terms of process it was an expedited annexation process that would not go to the Planning Commission but would come to the City Council to initiate the process pursuant to ORS and municipal code. They would be coming to Council in mid-September to initiate annexation and bring the final declaration in October.

Councilor Barnes asked if police response went along with right-of-way annexation.

Ms. Shanks would check with the police department. She discussed creating islands through street annexation. We are not allowed to have more than 25% of right-of-way around properties. As we go through declaration of annexation and the ordinance process they understood Council did not wish to force annexation of the properties and the City would not act on that. It would be clear those properties would not be receiving City services until they annexed to the City.

Mr. Asher said the worst thing was for someone to get the impression that annexing streets would trap anyone. This was a necessary step that could be misinterpreted. They would make the language clear in the resolution.

Ms. Shanks added currently there were 3 island properties, which are already receiving City services, and they would come to Council at a later date for discussion.

Mr. Wheeler reported staff had been in communication with residents since March 2008 about the project. They had sent 5 letters and a postcard to all residents, held a number of open houses, and canvassed the area in December. About 12 – 20 phone calls and a similar number of emails came to the City from people looking for more information on the project. The information and conversations have gotten more detailed in the last 6 months. In May they sent notices detailing cost methodology. From that effort there were 12 phone calls and 6-8 emails. On May 12, he attended the Southgate CPO with the City contractor to talk about construction of the project and the pump station. Last week they sent a letter asking about lateral placement. Last week the County sent a newsletter to all people living in the revitalization area that included some text provided by Milwaukie. Next week they will send out another letter regarding stimulus funding and how that would affect individual costs. He encouraged people to call him if they had questions. More letters would go out explaining the street annexations.

Councilor Barnes asked Mr. Wheeler if he was getting a different reaction from people now.

Mr. Wheeler responded that the people who were calling were interested in hooking up. There was probably another segment that was not interested in hooking up. He was surprised that they received over 130 responses about stub placement. It seemed the thinking was not about if they were going to hook up but when.

Mr. Rice added that initial contacts were from people that were angry, and now through staff outreach efforts people were calling for information. It was a different environment. His contacts have been more positive.

Mr. Wheeler said the elective portion of the program was very important. He discussed his conversations with Phil Stosse. At some point he stopped with the petition.

Mr. Asher said the City must follow through on everything that it said it was going to do. It takes a city-wide effort and hopefully people realize that it was not as bad as they originally thought it would be.

Mayor Ferguson met with Ms. Hemmen and suggested a light rail update and recap on the high speed rail presentation at the next work session.

Mr. Asher said there was a high speed rail report published for ODOT in June with a pre-application for over \$2 billion for inter-city passenger rail improvements. There was \$8 billion in ARRA funding for passenger rail operating between Eugene and Portland and Portland and Seattle. The idea was to get reliable passenger rail to a higher speed. The ODOT report drew a conclusion about a high speed rail on the Oregon Electric Line (Tillamook Branch) through Island Station, across the Forgotten Bridge to Lake Oswego, and down the Valley. According to the report it was cheaper to use OE and less freight traffic was involved. The proposal has 5 stops and stations with none in Milwaukie. Milwaukie would get 12 trains per day on the Tillamook branch on a separate track west of the existing track, which was dangerously close to businesses, neighborhoods, and institutions. Twelve trains per day not stopping would undo what the City was trying to do downtown and in the neighborhoods.

This would be a different impact with existing trains and light rail. Mr. Campbell was still doing research, and staff was waiting to talk to ODOT and would share livability concerns.

Mayor Ferguson said the downtown could be torn up for 5-6 years between light rail and high speed rail. That was a huge concern to him as well as high speed rail on a 4th track. He made his concerns known.

Mr. Asher recommended coordinating with Tualatin and Lake Oswego. He noted the Governor appeared to be strongly behind this.

Mr. Campbell said press release was from Governor's Office, and the study was from an engineering perspective looking at feasibility and ridership. It did not appear there was much consideration of land use. Oregon would hear back on this application from the FTA to get direction on proceeding with the application.

Councilor Chaimov said the City should contact Representative Tomei.

Mayor Ferguson announced Council would be meeting in Executive Session immediately following adjournment pursuant to ORS 192.660 (2) (h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Ferguson adjourned the work session at 6:43 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

SEPTEMBER 1, 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, Community Development/Public Works Director Kenny Asher, Light Rail Design Coordinator Wendy Hemmen

Light Rail Update

Ms. Hemmen provided the feasibility draft report from Lincoln Avenue to Park Avenue and showed what was anticipated. This was the same material she reviewed at the community meeting and used typical engineering documents. There was a plan view and topographical view, but they did not have a full view of the rest of Milwaukie. That would be shown in the next set of drawings, known as 25%, in December. In March 100% of preliminary engineering would be done along with the 30% set drawings. Staff worked diligently on putting together comments from this set of plans to make sure nothing is missed. They were now meeting with TriMet to discuss specific issues of which there were about 15. One concern was the Tacoma Station and connection from the Springwater Corridor. Another was at the Milwaukie Station and the gates at Harrison, bike lanes on Harrison, adequate parking and sidewalks, ADA compliant pedestrian facilities around the gates, and quiet zone requirements. They identified areas around Trolley Trail that need more study. The Oregon Department of Transportation (ODOT) triangle would be more green and trail system connections improved.

FEIS meetings started in August where the issues of noise, vibration and traffic w. She urged people to attend the monthly meeting on September 21 where a noise consultant would be present. As part of 15% review, important decisions were being made, and it was a key time for staff to be attentive to what was being planned for Milwaukie. Washington Street was being looked at to see whether the curb distance needed to be changed.

Mr. Asher said the cross section of 21st Avenue would be rebuilt from Washington Street to Lake Road because the tracks cross there. They would need to deal with pedestrian and bike safety.

Ms Hemmen said the station park-and-ride planning had been going on for about 3 months. Park Avenue was just finishing up with a meeting on October 21 detailing how the site would work. There were some flow/connection issues to be worked out. The second meeting for the Tacoma/Springwater Station is on October 12 and will address development opportunities and pedestrian connectivity concerns. The first Milwaukie Station meeting will be scheduled for

October 5 to look at center or side platform effects, pedestrian access, schools, South Downtown, Main Street, and the transit-oriented development (TOD) site.

Mr. Asher added the LPA 5% plan set showed the Milwaukie Station with a single center platform. The side platform design allowed more access, and staff will ask for a change. He noted it was more expensive because it included 2 sets of shelters and lighting. He commented on coordinating with the South Downtown project.

Ms. Hemmen said as part of the station planning effort key staff rode light rail to see first hand positives and negatives. They took a lot of pictures and would come back in October with a slide show of all of the station elements for Council to look at and consider. Architectural elements are crucial in setting the tone of the area.

Councilor Stone suggested a field trip to see where things would be placed and imagine what might be on the sites. She asked if we have started talking about traffic analysis on Harrison, Monroe and Washington, substation locations and infrastructure in general. Slides would be helpful.

Mr. Asher replied they would be staff would be meeting with TriMet and consultants on site on Friday. A results report on traffic would be done in the next month or two followed by a vetting process. They would have the Draft EIS by the end of the calendar year. The conceptual design report was a much more user friendly tool to help understand the project.

Ms. Hemmen added TriMet would like to make a presentation at the October monthly meeting specific to traffic issues on Johnson Creek Blvd. from 99E to 45th Avenue/Harney.

Mr. Asher said Milwaukie and Portland had been accelerating the study of Johnson Creek Blvd. because of concerns, and downtown traffic would probably not be discussed until November or December.

Ms. Hemmen discussed design review and permitting. North Milwaukie from Harrison to Tacoma has gone through some changes due to Union Pacific negotiations. One of the requirements was to stay 50-feet off the mainline so the tracks had to be moved under the Springwater Corridor. The existing freight tracks south of Mailwell will have to be redone and moved so it will go up at Springwater, over the Tillamook branch and continue until at grade at Milport and continuing on to Hwy 224. It will shift about 25-feet from Mailwell to Harrison and would add a safety wall. The wall is 6-feet high and 2-feet thick to prevent freight mishaps. The areas north of Harrison will have 250-foot safety wall. There was about 750 feet between Harrison and Monroe and the 250-foot wall would be in the middle to allow for sight distance. Another section would be added at the end of the platform on Lake Road. They would go through a design review for the substation which was typically 18' x 9'.

Councilor Stone asked what street in the Ardenwald neighborhood would be the east/west if going from Mailwell to Ardenwald.

Mr. Campbell replied it lines up pretty much with Olsen.

Ms. Hemmen said elevation starts at 0 feet at Tacoma and continues to Ochoco up to 36 feet. The train would be going on an elevated structure just before Roswell and would start going back down at Malcolm and be at grade at Olsen. The original length was about 3700 feet but was reduced to approximately 1300 feet. She discussed the spurs that would be abandoned in the industrial area.

Mayor Ferguson asked if Mailwell would be treated as a quiet zone.

Ms. Hemmen replied Mailwell would be included in the quiet zone, but it was a private crossing and would be treated somewhat differently. It needed to be up to quiet zone standards. Quiet zones were being pursued at all crossings in Milwaukie.

Mr. Asher added there would be an ongoing negotiation, and a noise consultant would be available to answer questions at the next monthly meeting.

Ms. Hemmen explained TriMet has applied for train horn waivers which meant the horn did not have to sound at the same decibel level or as frequently as the rules read.

Councilor Stone was interested in simulation of the noise levels.

Mr. Asher said they may not be able to simulate inside and out, but he would find out what was possible. He urged that people attend the September monthly meeting.

Ms. Hemmen said the Willamette River Bridge was scheduled to start work in 2011 and is totally separate and on a design built contract. The next steps were completing the FEIS and getting it accepted by April 2010 and the record of in July 2010. The early civil engineering work would begin in 2012. There was a slim chance of getting the Trolley Trail started in 2011. She discussed bike-pedestrian facilities from Park Avenue to River Road.

Councilor Stone commented on high speed rail and moving tracks around. It seemed to her that a lot of stuff is going on in one area. We also have wastewater brewing. How did the high speed rail factor in with all of this design? If tracks were moving why are we not pursuing an at grade line in Milwaukie?

Mr. Campbell replied even though spurs had to be relocated the owner of the railroad had special standing, and the project cannot forcibly acquire right-of-way. The project probably could not afford to pay railroads enough for at grade crossings. He gave a quick overview of high speed rail. ODOT recently published a draft study that would relocate the primary passenger route to the Oregon Electric (OE) line, and the Tillamook branch was a segment of that. It was done in preparation for a submittal to FRA for stimulus funds. There was \$8 billion in the first stimulus package targeted to support higher speed rail, and ODOT submitted a pre-application in July for a project that would improve speed and reliability of a passenger line between Portland and Eugene. They would need to do an alternative analysis with one or two possibilities. For downtown Milwaukie it could mean a number of things if they chose the OE line. It would mean construction of a second track for up to 8 additional passenger trains in Milwaukie on a daily basis. That would impact Portland Waldorf School and Milwaukie Lumber. Trains would be moving faster than the few freight trains today in Milwaukie. Heavy rail would mean a significant construction impact with additional noise and vibration. It would impact downtown and Island Station. There was no benefit to Milwaukie for that route. Any crossing improvements would have been made by the light rail project. Benefits of the UP Main Line were better delineated right-of-way was; marginal increase in number of trains; higher speeds; crossing safety improvements; and reduced potential of grade separation at Harmony. Staff will prepare technical comments on the study and Milwaukie staff would meeting with staff from Lake Oswego and Tualatin. They would contact Representative Tomei and the staff approach was to find any way

to express the importance that the decision making process was not dominated by ODOT.

Councilor Stone asked what other alternatives were being considered.

Mr. Campbell replied between Portland and Eugene the 2 options were the UP main line and Oregon Electric. It was hard to imagine there was a 3rd alternative in terms of right-of-way acquisition. He commented on available funding. The odds of this all happening very quickly was unlikely because there were a lot of hurdles along the way. It would behoove Milwaukie to pay attention to the planning and be aware that ODOT was considering a policy change on where passenger rail might run.

Councilor Chaimov had met with the UP Northwest government affairs representative and took away the message that UP was not enthused by the prospect of the use of the OE line because of problems it foresees with its own operations. It was not apparent that their concerns were insurmountable. He expressed interest in working together.

Mr. Campbell added that UP has only committed to participate in the study. He reported on Metro's TIGER grant to fill the pedestrian and bike gaps between Park Avenue and Clackamas Town Center. Council supported his refinement of letter for Mayor Ferguson's signature.

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

Mayor Ferguson adjourned the work session at 6:20 p.m.

Pat DuVal, City Recorder



To: Mayor and City Council

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

From: Jason Rice, Associate Engineer

Subject: Letter of Engagement with Clackamas River Water for waterline work
in the Northeast Sewer Extension Project Area

Date: September 25th for the October 6, 2009 Regular Session

Action Requested

Approve a Letter of Engagement with Clackamas River Water (CRW) for \$39,195 to resolve a conflict with a CRW waterline in the Northeast Sewer Project area.

History of Prior Actions and Discussions

September 2009: Initiated annexation of the right-of-way in the NE Sewer Extension Project Area by resolution as well as, authorized the City Manager to sign an updated Clean Water State Revolving Fund Loan Agreement for the NE Sewer Extension (NESE) project.

August 2009: Staff briefed Council on the status of the NE Sewer Extension Project and the need to annex the right-of-way in this area.

June 2009: Council approved the award of contract to Right-of-Way Associates Inc. for the easement and appraisal services within in the project area.

February 2009: Staff presented an update during Work Session to refresh Council on the NESE Project status.

February 2009: Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to provide a sewer system to the Dual Interest Area "A".

December 2008: Council approved a loan agreement for the Clean Water State Revolving Fund (CWSRF) loan to fund the extension of wastewater sewer to the Dual Interest Area "A" (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of wastewater sewer to the Dual Interest Area including; entering into an Intergovernmental Agreement (IGA) with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution 81-2008).

September 2008: Work session discussing the sewer extension project. Council requested additional information prior to acting.

May 2008: Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance.

March 2008: Work session to discuss the need for, and timing of wastewater service to the unincorporated area adjacent to the northeastern border of the City. Working with Clackamas County, the City was beginning a public outreach effort to inform residents about the Dual Interest Area and determine public interest regarding connection to the City's public wastewater sewer system.

September 2006: Staff briefed Council on State statute and City Comprehensive Plan policy regarding island annexations.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in the Dual Interest Area. This proposal assumed a City project to extend service to the unsewered unincorporated area.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County.

In the northern Dual Interest Area (DIA), or DIA, the agreement states: *“The City shall assume a lead role in providing urbanizing services.”*

Background

In the later stages of design of the Northeast Sewer Extension (NESE) Project, it became apparent that certain waterlines must be moved to accommodate the new sewer main along Johnson Creek Blvd. The proposed sewer main location is pinned between private properties to the south and the Springwater trail to the north (see attachment 1 for project location). After determining the necessity of the waterline relocation, CRW was contacted. City staff began negotiations with CRW for the valve cluster relocation. CRW has determined it will do the work in-house.

Section 10.010.1 of the Public Contracting Rules allows the City to have a contract with another public agency without going through a competitive process. While CRW could go out for bids, in this case the agency will do the work in-house, which benefits the NESE project schedule. Other benefits include CRW’s ability to design the project free of additional cost. If the project were bid, this cost would increase due to the amount of documentation a contractor would require to complete the work to CRW standards. The City also benefits from having CRW institutional knowledge of the system on site actually performing the work. Because of these reasons, staff believes having CRW perform the work at the proposed price is in the best interest of the City. The Letter of Engagement drafted by CRW (attachment 2) provides for the City to work with CRW and complete the needed waterline relocation.

CRW proposes to begin work by October 12, 2009 and complete all work by November 20, 2009. This is important to note because staff hopes to have a contractor building the wastewater main in this area for the NESE Project by December 2009.

Concurrence

Public Works, the Engineering Department, along with Century West Engineering (the City’s Engineering consultant), all agree that this relocation must be done to accommodate the Northeast Sewer Extension project. This group also agrees that the cost of the proposed work is within reason.

Legal Counsel has reviewed CRW’s request in the form of their “Letter of Engagement” and believes the City is protected by this agreement.

Fiscal Impact

The not-to-exceed contract for \$39,195.99 is covered by and will be paid for out of the 2009/10 NESE project budget. This cost will be reimbursed through the future Reimbursement District for the NESE Project.

Work Load Impacts

Staff expects minimal impacts to current schedules will be incurred. Since the waterline is owned and operated by Clackamas River Water, they will be conducting most of the inspections. The relocation will occur over a 2-3 week period and 5-10 hours of Milwaukie staff time is anticipated to serve the work.

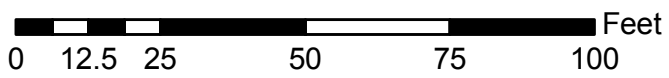
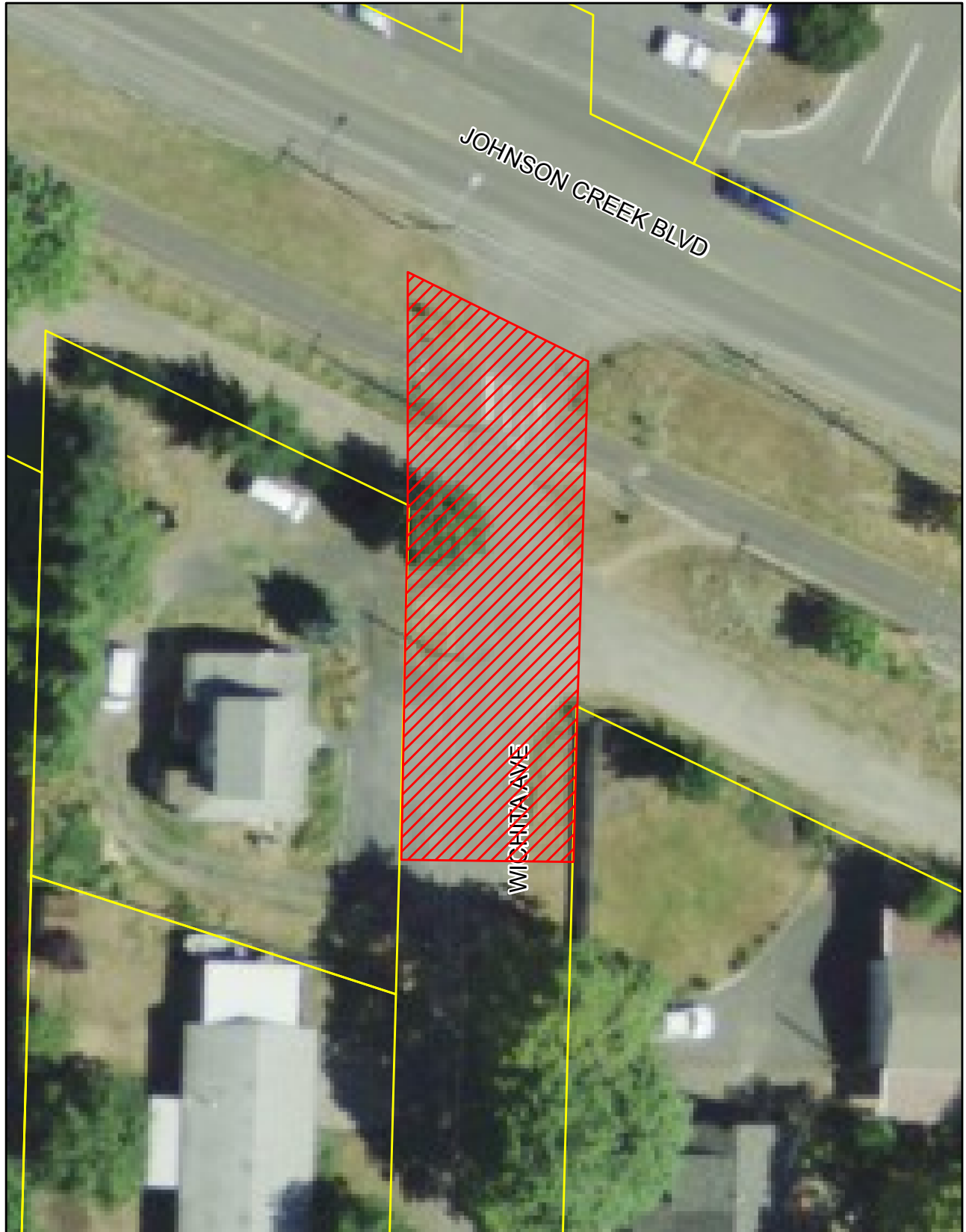
Alternatives

No alternatives exist at this time; the waterline is in the way of the proposed sewer line. With the ownership of the waterline, CRW is the responsible party for relocating it.

Attachments

1. Project Vicinity Map
2. CRW Letter of Engagement
3. Exhibit A
4. CRW Wichita Unit Cost Worksheet
5. Resolution

Vicinity Map



LETTER OF ENGAGEMENT

To: **Clackamas River Water**

This letter is to set forth the terms and objectives of an engagement for services by and between the City of Milwaukie (City) and Clackamas River Water, a domestic water supply district organized under ORS 264 ("District").

1. Effective Date.

This contract shall be effective as of **October 12, 2009** ("Effective Date").

2. Term

Unless terminated sooner under the provisions of this contract, the term of this contract shall be for a period from the effective date until **December 31, 2009**

3. Scope of Work

See attached Proposal for Scope of Work, Exhibit A.

4. Compensation

The compensation paid under this contract for the Scope of Work described herein, excluding compensation related to subsequent modification of this contract, in "an amount not to exceed" **\$39,195.99**.

5. Fees, Expenses and Billing Practices

Invoicing. The City shall make payments to the District on a work submittal and approval basis as work progresses based on invoices submitted by District. Payment shall be in such amounts determined to be allowable by City in accordance with the terms of this letter of engagement. At the agreed-upon stipulated amount. The City shall pay the District within fifteen (15) days from the date an invoice is approved by the City. Notwithstanding any other additional requirements of this letter of engagement, invoices shall contain the *contract number*, the *date(s) services were furnished*, and a *detailed description of the services furnished*. Failure to strictly comply with this provision may result in a delay in payment. All invoices shall be submitted to The City's Finance Department as follows:

City of Milwaukie
Attn: Gary Parkin
6101 SE Johnson Creek Blvd.
Milwaukie, OR 970206

6. Modification

This letter of engagement may only be modified in writing by a document that has been signed by individuals authorized to bind each of the parties contractually.

7. Assignment and Subcontracting

District shall not assign any of its rights or subcontract any of its responsibilities under this letter of engagement without the written consent of the City. If the City approves of such subcontract, District shall include in each subcontract any provisions necessary to make all of the provisions of this letter of engagement fully effective. The District shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

8. Indemnification

To the fullest extent permitted by law, the District and the City agree to fully indemnify, hold harmless and defend each other, the other entity's directors, officers, and employees from and against all claims, damages, losses and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, caused by the fault or negligence in whole or in part of the City or the District, their agents, sub-contractor, contractors, or employees from the performance of the work.

9. Compliance with Laws and Regulations

The District shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Letter of engagement, including governmental ethics laws. To the extent applicable, the District shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS chapter 279A and 279B, which provisions are hereby incorporated by reference.

10. Liens Prohibited

District shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished by the District and the District hereby waives any right it may have to filing such a lien. Nothing stated herein shall be construed as an admission by the City that the District is entitled to file any lien.

11. Intellectual Property

The District shall have unlimited rights to all work product produced in the performance of this letter of engagement. All such work product shall be the property of the District. District shall hold harmless, defend and indemnify the City, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by CRW as the result of the claim, including legal fees.

12. Termination

Either the District's contract representative or the City's contract representative, by written notice, may terminate this letter of engagement, in whole or in part, when it is in the best interest of the District or the City. If this letter of engagement is terminated, the District shall be entitled to compensation for work performed including costs for materials up to the date of termination in accordance with the provisions of this letter of engagement and all

products produced whole or materials ordered in part by the end of the day the letter of engagement is terminated shall remain the property of the District.

13. Applicable Law and Jurisdiction

Oregon law shall govern this letter of engagement. Any suit or action arising from this letter of engagement shall be commenced and prosecuted in the courts of Clackamas County, Oregon or the U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

14. Dispute Resolution

If the District and the City’s contract representative are not able to resolve a dispute involving issues of fact or the amount of compensation due the District arising from this letter of engagement, either party may, in writing to the other party, request mediation. If the parties cannot agree on a mediator or the process of mediation within 30 calendar days after receipt of a written request for mediation, either party may seek any remedy available at law to resolve the dispute. All costs of mediation shall be borne equally by the parties. Other than requiring the parties to provide notice of requested mediation, nothing in this paragraph shall be deemed to preclude CRW or the District from seeking any remedy available under the law.

CLACKAMAS RIVER WATER

CITY OF MILWAUKIE

Lee E. Moore, Sr.

Mike Swanson

General Manager

City Manager

Date:_____

Date:_____

Exhibit "A"

**CLACKAMAS RIVER WATER
Wichita and Springwater Corridor Waterline Relocation**

Project Number - 5074

The proposed work for the relocation of Clackamas River Water waterline located near the intersection of Wichita Ave approximately 30 feet south of the Springwater Corridor trail is in preparation of the Clackamas County and the City of Milwaukie's proposed joint project sanitary sewer. The proposed waterline relocation is scheduled to start by October 12, 2009 and be completed by November 20, 2009 (See Exhibit "B" Plans).

The work consists of relocating approximately 72 feet of restrained joint 8-in ductile iron piping (Class 52), 15 feet of 6-inch and 4-inch combined of restrained joint ductile iron pipe and several straddle blocks which minimizes shutdowns to existing water customers.

In addition, a four valve cluster of 8-inch resilient seated gates valves and the associated cross and tie-ins are required to completed the relocation work. The waterline relocation work has been planned in phases as described below. The work will be done to the attached plans and constructed to the CRW standards as follows:

Phase 1: Furnish and install concrete collar blocks, labor and associated and materials. Collars blocks are constructed to minimize shut down to existing customers.

Phase 2: Remove existing 8-inch waterline as necessary for the installation of the four valve cluster. Furnish and install all associated waterline, fittings and related appurtenances to reestablish the north/south waterline service.

Phase 3: Furnish and install the relocated 8-inch waterline (east-west). CRW to complete pressure testing and chlorination of waterline prior to final westerly tie in.

Phase 4: Remove existing 8-inch waterline and valve cluster near proposed sanitary sewer manhole. Furnish and install new 8-inch waterline to complete the north south tie. CRW to complete clean up and provide temporary asphaltic trench surface in preparation of proposed sewer work. Once the temporary trench patching is accepted by the city, all future maintenance will be provided by the city.

Phase 5: City to furnish and install all final paving related to the waterline relocation work to Clackamas County's satisfaction.

Business Unit Estimate

Remit Address:

Clackamas River Water
P O Box 2439
Clackamas, OR 97015-2439
(503) 722-9237

TO: Engineering
 Attention: Bob George

INVOICE #
 Date:
 Revised Date: **8-19-09**

Make Remittance Payable To: System Operations

Office use only: 1.10411 /

Date	Description	
	Project 5074 <i>Location: Wichita Intersection Rebuild</i>	
	Phase 4: Valve cluster removal and tie-in south	\$ 7,396.57
	Phase 3: Pipe install east / west	\$ 9,114.88
	Phase 2: Pipe and valve cluster install	\$ 8,289.28
	Phase 1: Collar block and project materials	\$ 14,395.26
	TOTAL	\$ 39,195.99
	Approved By	
	DATE:	

Clackamas River Water

Date: 8-13-07

PAGE 2

Project

5074

Customer

Engineering - CIP

Location:

Wichita Intersection Rebuild Est.

Phase 1 Collar Block with Materials

Labor	Employee	ST Hours	OT Hours	Total
	Field Team Leader	1.25		\$ 63.06
	Water Works Mech - 3	40.00		1,628.80
Subtotal Labor 1				\$ 1,691.86
	Contract Flagger	-		-
	Contract Flagger	-		-
Subtotal Labor 2				\$ -
Total Labor		41.25	-	\$ 1,691.86

Equipment	Equipment	Rate	Hours	Total
	Service Truck - 550	\$ 75.00	14.00	\$ 1,050.00
	Svc Truck - 1/2 Ton	\$ 20.00		\$ -
	12 YD Dump Truck-	65.00	3.00	195.00
	5 YD Dump Truck	50.00		-
	Backhoe	50.00	2.00	100.00
	Track Backhoe	50.00		-
	Trailer	20.00	1.00	20.00
	Pavement Saw	175.00	1.00	175.00
	Air Compressor	25.00	-	-
Total Equipment				\$ 1,540.00

Inventory Parts and Materials	Total
Total Inventory Parts and Materials	\$ -

Other Costs	Item	Estimate	Total
	Project Materials - Page 6		10,108.18
Total Other Costs			\$ 10,108.18

Overhead	Total Charges	Overhead	Total w/Overhead
Labor 1	\$ 1,691.86	30.70%	\$ 519.40 \$ 2,211.26
Labor 2	-	4.60%	-
Equipment	1,540.00	4.60%	70.84 1,610.84
Inventory	-	30.70%	-
Other Costs	10,108.18	4.60%	464.98 10,573.16
			\$ 1,055.22 \$ 14,395.26

Project Costs	RS PAGE 38	\$ 14,395.26
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Project 5074

Customer Engineering - CIP

Location: Wichita Intersection Rebuild Phase 2 - Pipe and Valve Cluster Install

Labor	Employee	ST Hours	OT Hours	Total
	Field Team Leader	2.00		\$ 100.90
	Water Works Mech - 5	67.50		2,748.60
Subtotal Labor 1				\$ 2,849.50
	Contract Flagger	9.00		171.90
	Contract Flagger- 2	18.00		343.80
Subtotal Labor 2				\$ 515.70
Total Labor		96.50	-	\$ 3,365.20

Equipment	Equipment	Rate	Hours	Total
	Service Truck - 550	\$ 75.00	14.00	\$ 1,050.00
	Svc Truck - 1	\$ 60.00	9.00	\$ 540.00
	12 YD Dump Truck	65.00	8.00	520.00
	5 YD Dump Truck	50.00	3.00	150.00
	Backhoe with Hoe Pack	70.00	3.00	210.00
	Track Backhoe	50.00	4.00	200.00
	Trailer - 2	20.00	3.00	60.00
	Pavement Saw	175.00	2.00	350.00
	Air Compressor	25.00	-	-
Total Equipment				\$ 3,080.00

Inventory Parts and Materials	Total
Total Inventory Parts and Materials	\$ -

Other Costs	Item	Estimate	Total
Total Other Costs			\$ -

Overhead	Total Charges	Overhead	Total w/Overhead
Labor 1	\$ 2,849.50	30.70%	\$ 874.80 \$ 3,724.30
Labor 2	515.70	4.60%	23.72 539.42
Equipment	3,080.00	30.70%	945.56 4,025.56
Inventory	-	0.00%	- -
Other Costs	-	4.60%	- -
			\$ 1,844.08 \$ 8,289.28

Project Costs	RS PAGE 39	\$ 8,289.28
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Clackamas River Water

Date: 10-08-07

PAGE 4

Project 5074**Customer** Engineering**Location:** Wichita Intersection Rebuild**Phase 3 - Pipe Install East / West**

Labor	Employee	ST Hours	OT Hours	Total
	Field Team Leader	2.00		\$ 100.90
	Water Works Mech - 5	90.00		3,664.80
Subtotal Labor 1				\$ 3,765.70
	Contract Flagger	9.00		171.90
	Contract Flagger	18.00		343.80
Subtotal Labor 2				\$ 515.70
Total Labor		119.00	-	\$ 4,281.40

Equipment	Equipment	Rate	Hours	Total
	Service Truck - 550	\$ 75.00	18.00	\$ 1,350.00
	Svc Truck - 1	\$ 60.00	9.00	\$ 540.00
	12 YD Dump Truck - 2	65.00	10.00	650.00
	5 YD Dump Truck	50.00	3.00	150.00
	Backhoe with Hoe Pack	70.00	5.00	350.00
	Track Backhoe	50.00	5.00	250.00
	Trailer	20.00	2.00	40.00
	Pavement Saw	175.00	2.00	350.00
	Air Compressor	25.00	-	-
Total Equipment				\$ 3,680.00

Inventory Parts and Materials	Total

Total Inventory Parts and Materials
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Other Costs	Item	Total
	Materials	
Total Other Costs		\$ -

Overhead	Total Charges	Overhead	Total w/Overhead
Labor 1	\$ 3,765.70	30.70%	\$ - \$ 3,765.70
Labor 2	515.70	4.60%	23.72 539.42
Equipment	3,680.00	30.70%	1,129.76 4,809.76
Inventory	-	4.60%	- -
Other Costs	-	4.60%	- -
			\$ 1,153.48 \$ 9,114.88

Project Costs	RS PAGE 40	\$ 9,114.88
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Clackamas River Water

Date: 8-14-07

PAGE 5

Project 5074**Customer** Engineering - CIP**Location:** Wichita Intersection Rebuild**Phase 4 - Valve Cluster Removal / S. Tie-in**

Labor	Employee	ST Hours	OT Hours	Total
	Field Team Leader	1.00		\$ 50.45
	Water Works Mech - 5	67.50		2,748.60
Subtotal Labor 1				\$ 2,799.05
	Contract Flagger	9.00		171.90
	Contract Flagger	9.00		171.90
Subtotal Labor 2				\$ 343.80
Total Labor		86.50	-	\$ 3,142.85

Equipment	Equipment	Rate	Hours	Total
	Service Truck - 550	\$ 75.00	14.00	\$ 1,050.00
	Svc Truck - 2	\$ 60.00	4.00	\$ 240.00
	12 YD Dump Truck - 2	65.00	11.00	715.00
	5 YD Dump Truck	50.00		-
	Backhoe with Hoe Pack	70.00	6.00	420.00
	Track Backhoe	50.00	2.00	100.00
	Trailer - 2	20.00	3.00	60.00
	Pavement Saw	175.00	-	-
	Air Compressor	25.00	-	-
Total Equipment				\$ 2,585.00

Inventory Parts and Materials	Total
Total Inventory Parts and Materials	

Other Costs	Item	Total
Total Other Costs		\$ -

Overhead	Total Charges	Overhead	Total w/Overhead
Labor 1	\$ 2,799.05	30.70%	\$ 859.31 \$ 3,658.36
Labor 2	343.80	4.60%	15.81 359.61
Equipment	2,585.00	30.70%	793.60 3,378.60
Inventory	-	0.00%	- -
Other Costs	-	0.00%	- -
			\$ 1,668.72 \$ 7,396.57

Project Costs	RS PAGE 41	\$ 7,396.57
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Materials:

Location: Wichita Intersection Rebuild

Customer: CRW

Materials	Unit	Quantity	Price	Total
8" Cl 52 DI Pipe	LF	72.0	\$ 21.94	\$ 1,579.68
6" Cl 52 DI Pipe	LF	10.0	\$ 16.09	\$ 160.90
4" Cl 52 DI Pipe	LF	6.0	\$ 14.02	\$ 84.12
Valve Box - Complete w/PVC	each	5.0	\$ 80.00	\$ 400.00
8" MJ x FLG Gate Valve	each	4.0	\$ 809.73	\$ 3,238.92
8" MJ Gate Valve -est.	each	-	\$ 809.73	\$ -
8" Long Pattern MJ Sleeve	each	1.0	\$ 109.48	\$ 109.48
6" Long Pattern MJ Sleeve	each	1.0	\$ 83.23	\$ 83.23
4" Long Pattern MJ Sleeve	each	1.0	\$ 55.30	\$ 55.30
8" FLG Cross	each	1.0	\$ 504.95	\$ 504.95
8" 45 degree bend	each	2.0	\$ 111.72	\$ 223.44
8" 22.5 degree bend	each	1.0	\$ 109.48	\$ 109.48
8" x 6" MJ Reducer	each	1.0	\$ 91.05	\$ 91.05
8" x 4" MJ Reducer	each	1.0	\$ 85.46	\$ 85.46
8" Grip Rings	each	18.0	\$ 62.62	\$ 1,127.16
6" Grip Rings	each	3.0	\$ 43.92	\$ 131.76
4" Grip Rings	each	3.0	\$ 37.78	\$ 113.34
8" Flg Bolt Kit with Gasket	each	4.0	\$ 10.00	\$ 40.00
8" Field Loc Gaskets	each	3.0	100.5	\$ 301.50
Romac 611 Restraint Clamp 8"	each	1.0	\$ 94.87	\$ 94.87
Romac 611 Restraint Clamp 6"	each	1.0	\$ 58.54	\$ 58.54
Rock 100x2.5x4x1.35 /27	yard	50.0	\$ 18.50	\$ 925.00
Cold mix	Ton	5.0	\$ 118.00	\$ 590.00
			\$	-
			\$	-
			\$	-
Total Inventory			\$	10,108.18

Non-Inventory Materials	Unit	Quantity	Price	Total
Concrete for Collar Blocks	Yard	3	100.00	\$ 300.00
			Total	\$ 300.00

Sub Contractor Work	Unit	Cost	Hours	Total
				\$ -
Other				
			Total	\$ -

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CLACKAMAS RIVER WATER (CRW) FOR THE RELOCATION OF A PORTION OF THEIR WATER MAIN THAT CONFLICTS WITH THE UPCOMING NORTHEAST SEWER EXTENSION PROJECT.

WHEREAS, the unincorporated area east of the City of Milwaukie, identified as Dual Interest Area "A" in the City-County Urban Growth Management Agreement, is without a public wastewater sewer system; and

WHEREAS, the need for a public system in this area has been identified as a high priority by residents and the State, County, and City governments; and

WHEREAS, in the design of the sewer project a conflict with CRW's water main was identified; and

WHEREAS, the identified water main must be relocated in order to move forward with sewerage the Dual Interest Area "A"; and

WHEREAS, CRW has required that they either perform the work on their own water mains or bid the work themselves; and

WHEREAS, Section 10.010.1 of the Public Contracting Rules allows the City to have a contract with another public agency without going through a competitive process; and

WHEREAS, in the interest of not postponing the sewer project to wait for CRW to bid the project out the City would like CRW to move forward with completing the work;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to execute a contract not to exceed \$39,195.99 with Clackamas River Water for the relocation of a portion of their water main that conflicts with the upcoming Northeast Sewer Extension Project.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

5.
PUBLIC HEARING



To: Mayor and City Council

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

From: Alex Campbell, Community Development

Subject: Logus Road Closeout/Budget Adjustments

Date: September 10, 2009 for the October 6, 2009 Regular Session

Action Requested

Provide budget authority for final payments on the Logus Road Improvement Project.

History of Prior Actions and Discussions

August 2008: Council approved a Resolution authorizing commencement of Right of Way acquisition.

July 2008 – Council approved an amendment to the IGA with ODOT for contracted appraisal services to expand and extend those services.

April 2008 – Council approved a budget amendment and a contract with Harper Houf Peterson Rhigellis for project design.

February 2008 – Council approved an IGA with ODOT for contracted appraisal services and an IGA with Clackamas County to allow expenditure of CDBG funds on the project.

March 2007 – Council approved an IGA with ODOT to accept a Bike/Ped program grant for the project and to initiate project expenditures.

Background

The Logus Road Project is now complete. The project constructed a continuous pedestrian connection between S.E. 49th Avenue and Stanley Avenue along Logus Road. The project incorporates a “green street” approach, preserving as much tree canopy as possible and providing on-site storm runoff capture and treatment through the use of “rain gardens.” The project includes new raised cross-walks at either end of Seth Lewelling Elementary.

Project finances were somewhat complex, with two external grant sources (ODOT Bike Ped grant, and CDBG funding) and four independent local funding sources (“Fee in Lieu of Construction” collections, Street SDC collections, Street Surface Maintenance Program, and Stormwater Capital and Reserve funds). Project completion was anticipated to take place in the last fiscal year, but due to several construction delays, particularly related to unanticipated road work (discussed below), the schedule was delayed. The City budget did not anticipate this delay and, therefore, did not carry over funds into the new budget year.

The budget amendment attached here carries forward funds that were budgeted last year, but were not expended. In addition, the amendment increases the Street Surface Maintenance Program’s contribution to the project from \$75,000 to \$150,000. This change reflects actual project expenditures on road construction. The \$75,000 originally budgeted was intended to cover the “grind and overlay” element of the project. However, during construction several soft spots were discovered, i.e., areas with insufficient asphalt and a degraded base that required excavation and reconstruction. The total street surface expenditures of the project were:

- \$32,175 for “over-excavation” (i.e., excavating and rebuilding the roadway base)
- \$111,642 for asphalt (significantly higher than anticipated)
- \$7,753 for fabric and other paving-related costs

The budget amendments in the attached resolution will create total budget authority for the project of \$294,119. This budget authority will provide adequate funds to reimburse Clackamas County for final contractor payments; engage a professional engineer to complete “as-builts” for the project; and establish a reserve for future year expenses for a four-year plant establishment period (anticipated at \$6,000 per year, or \$24,000).

Concurrence

The Finance Director was consulted and concurs with the budget changes as proposed. The Engineering Director was consulted and concurs with the adjustment to the SSMP contribution to the project.

Fiscal Impact

The adjustments lower the budgeted contingency amounts in Fund 580, Wastewater Capital and Reserve; Fund 315, Street Surface Maintenance Fund; and Fund 325, Street SDCs. The adjustments in 320 and 327 are funded by the realization of grant revenues, which were anticipated in the previous fiscal year, but will be received in the current fiscal year instead.

Work Load Impacts

None.

Alternatives

Expenses incurred to date have been incurred under the City's IGA with Clackamas County. The only alternative to the requested action would be to fund the payments through other funds. Staff believes the sources suggested are the most logical sources, given the nature of the project.

Attachments

1. Resolution
2. Photo of road reconstruction

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING BUDGET APPROPRIATION FOR THE COMPLETION OF THE
LOGUS ROAD IMPROVEMENT PROJECT.**

WHEREAS, The City has undertaken the Logus Road Improvement Project; and

WHEREAS, Funds were budgeted in the previous fiscal year for the project, but project delays did not allow completion of expenditures and the carry over of project funds was not anticipated in the current budget; and

WHEREAS, Street surface maintenance components of the project exceeded those funds originally budgeted by approximately \$75,000; and

WHEREAS, The changes in revenues, materials and services, capital outlay, contingencies and transfer appropriations across the affected funds do not exceed total fund appropriation(s) by more than 10% pursuant to ORS 294.480 Supplemental Budget(s) except in Fund 325 – Streets SDC and Fund 327 – Street Capital Reserve and;

WHEREAS, The change in revenues and offsetting capital outlay and transfers appropriations in Fund 325 – Street SDC and Fund 327 – Street Capital Reserve is due to delays in project completion and due to timing of grant receipts, respectively and do not create ‘new’ revenue or expenditure appropriations within each fund;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie establishes supplemental budget authority in the current fiscal year in the following amounts:

Fund 315 Expenditures:

Transfer of \$75,000 TRANSFER TO FD 327 CAP PROJ

Contingency reduced by \$75,000

Fund 320 Revenues:

Revenue of \$87,731 TRANSFER FM FD 327

Fund 320 Expenditures:

Contingencies increased by \$87,731

Fund 325 Expenditures:

Expenditure of \$54,150 in Capital Outlay, LOGUS ROAD

Beginning Fund Balance increased by \$54,150

Fund 327 Revenues:

Revenue of \$222,700 as GRANT REVENUE

Revenue of \$75,000 as TRANSFER FM 315

Fund 327 Expenditures:

Expenditure of \$209,969 in Capital Outlay, LOGUS ROAD PHASE I

Transfer of \$87,731 to TRANSFER TO FD 320

Fund 580:

Expenditure of \$30,000 in Capital Outlay, STSP LOGUS ROAD

Contingency reduced by \$30,000

Introduced and adopted by the City Council on October 6, 2009.

This resolution is effective on October 7, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 2

"Over-excavation"
at 54th Court



6.
OTHER BUSINESS



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
Joe Sandfort, Library Director
RE: Adoption of a Resolution Approving a Cooperative
Intergovernmental Agreement between the Library District of
Clackamas County and Member Cities
Date: October 6, 2009

ACTION REQUESTED

Adopt the proposed resolution authorizing the City Manager to execute the Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities.

BACKGROUND

During the past three decades the County and cities have revisited the structure and funding of libraries within Clackamas County. With the threatened loss of timber monies, Clackamas County served notice that it would need to severely curtail its future participation in the funding of local libraries. The ‘solution’ proposed was a county wide library district that would generate its own tax base that would be distributed to local libraries to replace the County funds. At its February 19, 2008 work session the City Council discussed whether or not it should direct the City Manager to draft a resolution that would consent to both include in the District all territory in the city that falls within Clackamas County and to authorize the transfer of \$10,000 to the county for an informational campaign. At its March 4, 2008 Regular Session, the City Council adopted Resolution 19-2008, confirming the City’s desire to be included in the Library District.

On November 4, 2008, the citizens of Clackamas County voted to create a library district in the county with a permanent tax rate of \$0.3974 per \$1,000 of assessed value. Adoption of the proposed resolution means that the City participates in the funding generated by the District. The City has budgeted \$875,000 for FY 2009-2010, an increase from the \$495,000 budgeted in FY 2008-2009. There are two components to the amount provided from the District. They are outlined on page 11 of the proposed IGA. One is the amount of the City’s assessed value times the District’s tax base of

\$0.3974 per \$1,000 of assessed value. The other is a factor dependent upon the population served by the City within the unincorporated area.

The IGA specifies the obligations of the district, the obligations of the cities joining the district, and the terms and amendments used in the agreement. Attachment A describes the formula by which funding is allocated among district members. Attachment B contains service population maps within the district and language explaining the usage and creation of these maps. Attachment C lists standards of service which member cities and libraries are required to follow.

The cities began negotiating the IGA with the county in December 2008, raising several concerns with the document. After several months of negotiations, the following concerns remain: First, the IGA does not set up a process to resolve service area disputes. Secondly, the agreement as written does not present a timetable for the closing of the county's libraries. When the Clackamas and Oak Lodge Libraries close, the Ledding Library's service area will expand, thus increasing its yearly revenue from the District. Thirdly, membership requirements stated in the IGA for the District Advisory Committee may not conform to previous discussions with and or commitments made to voters. (A proposed ordinance presented this same date will conform the practice in Milwaukie to that outlined in the ballot measure creating the district.)

An additional agreement(s) will be presented that will deal with some of the issues that remain unresolved. However, it was felt that the basic agreement should be executed inasmuch as the district would begin to receive revenue for distribution with the first major receipt of property tax revenue In November 2009.

CONCURRENCE

At its August 24, 2009 meeting, the Library Board voted to support the resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) between the City of Milwaukie and the Library District of Clackamas County.

FISCAL IMPACT

By signing the IGA formalizing its participation in the Clackamas County Library District the City of Milwaukie will receive \$875,000 from Clackamas County during FY2009-2010.

WORK LOAD IMPACTS

District revenues will enable the Library to increase its weekly hours with the addition of staff.

ALTERNATIVES

Not signing the IGA would result in the city not receiving \$875,000 from the county during FY2009-2010

ATTACHMENTS

1. Proposed Resolution
2. The Cooperative Intergovernmental Agreement between the Library District of Clackamas County and member cities, with attachments A, B and C.

Attachment 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON APPROVING THE COOPERATIVE INTERGOVERNMENTAL AGREEMENT BETWEEN THE LIBRARY DISTRICT OF CLACKAMAS COUNTY AND MEMBER CITIES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME

WHEREAS, on March 4, 2008 the City Council of the City of Milwaukie, Oregon adopted Resolution 19-2008 confirming the City's desire to include all territory within that portion of the City within Clackamas County included within the proposed Clackamas County Library District; and

WHEREAS, on November 4, 2008 the electors of Clackamas County approved creation of the Clackamas County Library District with a permanent rate of \$.3974 per \$1,000 of assessed value, and

WHEREAS, the purpose of the District is to provide local funding of library services through a transfer of funds to local libraries; and

WHEREAS, the said transfer of funds from the Clackamas County Library District replaces previous funding provided by Clackamas County; and

WHEREAS, the City of Milwaukie elects to enter into the proposed agreement for purposes of securing a dedicated source of funding for the Ledding Library.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT:

Section 1. The City hereby approves the Cooperative Intergovernmental Agreement Between the Library District of Clackamas County and Member Cities.

Section 2. The City Manager is authorized to execute the said Intergovernmental Agreement.

Section 3. This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council on October 6, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Attachment 2

PROPOSED FINAL MASTER IGA v.5

LIBRARY DISTRICT

2 March 2009

COOPERATIVE INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE LIBRARY DISTRICT OF CLACKAMAS COUNTY
AND
MEMBER CITIES

THIS COOPERATIVE INTERGOVERNMENTAL AGREEMENT (this "Agreement"), is entered into this ____ day of _____, 2009, by and between the Library District of Clackamas County (the "District") a county service district formed under ORS Chapter 451, and each of the Cities of Barlow, Canby, Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Rivergrove, Sandy, West Linn, and Wilsonville (each, a "City" and collectively, the "Cities").

WHEREAS, voters approved formation of the District to provide financial support to the library service providers of Clackamas County (the "Library Cities"); and

WHEREAS, the Parties desire to work in a cooperative manner to support and provide library services to their residents; and

WHEREAS, many of the Cities participate in the Clackamas County-supported Library Network of Clackamas County, which is discussed in an intergovernmental agreement by and between the participating Cities and Clackamas County; and

WHEREAS, the Cities desire funding by the District and to provide the levels of service described herein;

NOW, THEREFORE, the District and Cities each covenant and agree to the following:

Section 1 Obligations of the District

- 1.1 District Board. The Board of County Commissioners acting under the provisions of ORS 451 is the governing body of the District and shall be known as the District Board.
- 1.2 District Advisory Committee. The District Board shall organize and appoint a District Advisory Committee consisting of one nominee from each Library City consistent with the policies and procedures of Clackamas County and/or the District for advisory committees. The District Board shall appoint the individual nominated by the Library City governing body to fill the service area's representative seat. The District Advisory Committee shall be responsible for meeting at least annually to consider: (i) the evaluation reports of participating libraries as submitted pursuant to Section 2.3, (ii) any proposed changes to this Agreement pursuant to the amendment process described in Section 3.3, and (iii) any impact of the annexation or withdrawal of territory from the District pursuant to Sections 3.4 and 3.5 hereof.

- 1.3 District Budget Committee. State law also requires that the District constitute a Budget Committee consisting of the members of the District Board and an equal number of citizens, who may be nominated pursuant to existing County budget committee procedures. The role and responsibilities of the Budget Committee shall be as set forth in the applicable statutes.
- 1.4 District Revenue. The District has a permanent tax rate of \$0.3974 per \$1,000 of assessed value, collected from all parcels of real property in the District.
- 1.5 Distribution of Revenue. Revenues generated by the District permanent rate, including delinquent taxes, are allocated, appropriated and expended pursuant to the budget adopted by the District Board. The District Board agrees to allocate, appropriate, and distribute the funds of the District pursuant to the formula as defined on Attachment A (the "Formula") for the service areas as shown on the maps included as Attachment B ("Service Area Maps"). The Formula may be reevaluated as necessary by the Parties to this Agreement. Any change to the Formula shall occur as an amendment to this Agreement.
- 1.6 Transition Payments. The parties hereto acknowledge and agree that the District shall distribute funds to Clackamas County for the operation of the Clackamas Corner and Oak Lodge Libraries pursuant to the alternative Service Area Maps described on Attachment B until such time as the City of Happy Valley and the City of Gladstone construct facilities sufficient to serve such area. During the term of such distributions, the Parties anticipate that the County libraries will be operated in a manner consistent with the Service Standards. Upon completion of such facilities, distributions shall be made based on the indicated Service Area Maps. To the extent the annual distribution of funds to Clackamas County is greater than the annual need to operate such libraries, the District shall retain such funds in trust for the Cities of Gladstone and/or Happy Valley, respectively, for distribution at such time as such City is constructing new library facilities.
- 1.7 Library Authority. Clackamas County operates public libraries pursuant to a board order creating public libraries for all Clackamas County residents dated July 9, 1938, as amended and updated pursuant to Board Order 85-1221 dated October 31, 1985. The District has received a delegation of such authority from Clackamas County to operate as a public library for the benefit of incorporated and unincorporated residents of Clackamas County pursuant to an Intergovernmental Agreement. To the extent necessary to insure the legal and effective functioning of the public libraries of Clackamas County but in no way intended to limit or otherwise restrict the powers or abilities of the City service providers to operate public libraries, the District hereby delegates such authority to operate public libraries for the benefit of incorporated and unincorporated residents of Clackamas County to each City service provider a party hereto or as may join this Agreement from time to time.

Section 2 **Obligations of the Cities**

- 2.1 Use of Funds. The Library Cities will use District revenue to provide public library service, and shall expend the entire library revenue paid under this Agreement in accordance with the purpose for which it was provided by implementing a plan to achieve the Service Standards. For the purposes of this Agreement, "Service Standards" shall mean (i) the standards described on Attachment C, (ii) the provision of services to all District residents on the same terms, and (iii) the proper expenditure of funds as described in this Section 2.1. District funds may not be used to support general overhead or administrative costs of Cities except to the extent such overhead or administrative costs are directly related to the provision of library services and/or the operation of a public library. It is the intention of the parties to work cooperatively in helping each city make progress in meeting the Service Standards.
- 2.2 Library Management. Library Cities retain administrative control over the library and library services in its service population. Each such City is responsible for developing library services based on the needs of its service population and the available revenue. The Library Cities will cooperate with the District Advisory Committee to assist in the review of library services to District residents.
- 2.3 Cooperation and Reporting. Each Library City will cooperate to the maximum extent practicable with other participating Cities to form standardized rules, procedures, and programs that affect the District and the provision of library services in Clackamas County as a whole. Each Library City will provide the District with (i) copies of its annual report to the State of Oregon regarding the provision of library services, (ii) a report on its efforts to meet OLA Threshold Standards as defined on Attachment C, and (iii) any supplemental reports that the District through both the District Advisory Committee and the District Board may require.

Section 3 **Term and Amendment**

- 3.1 Term. This Agreement shall commence on July 1, 2009 and continue until terminated as set forth herein.
- 3.2 Termination. This Agreement shall terminate upon the dissolution of the District.
- 3.3 Amendment. Except as specifically provided in Section 4.14, this Agreement may be amended at any time upon the agreement of the District and two-thirds of the Library Cities; *provided, however*, that any amendment that would amend that portion of the Formula providing for the return of one hundred percent (100%) of revenue collected within a City service provider's boundaries to such City service provider shall require the unanimous consent of all Cities serving on the District Advisory Committee.

- 3.4 Changes in District Territory. The parties hereto recognize that during the term of this Agreement changes in the District territory may occur, such as (i) territory outside the District may annex into the District, (ii) territory currently in the District may withdraw by annexation into a non-participating City, or (iii) unincorporated territory currently in the District may annex into a participating City. The District shall inform the District Advisory Committee of any such changes, and the District Advisory Committee shall review the Service Area Maps and the Formula and recommend any amendments to this Agreement necessary to adjust for such changes.
- 3.5 Incorporation of a City within District Boundaries. Should an unincorporated area within the District choose to incorporate during the life of the District, the District Advisory Committee shall make a recommendation to the District Board of whether the newly-incorporated city qualifies as a service provider as such term is generally used in this Agreement, and if so to what extent the Formula should be adjusted to allow for a distribution to such new service provider. If the newly-incorporated city does not qualify as a service provider, the District Advisory Committee shall make a recommendation to the District Board regarding the impact, if any, of the new city on the provision of library services. Any proposed changes shall be addressed as an amendment to this Agreement.

Section 4 General Provisions

- 4.1 Indemnification. Each party shall release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, elected officials, employees, and agents, from and against all damages, claims, injuries, costs, or judgments that may in any manner arise as a result of the party's performance under this contract, subject to Oregon Tort claims limitations.
- 4.2 Governing Law. This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 4.3 Savings. Should any portion of this Agreement or amendment there to be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of the Agreement shall remain in effect. All Parties shall immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.
- 4.4 Reasonable Attorney's Fees. In the event any action is brought to enforce, modify or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs incurred in connection with such action or on appeal or review; said amount to be set by the court before which the matter is heard.

- 4.5 Notices. Formal notices, demands and communications between the Parties shall be deemed given three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested to the principal offices of the party hereto, or upon confirmation of receipt via facsimile, electronic transmission, or hand delivery. Such written notices, demands and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section.
- 4.6 No Personal Liability. No member, official, agent, or employee of the County, the District, or any City shall be personally liable to the other or any successor-in-interest thereto in the event of any default or breach by such entity.
- 4.7 No Agency. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 4.8 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the party granting such waiver.
- 4.9 Further Action. The parties hereto shall, without additional consideration, acknowledge, execute, and deliver from time to time such further instruments as a requesting party may reasonably require to accomplish the purposes of this Agreement.
- 4.10 Non-Waiver of Rights. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the party's right thereafter to enforce any provision or exercise any right.
- 4.11 Time is of the Essence. A material consideration of the parties entering into this Agreement is that the parties will perform all obligations under this Agreement in a timely manner. Time is of the essence as to each and every provision of this Agreement.
- 4.12 Restricted Assignment. No party hereto may assign its rights, responsibilities or obligations hereunder to another party, by operation of law or otherwise, without (i) seeking and receiving an amendment of this Agreement, (ii) having said party join this Agreement on the terms, conditions and covenants herewith, and (iii) with a demonstration that such new party has the capability and

durability to meet or exceed the levels of library service currently being provided by the party seeking to assign. The District Advisory Committee shall evaluate any request for assignment and make a recommendation to the District Board regarding the granting or denial of the same based on the above criteria, including the District Advisory Committee's determination of criteria (iii) above.

- 4.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

- 4.14 Enforcement of Terms. The Parties hereto recognize that the District is relying on the good faith and commitments of the Library Cities to utilize the funding provided by the District in the promised manner. The Parties expect that to the extent there is any noncompliance or breach of this Agreement, the Parties will discuss such noncompliance or breach in the District Advisory Committee and encourage an effort towards compliance. If discussions and encouragement do not remedy the continued failure of a party to meet the Service Standards or other term of this Agreement, then the District Advisory Committee shall meet to consider an amendment to this Agreement to create incentives for compliance, including but not limited to withholding of District funds, reallocation of unincorporated residents to neighboring service areas, or other such actions as may be deemed appropriate. The Parties hereto agree that in an event of a material breach of this Agreement by one of the Parties, an amendment proposed to specifically address such breach shall require a two-thirds vote of the Library Cities, including but not limited to any amendment which would reduce the breaching City's 100% return on assessments within such City's boundaries, either via a Formula amendment or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF THE
LIBRARY DISTRICT OF CLACKAMAS COUNTY
By: _____
Title: Chair _____
ATTEST: _____

THE CITY OF BARLOW	THE CITY OF CANBY
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF ESTACADA	THE CITY OF GLADSTONE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF HAPPY VALLEY	THE CITY OF LAKE OSWEGO
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF MILWAUKIE	THE CITY OF MOLALLA
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF OREGON CITY	THE CITY OF RIVERGROVE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF SANDY	THE CITY OF WEST LINN
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF WILSONVILLE	
By: _____	
Title: _____	
ATTEST: _____	

Attachment A

1. For the purposes of this Agreement, the “Formula” shall be calculated consistent with the following concepts:

a. The District rate is \$0.3974 per \$1000 of assessed value.

b. Each year the District will receive the amount collected for the year plus delinquent taxes recovered from the previous year. The District will distribute funds when received using the formula described below and shown in the example.

2. The Formula has two components:

a. City Assessed Value Component: The annual distribution to a Library City for properties within its boundaries shall equal the assessed value of such Library City’s properties, as established annually by the Clackamas County Assessor, divided by the total assessed value of all properties in the District. This determines the Assessed Value Percentage Rate for each Library City. Each Library City will receive funds equal to the Assessed Value fund amount multiplied by its individual Assessed Value Percentage Rate.

b. Unincorporated Population Served Component: After calculation of each Library City’s Assessed Value fund amount, the District shall calculate the remaining funds to be distributed (the “Remainder Amount”) and distribute those funds based on the Unincorporated Population Served Percentage Rate based on the Service Area Maps attached to this Agreement as Attachment B. The term “Unincorporated Population” will also include residents of those cities that do not provide library services.

The Unincorporated Population Served Percentage Rate is determined by the number of unincorporated residents served by each City as allocated on the Service Area Maps divided by the total number of unincorporated residents within the District. Each Library City will receive funds equal to the Remainder Amount multiplied by its individual Unincorporated Service Area Percentage Rate.

3. Prior year recovered delinquencies and interest earned: Recovered delinquent taxes combined with any interest earned will be distributed to Library Cities based on the distribution percentage allocations calculated in the previous tax year.

Below are examples of the distribution of funds based on 2008 assessed values and population figures. The spreadsheet assumes the new Gladstone/Oak Lodge and Happy Valley libraries have not yet been constructed.

Library District Distribution Formula

<i>Assessed Value 2008</i>		
Total County Assessed Value (AV)	\$32,936,836,893	100%
Less: Non-Participating City AV	\$(1,239,770,249)	-4%
Equals: Total Library District AV	\$31,697,066,644	96%
Participating Cities:	Assessed Value	
Canby	\$999,941,295	6%
Estacada	\$179,662,976	1%
Gladstone	\$635,886,719	4%
Happy Valley	\$1,508,430,197	9%
Lake Oswego	\$4,756,391,295	28%
Milwaukie	\$1,467,817,328	9%
Molalla	\$409,821,923	2%
Oregon City	\$2,002,572,357	12%
Sandy	\$551,473,814	3%
West Linn	\$2,655,549,376	16%
Wilsonville	\$1,652,437,025	10%
Total Participating Cities AV	\$16,819,984,305	100%
Total Library District AV	\$31,697,066,644	100%
Less: Participating Cities AV	\$(16,819,984,305)	-53%
Equals: Unincorporated AV in District	\$14,877,082,339	47%

<i>Unincorporated Population Served 2008</i>		
Canby	10,221	6%
Estacada	16,802	9%
Gladstone	8,506	5%
Happy Valley (Town Center)	32,373	18%
Lake Oswego	3,305	2%
Milwaukie	10,756	6%
Molalla	15,001	8%
Oregon City	28,015	15%
Sandy	22,236	12%
West Linn	5,691	3%
Wilsonville	3,421	2%
Oak Lodge	28,036	15%
	184,363	100%

<i>Example Distribution Calculation Assuming \$12 million in tax receipts</i>		
Total District Tax Receipts		
Total Tax Collected	\$12,000,000	100%
City Assessed Value	\$6,367,776	53%
Unincorporated Population Served	\$5,632,224	47%

City Distribution of Receipts				
	<i>Assessed Value</i>	<i>Pop Served</i>	<i>Total</i>	
			\$	%
Canby	\$378,562	\$312,248	\$690,810	6%
Estacada	\$68,018	\$513,295	\$581,313	5%
Gladstone	\$240,736	\$259,855	\$500,592	4%
Happy Valley (Town Center)	\$571,067	\$988,984	\$1,560,051	13%
Lake Oswego	\$1,800,693	\$100,967	\$1,901,660	16%
Milwaukie	\$555,692	\$328,592	\$884,284	7%
Molalla	\$155,152	\$458,275	\$613,427	5%
Oregon City	\$758,142	\$855,848	\$1,613,990	13%
Sandy	\$208,779	\$679,302	\$888,081	7%
West Linn	\$1,005,348	\$173,858	\$1,179,206	10%
Wilsonville	\$625,586	\$104,510	\$730,096	6%
Oak Lodge	\$-	\$856,490	\$856,490	7%
	\$6,367,776	\$5,632,224	\$12,000,000	100%

Attachment B

Service population maps are included as Attachment B.

1. The maps divide Clackamas County into library service areas. These areas are based on distance, roads, rivers, travel patterns, etc. and are intended to define where people are most likely to receive library service, and to give a Library City the ability to meet the library threshold standards in Attachment C. Each Library City's service area has been constructed by assigning Census tracts into library service areas. Based on census data compiled every 10 years, the population in each census tract will be verified and then the total unincorporated population within each service area will be used to calculate the Formula.
2. For the continuation of library service to the citizens in the Oak Lodge and Clackamas Corner areas, the service area boundaries and population served totals will not change until the new Happy Valley Library is open and the new Gladstone/Oak Lodge Library is open. As each new facility is opened to the public, the service population will be adjusted to the new agreed-upon boundaries found in this Attachment. The population service area changes and resulting increase in payments for unincorporated population served will take place in the fiscal year following the library opening.

[See attached maps]

Attachment C
Service Standards

The Parties agree that all library service providers shall strive to meet OLA Threshold Standards, with a particular emphasis on:

STAFFING: Provide qualified staff employed by the library as outlined in the table below:

Population Served	Threshold Staffing Level
0 - 2,499	0.5 FTE, with high school diploma
2,500 - 4,999	0.35 FTE/1,000 served. Director has B.A.
5,000 - 9,999	0.35 FTE/1,000 served. Director has B.A.
10,000 - 24,999	0.35 FTE/1,000 served. Director has MLS.
25,000 - 49,999	0.35 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.
50,000 - 499,999	0.33 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.

MATERIALS: Provide the number of volumes in the library's total collection as spelled out in the table below:

Population served	Threshold Materials
0 - 49,999	Material collection of 5,000 items or two items per capita, whichever is greater.
50,000+	Material collection of two items per capita.

ACCESS: Provide and post open hours which fit the community's need, including evening and weekend hours, and provide the minimum standards listed in the table below:

Population served	Threshold
0 - 4,999	20 hours
5,000 - 9,999	30 hours
10,000 - 24,999	40 hours
25,000 +	50 hours

NOTE: Total staffing levels and material volumes may be constrained by current facility size limitations. The Parties understand and agree that a strategic plan that recognizes such size limitations and adjusts staff and material goals accordingly is an acceptable implementation of this standard.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: October 6, 2009
RE: Amendment to MMC Section 2.28.020 Regarding Appointment of a Library Board Member to the Clackamas County Library District Advisory Committee

ACTION REQUESTED

The action requested is adoption of the proposed ordinance amending MMC Section 2.28.020 regarding the City's appointment to the Clackamas County Library District Advisory Committee.

BACKGROUND

At the 2008 General Election Clackamas County voters approved Ballot Measure 3-310, which establishes a countywide library district (District) and permanent tax rate in Clackamas County.

The Ballot Title, Question, and Summary were accompanied by an Explanatory Statement that provided, among other things, that each library in the District "would be required to ensure representation of both city and unincorporated residents on their local library board, ***whose designated member will then serve and represent their library on the District Advisory Board.***" (Emphasis mine.) Section 1.2 of the Cooperative Intergovernmental Agreement Between the Library District of Clackamas County and Member Cities (IGA) provides that the "District Board shall appoint the individual nominated by the Library City ***governing body*** to fill the service area's representative seat." (Emphasis mine.)

Thus, the IGA and the Explanatory Statement appear to be in conflict. The IGA provides for appointment by the governing body, while the ballot measure's Explanatory Statement (Attachment A) provides for an appointment by the local library board from among its members. During negotiations between the cities and the County I pointed out this conflict, stressing that our job was to translate the will of the voters into action, and the representative from the Office of the County Counsel dismissed it without comment.

The material before the voters on November 4, 2008 was as follows: the Ballot Title, the Question, the Summary, and the Explanatory Statement. Approval of the measure does not mean approval of only those portions we wish to implement. It is incumbent on us to translate their wishes into action. Among their wishes was a clear statement that the local library board appointed the member to the District Advisory Committee. The ordinance before you ensures that the City of Milwaukie follows the will of the voters.

Attachments:

1. Library District Measure 3-310 Voters' Pamphlet Explanatory Statement
2. Proposed Ordinance

Measure 3-310

Ballot Title

ESTABLISH A COUNTYWIDE LIBRARY SERVICE DISTRICT IN CLACKAMAS COUNTY

QUESTION: Shall District be formed for countywide libraries to restore hours and retain services; \$0.3974 per \$1000 assessed value beginning FY2009?

SUMMARY: If approved, the "Library Service District of Clackamas County" ("Library District") would be formed. Its territory would be countywide, exempting the cities of Damascus, Johnson City, and that portion of Tualatin within Clackamas County. Creation of the Library District would do the following:

- Provide permanent and dedicated library funding;
- Allow libraries to make basic repairs and library improvements;
- Restore all libraries' ability in the Library District to purchase more books and materials; and
- Prevent reductions in services and closure of some city libraries.

Declining federal funding to counties creates a shortfall for local programs, including libraries. The creation of a Library Service District would ensure a dedicated long-term funding source for library services, allowing libraries to retain educational resources and programs.

The Library District would be governed by the Board of County Commissioners and advised by an independent citizen committee. All of the monies shall be spent on library operations and services. An annual audit is available to the public.

ing for County operation of three libraries serving unincorporated residents. The County also funds the Library Network allowing the libraries to connect electronically, share their collections and work together to more efficiently provide library services.

Rationale for Proposal

However, declining federal funding to counties, including Clackamas County, has created a shortfall for local programs, including libraries. Clackamas County can no longer provide supplemental funding to city libraries or operate the three existing county libraries. The county has announced that, barring new funding, the three county libraries will close on June 30, 2009, and county-provided supplemental funding to city libraries will be reduced by 20% per year for the next five years, ending completely in 2014.

What the New District Would Provide

The creation of a Library District would ensure a stable, dedicated, and long-term funding source for library services, allowing libraries to retain their educational resources and programs. The Library District would implement a permanent rate of \$0.3974 per \$1,000 assessed value to exclusively fund library services. A home assessed at \$200,000 would pay approximately \$79.48 per year. This dedicated funding would allow the libraries in Clackamas County to stay open and continue their programs.

District Governance

The Library District would be governed by the Board of County Commissioners and advised by an independent citizen committee representing each library in the District. Each of these libraries would be required to ensure representation of both city and unincorporated residents on their local library board, whose designated member will then serve and represent their library on the District Advisory Board. An annual audit of District finances would be conducted and made available to the public.

(This information furnished by Christopher B. Storey, Assistant County Counsel.)

Explanatory Statement

If approved, the "Library Service District of Clackamas County" ("Library District") would be formed. Its territory would be countywide, exempting the cities of Damascus, Johnson City, and that portion of Tualatin within Clackamas County.

Current Library Services

The libraries of Clackamas County currently work together to provide important community services, including:

- **Educating youth:** Public libraries shoulder a greater proportion of this role today as school library budgets are cut.
- **Fostering literacy:** Libraries support literacy education efforts by providing teaching resources and space for tutoring.
- **Providing information and referral services:** Libraries provide information in areas of personal interest, research, business development, or to support recreational interests.
- **Serving pre-school children:** Libraries provide educational opportunities by supplying rotating collections of books to pre-school centers, holding weekly story hours and craft events and special programs directed at pre-school children.
- **Serving the elderly and home-bound:** Libraries provide rotating collections housed in retirement centers and direct loan service to home-bound, and provide large print and audio books.
- **Providing cultural opportunities:** Artistic, musical, and cultural experiences are held at libraries usually without fee and libraries in Clackamas County provide "Cultural Passes" so that patrons can take their children to museums and gardens free of charge.

This work is currently supported by annual payments from the County general fund to supplement city libraries and provide fund-

Attachment 2

ORDINANCE NO. _____

A ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AMENDING MMC SECTION 2.28.020 REGARDING THE APPOINTMENT OF A MEMBER TO THE CLACKAMAS COUNTY LIBRARY DISTRICT ADVISORY BOARD

WHEREAS, on November 4, 2008 the electors of Clackamas County approved creation of the Clackamas County Library District; and

WHEREAS, among the statements made in the ballot measure Explanatory Statement was the following: "Each of these libraries would be required to ensure representation of both city and unincorporated residents on their local library board, whose designated member will then serve and represent their library on the District Advisory Board;" and

WHEREAS, Section 1.2 of the Cooperative Intergovernmental Agreement Between the Library District of Clackamas County and Member Cities (IGA) forth the process for appointment of District Advisory Board members as follows: "The District Board shall organize and appoint a District Advisory Committee consisting of one nominee from each Library City consistent with the policies and procedures of Clackamas County and/or the District for advisory committees. The District Board shall appoint the individual nominated by the Library City governing body to fill the service area's seat;" and

WHEREAS, the Explanatory Statement requires appointment by the local library board of one of its members while the IGA requires appointment by the "Library City governing body" but is silent on the need for a local library board member; and

WHEREAS, the City of Milwaukie wishes to conform its process to comply with the conflict between the two processes while maintaining strict adherence to the will of the people as expressed in the ballot measure.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON THAT:

Section 1. MMC Section 2.28.010(E) shall be amended to read as follows: "The library board shall appoint one of its members as the City's representative to the Library District of Clackamas County District Advisory Board, and the city council shall affirm that action and forward it to the District governing body."

Section 2. MMC Section 2.28.010(F) shall be added as follows: "Such other activities as the council may assign."

Section 3. All other sections of 2.28.010 remain as written.

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

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

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney