

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 17, 2008**

CALL TO ORDER

Mayor Bernard called the 2032nd meeting of the Milwaukie City Council to order at 7:04 p.m. in the City Hall Council Chambers.

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

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

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****Clackamas County Plan for the Use of Deadly Force by Police Officers**

Undersheriff Dave Kirby described the District Attorney's Deadly Physical Force Planning Authority pursuant to ORS Section 181.783(7) and ORS 181.783(8). SB 111 was passed in the 2007 legislature and created a Deadly Force Planning Authority in each county. The Planning Authority in Clackamas County included District Attorney John Foote, Sheriff Craig Roberts, West Linn Police Chief Terry Timeus, Clackamas County Sheriff's Office Sgt. Jeff Smith, Oregon State Police Lt. Rich Evans, and citizen member Elaine Krauss. Each Authority had to develop a plan with 6 minimum requirements: education, outreach and training, immediate aftermath, investigation, exercise discretion to resolve issues of criminal responsibility, collection of information including a debriefing after the incident, evaluate the plan, and estimate of the fiscal impacts. The Planning Authority had to conduct at least 1 public hearing before submitting its proposed plan to the governing body, and that was done February 2008. Two-thirds of the governing bodies had to approve the Plan, and the Oregon Attorney General (AG) would consider approving the Plan based on the minimum standards of SB 111. If the AG decided the Plan did not meet the minimum standards, it would have to be revised, and some grant funds would be available.

He believed all agencies in Clackamas County had an adopted policy for the use of deadly force by its police officers but if not had to have one in place by July 1. One important provision of the Plan was that each officer involved in an incident had to be provided with 2 sessions with a mental health professional within 6 months. The officer was only required to attend 1, but 2 had to be offered. Every officer involved in a deadly force incident must not return to work for 72 hours after the incident. Personnel costs incurred were eligible for grants from the Department of Justice. Anyone who may not be directly involved but wished to have counseling as they were affected would be subject to mental health counseling. The conclusions and recommendations resulting were not admissible in any subsequent lawsuit. The intent was that the discussion be open and honest without fear that something said would come back.

Lt. Layng addressed the section of SB 111 that someone from an outside agency be involved in the investigation and the role of the Interagency Major Crimes Team.

Councilor Stone noted the statutory requirement that they needed to see a mental health professional at least 2 sessions. She asked why they had 6 months to do this. It seemed like sooner would be better.

Undersheriff Kirby replied everyone was a little bit different especially in the law enforcement field. Sometimes people were stoic immediately afterward, and it may hit them months later. A few months later things would tend to come home, and they say maybe they would like that second session. He believed that was probably the reason for the timeline, but he deferred to Chief Kanzler or someone involved in the committee discussion as to how that came about.

Councilor Stone said it looked like they were required to have at least 2 sessions, which was great. She asked the typical number of officers used to investigate an incident where deadly force was used.

Undersheriff Kirby replied that was a very good question. The best he could say was that it varied especially immediately. A lot of investigative things needed to be done, so the more bodies the better. The immediate aftermath was the most critical because that was when collection of evidence and things of that nature occurred. Depending on how complicated the investigation was going to be would depend on how many officers stuck with the investigation throughout. In short that was the best answer.

Lt. Layng added in his experience it was not unusual to have 10 to 15 investigators at the scene initially. That could increase or decrease depending the complexity of the investigation. It would depend on the evidence being isolated in a small area or the number of witnesses or neighborhood canvassing that needed to be done.

It was moved by Mayor Bernard and seconded by Councilor Barnes to approve Clackamas County's plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies pursuant to ORS § 181.783(7) and ORS 181.783(3). Motion passed unanimously. [5:0]

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the consent agenda:

- A. City Council Minutes**
 - 1. May 6, 2008 Work Session**
 - 2. May 6, 2008 Regular Session**
- B. Resolution 52-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Making Initial Appointments to the Milwaukie Arts Committee;**
- C. Resolution 53-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the King Road Reconstruction (43rd Avenue to Hollywood);**
- D. Resolution 54-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; Classifying the Fees Imposed by this Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution; and Providing for Cost of Construction Indexing of System Development Charges;**
- E. Resolution No. 55-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract and Issue a Purchase Order with Bizon Landscape Services for Landscape**

maintenance Services in the Amount of \$38,500 per year for a Maximum of Two Years; and

- F. An OLCC Application for 7-Star Market, 10598 SE 32nd Avenue, Change of Ownership**

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- **Cyndia Ashkar, Oregon City**

Ms. Ashkar introduced Mr. Otsyula. He had a master's degree in public administration, and his emphasis was on environmental and natural resource policy and administration. He was an expert on the federal laws of the National Environmental Policy Act (NEPA) and the process we were currently in regarding the proposed plans for transportation for the South Corridor and our special concern central Milwaukie. Mr. Otsyula had worked in the field for 20-years for the States of Washington and Oregon and for private citizens and had his own consulting agency here in Milwaukie. We were really lucky to have that kind of expertise, and he had some things he wished to share. She had some graphics to share. I hear and I forget. I see and I remember. I do and I understand.

- **John Otsyula, Milwaukie**

Mr. Otsyula had been there before, and he agreed to consult with 755 people who signed the petition seeking an alternative to light rail following NEPA requirements.

Ms. Ashkar read from the frequently asked questions in the NEPA document on the federal webpage. It said that in the presentation of the alternatives of which it appeared there was only 1 through central Milwaukie the use of graphics and tabular or matrix format was encouraged. It said in summary the following points were required: one of those was a comparative presentation of the environmental consequences of all the reasonable alternative actions including the preferred alternative. She looked over the Supplemental Draft Environmental Impact Statement (SDEIS) and did not see that. She had a sample of what it would look like.

Mr. Otsyula stated the federal regulations said all viable alternatives that met the purpose and need of the project needed to be studied and presented to the public in such a format that they could make a decision. We were not all planners and did not all know NEPA. It took a technical expert to go through the SDEIS that was produced by Metro and TriMet. Previously some alternatives were looked at earlier last summer. What was looked at was called straw man alternatives. They were alternatives that defeated the purpose. They were not going to fit. If one looked at an alternative that did not work to meet the purpose and need, then it was dismissed. All alternatives were supposed to be considered. He came before the City Council before and had this discussion, Mayor. The purpose of the City Council was to take all alternatives to Metro and not to remove them prematurely. That was what happened with the straw man alternatives. To the extent this project had a local funding nexus it required 40% of the money to come from local jurisdictions. Previously, 2 times this project was voted down by the people specifically for that reason. The funding. In other words people were going to be taxed. To put out 1 alternative with 3 design options was a straw man alternative. It was no-build or the Tillamook branch. Another way to rephrase that was to say if the line did not go through the Tillamook branch the possibilities of it being funded were zero. Now the Federal Transit Administration (FTA) was aware of this. Metro knew this. It was anathema to be discussing stations when there was no decision yet reached on the locally preferred alternative. The locally preferred alternative, furthermore, was not an alternative that was preferred by the local people. It was what

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the agency, in this case Metro and TriMet, preferred. There were several alternatives being offered that the City Council did not take to the South Corridor Steering Committee. He went to the Committee and presented this alternative. The Mayor should recognize that very well. One was the McLoughlin alternative. If you put light rail on McLoughlin the impact to schools and Historic Milwaukie would be minimal. It was within the corridor and would fit the purpose and the need. There was no congestion on McLoughlin. The 2030 projection took in so many assumptions. He could come up with data that showed it different. He would be glad to share that with Metro.

Ms. Ashkar said we were in the 45-day comment period with the SDEIS that ended June 23. What we brought to people if listened to which was supposed to be the purpose of the public comment then we went to the Final and there would be another public comment period after that. Then it was the record of decision with yet another public comment period.

Mr. Otsyula continued. After the Final Environmental Impact Study (FEIS) was published there was a cooling off period in which all of the issues raised, if not addressed at that time, could be raised again. At the time the record of decision was published before even the funding came through we had a right to appeal. In this case he added that he lived in Milwaukie in one of the oldest houses that would probably crumble the first time light rail went by. His son went to the Portland Waldorf School. He had a lot of vested interest. He was not just volunteering his services, but he was very willing to volunteer his services. It was important that he did not see, and he had reviewed a few Environmental Impact Statements, was some detailed reasons why 2 previous times this was voted down. If you explored those and the comparison of impacts to prematurely eliminate viable alternatives, which was at the heart of NEPA, it was really unacceptable.

- **Cheryl Fisher, Clackamas County**

Ms. Fisher addressed light rail in the South Corridor. She felt we were circumventing the federal NEPA process by not including another alignment in the SDEIS.

PUBLIC HEARING

A. 2008 – 2009 Budget Hearing

Mayor Bernard called the public hearing on the 2008 – 2009 Budget and 2009 – 2013 Capital Improvement Plan (CIP) to order at 7:30 p.m.

The purpose of the hearing was to consider resolutions that were required to effect the adoption of the FY 2008 – 2009 Budget and to hear public comment.

Staff Report

Mr. Swanson reported there were 3 actions the City Council would take at this hearing, and he would take each separately. The first was a resolution declaring the City of Milwaukie's election to receive state revenue sharing. This arose from ORS 221.770 that required a resolution of the City declaring its intent to accept state revenue sharing and specifically in this case it was the liquor tax. It also required that the Council hold 1 public hearing to provide written and oral comment to the authority responsible, namely the City Council and allow the public to ask questions of the authority for adopting the budget of the City. It was traditional at this time that the Mayor calls specifically for any testimony, comments, questions, or written testimony with regard specifically to the state revenue sharing. It was the liquor tax currently budgeted as revenue in the amount of \$243,144. Mr. Swanson recommended Mayor Bernard call for testimony at this time on this specific issue for the purpose of either receiving oral or written

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testimony or questions. If there was, the Council should take that into consideration. If there was not, the Council could take action to approve the resolution declaring the City of Milwaukie's election to receive state revenue sharing.

Mayor Bernard called for public comments on the election to receive state revenue sharing, and there was none. There was no correspondence regarding the liquor tax. He closed the public testimony portion of the hearing.

It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution declaring the City's intent to receive state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 56-2008:

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

Mr. Swanson reported the second resolution certified services for state revenue sharing that came out of ORS 221.760 that required that cities in counties over 100,000 in population who received revenues from cigarette, gas, and liquor taxes be required to provide 4 or more of the following municipal services: police protection; fire protection; street construction, maintenance, and lighting; sanitary sewer; storm sewer; planning, zoning, and subdivision control; one or more utility services. This particular resolution outlined the services that were provided so that the City could receive cigarette, gas, and liquor taxes. This next fiscal year cigarette taxes were budgeted as revenue to the general fund of \$35,800. Liquor taxes were budgeted as revenue to the general fund in the amount of \$243,144. State gas tax was budgeted as revenue to the street fund in the amount of \$966,418.

Mayor Bernard called for public comments, and there were none. There was no correspondence. He closed the public testimony portion of the hearing.

It was moved by Councilor Loomis and seconded by Councilor Stone to adopt the resolution certifying services for state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 57-2008:

A RESOLUTION CERTIFYING SERVICES FOR STATE REVENUE SHARING.

Mr. Swanson said the third resolution was adoption of the FY 2008 – 2009 City budget and capital improvement plan (CIP), making appropriations, and declaring and categorizing taxes for fiscal year 2008 – 2009. There were 4 Budget Committee hearings, April 29, May 13, May 21, and June 17. At the May 21, 2008 Budget Committee hearing the budget document was approved with certain changes and established an ad valorem property tax rate for the general fund of \$4.1291 per \$1,000 assessed value and \$578,947 for the public safety debt service fund. The budget did not contain a lot of new items and was status quo. There would be the first full year of implementation of photo radar and red light enforcement. The Poetry Series would be funded out of the general fund. The City applied for a \$450,000 grant for Riverfront Park and included \$100,000 match for that. Mayor Bernard noted in the consent agenda under the street maintenance fund King Road was on the list for this year. The budget before the City Council had a few changes from the budget that was proposed by the Budget Committee, and the City Council had a list of those as Exhibit A. The changes were occasioned because the City did not have a finance director until March, so some things were missed or came in late. Revenues and expenditures balanced in each one. The \$300 item was a lease that was missed in the proposed budget, and the

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\$20,000 item under the general fund was a transfer of parking revenues from facilities that was overlooked. Under street capital and reserve a couple of projects were not completed as planned and would be completed in 2008 – 2009, so that money had to be rolled over. Under wastewater several revenues were missed in the approved budget and were added. The same was true in stormwater system development charges (SDC). The original Vactor truck cost was \$180,000, but due to an error it was listed at \$70,000 in the budget. The actual cost, however, was \$235,000. He noted the first vehicle was purchased in 2001, and it served every operations department at the Johnson Creek Boulevard facility. Under facilities there was the \$20,000 transfer to the general fund he mentioned earlier. It also carried forward the Cash Spot demolition money that Mr. Parkin discussed earlier as part of the CIP. Those were the changes listed in Exhibit A.

Mayor Bernard called for public comments, and there were none. There was no correspondence. He closed the public testimony portion of the hearing.

Mr. Swanson said the real property tax rate remained the same as proposed by the Budget Committee as did the property tax in an amount same as set by the Budget Committee in May.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution adopting the Budget and Capital Improvement Plan, making appropriations, and declaring and categorizing taxes for fiscal year 2008 – 2009. Motion passed unanimously. [5:0]

RESOLUTION NO. 58-2008:

A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING APPROPRIATIONS, AND DECLARING AND CATEGORIZING TAXES FOR FISCAL YEAR 2008 – 2009.

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

Mr. Swanson reviewed the proposed amendments. In June 2006 the City Council was presented with a number of proposed amendments to the Municipal Code and the Comprehensive Plan that were forwarded by the Planning Commission. Among those were a couple of specific additions to the Municipal Code. One of them was Section 19.321.3 that defined major utility facilities that included wastewater treatment plants and decreed that they not be permitted as a community service use and were prohibited in all zones. The second was section 19.321.7 that declared those nonconforming uses, required the removal by December 31, 2015 and established civil penalties in the event that was not accomplished. Of course, they related practically to Kellogg Treatment Plant. When considered in June 2006 his recommendation was because the citizen advisory committee (CAC) process was underway rather than sticking a stick in the hornets' nest that we continue consideration of those along with the Land Use Board of Appeals (LUBA) filed on the adoption of the Comprehensive Plan amendments. Since then the amendments were being considered at the last meeting of each month to keep them alive. The 2 code sections have not yet been adopted by Council. Since the last time these were considered there was a development. The Community Partnership Task Force came up with its recommendations, which he would bring to the Council either at the July 1 or July 15 meeting. Councilor Barnes sat on that Committee. It attempted, and he thought wisely so, to establish a partnership of all providers and users within North Clackamas County. The first meeting of the new group would occur in October, so one of the things he would ask of Council was to support a representative. Because of this development he would ask the Council to continue consideration of adoption of both code sections.

Mayor Bernard understood 19.321.7 said any future sewage treatment plant would not be allowed in the City of Milwaukie.

Mr. Swanson replied 19.321.3 made any major utility facility a prohibited use in every zone. 19.321.7 required that any use prohibited by 19.321.3 prior to adoption of the section might remain in use only through December 31, 2015.

Mayor Bernard asked why the Council would not want to adopt 19.321.3 if the group determined building a new plant anywhere was cost prohibitive. Could the first one be adopted and the second held off for discussion at a later date?

Mr. Swanson thought that was an excellent question and would respond on July 15. He would discuss the suggestion with the City Attorney as it might impact the LUBA appeal. It might be seen as somehow preventing some action at Kellogg.

It was moved by Mayor Bernard and seconded by Councilor Chaimov to continue the hearing to July 15, 2008. Motion passed with the following vote: Mayor Bernard and Councilors Loomis and Chaimov voting 'aye' and Councilors Barnes and Stone voting 'no.' [3:2]

OTHER BUSINESS

A. City of Milwaukie-TriMet Umbrella Agreement for Transit Improvements in Downtown Milwaukie 2008 – 2018 – Resolution

Mr. Asher introduced Neil McFarlane, Executive Director for Capital Projects, and Steve Banta, Executive Director for Operations, from TriMet. Staff was seeking Council approval of a memorandum of understanding (MOU) which would be called an umbrella agreement that provided a road map for both the City of Milwaukie and TriMet with regards to Milwaukie as to what kinds of improvements were desired or intended for the City of Milwaukie over the next 10 years. The agreement anticipated there could be 1 very large capital project headed the City's way, and that was the light rail project. In advance of the Portland-Milwaukie light rail project City staff thought it was a good idea to dig down into some detail as to how, where, when, and with whose concurrence various decisions would be made about the project itself and transit facilities in downtown Milwaukie overdue for improvement. It was an attempt to look back and deal with issues here today and a look forward. Mr. Asher was really energized by this. It was not an easy agreement to reach not because the City did not have an excellent partner in TriMet. Any time one looked 10-years out you really started to put yourself out there when anticipating what you were agreeing to. In downtown Milwaukie transit was a very large presence. It has been and will continue to be. It really required a fair amount of good faith and creativity in how things were set up. He appreciated getting Council feedback at the work session and felt this was a running start. Last week they talked a lot about the safety and security section of the agreement. Chief Kanzler spoke the last time, and Mr. Banta was his counterpart here tonight.

Mr. McFarlane provided TriMet's perspective as the public transit provider. TriMet typically did not do this kind of agreement at this stage of a project, so it was new and unique. He also thought it was a terrific idea. Staff came to TriMet with the notion of laying out a roadmap. Many of the projects were complicated and grew in steps and layers. These were the very steps we would go through on various topics related to developing a project. The goal and objective was to be the best partner possible for the City of Milwaukie and to make sure whatever project was developed and molded to fit the community had the best benefits it possibly could and had the least impacts possible. That was the object. It could only be done by working closely with City Council, businesses, citizens, and neighbors. That was the objective. TriMet tried to live that in the way it developed these projects. Staff was dedicated to the notion of

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outreach and communication because again TriMet thought it was the only way it could be successful in delivering the projects. These projects were also very hard; they had lots of challenges including funding, technical, the railroad, the Oregon Department of Transportation (ODOT), the City of Milwaukie, the City of Portland, and all the agencies that molded the project in a certain way. This was a very early step. He appreciated the MOU's attempt to lay out a good roadmap that provided a list and work program to make sure the project fit Milwaukie to the very best extent possible. That was TriMet's objective and why it was important to support its adoption.

Mr. Asher said one way to think about this was an umbrella agreement because it was intended to address other agreements. There was the benefit of TriMet's experience in some regard because TriMet had built light rail projects in other communities. They built a few. They actually had a way of going through the light rail process with the communities, with the cities. It was blind to him as it probably was to most people who you actually dealt with regarding street closures and business impacts. How did you deal with safety and security? We talked a lot about that. How did you deal with things like quiet zones that were important to us before we signed up for the project? It gave a place to state all the expectations. We have been going through a light rail process for the last several years, and a lot of legitimate concerns had come up in the community not about light rail yes or no but about the conditions under which it would be built and integrated into the community. Mr. Asher and the rest of staff felt those needed a place to go. TriMet needed to acknowledge them, and there needed to be a statement of intention as to how those were dealt with. It was an MOU because there was no way to drill down through all of the details and all of those agreements right now. The best thing that we could do was to say there would be a number of agreements. He believed this MOU referenced 11. Assuming we went through the project everything from a funding agreement to a security operations plan, South Precinct establishment and operation agreement, design and construction intergovernmental agreement (IGA), conduct of construction agreement between TriMet and its contractor which Milwaukie would care about, a project maintenance agreement, completion of the FEIS which dealt with mitigations from impacts, a quiet zone application to the Federal Railroad Administration (FRA), if there were a park-and-ride built in downtown Milwaukie the City would want an agreement about how the park-and-ride was built and used, a bus stop shelter area agreement that was the first step toward dissolving the transit center that was a long-established goal in Milwaukie and one TriMet agreed to and which this agreement now began to define how and when we were going to start doing that work, a joint development agreement that talked about how the land was used jointly that TriMet acquired as part of the light rail project for redevelopment that met with the goals of the City, the agency, and the FTA. As much as we could do to note those agreements were forthcoming. Last week Council asked about more definition of when those would be forthcoming and hopefully Council received a list of those years in which we would expect to have those agreements before the Council and working on their execution.

Mr. Asher reviewed the major sections of the MOU. This was a very Milwaukie-centric view of the agreement. He stated all the things TriMet was acknowledging or agreeing to in its statement of intent in these different areas. It was a way of explaining what the agreement was and also complimenting our partner in the process. This was uncharted water for TriMet. Typically they dealt with those issues as they arose in communities and not before projects were even signed off on. Hopefully, this would give everyone some sense of comfort that we were going into a large capital facility project with our eyes open and with TriMet's eyes open about Milwaukie's expectations. The first substantive section after the recitals talked about local match. How would this light rail project be paid for? Both parties acknowledged that \$322 million was already committed to the project. \$322 million was a lot of money from the State and from the

region through a Metropolitan Transportation Improvement Program (MTIP) allocation. Parties further agreed in that section they would make contributions to the local match. In an earlier version there were numbers about the amount of that match. At Councilor Loomis's request those numbers were taken out. The agreement still said there would be a contribution, but it did not say what the contributions would be. He expected the funding IGA would define those amounts and would be executed sometime toward the end of 2008. That was one change that should be noted at the top of page 2.

There was a section on safety and security in which TriMet acknowledged it did have increasing responsibilities as its system grew and that more must be done in Clackamas County. TriMet acknowledged it did not yet have the proper number of officers and that it was planning for more officers for security patrols. We talked a lot over the past year about how many that should be and when that commitment should come. He felt Chief Kanzler was satisfied as were Mr. Asher and Mr. Swanson that we had an acknowledgement that no one really knew what that number was, but it was going to be more than it was today. As this line went into operation this detail would be attended to. TriMet agreed to better coordinate with local law enforcement by incorporating a forum by the opening of the I-205 – Portland Mall Light Rail project in September 2009 that was a precursor to an ultimate obligation which was the South Precinct similar to what TriMet was now doing on the east and west sides. Mr. Banta was present to give more detail if the City Council wished. TriMet agreed to let Milwaukie's public safety officials influence the light rail project at every stage from design, engineering, construction, and operation. Milwaukie will want its people to have a say in not just how it was operated but also how it was designed. The security operations plan would memorialize what was agreed upon. TriMet agreed to security cameras and lighting at all stations and park-and-rides. That was talked about a lot last week. He let TriMet know this Council had a real interest in seeing not just the cameras but also monitoring those cameras. He was not sure how that would be pulled off. The agreement did acknowledge TriMet was interested in researching best practices and applying those best practices to whatever station got built here in Milwaukie. TriMet was also interested in monitoring those stations and park-and-rides. Now it was a question of how to do it. It may be this was the prototype and the place to figure it out. There was new language at the bottom of page 2 on that point as well. TriMet further agreed to work with Milwaukie schools and neighborhood associations about staying safe near light rail.

There was a section on design, engineering, construction, and maintenance in which TriMet acknowledged that the concerns of downtown Milwaukie neighborhoods and schools were unique and that Milwaukie was small and needed to maximize its downtown real estate for redevelopment and not for transit track and infrastructure. They did not know what the final alignment would be, but the City and TriMet were on record as acknowledging this was a small downtown, and the neighborhoods were very close to it. They probably have not built a project in quite that environment before, and there was acknowledgement of that. TriMet acknowledged the Milwaukie community would have an opportunity to participate in the elements designed in Milwaukie especially the station. So where there was some discretion about how things were designed Milwaukie was going to have a chance to participate in that process. There would be a design and construction IGA that would formalize the City's role in the design. It would do more than that but it was something the City would be very interested in. Staff was very interested. It did not want a design sort of just handed to us on stations. He would probably say as well there were certain things, probably most things, which were sort of standard. The City would not be telling TriMet how to space the ballast in the track. The station was certainly important. There would be a conduct of construction plan that TriMet would agree to with its contractor. In that plan the concerns the schools had about construction windows and impacts that our businesses

and neighborhoods had will all have a chance to be worked out prior to construction. As Public Works Director he had several operations.

There was a section on mitigation, and in the agreement both acknowledged that there was a federal process that was quite official and formal that sort of defined impact and necessitated certain mitigations for certain kinds of impacts. He got direction from Councilor Chaimov that we needed more than that. We needed some assurance that TriMet would do its best to mitigate the concerns that they knew this community had about this project. Whether it was safety and security, near schools, freight access in the North Industrial Area, or noise and vibration. Whatever it was TriMet was sort of on notice that Milwaukie had an expectation that we would not only follow the federal guidelines and we would not necessarily be satisfied with the federal guidelines. Frankly, this was one he was really pleased was still in the agreement because it was a big deal for this City as everyone stated. One of the big ones was the quiet zone. In the agreement TriMet and the City agreed to pursue designation of a quiet zone from the FRA and to design the project to give it the best chance of receiving that designation. We want it quiet in the downtown as quiet as it can be. TriMet was not at all opposed to that. It did not have ultimate control over that call so could not agree to making it happen but could agree to doing everything it could to make it happen. There was no disagreement about what the intentions were in downtown Milwaukie.

The next section talked about transit facilities, amenities, and programs. This one was really more about the buses that were here today, and we expected to continue to be here more than the light rail project. There was a connection if the light rail project was built. If there was a station at Lake Road then there would be a lot of people making bus and transit connections in downtown Milwaukie. We needed to think forward to how bus traffic and bus transfers happened in downtown Milwaukie. There has been tortuous path with buses in downtown Milwaukie. Where those bus stops were. Where the buses laid over. The quality of the facility. The quality of the surveillance. All of those issues were long overdue to work out with TriMet. Progress was being made. The section started off by talking about park-and-rides. Any of the park-and-rides proposed on this light rail project would have some impact on Milwaukie. TriMet acknowledged that. It talked about in the event a downtown park-and-ride was built that the City would have some expectation that it would help design that garage so that it would conform with our mixed use requirements for the downtown especially with Main Street frontage. It was a very prominent site. We heard from the Park and Recreation Board that it was a gateway site. It cannot just be a stacked deck structure. Frankly, if there was a parking structure in downtown Milwaukie, the municipality ought to be able to have some use of it. TriMet was acknowledging there was an agreement to share the structure and to share in its design. We talked about dissolving the transit center, and that was affirmed in the agreement. TriMet acknowledged that the agency had changed course with regards to the bus layovers. It was no longer feasible to do that function at Southgate as we thought it was a year ago. There was no answer in this agreement for layovers. There was continued acknowledgement we wanted the layovers to occur in the optimal place which was a place that had the least impact on businesses as far as parking went and the least visual and noise impact on nearby residences. It was a challenge to figure out where to do that and not to have the buses driving all around downtown or driving out of direction. We will continue to work on that. There was a good bit in the agreement that talked about 2 bus stop shelter areas to replace the transit center that we had today. We would like to start working on one of these bus stop shelter areas now. In fact we already had the first couple of meetings and made some improvements behind City Hall to where we could have large sidewalks, architectural shelters, more seating, more lighting, a transit tracker, garbage receptacles, with all of the things a transit facility with this kind of usage deserved. That was going to happen. There was a further agreement here that if an when light rail

opened and we had a station to the south we would replicate that at the southern end of downtown. By decentralizing all of that bus waiting, improving the facilities, and by dealing with the layovers he thought that was what the community expected for dissolving the transit center. This agreement gave us a clear definition of what it was we wanted to do.

The last section talked briefly about joint development that was very important to him and hoped it was to everyone. TriMet acknowledged the light rail project had a regional benefit as people could move around the region more quickly and conveniently especially in this corridor. Mr. Asher thought it strengthened all the communities along the corridor, and it strengthened the region. That in and of itself might not be enough of a reason for Milwaukie to be interested in light rail. There was a very local benefit. He said it many times to the City Council and others there was a benefit to having a light rail station or stations in a community and in the City and even in downtown Milwaukie. That station area development was viewed, for living and working, as an amenity. People were willing to move to places, to relocate and start businesses near those amenities. One of the problems we had as a community was that we had very few tools to help make that sort of thing happen. We have talked about that as well. We did not have a land-banking program. We did not own property. We had some, but not enough to accomplish the objectives of the downtown plan. We did not have incentive programs for developers. We needed help, and this project could actually help. This was a public agency that would have to acquire some property downtown that was going to put in one station at the south end of town. The agency could actually work with us and for us to achieve some of those redevelopment goals. This agreement basically said if you are going to be in our town doing that sort of thing, we would like very much to be working on redevelopment projects with you and named a couple of sites that seemed to make some sense. One was the triangle site near Lake, Main, and 21st, another was the Cash Spot site which the City did own, and the third was the area near Tacoma. Tacoma was not in the City of Milwaukie, but the site just south was. There was no objection from TriMet as they liked to do that kind of thing. They understood that was where most of the local benefit came from in these projects. Mr. Asher thanked the Council for indulging all of that. It was a long list of agreements and acknowledgements. He hoped the Council viewed it the same way as he, Mr. Swanson, the City Attorney, and our partners at TriMet viewed it which was a really solid basis on which to proceed with the light rail project consideration or any of the transit improvements we would want for downtown Milwaukie over the next 10 years. He thanked the City Council and hoped it would take action and adopt tonight. He would entertain questions.

Mayor Bernard said this was not a public hearing, but Council would let people testify on this portion. He had a few people who wanted to testify. First he declared a potential conflict of interest for the record, "I am a property owner near the proposed light rail alignment, but the alignment does not touch any of my properties on Main, Washington, or 21st Street."

- **Ed Zumwalt, Milwaukie**

Mr. Zumwalt had a couple of ideas on the MOU. First of all if you sign a document like this you would have complete faith in the people you were signing it with. In the last 2 weeks he saw quite a bit of distrust. Maybe that was ironed out, but there was a lot of it visible. Maybe that will slow them down before they pull another stunt like pulling out of Southgate. This brought him to the 14 Points which he hated to belabor. Yeas ago when we put that together we thought we had the world by the tail. We had a really wonderful working group, and we trusted those people. He was asked by a couple of Councilors if that was a legal document, and he said it was not. It was a gentleman's agreement, and these were gentlemen. We shook hands. Everything was wonderful.

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APPROVED MINUTES

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Besides it had so much ink he did not see how anyone could weasel out of it. They showed him how. They trampled all over it, and what they did not trample over they were ignoring now. He did expect a lot of help from the City Council with mitigation in the neighborhood. Non-binding or binding. He noticed that a couple members of Council were hung up on that a couple of weeks ago. He would think that any understanding like this – any document like this would have to be non-binding by its very nature because who really knew what anyone understood about any document. Even if it was written up by attorneys. He did not think that was possible. A binding agreement bound the City's \$5 million as small as that amount was into the process. He knew \$5 million was not a lot in a \$1.4 billion project, but it was our money. \$5 million had a way of turning into \$15 million in a 20-year loan or however it was going to be done. It was not really the amount. It was that we voted this down twice in the City, and part of it was for monetary reasons. It was the idea of the thing. That was like someone coming up to you and saying, "look I am going to make your life just peaches and cream. It was going to be wonderful the rest of your life. First, I'm going to tear down your house, steal you wife and your car and your dog, and beat the stuffing out of you. First give me \$1,000." Mr. Zumwalt did not think so. It sounded like a country western song, but this was what they were asking. That \$5 million was nothing to them, but it was to us. Another thing that stuck in his craw a little bit was that it was mentioned a couple of weeks ago that the \$5 million would come back at us 2- to 2-1/2 times very quickly. Mr. Zumwalt was not disputing that. Economists got that figured out, but he wanted to know how that would manifest itself. He knew it would not come back in the taxpayers' pockets. Will it come back into the City's coffers or to the downtown businessmen in soaring land values. He knew it would not come back to Mike and Dion Shepard. The day the City Council said this transit station was going on Lake Road their little American dream and their property values went in the tank for good. That was the end of that little American dream. That was not the last little livability problem in this town before the mess was over with. This neighborhood and schools being so close. We ain't seen nothin' yet. But that was the way it went. Some people came out smelling like roses, and others got stuck with the thorns. His feeling on this was that the City should not sign any agreement with these people. As fine and upstanding as they were and as well meaning as they were things took over. This was too big a thing. They cannot control anything. Whatever they did, whenever they broke this agreement it will be for their benefit and to little old Milwaukie's because after all we needed to think about the region first.

- **Rob Kappa, Milwaukie**

Mr. Kappa said the City Council had some tough choices ahead. He asked as a citizen of Milwaukie to move this project forward. He felt strongly the economic benefit to the City would come back to us. The money invested would come back tenfold. It was not just about changing habits. It was about changing a culture. He did not have to tell the City Council about the cost of gas. It was not going to go below \$4. It might someday go down to \$3.95, but it would not go any cheaper. People needed to have other methods of transportation. It was working families. It was new couples. It was senior citizens. It was middle-income people. The reality was that it was going to be too expensive to maintain the auto culture we have today. While some citizens may feel that the City Council was doing a good thing others will hate your guts. That was the nature of the business the Council was in. He asked them as a Council not to make the mistake he made 10 – 12 years ago. Push this thing through. It was going to be very viable for the City of Milwaukie. The City Council was asking all the right questions. He felt confident the City Council would handle the process. He guessed 3 to 3-1/2 years to complete the process. Asking questions about traffic and safety. When it came to the development of the project during construction there would be disruptions in the

neighborhoods. Sure there would be traffic problems. It was the nature of building a project this big. Move it ahead.

- **Ed Parecki, Milwaukie business owner**

Mr. Parecki brought up a couple of things. He thanked Mayor Bernard for declaring the conflict of interest but believed he made a small mistake in that declaration. Mayor Bernard and everyone else along the line would benefit from the light rail construction. In the event Mayor Bernard would benefit he would have an actual and not a potential conflict of interest. That being said he challenged Mayor Bernard's participation in the discussions and the vote. Barring that he briefly looked over the memorandum of understanding and even though he did not really have a professional background in looking at contracts there were a lot of problems with this memorandum in general. First of all the fact that it was non-binding gave him shivers. So what was the point of having a non-binding agreement if it was non-binding? Anything said in agreement could and would be nullified at any time. He did not understand the point of the agreement. Some of what he called the weasel clauses, there were tons of them in here. Just to name a few first of all was that it was non-binding. Second the fact that there was an open-ended statement that TriMet and Milwaukie would each make contributions toward the local match. That was an open-ended clause. It meant nothing. It meant that you will make contributions to whoever decided what the amounts were. \$5 million did not mean anything. It could go beyond anything. He suggested something along the lines of a not-to-exceed clause, so there would be a limit on the amount the City would be liable for in the future. It also mentioned a few times that more than 1 station could be built. At the last Council meeting they agreed to 1 station at Lake Road. Maybe it should be more specific. Maybe it should say "station" instead of "stations." Otherwise they could come back and say the City Council agreed to "stations" and let's add a couple more. Or one more at Washington or Monroe. Another little point they say, "agrees to exert its best efforts to mitigate." Well they could try the hardest they could -- that was the best effort. Sorry. No more mitigation necessary. They talk about noise and vibration. Again best efforts. They used the words along the quiet zone that agrees to the extent practicable. It was not practicable to do the quiet zone any more, so let's just drop it. The last attempt to do a quiet zone at a cost of over \$300,000 was abandoned. It failed once. Why will it not fail again on this line? They say things like traffic generated at these facilities will be especially important. What did that mean? It was important. We did not want the traffic, but this alignment would create nothing but traffic. Then it was very interesting that they had an understanding that the parties agreed they would enter into a binding agreement. The agreement itself was non-binding, so how can you tell them you would enter into a binding agreement with a non-binding agreement. Again on page 5 they say TriMet agreed to the extent practicable. Sorry it was not practicable so we cannot do it. Those were just a few points Mr. Parecki thought would be interesting. The last one about the joint development they used the term "if appropriate." Again, well sorry this was not appropriate so we will to do that. He looked through the agreement and saw all the clauses that were totally meaningless. It was a non-binding agreement so what was the City Council signing, if anything.

Councilor Stone asked the City Attorney to comment on Mr. Parecki's concern about the Mayor's declaration of a potential conflict.

Mr. Monahan responded the ethics rules say an individual who was a decision maker needed to make a determination whether they had an actual or potential conflict of interest. A potential conflict of interest as when an action that would be taken had a potential, the possibility, but not necessarily a definite benefit. An actual conflict of interest was when one knew it was definite there would be a benefit. Mayor Bernard indicated in the past that by being a property owner in the downtown particularly in

regards to the potential location of stations there might be a potential increase in value to this property. Mr. Monahan thought what Mr. Parecki was indicating was that he felt by entering into this MOU for the City that the Mayor would definitely benefit from a financial benefit from light rail coming to the City. Mayor Bernard had to make his own determination whether he felt that was actual or potential. If there was a challenge and it sounded as if Mr. Parecki made a challenge it was up to the remaining members of City Council to determine whether or not they felt that the Mayor's conflict was potential as he characterized it or actual. The Mayor always had the opportunity if he chose to decide not to participate in a proceeding even when he had a potential conflict of interest. Mr. Monahan believed from the Mayor's actions tonight that he declared it as potential. That was how he understood it, and he was taking part in this proceeding. If the Council members chose to overrule that it was their prerogative. Obviously if the Mayor's declaration was wrong and someone wanted to challenge it at another forum that was their opportunity.

Mayor Bernard added he had declared this potential numerous times. He made the declaration 2 weeks ago and no one in the audience protested in the past. For clarification he heard numerous times that for example the Shepard's value had decreased. Was there not a potential that his property would decrease? It was amazing that one property owner's value decreased because of light rail, but the Mayor's increased. It seemed odd to him. Rumors last week were that TriMet bought his for \$2.9 million, and that was a lot more than Mayor Bernard would ask for it and appreciated it. The potential was there for anyone including every property owner in Milwaukie that the value would increase.

Councilor Stone disagreed it would impact everyone the same. The nearer to the line the more probable it was that in some way the property would be affected. The concern she had heard voiced and that people were wondering about was if there was a potential for an actual conflict of interest with a foreseeable sale of his property for instance with the building of light rail. That was a very real possibility. That concern had certainly been voiced. Mayor Bernard had a potential for an actual conflict of interest down the road. With the subsequent decisions. This was one decision that was going to be made, and there would be several more on top of that. The closer we get to the building of this, the closer Mayor Bernard could come to potentially having an actual conflict of interest.

Mr. Swanson said this was a memorandum of understanding that had a number of elements. Only one of which was the potential for light rail. He underlined potential because we had not even developed an LPA or gone through the FEIS process. If he remembered correctly a simple way to look at potential versus actual conflict of interest was that potential conflict of interest was one that could result in pecuniary benefit. An actual conflict of interest was one that would result in a pecuniary benefit. One had to look at it in terms of the action that was being taken tonight which was a memorandum of understanding. He thought there was still a long way to go before the memorandum of understanding would result in a pecuniary benefit as opposed to could. It seemed to him that the breadth of this thing – we talked about buses, shelters, light rail, development, and we did not talk about it just at that one place. In fact we did not even have an LPA. All we had was a recommended LPA. It seemed to him that the memorandum of understanding was at best only raised the possibility and could result as opposed to would result in a pecuniary benefit. He was not sure the memorandum of understanding resulted in pecuniary benefit to anyone in the sense that it would.

Mr. Monahan thought Councilor Stone portrayed the struggle. A conflict of interest could at one point in time be potential and at another point in time given changes in circumstances could be actual. The determination tonight was not for what the future

was but for what this action was before the City Council whether the Mayor had an actual or potential conflict of interest with this action.

Councilor Loomis commented in response to Mr. Parecki's question about why we were entering into a non-binding agreement he felt it was to identify the City Council's concerns so they could be addressed. That was the main reason for this document. We did not know all the issues or things that would arise. He would not be comfortable in signing a binding document at this time because things changed. It really did come down to trust and a true partnership. At the last City Council meeting he was feeling uneasy just because of the way comments were made by certain folks. He felt better. He was going to meet with Mr. MacFarlane. Get to know him a little bit better and feel at ease with the partnership. That was the crucial thing. Things were going to change as we went along. We were all aware that TriMet was in the transportation business, and that was what TriMet did. Milwaukie was in the City business, and that was what the Council did. Together we wanted it to be a good project and benefit us. He liked what was said at the beginning and wanted to believe it. He hoped they could work toward that relationship. The money part was an issue with him and always had been. Milwaukie did not have a lot of money, and there were a couple of big projects in the City that also had regional benefit and had greater benefit to the citizens of the City of Milwaukie. Money was tight here as it was everywhere. \$5 million did not sound like a lot compared to a \$1.4 billion project, but it was nearly half of the City's discretionary funds. It was a big concern. If we can have a good partnership, we can work through this. If he had the same feeling he knew it was a conflict of interest or potential or actual that was where he was confused. He was not sure it would bring that benefit. You hear it brings benefit on one hand, and others think it brings the whole town down. That was where he struggled a little bit. He needed to listen and pay attention a little more and look into things a little more.

Councilor Barnes agreed with Councilor Loomis. She did not want to go into a binding contract after Mr. Asher explained what we were trying to do. This was the start and building blocks for us. That was how she viewed it. It was like when you start a new school year. You start with everyone on the same page, and you start to build trust. Being together on this project and starting in this way helped build that trust. She looked forward to that. Her big concern was getting the security cameras to a point where we could actually see them on the Internet or on television. ODOT made that available for people who wanted to check road conditions. She knew that under this non-binding agreement TriMet would work at best practices. She volunteered her services this summer to work with them as a person who was actually in the media and worked with cameras. She would be more than happy to work with TriMet and Grady Wheeler to come together on a project that could actually put those cameras through our cable channel. Whenever anyone turned on Milwaukie cable access if we were not playing something that was prerecorded we could actually see those cameras. Or we could go to the Internet like the ODOT cameras. She was willing to work with them to find a way to have that happen.

Mr. Banta appreciated the support and willingness to work with TriMet. His concern was what did the nation do in terms of viewing and monitoring CCTV cameras because it was new for TriMet. Frankly they did a lot of construction under Mr. MacFarlane's guidance and others, and sometimes they liked to look out to other properties to see what they did in terms of incorporating something new into the one infrastructure and the process or procedure. That was his concern about how they went through in doing it. To him it was very different when looking at an ODOT camera for congestion on one of the local thoroughways versus monitoring public's behavior. He was not qualified to speak on behalf of that and was why he recommended doing an industry best practice.

Councilor Stone could well imagine you knew where she was coming from because she definitely made herself known. She really thought we had gone way far away in the direction that was intended 4 or 5 years ago when the 14 Points were developed. This was a regional project. Milwaukie used to be designated as a regional center and that did not sit well with the Council then. It did not sit well with her now. They downgraded us, if you will, to a town center, and then they created what became known as the 14 Points. They did not seem like they were being acknowledged in this particular alignment and what you wanted to do to our town. You needed Milwaukie. The region needed this center. She had a real problem with disrupting the safety and livability of this town and this neighborhood at our expense for the region. She did not think that was right. She thought that the 14 Points needed to be honored. Brian Newman spoke about the 14 Points back in April 2003, and he said there were 4 that were most significant. The main one was that light rail stay out of residential neighborhoods, and it was going right through one. Now how can we do that? How can we say 5 years ago that you have our word that we are not going into your neighborhoods, and now that was where we were going? The second point was that the leadership wanted no mandates on density or other planning requirements if light rail were to come to Milwaukie. Metro had agreed that light rail would come to Milwaukie on its terms with no density requirements. This was what Metro Councilor Brian Newman said, and he would be vigilant this commitment was kept. The third was a stipulation that the downtown transit center be moved specifically to the Southgate Theater site in the North Industrial Area. We even had a date certain for that move, and it never happened. Her point was that things did change. The basic concept of wanting to keep the small town feel was forgotten about that. Milwaukie was a diamond in the rough. We were a very small footprint for a very large transportation project that in her estimation was completely disproportionate to the size and scale of this town and this neighborhood. It had no business coming through this neighborhood like that and especially going behind a school and near 2 other schools. The funding issue was big for her too. People needed to be able to vote on how they wanted their transportation dollars spent and particularly the people in Milwaukie in terms of if they truly wanted this to come to their town. She would like them to answer for her tonight about the possibility of the funding actually happening to extend this line to Park because if it did not go there something needed to be in this agreement that said it would not, in no way, we would not turn the south end of town into a train depot and a bus depot. Right now the transit center was not being moved. It was being made over. It was being upgraded. It was not moved. We still had bus transit and layovers there. It did not sound like it was going to be moved any time soon. She did not want to see a train depot because that really increased the footprint of this project, and she thought it was inappropriate for Milwaukie. Something like that needed to be in the agreement. If we did not extend the line to Park, if there was not the funding to do that, then we will terminate at Southgate. We will not terminate in Milwaukie. She did not want the project to be built without voter approval. If she had that she would support it, but she needed voter approval to have that happen for her.

Councilor Chaimov asked Mr. Asher if he considered the memorandum of understanding to be the best commitment the City could obtain at this stage from TriMet on how TriMet would build and operate any light rail system.

Mr. Asher replied absolutely yes.

Mayor Bernard commented we had come a long way from a numerous page agreement to a blank page to what Mr. Asher described as getting everything we wanted. He was thrilled we had come so far. It was important to note, and Councilor Stone addressed it, that the City of Milwaukie was very concerned it did not end at the south end of downtown. The \$250 million was tied to Milwaukie light rail, and we would

be very concerned should it end there. He was very satisfied and very excited about moving this project forward. Just to address another issue. It was kind of amazing to him how, like Councilor Loomis said, in one area it destroyed the community and in the other one the Mayor got richer. He did not understand how that happened. One neighbor where light rail ended their value dropped 100%, but the Mayor's was raised 100%. He found that difficult to understand. He was excited about this and would vote in favor of the MOU.

Mr. Asher responded many of Councilor Stone's concerns which were shared by some of the community would have a full airing won July 14 and 15 which was where and when the LPA discussion would occur. They scheduled 2 nights to make sure that indeed everyone would have a chance to come and testify and that the Council would be able to have a full chance to discuss and ask questions. A lot of those concerns go right to the project itself and the LPA. That was probably the right time to take that on in earnest. The second was just to respond to the comment about should the terminus be at Lake Road in downtown Milwaukie and how to contend with that. There was language in 3.A of this agreement that talked about minimizing the footprint of the project should that happen and to incorporate and integrate some of those infrastructure facilities in a way that really did maximize downtown Milwaukie real estate for redevelopment. He felt that one was in their minds and addressed as well we can here. He shared the concern about the terminus at Lake Road, and that was the next discussion we needed to have.

Mayor Bernard said members of Council were getting emails, but he was not sure they were going anywhere else. He had been sending them all to Ms. DuVal but did not know about the others. Councilor Barnes agreed to forward them to her who would submit them to Metro.

It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the Mayor to execute a memorandum of understanding with TriMet establishing an umbrella agreement regarding transit improvements in downtown Milwaukie for the years 2008 – 2018. Motion passed with the following vote: Mayor Bernard and Councilors Barnes, Chaimov, and Loomis 'aye' and Councilor Stone 'no.' [4:1]

RESOLUTION NO. 59-2008:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH TRIMET ESTABLISHING AN UMBRELLA AGREEMENT REGARDING TRANSIT IMPROVEMENTS IN DOWNTOWN MILWAUKIE FOR THE YEARS 2008 – 2018.

B. Authorizing the City Manager to Execute a 2-Year Intergovernmental Agreement with Clackamas Fire District #1 to Provide Apparatus and Vehicle Maintenance Services to the District

Mayor Bernard understood from a Battalion Chief that the District Board had voted to extend the agreement.

Mr. Shirey reviewed the agreement. The last time this came before this City Council Mayor Bernard was involved and none of the rest were 10 years ago. It seemed worth spending a couple of minutes review this agreement. He started with telling the Council that the City maintained a fleet services division at the City with 5.5 mechanics and a fleet supervisor. Up until 10 years ago it was a pretty small group. Their responsibilities

included the maintenance of police vehicles and staff cars and specialized public works equipment and trucks. 10 years ago when the City agreed to transfer its fire personnel and equipment to Clackamas County Fire District it entered into a 10-year agreement at the time and took 2 fire mechanics under the City's employ. Since then a third fire mechanic was added. For the last 10 years the City maintained all of the District's equipment, and over time that number grew as well which was one of the reasons the third mechanic was added. To be honest with the Council the reason was not to make money. It was about providing a service he assumed the District asked the City to provide at the time. The agreement expired at the end of this month. The District asked the City to continue to provide the service, and he said he would as long as the City continued to recover the expenses associated with providing the service. The City was not in the business of making money; it was in the business of providing the service and recovering expenses. This agreement did not change dramatically the terms of the earlier agreement over the past 10 years. It was more specific about a few items. The cost of service was added in attachment C which was a spreadsheet that described what we were basing our charges to the District on. That included the recovery of 100% of the salary of the 3 fire mechanics, a portion of the salary of the fleet supervisor, a portion of the salary of the administrative assistant, and recovery for the space occupied generally speaking by the activities of the fire mechanics in the garage and related expenses. The Council may have noticed that the facilities charge was fixed for 2 years. The District felt that while the rest of the City's contributing to the improvements that were made in all of the buildings owned by the City benefited all the parties, it did not really benefit the District. They felt that maybe the City was pushing that a little bit too much and asked the City to cap it. Mr. Shirey agreed to do that but that was also the reason he wanted to come back to this in 2 years to see where we were at in that respect. The District had on the other hand a chance to look elsewhere to see if it could buy this service for less money. Mr. Shirey seriously doubted that was possible but gave them an option to change providers if it wished to do so. Those were really the 2 big changes, and he recommended approval of the IGA.

Councilor Loomis recalled in a work session a list of things, and this was one of them, that said the City had this agreement with the District and was losing money and being taken advantage of. Had that all changed and was everything good? It was a comment by another staff member.

Mr. Swanson thought this went a lot further toward recovering costs. They were looking at a 2-year agreement to test the market to see what else was out there.

Councilor Loomis understood some changes had been made to recover costs in this agreement as opposed to the old agreement.

Mr. Shirey replied that was correct.

Mayor Bernard did not believe the City was complaining it was being taken advantage of, but he did not recall the specific thing. We were losing money on it because we had an agreement. He was concerned the District might hear a comment that the City thought it was being taken advantage of.

Councilor Stone asked the reason for the City's losing money.

Mr. Swanson believed it was probably not costed correctly.

Mayor Bernard understood this was an opportunity to make a correction. The only thing that would go unchanged in the 2 years was the facilities charge.

Mr. Shirey clarified the agreement stipulated that beginning in March of the year preceding the end of the fiscal year the new cost of service agreement would be negotiated. The City's costs continued to go up, and they had to participate in those.

They had not as a part of this agreement ever been clear about this cost distribution in the previous IGA.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution authorizing the City Manager to execute a 2-year apparatus and vehicle maintenance agreement with Clackamas Fire District #1. Motion passed unanimously. [5:0]

RESOLUTION NO. 60-2008:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO-YEAR INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS FIRE DISTRICT #1 TO PROVIDE APPARATUS AND VEHICLE MAINTENANCE SERVICES TO THE DISTRICT.

C. Council Reports

Councilor Chaimov attended the final Poetry Series reading and announced the picnic on July 26 during Milwaukie Daze. On a personal note he was pleased and honored to attend his daughter's college graduation.

Councilor Barnes attended her daughter's high school graduation. She volunteered at the Friends of the Ledding Library Book Sale and was a part of the fundraiser cruise in for a Milwaukie High School student. She would attend the National Education Association Convention in Washington, D.C.

Mayor Bernard noted the success for the Milwaukie Farmers' Market and announced the City Hall Anniversary Celebration on July 11. He was honored to celebrate his father's 80th birthday. On July 1 the Clackamas Fire District would open the South End Station in Oregon City.

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

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 9:01 p.m.

Pat DuVal

Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL JUNE 17, 2008

MILWAUKIE CITY HALL
10722 SE Main Street

2032nd MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|------------|
| I. CALL TO ORDER | |
| Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
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- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
- 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
FROM: MIKE SWANSON, CITY MANAGER
DATE: JUNE 10, 2008 FOR JUNE 17, 2008 COUNCIL MEETING
RE: CLACKAMAS COUNTY PLAN FOR USE OF DEADLY FORCE BY POLICE OFFICERS

ACTION REQUESTED

The action requested by the District Attorney's Deadly Physical Force Planning Authority is approval of its "Plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies" (County Plan) pursuant to ORS Section 181.783(7) and ORS 181.783(8).

BACKGROUND

Senate Bill 111—Plan Addressing Use of Deadly Physical Force (SB 111) was adopted in 2007. (Attachment 1)

It creates a deadly physical force planning authority (Authority) in each county whose membership is as follows: (1) District Attorney; (2) Sheriff; (3) a nonmanagement police officer selected by the District Attorney and Sheriff; (4) a police chief; (5) a representative of the public selected by the District Attorney and Sheriff; and (6) a representative of the Oregon State Police selected by the Superintendent of State Police.

SB 111 requires that the Authority develop a plan consisting of the following: (1) an element dealing with education, outreach, and training regarding the use of deadly physical force for police officers, state and local government attorneys, and members of the community; (2) an element dealing with the immediate aftermath of an incident; (3) an element dealing with the investigation of an incident; (4) an element dealing with the District Attorney's discretion to resolve issues of potential criminal responsibility; (5) an element dealing with collecting information regarding the use of deadly force and debriefing after an incident and revision of the plan; and (6) an estimate of the fiscal impact of each of the above.

The plan must be approved or disapproved by at least two-thirds of the governing bodies to which the plan is submitted, after which it is submitted to the Attorney General, who determines whether or not it is in compliance with the minimum

requirements.¹ Once approved by the Attorney General each law enforcement agency is subject to its provisions unless, among other things, a plan provision(s) conflicts with a city or county charter provision or general ordinance that applies to the law enforcement agency.²

ORS Section 181.786 outlines the minimum requirements of a plan, many of which repeat the elements outlined above. Additions to the elements mentioned above serve to further amplify the requirements. For example, the statute requires that an officer involved in the use of deadly force be provided “at least two sessions with a mental health professional” paid for by the city within six months after the incident. It further provides that the sessions not be substituted for a fitness for duty examination required or requested as a condition of employment.

ORS Section 181.789(5)(a) provides that “[a] law enforcement agency employing an involved officer shall include at least one police officer from a different law enforcement agency in the investigation of the incident in which the involved officer was involved.”

The County Plan appears in large part to simply restate the provisions of SB 111. For example, the provision in the County Plan (Section 2(2)) that addresses the statutory provision requiring counseling is pretty much a restatement of the statutory language. Likewise, the provision of the County Plan that addresses the statutory provisions on debriefing following deadly physical force incidents that result in death (Section 3) simply restates the statutory provision.

The County Plan requires that all officer-involved deadly force incidents resulting in the death of a person be investigated by the Major Crimes Team (Section 1(2)). The County Plan goes on to state that use of the Major Crimes Team fulfills the requirement that at least one officer from an outside agency be involved in the investigation. At last report the Sheriff’s Department was not a participant in the Team. The question then is to what extent will it participate if required to do so by the County Plan?

The County Plan requires that “[a]ll law enforcement agencies to which this plan applies are required to adopt a policy dealing with the use of deadly physical force. At a minimum, the policy must include guidelines for the use of deadly force.” SB 111 requires that each policy be attached to the County Plan. The Milwaukie Police Department has had a written policy in place prior to adoption of SB 111. (Attachment 2) In comparing it to both SB 111 and the County Plan, the City’s plan is more comprehensive.

¹ At this writing I am not sure how many jurisdictions have considered or approved the County plan.

² Each jurisdiction subject to the plan is eligible for grants to reimburse the agency in part for the costs incurred in implementing and revising the plan. My understanding is that the total amount available Statewide is \$300,000. ORS 181.793 provides that should sufficient moneys not be appropriated for making grants, neither the local planning authority nor a law enforcement agency is not required to comply with the more substantive parts of SB 111.

I do not know whether or not other departments within Clackamas County have written policies, but if they do and if they are minimal, this effort missed an opportunity to enhance their efforts. Milwaukie's policy exceeds the requirements of both SB 111 and the County Plan, and I see no downside to approval of the County Plan as it pertains to the City of Milwaukie.

clackcodeadlyforceplan

PLAN ADDRESSING USE OF DEADLY PHYSICAL FORCE

181.781 Definitions for ORS 181.781 to 181.796. As used in ORS 181.781 to 181.796:

(1) "Employ," when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon and a municipal corporation of the State of Oregon, that maintains a law enforcement unit as defined in ORS 181.610 (12)(a)(A).

(3) "Police officer" means a person who is:

(a) A police officer or reserve officer as defined in ORS 181.610; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

[2007 c.842 §1]

181.783 Planning authority; development and approval of plan; compliance; notice upon challenge to plan. (1) There is created in each county a deadly physical force planning authority consisting of the following members:

(a) The district attorney and sheriff of the county.

(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are unions representing police officers within the county, the district attorney and sheriff shall select the police officer from among candidates nominated by any union representing police officers within the county.

(c) If at least one city within the county employs a police chief, a police chief selected by the police chiefs within the county.

(d) A representative of the public selected by the district attorney and sheriff. The person selected under this paragraph may not be employed by a law enforcement agency.

(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

(2) The district attorney and sheriff are cochairpersons of the planning authority.

(3) The law enforcement agency that employs the police officer selected under subsection (1)(b) of this section shall release the officer from other duties for at least 16 hours per year to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities.

(4) The planning authority shall develop a plan consisting of the following:

(a) An element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

(b) An element dealing with the immediate aftermath of an incident in which a police officer used deadly physical force.

(c) An element dealing with the investigation of an incident in which a police officer used deadly physical force.

(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly

physical force.

(e) An element dealing with collecting information regarding a police officer's use of deadly physical force, debriefing after an incident in which a police officer used deadly physical force and revising a plan developed under this subsection based on experience.

(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in paragraphs (a) to (e) of this subsection.

(5) The planning authority shall conduct at least one public hearing in the county before submitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7) of this section.

(6) The planning authority may consult with anyone the planning authority determines may be helpful in carrying out its responsibilities.

(7) The planning authority shall submit the plan developed under subsection (4) of this section, and revisions of the plan, to the governing body of each law enforcement agency within the county except for the Department of State Police and the Department of Justice.

(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7) of this section within 60 days after receiving the plan. The governing body may not amend the plan.

(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.

(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in ORS 181.786. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan:

(a) Each law enforcement agency within the county to which the plan applies is subject to the provisions of the plan; and

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS 181.796.

(11) If the plan is not approved by the Attorney General, the planning authority shall develop and submit a revised plan.

(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject to a provision of a plan approved under subsection (10) of this section that:

(a) Conflicts with a provision of a city or county charter or a general ordinance that applies to the law enforcement agency; or

(b) Imposes an obligation not required by ORS 181.789 if complying with the provision would require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of the people, in order to comply with the provision.

(13) The Attorney General shall periodically publish all approved plans.

(14) A law enforcement agency within a county has a duty to participate in good faith in the planning process of the planning authority for the county.

(15) A person bringing an action challenging the validity or enforceability of a plan approved under subsection (10) of this section shall serve the Attorney General with a copy of the complaint. If the Attorney General is not a party to the action, the Attorney General may intervene in the action. [2007 c.842 §2]

Note: Section 9, chapter 842, Oregon Laws 2007, provides:

Sec. 9. (1) A deadly physical force planning authority created by section 2 of this 2007 Act [181.783] shall submit the plan required by section 2 (4) of this 2007 Act to the governing bodies described in section 2 (7) of this 2007 Act no later than July 1, 2008.

(2) Notwithstanding section 2 (3) of this 2007 Act, for the period of time from the effective date of this 2007 Act [July 27, 2007] to June 30, 2008, the law enforcement agency that employs the police officer selected under section 2 (1)(b) of this 2007 Act shall release the officer from other duties for at least 80 hours to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities during that period of time. [2007 c.842 §9]

181.786 Components of plan. In the plan required by ORS 181.783 (4), a deadly physical force planning authority shall, at a minimum:

(1)(a) Address, under ORS 181.783 (4)(a), the manner in which each law enforcement agency within the county will comply with ORS 181.789 (2); and

(b) Attach a copy of each policy adopted under ORS 181.789 (2) to the plan.

(2) Address, under ORS 181.783 (4)(b), the manner in which each law enforcement agency within the county will comply with ORS 181.789 (3)(a) and (4).

(3) Address, under ORS 181.783 (4)(c), the manner in which each law enforcement agency within the county will comply with ORS 181.789 (5)(a).

(4) Address, under ORS 181.783 (4)(d), the manner in which the district attorney of the county will exercise discretion to resolve issues of potential criminal responsibility.

(5) Address, under ORS 181.783 (4)(e), the manner in which each law enforcement agency within the county will comply with ORS 181.789 (6). [2007 c.842 §3]

181.789 Policy relating to use of deadly physical force; collection of information; rules. (1) As used in this section, "involved officer" means:

(a) A police officer whose official conduct, or official order to use deadly physical force, was a cause in fact of the death of a person. As used in this paragraph, "order to use deadly physical force" means an order issued to another officer to use deadly physical force in a specific incident or an order or directive establishing rules of engagement for the use of deadly physical force for a specific incident.

(b) A police officer whose official conduct was not a cause in fact of the death of a person but whose official involvement in an incident in which the use of deadly physical force by a police officer resulted in the death of a person:

(A) Began before or during the use of the deadly physical force; and

(B) Was reasonably likely to have exposed the police officer to greater stresses or trauma than other police officers experienced as a result of their involvement in the incident before or during the use of the deadly physical force.

(2) A law enforcement agency shall adopt a policy dealing with the use of deadly physical force by its police officers. At a minimum, the policy must include guidelines for the use of deadly physical force.

(3)(a) For each involved officer employed by a law enforcement agency, the law enforcement agency shall pay the costs of at least two sessions with a mental health

professional that are attended by the officer. The sessions must be held within six months after the incident in which the officer was involved.

(b) An involved officer shall attend at least one of the sessions described in paragraph (a) of this subsection.

(c) Sessions with a mental health professional under this subsection may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

(4) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, a law enforcement agency may not return an involved officer to duties that might place the officer in a situation in which the officer has to use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or benefits as a result of the law enforcement agency's compliance with this subsection. Notwithstanding ORS 181.796 (1), a personnel cost incurred in complying with this subsection by a law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS 181.796.

(5)(a) A law enforcement agency employing an involved officer shall include at least one police officer from a different law enforcement agency in the investigation of the incident in which the involved officer was involved.

(b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is not grounds for suppressing evidence obtained in the investigation.

(6)(a) A law enforcement agency shall collect at least the following information relating to incidents in which a police officer's use of deadly physical force resulted in the death of a person:

(A) The name, gender, race, ethnicity and age of the decedent.

(B) The date, time and location of the incident.

(C) A brief description of the circumstances surrounding the incident.

(b) A law enforcement agency shall promptly submit the information collected under paragraph (a) of this subsection to the Department of Justice.

(7) The department shall compile and periodically publish information submitted under subsection (6) of this section. The department, by rule, may specify a form to be used by law enforcement agencies in submitting information under subsection (6) of this section. [2007 c.842 §5]

Note: Sections 10 and 17, chapter 842, Oregon Laws 2007, provide:

Sec. 10. A law enforcement agency shall adopt the policy required by section 5 (2) of this 2007 Act [181.789] no later than July 1, 2008. [2007 c.842 §10]

Sec. 17. Notwithstanding the effective date [July 27, 2007] of section 5 of this 2007 Act [181.789], section 5 (3) to (7) of this 2007 Act applies to incidents occurring on or after July 1, 2008. [2007 c.842 §17]

181.791 Admissibility of conclusions and recommendations. Conclusions and recommendations for future action made by or for a law enforcement agency that result from activities conducted pursuant to the element of a plan described in ORS 181.783 (4)(e) are not admissible as evidence in any subsequent civil action or administrative proceeding. [2007 c.842 §6]

181.793 Compliance. Notwithstanding ORS 181.783, 181.786 and 181.789 (3) and (6), if sufficient moneys are not appropriated to the Department of Justice for purposes of making grants under ORS 181.796, a deadly physical force planning authority created by ORS 181.783 or a law enforcement agency is not required to comply with any requirement of ORS 181.783, 181.786 or 181.789 (3) or (6) for which the law enforcement agency is entitled to reimbursement under ORS 181.796. [2007 c.842 §7]

181.796 Grants; rules. (1) As used in this section, “expenses” does not include personnel costs.

(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice shall make grants to law enforcement agencies to reimburse the law enforcement agencies for expenses incurred in implementing and revising the plans required by ORS 181.783. A grant under this section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

(3) The department may not make a grant under this section to a law enforcement agency unless the law enforcement agency is subject to a plan that has been approved by the Attorney General under ORS 181.783 (10).

(4) The department shall adopt rules necessary for the administration of this section. [2007 c.842 §4]

Note: 181.796 becomes operative July 1, 2008. See section 16, chapter 842, Oregon Laws 2007.

181.798 Expenditure limitation on grant moneys. A law enforcement agency, as defined in ORS 181.781, may not use moneys it receives under ORS 181.796 to supplant moneys from another source that the law enforcement agency has been previously authorized to expend. [2007 c.842 §12]

Note: 181.798 becomes operative July 1, 2008. See section 16, chapter 842, Oregon Laws 2007.

181.799 Expenses; rules. (1) A law enforcement agency that participates in the development of the plan required by ORS 181.783 (4) shall keep track of the expenses it incurs by reason of its participation. For purposes of this subsection and subsection (2) of this section, “expenses” includes, but is not limited to, personnel costs.

(2) The Department of Justice shall award a law enforcement agency one credit for each dollar of expenses incurred before July 1, 2008, by reason of the law enforcement agency’s participation in the development of the plan required by ORS 181.783 (4).

(3) Notwithstanding ORS 181.796 (2), when a law enforcement agency applies for a grant under ORS 181.796, the department, to the extent that funds are appropriated to the department for the purpose, shall make a grant that exceeds 75 percent of the expenses incurred by the law enforcement agency if the law enforcement agency has unused credits awarded under subsection (2) of this section. When the department makes a grant that exceeds 75 percent of the expenses incurred by a law enforcement agency, the department shall deduct the amount of the grant that exceeds 75 percent from the credits awarded the law enforcement agency under subsection (2) of this section.

(4) The department may adopt rules necessary for the administration of this section.
[2007 c.842 §11]

Use of Force

300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.11 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

300.2 POLICY

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

300.21 USE OF FORCE TO EFFECT AN ARREST OR PREVENT AN ESCAPE

Pursuant to Oregon Revised Statutes 161.235, and, except as provided in Oregon Revised Statutes 161.239, a peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes it necessary:

- To make an arrest or to prevent the escape from custody of an arrested person unless the peace officer knows that the arrest is unlawful; or

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For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

It is the policy of this department that use of force by its members be:

- (a) Justified under applicable state law;
- (b) Consistent with the specific policies which follows;
- (c) Professionally accomplished according to approved training and with approved equipment;
- (d) In all cases employed to accomplish a legitimate tactical objective;
- (e) Limited to that degree and duration which the officers reasonably believes necessary to accomplish that objective;
- (f) Applied by the officer and reviewed by the department based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision to use force.

An authorized official of a jail, prison, or correctional facility may use physical force when and to the extent that the official reasonable believes it necessary to maintain order and discipline, or as is authorized by law (Oregon Revised Statutes 161.205(2)).

300.22 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time)
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects)
- (c) Influence of drugs/alcohol (mental capacity)
- (d) Proximity of weapons
- (e) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances)
- (f) Seriousness of the suspected offense or reason for contact with the individual
- (g) Training and experience of the officer
- (h) Potential for injury to citizens, officers and suspects
- (i) Risk of escape
- (j) Other exigent circumstances

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

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300.23 NON-DEADLY FORCE APPLICATIONS

Any application of force that is not reasonably anticipated and intended under the circumstances to create a substantial likelihood of death or very serious injury shall be considered non-deadly force. Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to leg restraints, control devices and Tasers described in Policy Manual §§ 306, 308 and 309 respectively.

300.24 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.25 CAROTID RESTRAINT

The proper application of the carotid restraint hold by a trained officer may be effective in quickly restraining a violent individual however due to the potential for injury, the carotid restraint hold may only be applied under the following conditions:

- (a) The officer shall have received departmentally approved training in the use and application of the carotid restraint.
- (b) The carotid restraint may only be used when the officer reasonably believes that such a hold appears necessary to prevent serious injury or death to an officer or other person(s).
- (c) Any individual who has been rendered unconscious by the use of the carotid restraint shall be promptly examined by paramedics or other qualified medical personnel.
- (d) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid restraint and whether the subject lost consciousness as a result.
- (e) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.
- (f) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in any related reports.

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Use of Force

300.3 DEADLY FORCE APPLICATIONS

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or serious injury under the circumstances.

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction, or threatened infliction of serious bodily injury or death, and, the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, and when feasible, a verbal warning should precede the use of deadly force.

300.4 REPORTING THE USE OF FORCE

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

300.41 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the following circumstances:

- (a) The application of force appears to have caused physical injury
- (b) The individual has expressed a complaint of pain
- (c) Any application of a control device
- (d) The individual has been rendered unconscious

300.42 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of significant pain, or who has been rendered unconscious. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel. If an audio recording is made of contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

300.5 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

Milwaukie Police Department

Use of Force

- (a) Obtain the basic facts from the involved officer(s)
- (b) Ensure that any injured parties are examined and treated
- (c) Separately interview the subject(s) upon whom force was applied
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
- (e) Identify any witnesses not already included in related reports
- (f) Review and approve all related reports

In the event that the supervisor believes that the incident may give rise to potential civil litigation, a separate potential claim form should be completed and routed to appropriate channels.

Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6 USE OF FORCE REVIEW BOARD

The Chief of Police may assemble and convene a Use of Force Review Board to investigate the circumstances surrounding any use of force incident and will designate a member of the Board to serve as chairperson. This board will follow the procedures as outlined in § 302.24.

300.7 ANNUAL REVIEW

An annual review will be conducted on all use of force incidents which resulted in a "Supervisor's Review" or a review by the Use of Force Review Board and an incident report being forwarded through the chain of command. The purpose of the review will be to examine use of force incidents which may be useful in identifying department policy and/or training needs.

Deadly Force Review

302.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to review the use of deadly force by employees of this department.

302.2 REVIEW BOARD

The Milwaukie Police Department is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department to convene a Use of Deadly Force Review Board when the use of deadly force by an employee results in injury or death to a person.

The Use of Deadly Force Review Board will also investigate and review the circumstances surrounding every accidental or intentional discharge of a firearm, whether the employee is on or off duty, excluding range training or recreational use.

The Chief of Police may convene the Use of Deadly Force Review Board to investigate the circumstances surrounding any use of force incident.

302.21 COMPOSITION OF THE BOARD

The Use of Deadly Force Review Board normally would be comprised of the following persons:

- Command representative
- Training Sergeant
- Non-administrative supervisor

The Chief of Police will designate a member of the Board to serve as chairperson.

The chairperson will convene the Use of Deadly Force Review Board as necessary. It will be the responsibility of the division or unit commander of the involved employee(s) to notify the appropriate division commander of any incidents requiring board review. The division or unit commander will also ensure that all relevant reports, documents, and materials are available for consideration and review by the Board.

302.22 RESPONSIBILITIES OF THE BOARD

The Use of Deadly Force Review Board is empowered to conduct an administrative investigation into the circumstances of an incident. The Board membership may request further investigation, call persons to present information, and may request that the involved employees appear before the Board. The involved employees will be notified of the meeting of the Board and may be represented by legal counsel and/or other representation through all phases of the review process.

Absent an expressed waiver from the employee, no more than two members of the Board may ask questions of the involved employee.

The review shall be based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy and procedures, and approved training, to those facts. Facts later discovered but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.

Milwaukie Police Department

Deadly Force Review

If it appears that the actions of the employee(s) may result in criminal charges or disciplinary action by the Department, the Board will conduct the interviews in accordance with department disciplinary procedures. The Board does not have the authority to recommend discipline. The Board shall make a finding and such finding will be limited to one of the following:

- (a) The employee's actions were within department policy and procedures.
- (b) The employee's actions were in violation of department policy and procedure.

A finding will be the consensus of the Board. After the board has concluded, the board chairman will submit written findings of the board to the Chief of Police. After review by the Chief of Police, a copy of the findings will be forwarded to the involved employee's Division Commander for review and appropriate action.

At the conclusion of the review process, a copy of all relevant reports and information will be filed with the Chief of Police.

Once the Board has reached its specific finding, the Training Sergeant may convene the separate training committee to address training needs and recommendations for this department without specific reference to the facts of the incident considered by the Board.

302.3 ANNUAL REVIEW

An annual review will be conducted on all use of force incidents which resulted in a "Supervisor's Review" and an incident report being forwarded through the chain of command. The purpose of the review will be to examine use of force incidents which may be useful in identifying department policy and/or training needs.

Shooting Policy

304.1 PURPOSE AND SCOPE

The purpose of the shooting policy is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This policy is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this policy can only form the basis for departmental administrative actions.

304.11 POLICY

It is the policy of this department to resort to the use of a firearm, when it reasonably appears to be necessary, and generally:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.
- (c) To stop a dangerous animal.
 - 1. In circumstances where officers encounter an unexpected dangerous animal or are surprised by an animal which reasonably appears to pose an imminent threat to the safety of officers or others, officers are authorized to use deadly force to neutralize such a threat.
 - 2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g. dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g. fire extinguisher, Taser, OC Spray, animal control officer). Nothing in this policy shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.
- (d) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical.
- (e) For target practice at an approved range.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a) and (b) above. A specific warning that deadly force will be used is not required by this policy; only that a warning be given if feasible.

304.12 WARNING SHOTS

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the officer reasonably believes that they appear necessary, effective and reasonably safe.

Milwaukie Police Department

Shooting Policy

304.13 MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and are generally discouraged.

- (a) Unless it reasonably appears that it would endanger officers or the public, officers are expected to move out of the path of any approaching vehicle.
- (b) This is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others.
- (c) Officers may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed or intends to commit a felony involving the infliction or threatened imminent infliction of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force when feasible.

304.14 REPORT OF WEAPON DISCHARGE

Except during training or recreational use, any member who discharges a weapon accidentally or intentionally, on or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If on-duty at the time of the incident the member shall file a written report with his/her Division Commander prior to the end of shift unless otherwise directed. If off-duty, as directed by the supervisor but no later than the end of the next regularly scheduled shift.

Officer-Involved Shooting

310.1 PURPOSE AND SCOPE

To establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

Nothing in this policy is intended to increase, modify, or in any way affect the current legal standards nor shall any deviation from these guidelines be considered a breach of any legal standard.

310.2 INVESTIGATION RESPONSIBILITY

This department conforms to the Clackamas County Major Crimes Team for investigating officer-involved shootings.

310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency or interagency team with the approval of the Chief of Police or a Division Commander
- (b) A criminal investigation of the involved officers conducted by an outside agency or interagency team
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

310.4 JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved officers. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings:

310.41 MILWAUKIE POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Milwaukie Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation. The criminal investigation of the officer-involved shooting will be conducted by this agency or an inter-agency team as designated in the Clackamas County Major Crimes Team in conjunction with the District Attorney's Office

310.42 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Milwaukie Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by this agency or an inter-agency team as designated in the Clackamas

Milwaukie Police Department

Officer-Involved Shooting

County Major Crimes Team in conjunction with the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

310.43 MILWAUKIE POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Milwaukie Police Department will conduct timely civil and/or administrative investigations.

310.44 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of officer-involved shootings:

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Civil Investigation	Administrative Investigation
Milwaukie Police Department Officer in this Jurisdiction	Milwaukie Police Department	Clackamas County Major Crimes Team and District Attorney's Office	Milwaukie Police Department Civil Liability Team	Milwaukie Police Department Operations Captain
Allied Agency's Officer in this Jurisdiction	Milwaukie Police Department	Clackamas County Major Crimes Team and District Attorney's Office	Involved Officer's Department	Involved Officer's Department
An officer From this department in Another Jurisdiction	Agency where incident occurred	Clackamas County Major Crimes Team dictated by county where incident occurred	Milwaukie Police Department Civil Liability Team	Milwaukie Police Department Operations Captain

310.5 THE INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting.

310.51 DUTIES OF INITIAL ON SCENE SUPERVISOR

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s)
 1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects

Milwaukie Police Department

Officer-Involved Shooting

1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information
- (e) Provide all available information to the Patrol Sergeant and LOCom (Lake Oswego Communications). If feasible, sensitive information should be communicated over secure networks
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction
 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
 2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

310.52 PATROL SERGEANT DUTIES

Upon learning of an officer-involved shooting, the Patrol Sergeant shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police or a Division Commander.

310.53 NOTIFICATIONS

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Criminal Investigations Division Commander
- District Attorney
- Interagency OIS team
- Operations Captain supervisor
- Civil Liability Response Team
- Psychological/Peer support personnel
- Medical Examiner (if necessary)
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Patrol Sergeant.

310.54 MEDIA RELATIONS

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Patrol Sergeant, Criminal Investigations Division Commander and Public Information Officer in the event of inquiries from the media.

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Division Commander.

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Officer-Involved Shooting

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.55 INVOLVED OFFICERS

Once involved officer(s) have arrived at the station, the Patrol Sergeant should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated
- (b) Discussions with licensed attorneys will be considered privileged as attorney client communications
- (c) Discussions with departmental (e.g., association) representatives will be privileged only as to the discussion of non-criminal information
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any officer upon request
 - 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
- (e) Communications with peer counselors are confidential and may not be disclosed by any person participating in the peer support counseling session (Oregon Revised Statutes 181.860). To be considered confidential communications under the statute, the peer counselor must:
 - 1. Have been designated by a law enforcement agency or employee assistance program to act as a peer counselor, and
 - 2. Have received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment

Care should be taken to preserve the integrity of any physical evidence present on the officer, equipment or clothing (e.g., blood, fingerprints, etc.) until investigators or lab personnel can properly retrieve it.

Detectives shall make reasonable accommodations to the officer's physical and emotional needs.

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. Officers who use deadly physical force that results in the death of a person shall not be returned to regular duty until at least 72 hours immediately following the incident. It shall be the responsibility of the Patrol Sergeant to make schedule adjustments to accommodate such leave.

310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION

310.61 DETECTIVE PERSONNEL

Once notified of an officer-involved shooting, it shall be the responsibility of the Detective Division supervisor to assign appropriate detective personnel to handle the investigation of related crimes in compliance with the Clackamas County Major Crimes Team. Detectives will be assigned to work with the District Attorney's Office and may be assigned to separately

Milwaukie Police Department

Officer-Involved Shooting

handle the investigation of any related crimes not being investigated under the direction of the District Attorney's Office.

All related departmental reports except administrative and/or privileged reports will be forwarded to the designated detective supervisor for approval. Privileged reports shall be maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Division Commander.

310.62 CRIMINAL INVESTIGATION

It shall be the policy of this department to utilize the District Attorney's Office to provide guidance in a criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, detective personnel from this department may be assigned to "partner" with investigators from the interagency investigative team so as to not duplicate efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and Operations Captain ██████████ should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry
- (b) If requested, any involved officer will be afforded the opportunity to consult with a representative of his or her choosing or an attorney, prior to speaking with criminal investigators
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators

310.63 REPORTS BY INVOLVED OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures, but should also be included for reference in the investigation of the officer-involved shooting.

Milwaukie Police Department

Officer-Involved Shooting

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted under the supervision of the Operations Captain and will be considered a confidential peace officer personnel file.

- (a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s).
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, or if there are additional issues that were not covered in the criminal investigation, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview.
 3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview).
 4. The officer shall be informed of all constitutional "Miranda" rights and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions. The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (The Garrity admonishment).
 5. The administrative interview shall be considered part of the officer's confidential personnel file.
 6. The Operations Captain shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 7. The completed administrative investigation shall be submitted to the Use of Deadly Force Review Board, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy .
 8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

310.71 CIVIL LIABILITY RESPONSE

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

Milwaukie Police Department

Officer-Involved Shooting

All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation, but shall be given reasonable access to all other investigations.



John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

April 10, 2008

Chief of Police Larry Kanzler
Milwaukie Police Department
3200 SE Harrison Street
Milwaukie, OR 97222

Dear Chief Kanzler:

RE: Clackamas County Plan for the Use of Deadly Force by Police Officers

Please find enclosed the proposed plan by the Clackamas County Planning Authority for the use of deadly physical force by a police office in the line of duty. The plan has been developed by the Planning Authority which is composed of the following members:

John Foote	Clackamas County District Attorney (<i>Co-Chair</i>)
Craig Roberts	Clackamas County Sheriff (<i>Co-Chair</i>)
Rich Evans	Oregon State Police
Terry Timeus	West Linn Police Chief
Jeff Smith	Clackamas County Peace Officers' Association
Elaine Krauss	Private Citizen

The plan has been written to conform to the requirements of Senate Bill 111 which was passed by the Oregon Legislature in the 2007 session. It also conforms with and supports the Multi-Agency major Crimes Team which is responsible for investigating incidents of officer involved shootings that result in death.

The members of the Planning Authority will be presenting this plan to your city council in the next 6-8 weeks and would like to work closely with you to make sure that presentation is successful. We will be contacting you in the near future to begin that process.

Thank you for your continued support and assistance as we work through this process. We look forward to working with you to make this effort a success.

Sincerely,

John S. Foote

Craig Roberts

RSP Page 27

cc: Planning Authority Members



Plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies

as mandated by Senate Bill 111,
74th Oregon Legislative Assembly

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PREAMBLE

Law enforcement has the vitally important responsibility of protecting the public from crime. The use of deadly physical force by law enforcement personnel is a matter of critical concern to both the public and the law enforcement community. The purpose of this plan is to provide a framework for a consistent response to, and a thorough investigation of, the use of deadly physical force by law enforcement officers within Clackamas County.

This plan will not set specific standards for the use of deadly physical force in each law enforcement agency, nor will it function as a substitute for their individual policies. The goal of this plan is to maintain public confidence in the criminal justice system through open communication about deadly physical force incidents and the advancement of thorough and fair investigations.

EXPLANATION OF PROCEEDINGS

In 2007, the 74th Oregon Legislative Assembly passed Senate Bill 111, which Governor Ted Kulongoski signed into law on July 27. It requires each of Oregon's 36 counties to develop a plan addressing the use of deadly physical force by police officers.

In Clackamas County, District Attorney John Foote and Sheriff Craig Roberts convened a six-member planning authority, as prescribed by law, including: a representative of the Oregon State Police, a police chief from a local city, a representative of a local police union and a member of the public.

The planning authority has developed the following plan. As required by the Senate Bill 111, it addresses the investigation of deadly physical force incidents and their immediate aftermath, a system for gathering and reporting information about such incidents, a description of the district attorney's discretion in resolving questions of criminal responsibility, and a program of education, outreach and training for police officers, government attorneys and the public at large, as well as an estimate of the financial impact of the plan itself.

To become effective, two-thirds of the government bodies in Clackamas County with jurisdiction over a police force must approve this plan as written, along with Oregon Attorney General Hardy Meyers. The law requires final approval of this plan no later than July 1, 2008.

MEMBERS OF THE PLANNING AUTHORITY

John Foote	Co-Chair, Clackamas County District Attorney
Craig Roberts	Co-Chair, Clackamas County Sheriff
Rich Evans	Oregon State Police
Terry Timeus	West Linn Police Chief
Jeff Smith	Clackamas County Peace Officers' Association
Elaine Krause	Private Citizen

ADMINISTRATIVE PROCEDURES

- 1) In the event that a member of the planning authority becomes unavailable, a replacement shall be appointed as provided in Section 2 (1) of Senate Bill 111, Oregon Laws 2007.
- 2) There shall be six voting members of the planning authority. The approval of the plan, or any elements or revisions thereof, shall be by majority vote.
- 3) The presences of two-thirds of the voting members shall be required in order to hold any vote.
- 4) Any meeting of a quorum of the voting members of the planning authority shall be subject to Oregon's open meeting law.

APPLICABILITY OF THIS PLAN

- 1) All law enforcement agencies to which this plan applies are required to adopt a policy dealing with the use of deadly physical force. At a minimum, the policy must include guidelines for the use of deadly physical force. Each agency must adopt such a policy no later than July 1, 2008.
- 2) Having been approved as required by Senate Bill 111, this plan shall be applicable, as set forth herein, to any use of deadly physical force by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Clackamas County, on or after July 1, 2008.

TERMS AND DEFINITIONS

For the purposes of this plan, the following terms and definitions will be used:

Law Enforcement Agency means the Oregon Department of State Police, the Oregon Department of Justice, the district attorney's office, the sheriff's office or a municipal police department, or any other division of government that maintains a law enforcement unit.

The **Plan** is the final document, approved by the planning authority, as well as two-thirds of the governing bodies in Clackamas County having jurisdiction over law enforcement agencies and the Oregon attorney general. All revisions approved by the planning authority shall become part of the plan.

Deadly Physical Force means physical force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury, as described in ORS 161.015 (3).

Serious Physical Injury means a physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ, as described in ORS 161.015 (8).

Physical Injury refers to an impairment of physical condition or substantial pain that does not rise to the standard of a "serious physical injury," as described in ORS 161.015 (7).

Police Officer means a person who is a police officer or a reserve officer as defined by ORS 181.610 and is employed by a law enforcement agency to enforce the criminal laws of Oregon.

Involved Officer means the person whose official conduct or official order to use deadly physical force was the cause in fact of the death of a person. Involved officer also means an officer whose official conduct was not the cause in fact of the death of a person, but who was involved in the incident before or during the use of deadly physical force and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

SECTION 1 — INVESTIGATIVE PROTOCOL

- 1) The use of deadly physical force by police officers may or may not result in a person sustaining a physical injury, a serious physical injury or death. The severity of the outcome will determine the investigative protocol to be followed in each case.
 - a) If deadly physical force is employed by an officer, but no person sustains a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, require the officer to make a report to his or her superior regarding the incident.
 - b) If deadly physical force is employed by an officer and a person sustains either a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, conduct an investigation of the incident. This section does not preclude the agency from seeking the assistance of an outside law enforcement agency in the conduct of that investigation.
- 2) Officer-involved deadly physical force incidents that result in the death of a person in Clackamas County are investigated by the Major Crimes Team, an established inter-agency working group that employs investigators from different police agencies across the county. The Clackamas County Major Crimes Team protocol provides specific details as to the makeup of the team and the conduct of such investigations.
- 3) The involvement of the Major Crimes Team automatically commits investigators from several different agencies to the case, fulfilling the Senate Bill 111 requirement that at least one officer from an outside agency be involved in the investigation.

SECTION 2 — AFTERMATH

- 1) For a minimum of 72 hours immediately following an incident in which a police officer uses deadly physical force that results in the death of a person, as defined by this plan, the law enforcement agency employing that officer shall not return the involved officer to duties that might again require them to employ deadly physical force. The agency may not reduce the involved officer's pay or benefits as a result of its compliance with this requirement.

A law enforcement agency that employs 40 or fewer police officers and complies with this requirement may be eligible for a grant to reimburse the resulting expenses from the Oregon Department of Justice.

- 2) The law enforcement agency that employs the involved officer shall pay for at least two sessions with a mental health professional that are attended by the officer. The sessions must be held within six months of the incident in which the officer was involved, and these sessions may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

The involved officer shall attend at least one of these sessions, or be subject to the suspension or revocation of his/her certification by the Department of Public Safety Standards and Training, consistent with the provisions of ORS 181.662.

SECTION 3 — DEBRIEFING

- 1) All law enforcement agencies shall, where appropriate, conduct a debriefing following the use of deadly physical force by its officers.
- 2) Following all deadly physical force incidents that result in the death of a person, the law enforcement agency employing the involved officer is required to promptly provide the following information, at a minimum, to the Oregon Department of Justice:
 - a) The name, gender, race, ethnicity and age of the decedent, and;
 - b) The date, time and location of the incident, and;
 - c) A brief description of the incident and the circumstances surrounding it.
- 3) The planning authority shall meet once each year, at a minimum, to consider the information gained from debriefings and the information submitted to the Oregon Department of Justice, as described in paragraphs 2 and 3, to revise this plan, if necessary, as described in Section 7.

SECTION 4 — EXERCISE OF DISTRICT ATTORNEY DISCRETION

- 1) When an incident occurs involving the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, the police agency shall promptly notify the District Attorney's office. Notification shall be made to the District Attorney, the Chief Deputy or the Major Crimes Team Coordinator. The District Attorney's office shall consult directly with the Major Crimes Team and the involved police agency regarding the investigation and implementation of the elements of this plan.
- 2) The District Attorney has the sole statutory and constitutional responsibility to make all decisions regarding the review of incidents involving deadly physical force by a police officer that results in death or serious physical injury. The District Attorney shall establish a clear and consistent policy for the review of incidents of the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, including the use or non-use of the Grand Jury process. Pursuant to that policy, if the District Attorney determines that a grand jury review is not appropriate, the District Attorney shall conduct a thorough review of the facts to determine if the use of deadly physical force was justified under Oregon law. The purposes of presenting an officer involved shooting case involving death to a grand jury is to determine if any criminal laws have been violated and to maintain public confidence through an independent review of the facts by an impartial body of private citizens. However, grand jury proceedings are strictly confidential and the details of the grand jury review are not to public inspection. The grand jury may only return a criminal indictment if all the evidence taken together would warrant a conviction of a specific crime by a trial jury.
- 3) Preliminary Hearings (ORS 135.070) may not be used to review an officer's use of deadly physical force. The District Attorney may order an inquest (ORS 146.135-65) to obtain a jury finding of the cause and manner of any death within the county. However, if the District Attorney determines that an inquest is appropriate, it should not be conducted until after the grand jury has conducted its hearing or the District Attorney has determined that no crimes have been committed.

SECTION 5 — EDUCATION, OUTREACH AND TRAINING

- 1) To provide for the education of police officers, government attorneys and the community regarding the use of deadly physical force by the police, as required by Section 4 of Senate Bill 111, the Clackamas County Sheriff's Office will produce and share with other law enforcement agencies within the county such materials as may be useful for this purpose, including a video presentation and accompanying written material.
 - a) Said material will be disseminated to all police officers throughout the county at a time and place each agency deems convenient, provided it occurs within 90 days of this plan's final approval by the Oregon Attorney General, or within 1 year of a new officer's date of hire.
 - b) Said material will be sent within 90 days of this plan's final approval to all attorneys employed by the county, its constituent cities, or the State of Oregon within Clackamas County, to include public defenders.
 - c) Said material will be made available to the community at large through whatever means the sheriff and other chief law enforcement officers deem appropriate and feasible, which are to include, but are not limited to:
 - i) Broadcast on cable access and, if possible, commercial television stations, and;
 - ii) Websites belonging to the Clackamas County Sheriff's Office and other law enforcement agencies, and;
 - iii) Live presentations before the board of county commissioners, as well as the city council or city commission of each constituent city, and;
 - iv) Direct distribution to public safety partners throughout the region, such as fire districts and ambulance companies, and;
 - v) Live presentations before community groups, service organizations and quasi-governmental entities, such as local Rotary Clubs, Community Planning Organizations, Clackamas Community College, and other bodies.

- d) Said material will be provided to members of the media at the Public Safety Training Center. In addition to receiving the material, reporters will be given the opportunity to use the force options simulator and any other available facilities to provide them with a “hands on” experience related to the use of deadly physical force by police officers. Furthermore, the material will be transmitted to the media on all future occasions when a deadly physical force incident occurs in Clackamas County, to provide context for the incident.
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- 2) All major public outreach efforts by all of the law enforcement agencies in Clackamas County, such as the Citizens Informational Sheriff’s Academy, shall include an educational component dealing with the use of deadly physical force by police officers.

SECTION 6 — FINANCIAL IMPACT

At the conclusion of each fiscal year following the adoption of the plan, each agency shall submit to the planning authority a report outlining the fiscal element of each aspect of the plan as described in sections (a) through (e) of section 2, paragraph 4 of Senate Bill 111.

SECTION 7 — REVISION OF THE PLAN

The planning authority will meet once each year, at a minimum, to review the functioning of the plan. If revisions to the plan become advisable, the planning authority shall meet to consider such a revision. If the planning authority adopts a revision, it shall be submitted for approval as provided by statute.

3.
CONSENT AGENDA

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

May 6, 2008

Mayor Bernard called the work session to order at 6:14 p.m. in the City Hall Conference Room.

Council Present: Mayor Jim Bernard and Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone.

Staff Present: City Manager Mike Swanson, Community Development and Public Works Director Kenny Asher, Engineering Director Gary Parkin, Information Coordinator Grady Wheeler, Community Services Director JoAnn Herrigel, Associate Engineer Jason Rice

Downtown Business Organization

This matter was postponed until May 20, 2008.

Extension of Wastewater Collection System to “Dual Interest Area A”

Mr. Asher said at the previous work session staff was directed to talk with people in the area and continue discussions with Clackamas County. They held a meeting and Mr. Wheeler had notes from the meeting that were not included in the staff report. He had been researching the answer to a question posed by Mr. Wheeler, which was, “I understand there was an agreement with the County that Milwaukie would be the lead sewer provider in this area, but why is that important?” Mr. Wheeler said it did not seem important to people living in that area, and he was having a hard time explaining why a piece a paper was reason enough to continue with what appeared to be an unpopular project. He had spent a lot of time trying to better understand the issues of governance – who was providing which services to what areas including this one? He had read multiple reports dating back to 1997 to figure out the answers to that question. There was no way that he could answer Mr. Wheeler’s question or to explain the project to anyone without going through what he felt were the relevant governance issues demonstrating that the City was acting responsibly in pursuing the project and raising the questions about governance.

This would be a capital improvement project (CIP) to extend City sewer to an area generally east. It was also an obligation they would be making good on based on the 1990 Urban Growth Management Agreement (UGMA) with Clackamas County, and it would cause properties to annex to the City over time. The project was not a new idea and it was not a tussle between the City and County. The City has had differences with the County and probably would continue to have some differences on project implementation, but the County was a partner. It was advertising correctly in County materials that the area had been planned for the City to provide sewer service. It was not a project to force property owners to hook up to City sewer and it was not an annexation project. When a city was bordered by open land that was ready for development often times it was annexed. Land did not mind being annexed, but people and neighborhoods did. Oregon State law insisted that government cooperate and work together to understand how urban services were provided in a long-range

fashion. That meant that coordination needed to happen. He thought annexation was unpopular because it raised all the issues related to growth management. People were suspicious of annexation because cities are trying to grow for their own sake, growth was not paying its way, and other devious motives. It had to do with growth and change and that was complicated. There were no easy answers. Finally, like nothing else it raised the “them v. us” dualism, which was rampant in the State. He had to be careful not to suggest Milwaukie was the preferred provider. This was about trying to provide the best services for a region because in the end, that was all that mattered.

He showed some slides and talked about Clackamas County. It showed growth in the northwest part of the County and up to the 2000 growth that went past I-205 and began to fill in. One of the results was that the County took on a dual identity. Clackamas County had the largest rural population in the State and the 3rd largest urban population in the State. Lake Oswego was the largest City in the County. The County had done a lot on the urban side – it had an urban renewal agency, which was typically a city function. 51 cities sponsored urban renewal districts around the state and only 4 counties did. Clackamas County was the only county that had more than 1. The County had had 4 renewal areas, 3 active and 1 recently formed in the subject area. The trend was revealing – in 1970 Clackamas County had the fewest government units of the 3 counties in the region. In 1994, the trends had gone in the opposite direction from the other counties that had lessened the number of governments. Clackamas County was the least populated of the 3 urban counties. Something was going on in Clackamas County over the last 35 years that was different than what was happening in Washington and Multnomah Counties. The question was, had that been intentional, and was it to the betterment of the residents? He did not wish to suggest that having a lot of governmental units was a bad thing, but there were 2 schools of thought. Some would argue that having a lot of districts and not a lot of general-purpose government was a good thing because it gave people more choices and drove entrepreneurialism and innovation, called the market model. There were some who believed that the market model was good government. It was totally appropriate and a preferable form of governance. He discussed the commons model, which basically said the market model overestimated the importance of individual decisions at the expense of collective goods. The collective goods were systems that crossed jurisdictional lines. If you allowed those things to be decided on a house-by-house basis they would be fragmented and under provided. Fragmentation led to inequalities. There was room for opinion. He did not suggest that the overlapping districts in Clackamas County were necessarily bad. One of the effects though was that if you have that situation you are in a difficult spot if you are one of the governed. He shared an example, in 1995 Oak Grove was going to be serviced by 15 local government units and those 15 units were governed by 48 elected officials. If someone wanted to exercise his franchise and participate in the local affairs of Oak Grove there were 90 people that were accountable. There was more process and less efficiency.

It was all relevant to why Milwaukie was trying to make good on the agreement that was in place. Milwaukie had spent more than 2 years trying to resolve a

contract with Clackamas River Water (CRW) to purchase surplus water. On wastewater treatment it had been decades and millions of dollars of studies. Milwaukie was paying \$1 - \$2 million annually for treatment and capital expenditures to the Kellogg Treatment Plant, and customers had no say in how expenditures were made. There were representation issues. City planners and engineers were having issues with Clackamas County approving a small subdivision in Milwaukie's Lake Road area. The County approved a connection to the CCSD sewer system instead of City sewer and allowed a private street, which was in violation of both City and County standards. Milwaukie appealed that decision but lost. That subdivision was in the other Dual Interest area and was supposed to be closely coordinated. The project went forward as proposed by the developer. Milwaukie services the Clackamas Fire District #1 vehicles and is in the process of renegotiating a new contract. The contract over the last 10 years did not cover the costs of that work, so Milwaukie was currently providing a small subsidy. In library services there would be vote on the formation of a District. That raised another issue that services provided in urban areas were used by people living in unincorporated areas. If looking at the governance theory on how to allocate costs and services there was an issue of "free rider" where non-residents use the library without paying. Streets had a different kind of problem. First there were streets that crossed, so coordination was important through difficult. He noted that Clackamas County collected up to a million dollars a year in gas tax due to the City of Milwaukie vehicle registrations. That was how the County received its gas tax money, and there was no way for City to hold the County accountable for reinvesting those receipts for street maintenance in Milwaukie. Law enforcement responded to calls in the County. Urban renewal districts were another issue when they impacted special districts supported by Milwaukie taxpayers like the Fire District. The County collected tax increment from City taxpayers.

In summary there were issues of cross subsidy; free rider (police and library), inefficiencies when governments found themselves in lengthy negotiations (CRW wastewater, fire district), and turf problems when governments began acting on their own behalf to the detriment to better public policy. The Milwaukie Comprehensive Plan says, when it comes to growth, our first objective was to encourage and participate in efforts to define a unified system of governance for the Northwest urban area of Clackamas County. Milwaukie cannot get there alone, so it must work with County and other cities. UGMA was mandated by the State. It attempted to clarify who provided services to specific areas. Clackamas County had UGMA's with all of the cities, but they were not identical. He discussed the differences with other cities' UGMA's. City approval was required for most service district annexations, but Milwaukie's approval was not required if CCSD#1 wanted to annex people to our UGMA. Staff looked at Lake Oswego's UGMA, and it required annexation to the City if a project proposal required City water or sewer, which we don't have in our agreement. It also said that the County would not support annexation of land within in the Dual Interest Area to service districts without Lake Oswego's approval, which was not in Milwaukie's agreement. Milwaukie had some work to do with the County to bring its UGMA up to date and more in line with the City's current needs. The slide he ended with was a question of, how well were we doing as a region? The Dual Interest Area was in the recently formed North Clackamas Revitalization Area with mostly single-family homes on septic systems. The urban renewal report identified blight; streets without curbs, sidewalks, lighting, a stormwater facilities, and they had crime and law enforcement issues. All of that to him described a situation where governance had not been good enough. He did not want to argue that the

City or County should be providing more services in the area, but rather to acknowledge that although there were people living in that area that wanted to stay part of the County that was an area where governance systems had failed. The policies and practices had failed. Breaking agreements and not getting around to the sewer problem would perpetuate the blight conditions, which were exactly the kinds of things the County was admirably trying to address.

Mr. Parkin provided a look at the preliminary design. The boundaries followed the topography of the area. He discussed how the project might be financed. Could the main be installed and as people needed to connect allow them to connect over a 20-year period? Would that provide the funding that the City needed to pay back the state loaned money?

Scott Nebeker, Parametrix, said his role was to look at how this would be funded and if it was financially feasible. They looked at several scenarios including one with the smallest revenue with only a few people connecting over a long period of time. It appeared that 5-6% of properties connecting per year would generate enough revenue to repay the project loan. It would be to the City's and property owner's advantage if about 20-40% connected up front.

Mr. Parkin said a reasonable assumption of connection over a 20-year period was that there would be a need for most of the owners in that area to connect. The project could be funded without impacting Milwaukie's rates.

Mayor Bernard said he assumed one issue for the owners was the increased tax rate, and he would like to see the rate difference.

Mr. Swanson said that Milwaukie's permanent rate \$6.7889. The unincorporated area's rate is \$6.3456. The rate is narrowed with the enhanced law enforcement district.

Councilor Loomis said that they had received a lot of information, and he would appreciate having that information before the meeting. All of those agreements were not one-sided and to put that on someone else was inappropriate.

Mr. Asher said he did was not saying Milwaukie was getting a bad deal. We were a party to the contracts; he was trying to gain a higher perch and was looking at why they were continually negotiating contracts to make up for deficiencies. He was trying to understand why the UGMA mattered and what should be done about it.

Councilor Loomis said he attended the neighborhood meeting. One message that came out was that people were okay with the sewer, but did not want to annex to the City. It was not just the tax rate. People had a deep sense of community there just like in Milwaukie. There were no answers as to the benefits of annexing to Milwaukie. To the County's credit, the residents there were happy with the service. It was deeper than just policy. He would have a hard time supporting annexing at this time. If it were the entire area then he would say 'yes.' He felt there was an opportunity to build goodwill. He did not like drawing a line in the sand for 300 homes.

Mayor Bernard said his problem was the agreement had never been followed, and the City and County were constantly at the battle lines. Those agreements needed to be reviewed so these issues could be resolved. It should be cleaned up to the satisfaction of all parties including the residents. Like any contract you either had to renegotiate or throw it out.

Councilor Loomis thought it was important to sit down and look at the agreement and the language. It should be about the best and most efficient way to provide service.

Mr. Asher said the agreement said the City shall be the lead provider for sewer service and was very specific in Dual Interest Area A. The rest of the agreement was about coordination. We would also need to look at the Comprehensive Plan because that agreement tied in.

Councilor Loomis could not justify that kind of splitting of neighbors. It needed to be considered and discussed.

Mr. Asher said that that would be a change in policy, and they could explore how to do that.

Mayor Bernard said he thought they needed to sit down and resolve the UGMA, which was not worth the paper it was written on. It was more efficient to consolidate services, and we should talk about it.

Councilor Stone had a question about that area. There were 1300 properties on septic within that Dual Interest Area?

Mr. Asher replied that was the number of properties in the whole revitalization area, which was larger than the Dual Interest Area A. It was about 300 homes.

Councilor Stone said she was at the meeting and the sentiment certainly was that they wanted to be left alone. She also heard that some people saw the benefit of sewer being available if septic tanks were beginning to fail. When looking at the location of sewer pipes Milwaukie made the most sense.

Mr. Asher said topographically it made sense and that was why it was laid out that way.

Councilor Stone said if the County and City went forward and wanted to look at connecting people to sewer it was very important to make sure people understood the economics of hooking up with Milwaukie versus the County. It would be good for both sides to help offset the cost and recoup the City's investment by allowing them to connect over time.

Mr. Asher said the model showed that economically the City was competitive with what the County is able to do on the hookup. There was an economic question and there were other issues that had nothing to do with economics. They were issues having to do with identity.

Councilor Stone did not want to give the impression that the City was strong arming people to annex. That perception needed to change.

Councilor Chaimov said his view was informed somewhat by living in an unincorporated area for 20 years. Having moved into Milwaukie he found he was vastly misinformed and had a much different viewpoint on it today. That being said, he agreed with Councilors Stone and Loomis, he was not keen on taking some action that forced someone to join the City when they did not want to. On the other hand there was an agreement that the City would provide sewer, so parties should live up to it. He would not object to pursuing with the County and the affected citizens an agreement that came up with a different economic model. If the question today was do we move forward with project, the answer was 'yes' because we were obligated to do so.

Mr. Asher was prepared to go forward with the project and also prepared to go to the County to discuss that the current agreement did not serve the needs.

This was an issue between the City and County and those caught in between now had to be spectators. They had proceeded with the project because they felt it was the right thing to do, and they were trying to honor this and all agreements. He did not think it was just a matter of being bureaucratic. The agreement was in place for a reason and it might not be right yet, but the idea was to provide better governance through better coordination of service planning and deliverance. In the meantime, staff was trying to put together the best package to be able to get the sewer in the ground at the least cost to the people who would be connecting. He would come back with more of an update on how that project was going and less of the policy information that he spent so much time on.

Councilor Stone asked how the people in the affected area were going to be notified that the City was moving forward with the sewer project? We need to have more of a dialogue with them and need a good plan to do that.

Mr. Asher replied the public outreach part was working okay as evidenced by the number of people at this meeting.

Councilor Loomis want to keep the goal in sight. That area was the largest area in state that was not on sewer, and it needed to be for the environment and for them. The timing was right because of the cost.

Mr. Asher said the North Clackamas Revitalization Area would help lower the costs. In Multnomah County the State that came into the unincorporated area and told property owners they would have to connect to sewer and annex. He thought there was still a lot of bad feeling, but it made it easier for the City of Portland to hide in the skirts of the State. Milwaukie did not have that benefit.

Mayor Bernard adjourned the work session at 7:08 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
May 6, 2008**

CALL TO ORDER

Mayor Bernard called the 2029th meeting of the Milwaukie City Council to order at 7:13 p.m. in the City Hall Council Chambers.

Present: Mayor Jim Bernard, Council President Joe Loomis and Councilors Greg Chaimov, and Susan Stone. Councilor Deborah Barnes absent.

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Information Coordinator Grady Wheeler, Community Development and Public Works Director Kenny Asher, Planning Director Katie Mangle, Engineering Director Gary Parkin

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARD

Del Monte Pet Products and Albertson's K-9 Donation

Mayor Bernard announced that the Milwaukie Police Department received a \$5,000 check from Milk Bone and Albertson's the help reinstate the K-9 program.

A. Recognize Councilor Susan Stone for Service as Council President

Mayor Bernard and Council thanked Councilor Stone serving as Council President since January 2007.

B. Proclamation – Building Safety Week

Councilor Chaimov read a proclamation naming May 5 – 11, 2008 as Building Safety Week in the City of Milwaukie.

C. Proclamation – Safety Break May 14, 2008

Mayor Bernard read a proclamation naming May 14, 2008 as Safety Break Day in the City of Milwaukie.

D. Schools and Light Rail

Mr. Asher said the SDEIS document was published this week, and they were quickly moving into the review and decision phase. There would be many opportunities to address decision-making bodies, but Milwaukie had a special circumstance in that the alignment was close to 3 schools (Portland Waldorf, St. John's, and Milwaukie High School). Before getting into hearings they thought it would be good to address this on their own stage. In addition, Councilor Barnes had requested to hear from other schools that were already living with Light Rail.

Mr. Wheeler said a total of 6 schools were represented. John Harris, Portland Waldorf School Board of Trustees, Jerry Foy and Dr. Julie Voegel, St. John the Baptist Catholic School, Kelly Carlisle, Milwaukie High School Principal, Mike Jacobson and Jerry Bitz, De La Salle North Catholic High School Director of Corporate Internship and Former Member Board of Trustees, Stephanie Hinkel, Trillium Charter School Director, and Joseph Malone, Ockley-Green Middle School Principal. He suggested that each school

make an informal opening statement providing a brief explanation of the school's environment and their concerns or experiences with operation near a light rail alignment. He emphasized that each school was invited and encouraged to say whatever they thought was important for Council to hear. In the case of those who asked for some guidance about what they might want to address he suggested the following topics: What were the expectations before light rail was constructed and what has been the reality? What are your school's safety and security concerns? Have there been any measures taken or strategies put in place to increase safety and security – either by the school or TriMet? Is light rail a resource for students and teachers? How does light rail impact the learning environment – either adversely in the way of noise or vibration, or positively, in the way of providing transit to other learning opportunities? Have there been any incidents?

John Harris read his letter into the record. PWS are ardent supporters of mass transit and had actively participated in the south corridor light rail project. Through that involvement they attempted to get educated on the possible impacts that this project would create on their school. They had formed committees, held meetings, and they had been engaged. They continue to maintain that the SDEIS did not conform to law, and if published may be challenged. Through their process they had concluded; with respect to educational programs and child development PWS education was based on a well-established and innovative understanding of human development. That understanding required that the institution and the teachers create a physical environment conducive to particular developmental ages. PWS seeks to provide in outdoor play and athletic environments an area free from distractions that could get in the way of students. The school strived to provide a distraction free environment into all visual and oral experiences both indoors and out as necessary to Waldorf education. Light Rail, as proposed in such close proximity, would compromise the health and well being of their children. They were concerned about frequent interruptions to all learning situations; they were concerned about pressure from parents and safety and security to enclose their presently open campus. They were opposed to a station at Harrison or Monroe, which create grave safety concerns for students and staff and treacherous traffic conditions for their parking lots potentially making them unusable. The potential alignment and stations would result in millions of dollars of investment to include security patrols, restricted parking access points, vandalism cleanup, sound protection, structural modifications, outdoor area relocations and potential new construction. Finally, from a financial perspective the presence of the light rail alignment so close to PWS and the multi-year construction phase threatened enrollment. The school could easily lose over 10% of enrollment and lead to faculty and staff layoffs. Costs to mitigate concerns would reverse investments and displaced families will move. The time tonight was quite limited and he invited the council to visit the school on several dates for a tour of the facilities.

Councilor Chaimov encouraged Mr. Harris to keep discussions open with Council. He asked if PWS had talked with TriMet or Metro to help mitigate costs.

Mr. Harris replied that they had several one-on-one discussions with Metro and TriMet in their efforts to understand the mitigation process, specifically around when those conversations are appropriate in that process. It had been somewhat unclear when that would occur because the SDEIS had not been published, and the impacts at some level could not be fully stated.

Mayor Bernard asked if Mr. Harris had considered the price of gasoline over the next few years and how students would be able to afford get to school. Light rail could provide an environmentally sound transportation system option for students and staff.

Mr. Harris replied that many things had been considered and many things had been discussed. The cumulative effects, notwithstanding the benefit of mass transportation, of light rail being so close and stations potentially believe given the things said are extreme. He appreciated the time and would very much appreciate and open doors for deeper conversations.

Councilor Stone asked being a supporter of mass transit and light rail then Mr. Harris's solution for light rail placement would be where?

Mr. Harris said that was a deeper conversation than time allowed. He would say Portland Waldorf School had been very consistent in its request and belief that multiple alignments through Milwaukie should be studied in a deeper way. They believed that adhering to NEPA law at a detailed level and not the level at which they had been studied would perhaps create additional options that would be better for the City and community.

Jerry Foy introduced Fr. De Costa, and Julie Voegel and others from St. John's Catholic Church and School. He said Dr. Voegel would be presenting her concerns from a school point of view.

Dr. Julie Voegel said from their Catholic campus perspective she was concerned with traffic congestion, safety, and track location. St. John's was a commuter school and the street most often used was Washington. There were 3 stops currently proposed within a 3-block radius: Washington, Monroe, and Harrison Streets. From her perspective that was overkill, and if we could eliminate those closest to school it would be fantastic. Mainly from the fact that Washington was used by St. John's, Milwaukie Elementary, and Milwaukie High School during the same peak hours of operation as light rail. Congestion on Washington would hinder how the school functioned. Safety issues were huge. From her perspective and others there were safety issues in other areas of the City without guaranteed funding for enough officers. Light rail placement so close to the campus potentially placed their children and families at greater risk from strangers in the neighborhood. Lack of highly visible officers increased potential for crimes of many kinds. Safety of students was prime consideration. A stop at Washington made an unwanted entrance to strangers. The campus could easily be compromised with the next train coming by in 7 minutes. The proposed track location ran through the residential section of Historic Milwaukie, and it would be St. John's preference to move it to McLoughlin. That would move it away from residential and to the business section. She said many potential commuters if the track stayed where it was would require people to park and walk to the station, which would increase the number of vehicles parked on the street consistently used by 3 different schools. That again brought up safety and congestion concerns. She related to the Waldorf concerns about the amount of vibration and noise and how that would impact learning at the school. The distractions would have a huge impact on their classrooms. They were close to the tracks and heard all of the trains that came by, and it was a huge issue from a learning perspective. As a representative for the Catholic school campus it was a huge concern. They had been a cornerstone in Milwaukie for nearly 100 years and would like to remain in the same location and be contributing members of the community.

Kelly Carlisle, Milwaukie High School, thanked the City for engaging the schools in tough conversations about transportation. Council was hearing a theme that schools were feeling vulnerable with light rail introduced to this particular part of the community. There was a high degree of interesting sensitive points that needed thorough consideration. We all wanted to be concerned with student safety and security and had been asked to be objective in our thinking and what it would mean for light rail to be so close to the schools in the community. At Milwaukie High School staff members shared some of the concerns of the other schools. They were concerned about light rail

passengers and unauthorized visitors to their campus and what that would mean to a high school community. MHS had a fairly challenging campus with a lot of entry points available. We need to keep in mind that there are some benefits to the introduction of light rail to our community. We are already sensing a greater need to access TriMet as our vehicle for transportation for field trips. Resources are tighter, it was true, as teachers seek to innovate and bring students to other parts of the community they cannot always do it with school buses so they had found it a blessing to be close to TriMet to access buses and make use of that as resource. They would see the introduction of light rail as a benefit for them as well as community staff members. On the negative side they saw a need for thorough review of the interactions between peak hours of school traffic, and what that meant with the introduction of light rail. He was particularly interested in seeing how few north south arterials we have and what that would mean at peak times when school is just starting or ending. As cars were arriving he saw possibilities for some real deep conversation about what that would mean. Washington, Monroe, and Harrison were on the map, but he also wanted to pay attention to Lake and Main and Lake and 21st Avenue, which would impact Milwaukie High School the most. He appreciated Chief Kanzler's comments that in the design of light rail and the stops there were opportunities to mitigate many of the concerns around safety and security. He said they expect and uphold our City Council to be extremely thorough of the revue of these concerns as well as other stakeholders in the community and if this is going to happen it would happen with the highest degree of concern over the safety of our most vulnerable portion of the population, which involve children, people in wheelchairs, or those that move slowly. When it came to school populations with 3 schools so close together and the interaction with light rail they really do have high expectations of those interacting with Metro and expect them to advocate for the schools in the work that you do. He said they don't have extreme opposition at MHS for the introduction of light rail, but they had concerns. They want to bring those concerns forward to Council and trust that in the next set of conversations that we would be able to have some honest interaction and have good outcomes as a result.

Mike Jacobson and Jerry Bitz, from De LaSalle North Catholic High School located at N. Lombard and N. Interstate in North Portland.

Mr. Bitz was a former board member and board chair of De La Salle. It was a unique school. The students were all from low-income families, and the students all worked one day per week. He said a serious consideration when they decided on their location was the presence of the Interstate MAX line. There was a station on the corner of Lombard and Interstate, and for them that was a big positive. Many of their students used light rail coming and going from school, and because all of their students work one day per week many of them took light rail to go to their jobs. About half of the faculty used light rail. It had been a great strength and they did not consider it a negative safety issue. Their students were safer on light rail and being in the neighborhood of light rail. The biggest safety issue to him was the ride to school in their parents' automobiles. He had heard questions about the impact on traffic and he could assure everyone there was a lot more traffic on N. Lombard and N. Interstate then there was on Washington, Jefferson, and Monroe Streets. Traffic seemed to move, and he personally did not see that as an issue.

Mr. Jacobson was co-principal at De LaSalle, and he had said there had been very few incidents in regard to light rail. Interstate and Lombard was a very active corner with a lot of crime, and he had not seen any spillover into the school grounds from people riding the light rail.

Mr. Bitz said he had been a Milwaukie resident for 47 years. He was a strong advocate of light rail and was looking forward to the presence of light rail. The location of tracks was not that important to him personally. He would rather see the tracks on 21st

Avenue or Main Street. He looked forward to using it and saw it as a positive for Milwaukie as it had been for other communities. Light Rail was a good thing for Milwaukie and a good thing for schools. Safety concerns could be addressed.

Stephanie Hinkle, Trillium Charter School. This school was located at a major stop on the MAX line and was one of the factors for choosing the building that they moved into last fall. It had been an asset to their school. Trillium was a K-12 plus pre-school with 350 students. They were expecting it to be a positive and negative in some ways and in a lot of ways it had not been much of a negative at all. They constantly used light rail for field trips, and many of their students used public transportation to get to school. The few incidents they had were when they first moved in. The school being there changed the way that the community interacted, and the neighborhood improved. There was a park next door that had a lot of crime and that overflowed to the MAX stop. Since the school moved in that had calmed down. She was a big believer in MAX and Trillium was a very urban school. She said that process was critical and having light rail would be an asset to the community in a really huge way. She hoped that Council took the opportunity to not make it divisive. It was not a very loud stop, but they did not have gates. The impact from that would be different from the gates coming down at a stop versus what they had, which was stoplights. It was frustrating at first, but they adjusted to the traffic changes. It all sorted itself out. She felt it would be an asset for the community but where and how it was done was the critical piece.

Mayor Bernard asked if the school was mid-block and if there were any vibration issues?

Ms. Hinkle did not notice vibration because of the number of students. No one had ever remarked on vibration, and she was sure there was vibration but it had not impacted learning. She could sometimes hear a beep, but did not feel vibration.

Councilor Stone said Council went right past the school on the MAX tour. Ms. Hinkle brought up a good point about traffic and a lot of noise. That was an important distinction when talking about putting this near a school. The environment was already congested and chaotic with traffic, and we did not have that situation in Milwaukie.

Ms. Hinkle said that was an important distinction to make. In some ways it made their intersection better.

Councilor Chaimov asked if she learned anything in the N. Interstate naming debacle that she could share with Council to help them get through this process.

Ms. Hinkle learned that the process was the problem. You needed to make sure there were no hidden agendas. The issues could have been resolved if it had not become so divisive. It got so big and dramatic that one could not say anything without feeling like she were taking a side. Ego or hidden agendas should not interfere with process.

Joseph Malone, Ockley-Green Middle School, said his school was completed 6 years ago. At the time light rail was completed there were 460 students. TriMet came to ask him if there was anything that they could do to help with safety and construction. He requested that they not put a station behind the playground, which they honored. He was not sure if it was because he asked them or if it was already in the plan to put it somewhere else. Another plus was that TriMet came into the school and for an entire year put on safety programs giving instructions on how to get on and off light rail. After that process their students were one of the first groups to ride the light rail through that area. It helped them through the process of knowing the dangers and the things not to do when riding light rail. Light rail was an asset to the school because students used it for field trips to go downtown, and he used it to go to PDX. It was very convenient and helped them financially by not having to rent buses. Security at the stops was a plus because if there was an incident occurring the security notified the school. They worked

well with TriMet and that had been positive. They did not hear any sound from the light rail because the school was about 100 yards from the tracks unless students were outside during recess. There was not a station at their stop so he did not see people getting off at their stop. He felt it was important not to have a station close to school settings so people were not hanging around at the station. Approximately 150 students and staff members rode light rail daily. It had been a positive thing and the fact that TriMet dealt with the safety issues for a year went a long way. The nearest stops were about 2-1/2 blocks from their site.

Mayor Bernard asked Mr. Wheeler why he chose these schools.

Mr. Wheeler said they chose Interstate because it was the line most recently completed. They had heard a lot about security through design and thought by choosing the most recent alignment that it would provide the most recent comparison.

Councilor Stone asked if there were any situations on a MAX line similar to the proposal in Milwaukie with the close proximity to schools.

Mr. Wheeler said these schools were good a representation.

Councilor Stone said these schools were on very busy streets. Milwaukie light rail would be apples to oranges in comparison. Was there any comparison of a situation that would be similar?

Mr. Wheeler replied that he did not know any off the top of his head, but he would work with TriMet to find more similar situations.

Mr. Unsworth said there was similarity in Hillsboro, which he would address.

E. Southgate Park-and-Ride Update

Mr. Asher said this was a briefing to explain the status of the Southgate park-and-ride project. TriMet recently told Milwaukie staff that the project was off the books and no longer part of the plans. Mr. Unsworth from TriMet was here and after his synopsis he would come up and go through the chronology and events as TriMet looked at them. He felt Council would want both perspectives to zero in on where we were and where we needed to go. About 6 weeks ago they received notice from TriMet that they were no longer pursuing the Southgate park-and-ride project, Milwaukie's bus layover. The park-and-ride project was an approved project. It was and still is awaiting permits to be built. The layover project had not yet gone through a formal land use process, but it would have had to do that had we been able to identify funding. It did go through a community process, which involved the current Council and neighborhoods in early 2007.

Ms. Mangle said the Southgate park-and-ride project spanned the staff turnover, so when they heard the news from TriMet that the project was likely to go away they prepared a memo, included as attachment 1, on the staff report to help understand what happened in the City's permitting process starting in 2003. They did that because they wanted to understand what happened and make sure that they were able to identify any problems on the City's part. All along this project had a lot of challenges that included site acquisition, issues with surrounding property owners, and easements. The land use application process took a long time partly because of the several hearings at the Planning Commission stage. It was appealed to the City Council and subsequently appealed to the State Land Use Board of Appeals (LUBA). Once approval was gained there was some staff turnover at TriMet and the City. It had been a challenging project for TriMet staff all along and as Mr. Asher mentioned it was still in the building permit process. There was still an open application on hold pending a resolution of a few issues.

Mr. Parkin said stormwater was the only issue with engineering that was contentious. In the beginning TriMet made some general statement that they would meet City stormwater standards. Typically they would agree on a stormwater plan and have an idea of what that water quality facility would look like and what TriMet would need to do. TriMet came to the City last December with plans, and staff made the statement to TriMet that they would need to provide detention for storm drainage, which was a pretty big issue for that large of a site. After a month's dialogue they realized detention was not a requirement. Just the water quality issues needed to be dealt with. They met with engineers and designers and came up with a reasonable and feasible way to address the water quality issues. They never did get an answer back after that meeting, and that was the last interaction City staff had with TriMet.

Mr. Asher said although staff was new they recognized the project history went back more than 6 years. There had been several attempts to get the buses to an off-street location, and this was only the latest chapter. The funds set aside for this project were initially programmed for the former Safeway site now North Main Village. He reminded Council that they went through half a year's worth of process to figure out some solution to bus parking and circulation in downtown Milwaukie. In late 2006, with Phil Selinger, they began a community discussion. They re-established that it was good to have bus service in downtown, but the facilities were inadequate for the amount of use. While we would continue to embrace the notion of downtown Milwaukie as a hub for bus service and connection an upgrade to those facilities was long overdue. They established that there needed to be a dialogue with the community, TriMet, and the City to figure out how to make those improvements and where the buses would park. In anticipation of a light rail study they recognized that something needed to be done as quickly as possible. TriMet came forward and said part of the problem was the size relative to the size of Milwaukie's downtown. That the concentration of bus operations in a center created a larger presence than if operations could be separated. As previously proposed during the working group process TriMet found that that the transit center could be dissolved with functions separated. Council direction was to talk to the neighborhoods and the north industrial area to discuss options. There was near unanimous support for moving the layover to Southgate. The NILUS group said it was not their first choice, but they could live with it. In April 2007 they brought back that report; Council was glad there was unanimity and asked staff to find the money to do it. TriMet made an application on Milwaukie's behalf for Connect Oregon funds, which was not granted, but there was active work towards getting the facility built. They knew it would have to be a separate land use application from the park-and-ride. It was clear from the very beginning of these discussions that TriMet had some discomfort with putting the bus facility up there because it created out of direction travel for buses, which added time and burned fuel. From the beginning they said it would have some impact on service. He confirmed with Mr. Selinger that he was sure he wanted to do it because he knew it would be a popular idea in Milwaukie and TriMet said they would figure out a way to make it happen. That is where they were until March 2008.

Mayor Bernard said maybe we needed to call Jimmy Carter to negotiate the short-term parking. He could hear Mr. Zumwalt saying this was indicative of a TriMet promise that they would not be following through on again. It is indicative to an agreement that in phase 1, the transit center would be moved, and it was not. We were talking about bringing light rail to Milwaukie. We needed an agreement that would protect the community. An agreement was not followed. That is why the agreement about light rail had to be a solid contract. Having an agreement not worth the paper it was written on could not happen. He was very concerned this was another thing out the window. He never thought they should have purchased the land when the seller was not anxious to sell. It would be very important that the TriMet agreement was solid.

Mr. Asher said in anticipation of a solution they are working on an memorandum of understanding (MOU) or an intergovernmental agreement (IGA) between Milwaukie and TriMet that would attempt to address this situation and to come up with another solution and address a host of other issues that has arisen in the community around the introduction of light rail. Mr. Asher and Mr. Swanson had shared a draft of that agreement with TriMet staff and it was scheduled for the next work session agenda. He wanted to mention they were hard at work at that and they were not going to just let that dangle in the hopes that somehow a solution would be arrived at.

Mayor Bernard understood no decision had been made on the locally preferred alternative (LPA), and it did not make a whole lot of sense to make an investment in something that may not be used. However, it definitely needed to be part of the discussion.

Mr. Unsworth went over a PowerPoint presentation to touch on some main points. He talked about the Milwaukie transit center discussion. This discussion had gone over a number of years and essentially was about the Southgate Park and Ride, the transit center function, and what was and was not being done. In 2002, the Environmental Impact Study (EIS) was prepared, and this Council and others picked a Main Street alignment that would have used Southgate. At that time all signs pointed to moving forward with that alignment, so securing the property made sense in the short term for a park-and-ride. They sought to purchase that property for a short-term park and ride and a long-term investment where a transit center was going to be. During that time the Working Group had its effort, and NILUS said it wanted the Tillamook Branch alignment. It never came to fruition because of the Kellogg Lake transit center issues. He showed the 2 different alignments, and the park-and-ride did not work well with that alignment. It had been a long process, and TriMet purchased the property for \$2.03 million which was more than planned. There were many hearings and a LUBA appeal, which added legal fees and a number of traffic analysis costs. Construction costs escalated by almost \$1 million more than anticipated in the 2003 budget. In addition, there was additional scope for a number of good reasons. That included additional lighting, closed circuit television (CCTV), revised stormwater management, and additional administration and construction costs that ended up adding \$1.2 million. TriMet's initial estimates were \$3.1 million. Inflation added another \$900,000, and the park-and-ride scope ended up costing \$5.289 million. The federal grant was \$3.1 million and about \$420,000 remained. The TriMet general fund was being asked to kick in \$2.1 million for the remainder of that construction. General Manager Hansen was concerned about the demands on the general fund. They were spending a lot of money on administration, engineering, and design for the Portland - Milwaukie Light Rail project. The Southgate park-and-ride really only had a meaningful life until 2010 to 2011. That was a lot of money to spend for such a short time use. What TriMet knew from NILUS and previous Council action suggested the Tillamook Branch was the preferred LPA, so the usefulness of Southgate tended to go away. That led the General Manager to the conclusion this might not be right time. Even though there was a commitment made there was short fiduciary responsibility to look at all the general fund needs. This may not be the right thing right now. When the cinemas were there and TriMet had a shared use agreement and paid for part of the lot and the upkeep. It was a very popular park-and-ride with 330-340 riders per day. When that went away TriMet got complaints about people not able to park and ride there. TriMet understood that NILUS felt there was some on-street parking used for park-and-ride, and they wanted to get away from that. When you look at the Milwaukie light rail project you would see there were significant park-and-rides including Tacoma. The project was looking at Lake Road and Park Avenue to get those cars in the right location. The transit center function had been very problematic to locate off-street. There had been tries at Southgate, Safeway site, and Kellogg Lake. In the process when they were giving up on Kellogg Lake they

decided that it was smart to dissolve the transit center function. They would still bring the bus routes into downtown but really the layovers with buses sitting and idling was not conducive to Milwaukie's downtown health. They had been trying to address the layover impacts and improve the quality of the bus stops in the area around it. Since 2004 when this first came up TriMet actually reduced the number of buses laying over in downtown by 36%. In addition when the green line comes out in the fall of 2009 they figured out a way to take the 31 and 32 buses that currently layover in Milwaukie and move them to Oregon City or Clackamas Town Center. By the fall of 2009, 52% of the layovers that occur downtown will no longer happen. 48% of the layovers are still the line 70 that came from the Rose Quarter and line 75, which came from St. Johns. They needed to find a place for those to layover. The Council direction to TriMet was layover at Southgate, but that was out of direction. There were both environmental costs and traffic issues. They wanted to find the best layover location in an environmentally sensitive way. That was the challenge that the General Manager brought back to them. Was there a way that TriMet could team with Milwaukie for a joint transit-oriented development joint that did not drag those buses back through downtown as much? That was where TriMet upper management was at this point. He said TriMet's reputation was on the line because it had said it wanted to move these layovers and get the park and ride going. Mr. Swanson and Mr. McFarlane were involved in working on the MOU that put all of these issues in writing to provide a roadmap for solving some very difficult problems. The next idea was the quality of the bus stop. Right now there was a pretty simple typical bus stop. The idea was to do something more architecturally significant with distinctive shelters, lighting, seating, display signs, public art, and bike facilities that meets the downtown design guidelines. The siting of those bus shelters would be coordinated with City staff and where the light rail stops end up being, which could potentially be near Jackson and Washington Streets. There would be lot of effort in going in to figure those exact locations and how they fit with existing neighborhoods.

Councilor Stone asked about the last slide about the 2 stops for the buses. They would be at the same stops as light rail?

Mr. Unsworth said they were thinking of one on the north side near Jackson and one on the south side and would be predicated on light rail stops. These were not layovers.

Councilor Stone said buses typically had more stops to service the community so why would it be the decision to only have 2 stops.

Mr. Unsworth replied TriMet was trying to minimize the impact on downtown streets and return some parking. The idea was to have fewer but more architecturally significant stops.

Councilor Stone was just concerned about good service up and down the line.

Councilor Loomis was disappointed about the loss of the park-and-ride. People were now parking in the neighborhoods all the way up to Hector Campbell.

Councilor Chaimov asked Mr. Unsworth to take this message back to leadership. TriMet was asking for people in Milwaukie to place an enormous amount of trust in TriMet to the extent TriMet did not now have. TriMet had a very short period of time in which to earn that trust, and he hoped Mr. Unsworth had listened to the concerns from the schools today. It would take significant actions on the part of TriMet to gain the necessary trust.

Mayor Bernard commented every newspaper had been calling him. He addressed his concerns earlier and as he said he understood that since the LPA decision had not been made it did not make sense to make that investment right away. He appreciated Mr. Unsworth's attending the meeting and looked forward to a good, solid agreement for light rail and on real paper.

Councilor Stone observed they were all obviously disappointed and hoped for a solution very soon.

Mr. Unsworth would take all of Council's comments back to TriMet management. TriMet was working diligently with City staff on a weekly basis to make sure that they followed through on these commitments. If the General Manager were here, he would say it was really about these monies and current shortfalls.

CONSENT AGENDA

A. City Council Minutes

- 1. December 18, 2007 Regular Session**
- 2. February 19, 2008 Work Session**
- 3. March 4, 2008 Work Session**
- 4. March 4, 2008 Regular Session**
- 5. March 18, 2008 Work Session**

B. Resolution 36-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, reappointing Mike Miller to the Milwaukie Budget Committee;

C. Resolution 37-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Christie Schaeffer to the Milwaukie Park and Recreation Board; and

D. Resolution 38-2008: A Resolution of the City Council of Milwaukie, Oregon, approving the award of contract for the Washington Street Paving Project (McLoughlin Boulevard to Hwy 224).

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the consent agenda. Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

- Howard Dietrich, Milwaukie business owner**

Mr. Dietrich spoke to Councilor Chaimov specifically. He knew more about Southgate than anyone else. In the hearings before City Council TriMet continued to say it would be for a Southgate park-and-ride and no other purpose such as light rail. They lied time after time in court documents and in the appeal. They said they were not going to use it for light rail. The Main Street alignment showed they would use it for another purpose. His point was if you get in bed with snakes you were going to get bit. You cannot write a document that would control things when people said they could not afford something. That was not what people in business did. If we signed a contract even if it costs us profit or money, they had to do it. He had never heard such a story. People who sat before Council were honest, but if people at the top were crooked it did not matter. Any agreement had to be done by lawyers and it had to be done by Fred Hansen. The City had to have some ability that if TriMet violated the terms of the agreement Milwaukie had some remedy. Light rail was there and the alignment was there, but they cannot live up to the agreement. Milwaukie had to have remedies when people disobeyed something they agreed to do. He dealt with TriMet and they consistently lied at the top, and people down below had to apologize. They did not have people backing it up, and that was not how to do business.

- Ed Zumwalt, 10888 SE 29th Milwaukie**

Mr. Zumwalt was looking through his files and found a letter dated Jan 9, 2004, to John Gessner from Ron Naso, which he read to Council. In the letter Mr. Naso stated he read

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in *The Oregonian* that strong consideration of a Lake Road light rail station presented significant problems for MHS. Whether we like to acknowledge or not transit centers provide a place for socializing and assembling for illegal activity. The old transit center across from Portland Waldorf School had a reputation as a gathering spot for young people with misdemeanor behaviors. Placing a transit center even closer to the High School would create a temptation for a number of students who are looking for something to do other than going to classes. It would provide for easy transport throughout the City of Portland during the school day. The proposed location would also provide an easy source of transportation for young people from around the City who want to access Milwaukie High or its students. There was deep concern about skateboarding at a station at Lake Road. That did not sound like a negative letter. It sounded like a concerned administrator. The next document he brought was a transit center relocation recommendation Planning Commission staff report February 24, 2004. He read from the Working Group community comments. Kelly Carlisle, Milwaukie High School Vice Principal clarified concerns for the Working Group which included that the existing transit center was a negative attractor to students and experience showed the students might obtain drugs at the transit center. He shared a clipping from an *Oregonian* article that said Milwaukie High might coordinate with the police department to lower the truancy rate. The article went on to say what steps they were taking to solve the problem created by 1,032 students having 25,400 unexcused absences in the first semester. His point was why were we bringing a crack train in the middle of our schools. This letter was used as a tool to push the transit center to Kellogg Lake.

- **Ed Parecki, Milwaukie business owner**

Mr. Parecki was here as proud member of the Waldorf community. He read a press release regarding top music honors that went to two Portland Waldorf School students. The students won first prizes in state soloist competition on Saturday at Lewis and Clark. This was the first time in the history of the competition that one student had placed first in two categories. He thought the City would like to know that Portland Waldorf School produced some fine musicians.

Some of the things he heard here tonight that struck him as interesting was that the City Council and the Planning Department had been arguing that the City proposed 3 alignments as part of the NEPA process. It seemed to him that without Southgate there was only one alignment available. Yet again the NEPA process had been violated. Another thing that he noticed was that in a small \$3 - \$5 million project TriMet was predicting a 20% budget overrun. If the same kind of consequences were to be applied to the \$1.4 billion light rail project and the government is giving you 60% of the \$1.4 billion was the City and everyone else involved willing to put up \$860,000 million of our own private funds to fund that project? That was what would happen if we look forward. There were a lot of consequences. Apparently, TriMet did not know how to budget properly.

- **Sandy (did not provide last name or city of residence on sign-in card)**

There about the sewer system and sat in on the work session. Bovine excrement. The neighbors did not wish to be split up, and they all liked being in unincorporated Clackamas County and did not wish to be a part of a city and especially apart of the City of Milwaukie. All of them have had problems in the past and remembered lots of issues some of which she had heard tonight. She could go back 35 years with a lot of the same things being said. After listening to what was said in the work session the one thing that struck her overall was that she believed the City of Milwaukie would be farther ahead to allow Clackamas County to do the sewer. There was precedent for that. The City had already turned over the fire department to a County agency so to speak. Then Milwaukie could spend time and dollars working out what to do with the monstrosity on

the River. That was where the City Fathers wanted it placed, and that was why it is there. They had no idea people would want to see a river. They really wanted a way to keep the young ones from using it for their all-night parties. They were asking do not split up our street; do not split up our neighborhood, but do something now and down the road that would be better for Milwaukie and the surrounding residents and that was to let the County take over putting the sewer system in. Milwaukie needed to spend its time and dollars figuring out what to do with the station on the river.

- **Phillip G. Stose, Clackamas County**

Mr. Stose had a fundamental problem with being annexed to the City of Milwaukie when the County owned the sewage treatment plant. In order for them to get sewer service they had to annex to Milwaukie. He did not quite understand why they had to do that when the County owned Kellogg and Milwaukie wanted the plant out of there. Eventually that plant would go someplace else, and he had heard that it would go out beyond I-205. It was more economical to go downhill, but in the long run Milwaukie would pump it back up hill past their houses on the other side of I-205. It didn't make any sense at all for Milwaukie to be in the sewer business. He understood about the agreement with the County to provide the service, but the residents already asked a number of times in petitions to be incorporated in Clackamas County. He had the petition with him and it was on record in the County. It had been sitting there since 1990 and nothing had ever been done about it. Every few years Council says let's provide sewers up there. How many times will they have to go through this and get it through Milwaukie's head that people don't want to be a part of Milwaukie? You have enough problems – leave us alone and go somewhere else.

- **Jeff Klein, Lewelling Neighborhood Chair**

Mr. Klein represented his Neighborhood, which was adjacent to the area in question for annexation. A lot of work had went into their new neighborhood park and as you stand in the park you can look at a property that is only 5-feet away that is in Clackamas County and see a failing septic system. He agreed with Councilors Loomis and Stone that it was difficult to go to people and tell them you were going to strong arm them. Through negotiations and a bigger view we can see some compromise. He believed those areas needed sewer just from environmental aspect alone. Whether Milwaukie or the County provided sewer it was right to do it now and the City was offering up a plan, which the County was not. He did not see the County stepping forward in a number of areas that need addressing in those particular places. He would love to see that. When you drive down Stanley you can see when you are in Milwaukie and when you are in unincorporated and that was a real difference and he would like to see that changed because it was his neighborhood and he felt he represented a lot of the people even though they aren't necessarily in that neighborhood because they send a lot of kids to Seth Lewelling Elementary School. He hoped we could bridge the gap that is out there and solve some of the environmental issues.

Mr. Swanson said Municipal Code 2.04.360 spoke to this section of the agenda. Among other things it did not encourage comments that were of a personal nature. He had certainly indicated to Mr. Unsworth and Mr. McFarlane that he was disappointed. They were vigorously pursuing an agreement between Milwaukie and TriMet. Early on the word "crook" was used to characterize upper management at TriMet. While violating that section of the Code it was simply not true. He was disappointed this had happened. That was not the message he wanted taken back to Mr. Hansen. The message he wanted taken back was of disappointment.

Mayor Bernard agreed with Mr. Swanson. These are tough economic times and sometimes you had to step back. There are many challenges ahead and decisions that

had not yet been made. In our budget we all had to pull back from some decisions and his understanding was that the application was still at the planning department for future discussion. It was not gone forever. TriMet and Milwaukie citizens had invested a lot of time and energy and hopefully it was just a matter of delay.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Well 8 Rehabilitation Phase 2 – Resolutions

Mr. Parkin said he was asking for authorization to continue the construction of Well #8 rehabilitation, including a contract award for the mechanical portion of the project, designated as phase 2, and project authorization for an additional \$155,000 this year. The project originated with the well failing for multiple reasons. They needed to provide the flow coming from well #8 somewhere and there was a study done 3 years ago to determine if it was more feasible to have the well remain on the same property or move it somewhere else. That study determined that it was cost effective and the best solution to leave it on that site. A year ago the City hired Murray Smith to develop the project plans. The original estimate was \$300,000 to rehabilitate the well on that site. The other alternatives would have increased the costs. Phase 1, well development, was completed, and the City had a higher yield than its water rights., which was positive. The downside was that the cost was quite a bit higher than estimated. The drilling estimate was \$106,000, but the project costs accumulated were \$237,000. Only one contractor responded to the drilling request for proposals (RFP). There are a lot of unknowns when drilling a well, and the contractor ran into some issues. They anticipated the cost in Phase 2 to be around \$125,000 and it came out to \$328,000. Clearly the City got a poor estimate. There was some mechanical work that was not easy to do and there were issues with vulnerability. The bid alternate was \$257,000, which was another piece they had not anticipated in the original estimate for this project. That was a need they were anticipating in the future, but was not a State requirement. It was something that would be good for the City's system because it provided a way to inject chlorine at the wellhead, and if you did have a good mixing there was a possibility of sending too much chlorine. It was a good thing from a water quality standpoint, and could be a requirement in the future. It was cheaper to do it now than to retrofit. He commented on how expensive the contact chamber was.

Councilor Stone asked why it was so expensive?

Mr. Rice replied the contact chamber was a 6-foot diameter corrugated steel pipe. He had some discussions with the bidding contractors and some of them were surprised at the lowest bid because the cost of the pipe alone was \$250,000.

Mr. Parkin met with the Finance Director to work out a budget for this project that relied heavily on the water system development charge (SDC) reimbursement funds that would tap out those funds. Money would not be available for other work. The City had not relied on those funds to do this type of work, and this was not an SDC project. It was using the reimbursement money, which had not been used in the past but could be used to put in new mains and other projects.

Councilor Chaimov noted he had met with Mr. Parkin who very kindly brought him up to speed on this project.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution transferring appropriation authority. Motion passed unanimously among the members present. [4:0]

RESOLUTION 39-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TRANSFERRING APPROPRIATION AUTHORITY.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution approving the award of contract for the construction of Well #8 Phase 2. Motion passed unanimously among the members present. [4:0]

RESOLUTION 40-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF WELL 8 PHASE II.

B. Ordinance Amending Milwaukie Municipal code 2.17 Milwaukie Arts Committee

Mr. Monahan said the Milwaukie Arts Committee was created on March 18, 2008 and was made up of 7 members. Recently Council had held interviews and found a number of qualified and interested people in the community. The proposed ordinance would amend the ordinance adopted on March 18 by increasing the number of members from 7 to 10.

It was moved by Councilor Stone and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 2 to revise Section 2.17 the membership and terms of office of the Milwaukie Arts Committee. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance 2 times by title only.

Ms. DuVal polled the Council: Mayor Bernard and Councilors Stone, Loomis, and Chaimov 'aye.' [4:0]

ORDINANCE 1982

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 2 OF THE MILWAUKIE MUNICIPAL CODE TO REVISE SECTION 2.17, THE MEMBERSHIP AND TERMS OF OFFICE OF THE MILWAUKIE ARTS COMMITTEE.

C. Appointment of Board & Commission Members

It was the consensus of Council to reappoint Teresa Bresaw and Scott Churchill to the Planning Commission and Molly Jo Hanthorn and Ben Horner-Johnson to the Center/Community Advisory Board.

Mayor Bernard suggested either the Arts Committee or Design and Landmarks Committee inventory City monuments.

D. Council Reports

Councilor Chaimov had done some ride-a-longs with the staff that made this City work on a day-to-day basis. He learned some important lessons including that the City was fortunate to have such wonderful people working for it and how much it took to make things run without Council hindrance.

Councilor Stone announced the Library Plant Sale on May 10. The Ardenwald Neighborhood Secret Garden Tour would not be held this year.

Mayor Bernard announced the Farmers' Market would every Sunday rain or shine until October. He had an opportunity to greet former President Bill Clinton in Oregon City and it was a quite an honor. Tomorrow he would attend the Mayor's Institute on City Design along with 7 mayors from around the west.

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Chaimov to adjourn the meeting. Motion passed unanimously among the members present. [4:0]

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

Pat DuVal, Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAKING INITIAL APPOINTMENTS TO THE MILWAUKIE ARTS COMMITTEE.

WHEREAS, the Milwaukie Arts Committee was established by Ordinance 1978 on March 18, 2008; and

WHEREAS, the number of members on the Milwaukie Arts Committee was increased to ten by Ordinance 1982 on May 6, 2008; and

WHEREAS, the Mayor and City Council conducted interviews for Committee positions on April 15, 2008; and

WHEREAS, Section 2.17.030 of the Milwaukie Municipal Code addresses member terms of office by stating, "initially five members shall serve a three-year term and five shall serve a two-year term"; and

WHEREAS, the City Council has determined that at the first regular Milwaukie Arts Committee meeting the initial appointed members shall have the right to determine member's length of terms in accordance with the Milwaukie Code; and

WHEREAS, a list of member terms will be forwarded to the Mayor and Council to be memorialized by resolution in July, 2008; and

WHEREAS, Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body."

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

SECTION 1: That Kati Bendig, Liz Danek, Jeff Davis, Mark Gamba, Erick Griswold, Alicia Hamilton, Nancy Matich, Coral Natta, Joe New, and Chris Sapienza are appointed to the Milwaukie Arts Committee.

SECTION 2: That the term of appointment shall commence on June 17, 2008.

SECTION 3: That the length of individual member terms shall be established by resolution in July, 2008.

SECTION 4: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on June 17, 2008.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

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City Attorney

Resolution No. _____



To: Mayor and City Council

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

From: Brenda Schleining, Associate Engineer

Subject: King Road Reconstruction – Street Surface Maintenance Program (SSMP)

Date: May 27, 2008 for the June 17, 2008 Regular Session

Action Requested

Authorize the City Manager to execute a contract for the reconstruction of King Road from 43rd Ave. to Hollywood Ave. with Knife River, in the amount of \$710,457.00 (this amount includes a 10% project contingency).

History of Prior Actions and Discussions

July 1, 2007 through June 30, 2008: During this first year of the SSMP the City was able to pave 42nd Ave (JCB to Harvey, Resolution No. 43-2007), and 37th Ave (Lake to Hwy 224, Resolution No. 43-2007). The City also plans to pave Washington St (99E to Hwy 224, Resolution No. 38-2008) June 16th-20th, and expects to pave Oak (Hwy 224 to Monroe, Resolution No. 45-2008) within the next 30 days.

January 2007: The Street Surface Maintenance Program (SSMP) was developed during 2006 with extensive public outreach and input. The SSMP was formally adopted on January 2, 2007 by Ordinance 1966 and took effect on July 1, 2007.

Background

The City of Milwaukie has road authority on King to Hollywood Ave. The project area is 4100 feet long and 49 feet wide. The street will be excavated down to a depth of about 18 inches in a process that reuses the existing base and minimizes the amount of waste

material. This method is called a cement treated base (CTB). The City will also save money and material by re-using part of the center turn lane.

The project duration will be about one month. The starting date for the storm portion is estimated to be early July, and the roadwork portion should start in mid July 2008.

The City Street Department installed a project sign in each direction on King Rd earlier this year to inform drivers of the upcoming construction. The residents on King Rd. were notified with a door hanger in mid April. Residents and businesses along the project will also be notified with door hangers by the contractor prior to construction, and updated as needed.

There will be some unavoidable traffic delays and street closures during construction. The roadway will be re-built one side at a time, to maintain 2-way traffic flow as much as possible during construction. The contractor will minimize traffic delays by scheduling any street closures during off-peak hours. Driveways will be inaccessible to residents and businesses from a few hours to a few days. Steel-plated ramps will be installed, as needed, for the mobility impaired residents.

The private utility companies were previously notified about this project and the five-year moratorium on utility cuts, and have indicated they have no conflicts. The five-year utility street cut moratorium will be in effect upon paving of these sections of King Rd (per the SSMP).

This project includes \$50,000 of storm improvements that are funded by the storm System Development Charges (SDC's) fund. The storm catch basins (CB's) will be upgraded to the City's standard type, with bike friendly grates. The existing CB's are non-uniform and misshapen and drain directly into the drywells. Replacing the catch basins is a move towards standardizing the storm system, which will lend itself to easier repairs and storage of replacement parts. The new catch basins can be fitted with storm water filters, which remove a large portion of metals and bacteria from the storm water. The filters will improve the quality of the storm water flowing into the drywells.

The storm and street work were combined into one project to save money, time, and give the City more control over the construction schedule, by contracting with one contractor. The Milwaukie Public Works Standards (adopted May 15, 2007) will be followed to ensure paving mix, quality, placing, and compaction. The City has contracted with CMTS to provide a full-time construction inspector, to ensure the City standards are met.

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

	<u>Contractor</u>	<u>Bid Amount</u>
1.	Morse Bros., Inc. dba Knife River	\$645,870.00
2.	Kodiak Pacific, Inc.	\$726,726.00
3.	Kerr Contractors	\$759,101.50
4.	Eagle-Elsner	\$796,460.00
***	Engineer's Estimate	\$850,000

The lowest responsive bid amount of \$645,870 is \$204,130 less than the Engineer's Estimate. This is due to savings by recycling some of the roadway materials including the rock base and some asphalt (this was not assumed in the original Engineer's Estimate), in addition to bidding out roadwork at the beginning of the paving season, and the decision to preserve the road base in the center turn lane.

The roadway base located in the center turn lane area is in good condition, as shown by roadway sample cores that were done by ACS testing. Thereby, the travel lanes will each be rebuilt down to the sub base at a depth of 18" each, and only 3" of the center lane will be removed and replaced.

Concurrence

Engineering staff coordinated with Operations on the scope, limits, and technical requirements for this project. Lewelling, Hector Campbell, and Linwood Neighborhood District Associations (NDA's) will be notified about the reconstruction and schedule.

The private utilities will also be notified of the new 5-year moratorium of street cuts on King Rd, after the paving occurs.

Fiscal Impact

This project is a part of the 2008-09 Capital Improvement Plan. The approved SSMP budget includes \$800,000 for paving King Road. The recommended bid for \$645,870.00 + 10% is within the approved budget.

A break down of the cost for the Storm portion of the project was calculated to be \$50,000. The Storm SDC fund will contribute \$50,000 towards the project. The balance of \$595,870 and the 10% contingency of \$64,587 will be funded by the SSMP fund. ($\$50,000 + \$595,870 + \$64,587 = \$710,457$ (award amount)).

The revenue collected to date for the SSMP program has exceeded projections. Expected revenue to date (May 30, 2008) is \$668,523 and the actual amount collected is \$728,670. The yearly projection is \$802,228, which should be met or exceeded by June 30, 2008.

Work Load Impacts

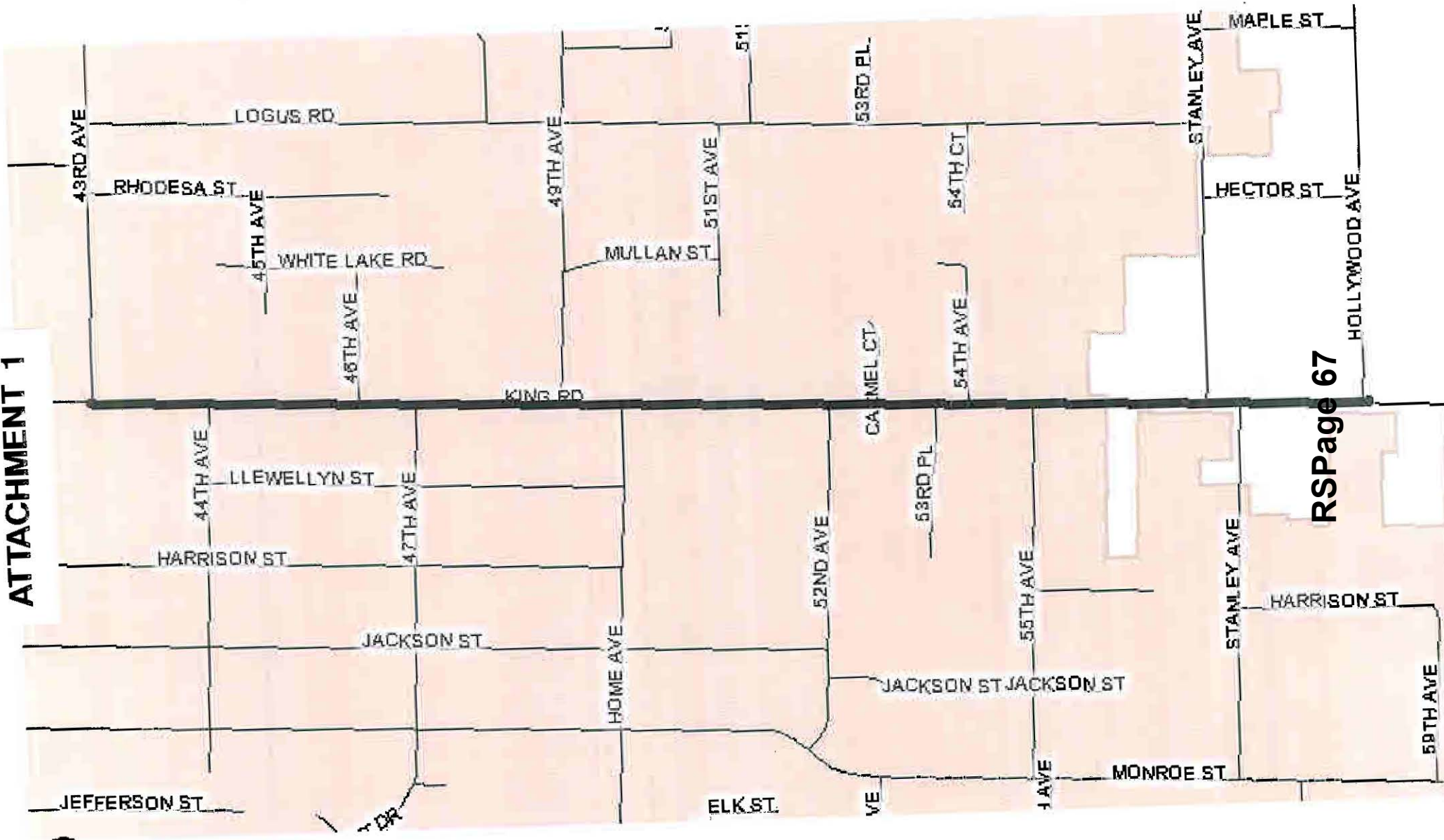
This project, representative of all SSMP work, is responsible for a sizable portion of the workload for the engineering department. The Storm and Street departments assisted the Engineering department by collecting technical data, locate utilities, and creating utility maps.

Alternatives

Bid the storm and street project out separately.

Attachments

1. Project Vicinity Map
2. Resolution



SE King Rd, Milwaukie OR 97222
43rd-44th, remove and replace 3" AC
44th-Hollywood, CTB method

ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE KING ROAD RECONSTRUCTION (43rd to Hollywood).

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

WHEREAS, King Road was selected for treatment after analysis of the street system; and

WHEREAS, the project was approved for funding in the 2008/2009 budget; and

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

WHEREAS, Knife River is the lowest responsive bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the reconstruction of King Rd with Knife River in the amount of \$710,457.

Introduced and adopted by the City Council on .

This resolution is effective on .

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist, *Ac*
Katie Mangle, Planning Director; and
Gary Parkin, Engineering Director

Subject: 2008-2009 Fee Schedule & Adopting SDC Indexing

Date: June 3, 2007 for June 17, 2008

Action Requested

Approve resolution adopting the fiscal year 2008-2009 fee schedule, including System Development Charges (SDCs).

History of Prior Actions & Discussions

June 2007 – Council last updated the City fee schedule. Council adopted by Resolution (No. 40-2007) a policy to annually adjust SDCs for inflation in the cost of construction.

Background

1. Fee Schedule Update

Prior to the beginning of each fiscal year, City department managers review the schedule of fees and charges and recommend changes to reflect actual costs. The document is intended to be a complete and standard reference for all fees and charges across all departments.

Each year changes to the fee schedule are made to improve readability; clarify what the fee is for or how it is to be calculated or collected; to eliminate obsolete charges; or make small adjustments to rates.

In this year's update, the more significant changes include

- A reduction in library fines for overdue children's materials, from \$.25 per day to \$.10 with a maximum of \$1.00. (Fines for overdue adult items are unchanged.)
- Planning added new fees for two processes that did not have established fees. A minor sign adjustment review fee was set at \$800 (in effect lowering the fee from \$1500 to \$800 for some sign adjustment reviews). A \$505 fee was established for a tree removal appeal hearing.
- Billable rates for staff time were updated to accurately reflect City costs.

2. Indexing System Development Charges (SDCs)

Resolution 40-2007, adopted by City Council on June 17, 2007, provides for annually indexing City System Development Charges for inflation. The data source, as defined in the resolution, is the Engineering News Record (ENR) Construction Cost Index (CCI) for the City of Seattle. (An equivalent index is not available for Portland.)

Because construction costs were essentially flat this year, rates were changes only very marginally:

- The Transportation SDC will increase from \$1,596.52 per peak hour trip to \$1,599.77.
- The Stormwater SDC will increase from \$1,127.93 per impervious surface unit (1 residential property or 2706 square feet) to \$1,130.23.
- The residential water meter SDC will increase from \$990.13 to \$992.15.
- The wastewater/sanitary sewer SDC will remain at \$893 as originally set in 1994. Staff does not recommend adjusting this rate for inflation at this time; it would be a challenge to justify such a large increase given that the methodology and list of projects is dated. An update of the calculation method will be completed following the master plan update, which is currently underway.

A full schedule of the City-imposed SDC rates is included as page ___ of the City Fee Schedule. The new version of the fee schedule includes all SDCs and construction excise taxes the City collects for other jurisdictions.

Concurrence

The Department Directors reviewed and refined the fee rates established by the proposed fee schedule resolution. The Finance and Human Resources Director both reviewed new billable rates for staff time. The adjustments to the overdue fine for children's material were approved by the Library Board on May 19.

Fiscal Impact

No appreciable impacts to budgeted expenditures or revenues are expected.

Work Load Impacts

Minimal work is required to update the fee schedule.

Alternatives

The Council has the option of adopting the 2008-2009 fee schedule with changes. No action would leave the prior rates in effect.

Attachment

1. Resolution Setting City Fees for Service

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING FEES FOR SERVICES; CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION; AND PROVIDING FOR COST OF CONSTRUCTION INDEXING OF SYSTEM DEVELOPMENT CHARGES.

WHEREAS, The City completed a formal Cost of Services Study and User Fee Analysis in Fiscal Year 1994 – 1995 and updated the Study in Fiscal Year 1995- 1996; and

WHEREAS, The City Council reviewed all costs of services and user fee structures; and

WHEREAS, Affected departments annually review labor costs as well as compare fees with other local jurisdictions and adjust accordingly; and

WHEREAS, The fees set forth in the attached "Fees and Charges" are set at a level to cover the costs of providing the services for which the fees are charged but to not generate any excess income for the City; and

WHEREAS, Fees are set by City Council resolution; and

WHEREAS, The City Council has adopted water, storm water, transportation and wastewater System Development Charges for new development, based on adopted master plans and approved methodologies; and

WHEREAS, The Oregon Revised Statute Chapter Two Hundred and Twenty-Three (223) provides for the regular updating of System Development Charges to account for increases in the cost of construction;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon, determines that the fees, herewith attached as "Fees & Charges", are effective July 1, 2008, and:

Section 1. The City of Milwaukie "Fees and Charges" are revised as shown in Exhibit A (strike-out version) and adopted as the official fee schedule of the City of Milwaukie as shown in Exhibit B.

Section 2. The fees imposed by this Resolution are not taxes subject to the property limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 3. Any previously adopted fee for which a fee or charge is stated in the attached "Fees and Charges" is amended to conform to the amount stated in the "Fees and Charges". Any previously adopted fee for which a fee or charge is not stated in the attached "Fees and Charges" shall remain at its present amount.

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Section 4. The City of Milwaukie updates the storm water, water, and transportation System Development Charges according to the Engineering News Record Construction Cost Index for Seattle, as listed in the attached "Fees and Charges," and shall continue to annually update System Development Charges by the Construction Cost Index as part of future fee schedule updates.

Introduced and adopted by the City Council on June 17, 2008.

This resolution is effective on July 1, 2008.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RSPage 73



CITY HALL
10722 SE Main
MILWAUKIE, OREGON 97222

PHONE: (503) 786-7555
FAX: (503) 652-4433

Fees & Charges

Strikeout = Deletions Underline = Additions
Adopted June 17, 2008—Resolution # -2008 (except as noted)
Effective July 1, 2008 (except as noted)

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PLANNING

Land Use Applications

Title 19 Zoning

Chapter 19.300 Use Zones

CSC Community Shopping Commercial Review	\$1,500
CSU Community Service Use	\$1,500 (max.) or Actual Cost *
CSU Community Service Use—Wireless Communication Facility (Type II review)	\$750
CSU Community Service Use—Wireless Comm. Facility (Minor Quasi-Judicial rev.)	\$1,500 (min.) or Actual Cost *
Reserve deposit.....	\$1,000
DR Design Review (Type I review, without Building Permit).....	\$130
DR Design Review (Type I review, with Building Permit).....	Incl. w/cost of Major Building Permit Review
DR Design Review (Type II review)	\$800
DR Design Review (Minor Quasi-Judicial review)	\$1,500
HR Historic Resource Alteration (Type I review).....	\$500
HR Historic Resource Alteration (Minor Quasi-Judicial review)	\$1,500
HR Historic Resource Deletion	\$2,035
HR Historic Resource Demolition.....	\$2,035
HR Historic Resource Designation.....	\$0
MU Mixed Use Overlay Review.....	\$1,500
PD Planned Development (Preliminary Plan Review).....	\$2,615
PD Planned Development (Final Plan Review).....	\$3,245
WG Willamette Greenway Review	\$1,500
WQR Water Quality Resource (Type I review, without Building Permit).....	\$130 **
WQR Water Quality Resource (Type I review, w/Building Permit).....	Incl. w/cost of Major Bldg. Permit Review **
WQR Water Quality Resource (Type II review)	\$750 **
WQR Water Quality Resource (Minor Quasi-Judicial review).....	\$1,500 **

Chapter 19.400 Supplementary Regulations

ADU Accessory Dwelling Unit, Type 1	\$860
TAR Transition Area Review.....	\$1,500
TS Temporary Structure (Type I review).....	\$50
TS Temporary Structure (Minor Quasi-Judicial review).....	\$1,010

Chapter 19.600 Conditional Uses

ADU Accessory Dwelling Unit, Type 2	\$1,770
CU Conditional Use.....	\$1,500

Chapter 19.700 Variances, Exceptions, and Home Improvement Exceptions

E Use Exception.....	\$1,500
HIE Home Improvement Exception.....	\$800
VR Variance (Type II review)	\$800
Additional reserve deposit	\$700
VR Variance (Minor Quasi-Judicial review).....	\$1,500

Chapter 19.800 Nonconforming Uses

DD Director's Determination of Nonconforming Situation.....	\$50
NCU Nonconforming Use/Structure (Type II review).....	\$800
NCU Nonconforming Use/Structure (Minor Quasi-Judicial review).....	\$1,500

Chapter 19.900 Amendments

CPA Comprehensive Plan/Map Amendment.....	\$3,210
ZA Zoning Ordinance Amendment.....	\$3,210
ZC Zoning Map Amendment (aka "Zone Change").....	\$3,210
Ballot Measure 56 Notice (for Zone Amendment or Zone Change).....	Actual Cost (\$1 per affected property, \$35 minimum)
Reserve deposit.....	\$500

Chapter 19.1000 Administrative Provisions

AP Appeal to City Planning Commission/City Council.....	\$505
DI Planning Director Interpretation.....	\$100

Chapter 19.1400 Transportation Planning, Design Standards, and Procedures

TPR Transportation Plan Review (Type I review).....	\$150 **
TPR Transportation Plan Review (Type II review).....	\$750 **
TPR Transportation Plan Review (Minor Quasi-Judicial review).....	\$750 **
Additional reserve deposit.....	\$750 **

Chapter 19.1500 Boundary Changes (Annexations)

A Annexation (Expedited).....	\$100
A Annexation (Nonexpedited with no Zone Change or Comp Plan Amendment).....	\$100
A Annexation (Nonexpedited: Zone Change only).....	\$100
A Annexation (Nonexpedited: Zone Change and Comp Plan Amendment).....	\$3,210

Title 17 Land Division

DD Director's Determination of Legal Lot Status.....	\$50
ELD Expedited Land Division.....	\$4,125
FP Minor Land Partition (Final Plat).....	\$150
FP Subdivision (Final Plat).....	\$150
LC Lot Consolidation.....	\$250
Additional reserve deposit.....	\$250
MLP Minor Land Partition.....	\$750
Additional reserve deposit.....	\$1,000
PLA Property Line Adjustment.....	\$640
R Partition Replat.....	\$500
Additional reserve deposit.....	\$500
R Subdivision Replat.....	\$500
Additional reserve deposit.....	\$1,000
S Subdivision (Preliminary Plat).....	\$2,630
SV Street or Plat Vacation.....	\$1,905
Extension of Planning Commission Approval.....	\$40

Title 14 Signs

Adjustment:

• <u>Type II (up to 25% variance from standard)</u>	\$800
• <u>Minor Quasi-Judicial review (over 25% variance from standard)</u>	\$1,500
Community Service Use Sign Review (Minor Quasi-Judicial review).....	Actual Cost *
Sign Permit Review (see Reviews, Inspections, and Preapplication Conferences below)	

Other fees

M-37 Property Value Reduction Claims (<u>pertaining to</u> Ballot Measures <u>37 or 49</u>).....	\$1,515
(Fee will be refunded if applicant prevails. If claim is denied, additional money may be required to cover contract-attorney or appraiser costs, as determined by City Manager.)	
TP Tree Permit (major pruning or removal of trees in the public right-of-way)	\$35
Tree Removal Appeal Hearing	\$505
Technical Report Review (Traffic, Wetlands, Geotechnical, Hydrology, etc):	
• Scope of Work Preparation	Actual Cost *
Additional reserve deposit.....	\$1,000
• Review of Technical Report.....	Actual Cost *
Reserve deposit:	
• Traffic.....	\$2,500
• <u>Water Quality Resources</u>	\$1,500
• All others.....	\$1,000
Variance from Clear Vision Standards	\$1,500
Zoning Confirmation Letter.....	\$50

Discounts for Land Use Applications

Two or more applications	No discount for most expensive application—50% discount for all others ***
Senior citizens and low income citizens	25% discount (50% for appeals) ****
NDA-sponsored land use applications related to parks	Fees waived

Deposit Information

In some cases, reserve deposits are collected to ensure that the City’s actual costs are covered. Deposits used for consultant review of technical reports will be refunded relative to actual costs, and additional money may be required if actual costs exceed the deposit amount. Deposits collected as part of Type II land division applications (such as Minor Land Partitions, Lot Consolidations, and Replats) are generally refunded if the application is not elevated to the level of Minor Quasi-Judicial review. ~~However, part or all of the deposit may be kept (based on actual costs) if the application is deemed to warrant an extraordinary level of staff time and resources.~~ This applies only to reserve deposits—base fees are nonrefundable.

Notes

- * Actual cost to be determined by Planning Director or Engineering Director by estimating the cost of City staff time and resources dedicated to the project.
- ** Water Quality Resource and Transportation Plan Review applications may also require additional Technical Report Review.
- *** Applies to applications which relate to the same parcel of land and which will be considered at the same Planning Commission meeting.
- **** Seniors must be at least 62 years of age. Low-income citizens may qualify for reduced fees by filing the same application used to apply for reduced sewer and water rates.

Reviews, Inspections, and Preapplication Conferences

Building Permit Review (Short)	\$25
Building Permit Review (Minor).....	\$95
Building Permit Review (Major).....	\$130
Planning Inspection Fee.....	\$50
Preapplication Conference.....	\$125
Preapplication Conference with Transportation Review	\$200
Sign Permit Review	\$95/sign type
Sign Permit Review (Daily Display or “sandwich board” sign)	\$25-\$50

Materials

Many materials are available online for free at www.ci.milwaukie.or.us/departments/planning/planning.html.
 Contact Planning staff for additional information.

Zoning Ordinance.....	\$13
Comprehensive Plan.....	\$15

Comprehensive Plan or Zoning Ordinance Map:

- 11x17 handout (Black & White/Color) No charge/\$2
- GIS maps (e.g., Zoning Map) Full sheet \$45; see Engineering fees for other sizes
- Bluelines (e.g., Zoning Map)..... All sizes \$5

Comprehensive Plan ancillary documents: (most not available online)

• Ardenwald Park Master Plan	\$2
• Downtown and Riverfront Land Use Framework Plan.....	\$25
• Elk Rock Island Natural Area Management Plan	\$8
• Furnberg Park Master Plan	\$5
• Homewood Park Master Plan.....	\$1
• Johnson Creek Resources Management Plan.....	\$15
• Lake Road Multimodal Plan.....	\$8
• Lewelling Community Park Master Plan.....	\$1
• North Clackamas PFP	\$25
• Town Center Master Plan	\$15
• Scott Park Master Plan.....	\$2
• Spring Park Master Plan.....	\$5
• Springwater Corridor Master Plan	\$8
• Transportation System Plan	
• <u>Full Document</u>	<u>\$32.49</u>
• <u>Executive Summary.....</u>	<u>\$15</u>
• <u>CD.....</u>	<u>\$3.50</u>
• Water Tower Park Master Plan	\$2
• Wichita Park Master Plan	\$2
• Vision Statement (one page).....	No charge

Sign Ordinance	\$5
Land Division Ordinance	\$5
Downtown Design Guidelines (Black & White/Color).....	\$10/\$35
Downtown and Riverfront Public Area Requirements	\$16
Other informational handouts (10 pages or less).....	No charge
Other informational handouts (over 10 pages)	At cost

BUILDING

Section I. Residential Building Permits

A. Structural Permits—Valuation shall be calculated in accordance with OAR 918-050-0100.

1. Permit Fee

Permit fees from calculation of total valuation from the square footage of the improvement

\$1-\$500	\$18.75
\$501-\$2,000	\$18.75 plus \$2.89 per \$C over \$5C to \$2K
\$2,001-\$25,000	\$62.10 plus \$11.54 per \$K over \$2K to \$25K
\$25,001-\$50,000	\$327.52 plus \$8.58 per \$K over \$25K to \$50K
\$50,001-\$100,000	\$542.02 plus \$5.77 per \$K over \$50K to \$100K
\$100,001 and up	\$830.52 plus \$4.88 per \$K over \$100K
Minimum permit fee	\$75.00

- 2. Initial Plan Review Fees** 65% of the permit fee
- 3. Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)
- 4. Third Party Plan Review Fee (for transfer of plan review to a third party)** 10% of the permit fee (\$65.00 min.)

B. Mechanical Permits—Fees per current Mechanical Permit application

Minimum Permit Fee..... \$60.00

1. HVAC

For the installation of:

a. Air handling unit including ducts:	
Up to 10,000 cfm.....	\$23.00
Over 10,000 cfm	\$26.00
b. Air conditioning/heat pump (site plan required)	\$40.00
c. Alteration of existing HVAC system.....	\$18.50
d. Boiler/compressor	\$18.50
e. Install/relocate/replace furnace/burner including ductwork and vent:	
Up to 100,000 BTU/H.....	\$18.50
Over 100,000 BTU/H.....	\$22.00
f. Install/relocate/replace heaters (room, suspended, wall- or floor-mounted)	\$18.50
g. Vent for other than furnace	\$18.50

2. Environmental Exhaust and Ventilation

For the installation of:

a. Appliance vent	\$15.00
b. Dryer exhaust.....	\$12.00
c. Each hood that is served by a mechanical exhaust or air conditioning	\$10.00
d. Exhaust system with single duct (bath fan) each.....	\$8.50
e. Exhaust system apart from heating or air conditioning	\$12.00

3. Fuel Piping and Distribution

a. LPG-NG-Oil fuel piping:	
Up to 4 outlets (includes gas tag).....	\$22.00
Each additional outlet over 4	\$2.00

4. Other Listed Application or Equipment

a. Decorative fireplace or insert	\$35.00
b. Woodstove/pellet stove.....	\$47.00
c. For each appliance or piece of equipment regulated by the code but not classed in other appliance categories, for which no other fee is listed in this code, or for which a fee is listed for alteration or extension of an existing mechanical system	\$18.50

City of Milwaukie Fees & Charges

Adopted June 17, 2008/Effective July 1, 2008—Resolution # ___-2008 (except as noted)

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5. Stand-alone Fire Suppression Systems (requires a backflow device installed by licensed plumbing contractor or persons exempt from licensing)

0 sq. ft. to 2,000 sq. ft.....	\$90.00
2,001 sq. ft. to 3,600 sq. ft.....	\$135.00
3,601 sq. ft. to 7,200 sq. ft.....	\$169.00
\$7,201 sq. ft. and greater	\$315.00

C. Plumbing Permits—Fees per current Plumbing Permit application

1. Total Bathrooms Per Dwelling

1 bath dwelling (includes 1 kitchen).....	\$335.00
2 bath dwelling (includes 1 kitchen).....	\$370.00
3 bath dwelling (includes 1 kitchen).....	\$440.00
Additional bathroom/kitchen	\$175.00
Includes the first 100 ft. of water piping, sanitary and storm sewer lines, hose bibs, icemakers, underfloor low point drains, and rain drain packages that include the piping, gutters, downspouts, and perimeter system.	

2. Additions, Alterations, and Repairs \$16.75/fixture

3. Building Sewer Connection \$57.00

4. Multipurpose or Continuous Loop Fire Suppression Systems

0 sq. ft. to 2,000 sq. ft.....	\$90.00
2,001 sq. ft. to 3,600 sq. ft.....	\$135.00
3,601 sq. ft. to 7,200 sq. ft.....	\$169.00
\$7,201 sq. ft. and greater	\$315.00

5. Minimum permit fee..... \$60.00

D. Other Inspections and Fees

1. Inspections outside of normal business hours..... \$98.00/hr. (min. charge 2 hrs.)
(Must be preapproved by applicant)

2. Inspections for which no fee is specifically indicated..... \$68.00/hr.
(Must be preapproved by applicant)

3. Reinspection fee..... \$58.00/hr.

4. Replacement sheets..... \$23.00/sheet

5. The minimum fee shall be..... \$50.00

6. Investigation fee..... Amount of subject permit fee

7. Temporary Certificate of Completion..... \$50.00

E. Manufactured Dwelling and Cabana Installation Permits— All jurisdictions in the Tri-County area shall charge a single fee for the installation and set-up of manufactured homes. This single fee shall include the concrete slab, runners, or foundations when they comply with the prescriptive requirements of the Oregon Manufactured Dwelling standard, electrical feeder and plumbing connections, and all cross-over connections.

1. Installation permit \$445.00

2. Earthquake-resistant bracing \$135.00

3. Reinspection..... \$135.00

4. Statewide code development, training and monitoring fee (in addition to all other manufactured dwelling fees and charges) \$30.00

Section II. Commercial/Industrial Building Permits

A. Structural Permits—Valuation shall be calculated in accordance with OAR 918-050-0110.

1. **Permit Fee**
 Permit fees from calculation of total valuation from the square footage of the improvement
 \$1-\$500 \$18.75
 \$501-\$2,000 \$18.75 plus \$2.89 per \$C over \$5C to \$2K
 \$2,001-\$25,000 \$62.10 plus \$11.54 per \$K over \$2K to \$25K
 \$25,001-\$50,000 \$327.52 plus \$8.58 per \$K over \$25K to \$50K
 \$50,001-\$100,000 \$542.02 plus \$5.77 per \$K over \$50K to \$100K
 \$100,001 and up..... \$830.52 plus \$4.88 per \$K over \$100K
 Minimum permit fee \$75.00
2. **Initial Plan Review Fees** 65% of the permit fee
3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)
4. **Fire and Life Safety Plan Review Fee** (commercial only).....40% of structural permit fee
 (Based on valuation of total improvements or \$50.00/hr. to review a Fire and Life Safety Master Plan)
 (Hourly charge must be approved by Applicant)
5. **Seismic Site Hazard Report Review** 1% of total structural and mechanical fees

B. Mechanical Permits—Valuation shall be calculated on the value of the equipment and installation costs.

1. **Use this section for commercial installation, replacement or relocation of nonportable mechanical equipment or mechanical work not covered previously. Indicate the value of all mechanical labor, materials, and equipment.**
 Permit Fee:
 \$1 to \$5,000 \$60.00
 \$5,001 to \$10,000 \$60.00 plus \$1.71 per \$C over \$5K
 \$10,001 to \$100,000 \$145.50 plus \$10.50 per \$K over \$10K
 \$100,001 and up..... \$1,090.50 plus \$7.25 per \$K over \$100K
 Minimum permit fee \$60.00
2. **Plan review fee** 25% of mechanical permit fee
3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)

C. Plumbing Permits

1. **Each fixture** \$16.75
2. **Utilities per 100 feet** \$62.00
 - a. Catch basin \$27.00
 - b. Drywells each \$27.00
 - c. Footing drain (per 100 lin. ft.) \$53.00
 - d. Rain drain connector \$27.00
 - e. Manholes each \$53.00
3. **Piping (per 100 lin. ft.)** \$62.00
4. **Building Sewers (per 100 lin. ft.)** \$62.00
5. **Initial Plan Review Fees** 30% of the Plumbing permit fees
6. **Plan Review Fees Required/requested by Changes, Additions, or Revisions** \$70.00/hr. for commercial
7. **Minimum permit fee** \$60.00
8. **Medical Gas Permits:** Valuation shall be calculated on the value of the equipment and installation costs.
Medical Gas Permit Fees:
 \$1-\$5,000 \$60.00
 \$5,001-\$10,000 \$60.00 plus \$1.71 per \$C over \$5K
 \$10,001-\$100,000 \$145.50 plus \$10.50 per \$K over \$10K
 \$100,001 and up..... \$1,090.50 plus \$7.25 per \$K over \$100K
 Minimum permit fee \$60.00

D. Other Inspections and Fees

- 1. Inspections outside of normal business hours..... \$98.00/hr. (min. charge 2 hrs.)
 (Must be preapproved by applicant)
- 2. Inspections for which no fee is specifically indicated..... \$68.00/hr.
 (Must be preapproved by applicant)
- 3. Reinspection fee..... \$58.00/hr.
- 4. Replacement sheets..... \$23.00/sheet
- 5. The minimum fee shall be..... \$50.00
- 6. Investigation fee..... Amount of subject permit fee
- 7. Temporary Certificate of Occupancy..... \$180.00
- 8. Change of use/occupancy..... \$300.00

E. **Deferred Submittal Fee** (in addition to project plan review fee)
 (OAR 918-050-0170)..... \$250.00 + 10% of deferred item permit fee
 per deferred submittal (minimum \$300.00)

F. **Phased Permit Fee** (in addition to project plan review fee)
 (OAR 918-050-0160)..... \$250.00 + 10% of total project permit fee per phase
 (minimum \$300.00, not to exceed \$1,500 per phase)

Section III. Permit Related Fees

A. A State surcharge shall be collected in an amount as required by State law.

B. Electrical permit fees shall be as adopted in Resolution 19-2003, adopted by the City Council on May 6, 2003 (effective July 1, 2003) with the following exceptions:

- 1. The state surcharge shall be the amount required by State law as noted in Section III.A of this resolution.
- 2. The Minor Labels program will be deleted as required by SB 512 and SB 587.

C. **House Moving/Demolition Permits**
 2,000 sq. ft. or less..... \$78.00
 Each additional 1,000 sq. ft..... \$38.00
 Plan Review Fee..... 65% of the permit fee

D. **Prefabricated Structures**.....(Per current permit fees)

E. **Temporary Structures**.....(Per current permit fees)

F. **Manufactured Dwelling Parks and Mobile Home Parks**.....Per current State of Oregon permit fee
 (OAR. Division 650. Table 1) plus 30%

G. **Recreational Parks and Organizational Camps**.....Per current State of Oregon permit fee
 (OAR. Division 650. Table 1) plus 30%

H. Miscellaneous Building Valuations

1. Retaining Walls	
To 8 ft. high, including footing.....	\$254.00/lin. ft.
Over 8 ft. high.....	\$276.00/lin. ft.
2. Fences	
Over 6 ft. to 8 ft. high.....	\$15.00/lin. ft.
3. Concrete Slabs on Grade Foundations —For house moves, modular buildings, pole buildings, etc.	
Plain concrete:	
4-in. slab.....	\$3.00/sq. ft.
5-in. slab.....	\$3.10/sq. ft.
6-in. slab.....	\$3.25/sq. ft.
Reinforced concrete.....	Add \$1.15/sq. ft.
4. Crawl Space Foundations	
For house moves, modular, etc.	\$7.50/sq. ft.
5. Accessory Buildings	
With floor slab.....	\$55.00/sq. ft.
Without floor slab.....	\$28.00/sq. ft.
6. Pole Buildings	
Up to and including 14-ft. eave height.....	\$32.00/sq. ft.
Over 14-ft. eave height.....	\$45.00/sq. ft.
For insulation:	
Roof—add.....	\$.35/sq. ft.
Slab—add.....	\$.35/sq. ft.
Wall—add.....	\$.35/sq. ft.
For slabs on grade.....	see Section III.H.3 for fees
7. Swimming Pools (pool only/deck extra)	
Concrete or gunite.....	\$70.00/sq. ft.
Plastic below ground.....	\$45.00/sq. ft.

Section IV. In-Fill and Grading

A. In-Fill and Grading Permit Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards.....	\$35.00
101 to 1,000 cubic yards.....	\$45.00
1,001 to 10,000 cubic yards.....	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

B. In-Fill and Grading Plan Review Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards.....	\$35.00
101 to 1,000 cubic yards.....	\$45.00
1,001 to 10,000 cubic yards.....	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

C. Other Inspections and Fees

1. Inspections outside normal business hours.....	\$75.00/hr. (min. charge 2 hrs.)
2. Reinspection fee.....	\$75.00/hr.
3. Inspections for which no fee is specifically indicated.....	\$75.00/hr.

ENGINEERING

Inspections and Permits

Right-of-Way Inspection Permit	\$135-\$150
Right-of-Way Use Permit	\$30
Subdivision Const. Inspect. (Street/Sewer/Water/Storm Sewer)	5.5% of Total Const. Cost (min. \$500)
Public Impvts. Const. Inspection (Comml./Ind./Misc. Dev.)	5.5% of Total Const. Cost (min. \$500)
Street Opening Inspection Fee	\$85
Right-of-way/Street Opening Reinspection (beyond standard of 2 for R-O-W and 1 for street opening)	\$85
Street Opening Deposit	\$1,500 (Performance bond amount at discretion of City Engineer)
Right-of-Way Usage for Wireless Communication Facility	\$250/month per antenna per utility pole
Sewer Inspection (residential)	\$57
Sewer Dye Test	\$57
Moving Buildings	\$200 + \$65/hr. staff time + \$1,000 deposit

Materials (Engineering)

Public Works Standards	\$30
Transportation Design Manual	\$5
Aerial Maps (all sizes)	\$5
Bluelines (all sizes)	\$5
Microfilm (all sizes)	\$5
Sewer TV Inspection Tape	\$25

Electronic Drawings

Paper—all sizes	\$5-\$45/hr. for additional work
Other format	\$7
Reproduction charges	\$1 for first page/\$.10 each additional page

Printed and Electronic Maps (GIS)

Standard selection of GIS maps

Full Sheet (34" x 44")	\$45
1/2 Sheet (22" x 34")	\$35
1/4 Sheet (17" x 22")	\$25
1/8 Sheet (11" x 17")	\$15
Electronic file (via electronic mail in PDF, JPG, GIF or TIF formats)	\$15
Electronic file (for mailed media, which includes postage, handling and media charges)	\$22

Aerial maps

Full Sheet (34" x 44")	\$50
1/2 Sheet (22" x 34")	\$40
1/4 Sheet (17" x 22")	\$30
1/8 Sheet (11" x 17")	\$20
Electronic file (via electronic mail in PDF, JPG, GIF or TIF formats)	\$15
Electronic file (for mailed media, which includes postage, handling and media charges)	\$22

Custom maps:

Flat charge per hour plus cost of materials	\$55
Electronic file (for mailed media, which includes postage, handling and media charges)	\$7

Erosion Control

Technical Guidance Handbook	No charge
Minimum Charge for Clearing/Construction*	\$75
Minimum charge applies if:	
• Over 500 sq. ft. of disturbed soil	
• Not in or around a sensitive area (NR Zone, wetlands, conservancies, and streams)	
• Value of structure/remodel doesn't exceed \$20,000	
Clearing/Construction for Single-Family Residential	\$380
Rate if certified in erosion control**	\$225
Clearing/Construction for Multifamily Residential	\$490
Rate if certified in erosion control**	\$335
	(additional \$40 per ½ acre over 1 acre)
Clearing/Construction for Subdivision/Commercial/Industrial	\$623
Rate if certified in erosion control**	\$467
	(additional \$40 per ½ acre over 1 acre)
Additional Site Visit (due to code enforcement)	\$65

*Erosion control certification discount does not apply

**Certification requires 4 hours of training in erosion control every 2 years

WATER

Service and Equipment

Connect Service 5/8" or 3/4" Residential Service	\$2,460
Connect Service 1"	\$2,547
Connect Service 1 1/2"	\$2,923
Connect Service 2"	\$3,067

Equipment

3/4" Meter	\$208
1" Meter	\$301
1 1/2" Meter	\$510
2" Meter	\$625
Hydrant Meter Deposit	\$2000
	(Refundable less water usage)

Miscellaneous

Delinquent Account—Past Due Notice	\$10
Delinquent Account—Notice of Termination	\$30
Failed Arrangement Shut-off	\$30
After-hours Restoration of Service	\$80
	(Monday-Friday 5:00-8:00 p.m.; Saturday and Sunday 8:00 a.m.-5:00 p.m.)
Information Research	\$44/hr.
Reimbursement District Fee	To be determined by scope of project

**SYSTEM DEVELOPMENT CHARGES
 & CONSTRUCTION EXCISE TAXES**

Transportation System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)
 Trip generation rates for each land use type are derived from the Institute of Transportation (ITE) report Trip Generation (7th Edition, 2003). Trip rates are expressed as vehicle trips entering and leaving a property during the p.m. peak travel period.

Transportation SDC ~~\$1,596.52~~ **\$1,599.77 per trip**

Stormwater System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)
 Stormwater unit is equal to 2,706 square feet of impervious surface on the property. Each single-family residential property is 1 stormwater unit.

Stormwater SDC:

Reimbursement	\$272.54 \$273.09 per stormwater unit
Improvement.....	\$774.75 \$776.32 per stormwater unit
Administration	\$80.64 \$80.80 per stormwater unit
TOTAL	\$1,127.93 \$1,130.22 per stormwater unit

Wastewater System Development Charge (adopted Res. 40-2007, June 19, 2007 Res. 44-1994, Nov. 1, 1994)
 A wastewater unit is equal to 16 fixture units derived from Table 7-3 of the Oregon Plumbing Specialty Code. Each residential dwelling unit is 1 wastewater unit.

Wastewater SDC:

Reimbursement	\$327 per wastewater unit
Improvement.....	\$566 per wastewater unit
TOTAL	\$893 per wastewater unit

Water System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)

Meter Size	Reimbursement	Improvement	Administration	TOTAL
5/8"x3/4"	\$502.21	\$417.49	\$70.43	\$990.13
3/4"x3/4"	\$753.32	\$626.23	\$105.65	\$1,485.20
1"	\$1,255.53	\$1,043.72	\$176.08	\$2,475.33
1.5"	\$2,511.06	\$2,087.44	\$352.16	\$4,950.66
2"	\$4,017.69	\$3,339.91	\$563.46	\$7,921.05
3"	\$8,035.38	\$6,679.82	\$1,126.91	\$15,842.11
4"	\$12,555.28	\$10,437.21	\$1,760.80	\$24,753.29
6"	\$25,110.56	\$20,874.43	\$3,521.60	\$49,506.59
8"	\$40,176.89	\$33,399.08	\$5,634.56	\$79,210.54
10"	\$57,754.28	\$48,011.18	\$8,099.69	\$113,865.15
12"	\$112,997.51	\$93,934.92	\$15,847.24	\$222,779.64

Meter Size	Reimbursement	Improvement	Administration	TOTAL
5/8"x3/4"	\$503.23	\$418.34	\$70.58	\$992.14
3/4"x3/4"	\$754.85	\$627.50	\$105.86	\$1,488.21
1"	\$1,258.08	\$1,045.84	\$176.44	\$2,480.35
1.5"	\$2,516.15	\$2,091.68	\$352.88	\$4,960.71
2"	\$4,025.85	\$3,346.69	\$564.60	\$7,937.13
3"	\$8,051.69	\$6,693.38	\$1,129.20	\$15,874.27
4"	\$12,580.77	\$10,458.40	\$1,764.38	\$24,803.54
6"	\$25,161.53	\$20,916.80	\$3,528.75	\$49,607.08
8"	\$40,258.45	\$33,466.88	\$5,646.00	\$79,371.34
10"	\$57,871.52	\$48,108.64	\$8,116.13	\$114,096.29
12"	\$113,226.89	\$94,125.61	\$15,879.38	\$223,231.88

Parks and Recreation System Development Charge

Collected for the North Clackamas Parks and Recreation District for residential uses only (updated 8/17/07).
 (adopted Clackamas Board of County Commissioners, Ordinance 09-2007, Oct. 25, 2007)

Parks and Recreation SDC:

Single-Family Residential	\$2,214-\$3,985 per dwelling unit
Multifamily Residential	\$1,824-\$3,608 per dwelling unit
Manufactured Residence (in park)	\$1,848 per dwelling unit
Nonresidential	\$60 per employee*

RSPage 87

* Number of employees calculated according to type of business and building square feet.

School Construction Excise Tax

Collected for North Clackamas School District (adopted North Clackamas School District, December 6, 2007)

School Construction Excise Tax:

Residential\$1 per square foot*
Commercial \$0.50 per square foot**

*Residential additions under 1,000 square feet exempted.

**Total fee capped at \$25,000 per project. Private schools, churches, public improvements, low-income (HUD) housing, hospital improvements, improvements to religious facilities, or agricultural buildings are exempt.

Metro Construction Excise Tax

Collected for Metro (adopted Metro Council March 2)

Metro Construction Excise Tax \$0.12 per \$100 of permit value

*Permits for construction projects valued at \$100,000 or less will be exempted from this tax as well as permits for development of affordable housing units and permits issued to 501(c)(3) nonprofit organizations for other projects aimed at serving low-income populations. Permits for construction valued at more than \$10 million will be assessed a flat \$12,000 fee (0.12 percent of \$10 million).

BUSINESS REGISTRATION

Standard base fee.....	\$100
Reduced standard base fee*.....	\$40
New business commencing between July 1 and December 31.....	\$50
Change in business ownership fee.....	\$10
Fee for each FTE.....	\$3
Penalty.....	\$10% of base fee each calendar month and fraction thereof delinquent
Temporary Business (2 weeks or less).....	\$25
Duplicate receipt.....	\$10

*The purpose of the reduced standard base fee is to provide a cost benefit for small businesses already registered with the city. First time applicants and start-up businesses are not eligible. To qualify, a registered business must submit acceptable documentation showing annual gross income (receipts) from the business of less than \$10,000.00 in a calendar year. The only acceptable documentation is the one or two year's previous IRS Form 1040 together with a copy of Schedule C (home-based businesses) or Schedule E (rental properties). If the documents are presented in person, the city will not retain a copy. If the documents are mailed, the copies will be reviewed and shredded.

The reduced fee is only available to qualified businesses December 1 through January 31 of the renewal year. All renewals received and/or submitted after January 31 must pay the full standard base fee.

PARKING

Monthly Permit.....	\$25
6-month prepay permit.....	\$125
Parking without a permit.....	\$25
Overtime parking.....	\$15
Parking in disabled space.....	\$250 min./\$600 max.

POLICE

Permits/Licenses

Adult Business.....	\$372
Alarm Permit—Residential (seniors 60+ exempt from fee requirement).....	\$15
Alarm Permit—Business.....	\$21
Gun Background Check.....	\$21
Liquor License (Original Application).....	\$108
Liquor License (Name or other change).....	\$83
Liquor License (Renewal Application).....	\$36
Liquor License (Temporary License).....	\$10

Police Reports

Dispatch Tape Copy.....	\$26
Video Tape Copy.....	\$31
Police Report.....	\$15
Copy of Field Contact Report (FCR card).....	\$5

Police Services

False Alarm Response (first three).....	No charge
False Alarm Response (each alarm after third).....	\$160
Vehicle Impound.....	\$50
Fingerprinting.....	\$10
Loud Party Response—first response.....	Warning
Loud Party Response—second response and/or each subsequent response in 24-hr. period.....	\$50

LIBRARY

Charges

Microfilm Copies.....	\$0.10
Photocopies:	
Black and White.....	\$0.10
Color.....	\$0.90

Fines

Overdue Fine (all materials):	
• <u>Adult</u>	\$0.25/day (\$3 max.)
• <u>Juvenile</u>	\$0.10/day (\$1 max.)
Missing Barcode.....	\$1
Missing Book Jacket.....	\$2
Missing Barcode and Book Jacket.....	\$3
Books on Tape Cassette.....	\$7
Juvenile or Adult Books on Tape—Vinyl Case.....	\$5
Juvenile Kit—Plastic Bag.....	\$2
Media Cases:	
Cover sheet.....	\$1
Video Box.....	\$1
DVD Case.....	\$1
CD Case.....	\$1
CD-ROM and Audiobook Cases.....	\$2
Missing Pages and Booklets.....	Refer to Librarian
Lost Book Item.....	Actual Retail Cost
Damaged Material.....	Replacement Cost
Lost Library Card.....	\$1
Public Computer Printing.....	First 5 free then \$0.10 per page

MISCELLANEOUS

Photocopies

Staff Assisted/Research Required:	
Black and White.....	\$0.30
Color	\$1
Unassisted:	
Black and White.....	\$0.05
Color	\$0.75

Other Copying/Service

Audio tape	\$10
Video tape	\$20
Transcription (per hour).....	\$30

Photographs

Photo CD.....	\$5 per disc
Color photos on photo quality paper	\$3 per page
Color photos on standard copy paper	\$1 per page

Financial Reports

Comprehensive Annual Financial Report.....	\$40-\$45
Annual Adopted Budget	\$40-\$45

Miscellaneous

Sidewalk Bench annual fee.....	\$74
Sidewalk Use—Vendor Fee	\$10
Major Community Event.....	Actual Direct Cost
Block Party—Misc. Event.....	Actual Direct Cost
Returned Check Charge	\$30
Lien Search	\$25-\$27
Postage and Handling	\$2 + postage cost

RECYCLING

Down to Earth Day

Automobile Load	\$2
Station Wagon.....	\$2
Small Pickup	\$5
Standard Pickup.....	\$6
Large Truck	\$8
Small Trailer	\$5
Large Trailer.....	\$6
Unmounted Tires (each)	\$1.50
Residual Solid Waste Permit Registration	\$100
Residual Solid Waste Tonnage Fee	\$2.80/ton

TELECOMMUNICATIONS

Registration fee	\$36
Franchise review deposit	\$5,000
Community Service Use—Wireless Communication Facility (see PLANNING fees)	
Right-of-Way Usage for Wireless Communication Facility (see ENGINEERING fees)	

BILLABLE HOURLY RATES

Hourly rates for employee services are billed at the actual cost per hour for that employee. The following is given as an estimate only of what the rate will be.

Community Development and Public Works Administration

Community Development and Public Works Director	\$73-\$76
Resource and Economic Development Specialist	\$44-\$45
Office Supervisor	\$38-\$39
Administrative Specialist III	\$34-\$36
Administrative Specialist II	\$31-\$32

Engineering

Engineering Director	\$64-\$67
Civil Engineer	\$50-\$53
Associate Engineer	\$41-\$43

Planning

Planning Director	\$64-\$67
Senior Planner	\$41-\$53
Associate Planner	\$44-\$45
Assistant Planner	\$39-\$41

Building

Building Official	\$55-\$58
Building Inspector	\$44-\$45
Permit Technician	\$34-\$36

Operations

Operations Director	\$64-\$67
Operations Supervisor	\$48-\$50
Fleet Supervisor	\$46-\$48
Facilities Maintenance Coordinator	\$41-\$43
Water Quality Coordinator	\$39-\$41
Asset Management Technician	\$38-\$39
Utility Specialist II	\$38-\$39
Mechanic	\$34-\$36
Utility Worker II	\$36-\$39
Utility Specialist I	\$31-\$32
Utility Worker I	\$31-\$32

Code Compliance

Code Compliance Coordinator	\$38-\$39
Code Compliance Assistant	\$31-\$32

Records and Information Management (RIM)

Senior Administrative Specialist	\$57
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CITY HALL
10722 SE Main
MILWAUKIE, OREGON 97222

PHONE: (503) 786-7555
FAX: (503) 652-4433

Fees & Charges

Adopted June 17, 2008—Resolution #__-2008 (except as noted)
Effective July 1, 2008 (except as noted)

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PLANNING

Land Use Applications

Title 19 Zoning

Chapter 19.300 Use Zones

CSC Community Shopping Commercial Review	\$1,500
CSU Community Service Use	\$1,500 (max.) or Actual Cost *
CSU Community Service Use—Wireless Communication Facility (Type II review)	\$750
CSU Community Service Use—Wireless Comm. Facility (Minor Quasi-Judicial rev.) .	\$1,500 (min.) or Actual Cost *
Reserve deposit.....	\$1,000
DR Design Review (Type I review, without Building Permit).....	\$130
DR Design Review (Type I review, with Building Permit).....	Incl. w/cost of Major Building Permit Review
DR Design Review (Type II review)	\$800
DR Design Review (Minor Quasi-Judicial review)	\$1,500
HR Historic Resource Alteration (Type I review).....	\$500
HR Historic Resource Alteration (Minor Quasi-Judicial review)	\$1,500
HR Historic Resource Deletion	\$2,035
HR Historic Resource Demolition.....	\$2,035
HR Historic Resource Designation.....	\$0
MU Mixed Use Overlay Review.....	\$1,500
PD Planned Development (Preliminary Plan Review).....	\$2,615
PD Planned Development (Final Plan Review).....	\$3,245
WG Willamette Greenway Review	\$1,500
WQR Water Quality Resource (Type I review, without Building Permit).....	\$130 **
WQR Water Quality Resource (Type I review, w/Building Permit).....	Incl. w/cost of Major Bldg. Permit Review **
WQR Water Quality Resource (Type II review)	\$750 **
WQR Water Quality Resource (Minor Quasi-Judicial review).....	\$1,500 **

Chapter 19.400 Supplementary Regulations

ADU Accessory Dwelling Unit, Type 1	\$860
TAR Transition Area Review.....	\$1,500
TS Temporary Structure (Type I review).....	\$50
TS Temporary Structure (Minor Quasi-Judicial review).....	\$1,010

Chapter 19.600 Conditional Uses

ADU Accessory Dwelling Unit, Type 2	\$1,770
CU Conditional Use.....	\$1,500

Chapter 19.700 Variances, Exceptions, and Home Improvement Exceptions

E Use Exception.....	\$1,500
HIE Home Improvement Exception.....	\$800
VR Variance (Type II review)	\$800
Additional reserve deposit	\$700
VR Variance (Minor Quasi-Judicial review).....	\$1,500

Chapter 19.800 Nonconforming Uses

DD Director's Determination of Nonconforming Situation.....	\$50
NCU Nonconforming Use/Structure (Type II review).....	\$800
NCU Nonconforming Use/Structure (Minor Quasi-Judicial review).....	\$1,500

Chapter 19.900 Amendments

CPA Comprehensive Plan/Map Amendment.....	\$3,210
ZA Zoning Ordinance Amendment.....	\$3,210
ZC Zoning Map Amendment (aka "Zone Change").....	\$3,210
Ballot Measure 56 Notice (for Zone Amendment or Zone Change).....	Actual Cost (\$1 per affected property, \$35 minimum)
Reserve deposit.....	\$500

Chapter 19.1000 Administrative Provisions

AP Appeal to City Planning Commission/City Council.....	\$505
DI Planning Director Interpretation.....	\$100

Chapter 19.1400 Transportation Planning, Design Standards, and Procedures

TPR Transportation Plan Review (Type I review).....	\$150 **
TPR Transportation Plan Review (Type II review).....	\$750 **
TPR Transportation Plan Review (Minor Quasi-Judicial review).....	\$750 **
Additional reserve deposit.....	\$750 **

Chapter 19.1500 Boundary Changes (Annexations)

A Annexation (Expedited).....	\$100
A Annexation (Nonexpedited with no Zone Change or Comp Plan Amendment).....	\$100
A Annexation (Nonexpedited: Zone Change only).....	\$100
A Annexation (Nonexpedited: Zone Change and Comp Plan Amendment).....	\$3,210

Title 17 Land Division

DD Director's Determination of Legal Lot Status.....	\$50
ELD Expedited Land Division.....	\$4,125
FP Minor Land Partition (Final Plat).....	\$150
FP Subdivision (Final Plat).....	\$150
LC Lot Consolidation.....	\$250
Additional reserve deposit.....	\$250
MLP Minor Land Partition.....	\$750
Additional reserve deposit.....	\$1,000
PLA Property Line Adjustment.....	\$640
R Partition Replat.....	\$500
Additional reserve deposit.....	\$500
R Subdivision Replat.....	\$500
Additional reserve deposit.....	\$1,000
S Subdivision (Preliminary Plat).....	\$2,630
SV Street or Plat Vacation.....	\$1,905
Extension of Planning Commission Approval.....	\$40

Title 14 Signs

Adjustment:

• Type II (up to 25% variance from standard).....	\$800
• Minor Quasi-Judicial review (over 25% variance from standard).....	\$1,500
Community Service Use Sign Review (Minor Quasi-Judicial review).....	Actual Cost *
Sign Permit Review (see Reviews, Inspections, and Preapplication Conferences below)	

Other fees

M-37 Property Value Reduction Claims (pertaining to Ballot Measures 37 or 49).....	\$1,515
(Fee will be refunded if applicant prevails. If claim is denied, additional money may be required to cover contract-attorney or appraiser costs, as determined by City Manager.)	
TP Tree Permit (major pruning or removal of trees in the public right-of-way)	\$35
Tree Removal Appeal Hearing.....	\$505
Technical Report Review (Traffic, Wetlands, Geotechnical, Hydrology, etc):	
• Scope of Work Preparation	Actual Cost *
Additional reserve deposit.....	\$1,000
• Review of Technical Report.....	Actual Cost *
Reserve deposit:	
• Traffic.....	\$2,500
• Water Quality Resources.....	\$1,500
• All others.....	\$1,000
Variance from Clear Vision Standards	\$1,500
Zoning Confirmation Letter.....	\$50

Discounts for Land Use Applications

Two or more applications	No discount for most expensive application—50% discount for all others ***
Senior citizens and low income citizens25% discount (50% for appeals) ****
NDA-sponsored land use applications related to parks	Fees waived

Deposit Information

In some cases, reserve deposits are collected to ensure that the City's actual costs are covered. Deposits used for consultant review of technical reports will be refunded relative to actual costs, and additional money may be required if actual costs exceed the deposit amount. Deposits collected as part of Type II land division applications (such as Minor Land Partitions, Lot Consolidations, and Replats) are refunded if the application is not elevated to the level of Minor Quasi-Judicial review. This applies only to reserve deposits—base fees are nonrefundable.

Notes

- * Actual cost to be determined by Planning Director or Engineering Director by estimating the cost of City staff time and resources dedicated to the project.
- ** Water Quality Resource and Transportation Plan Review applications may also require additional Technical Report Review.
- *** Applies to applications which relate to the same parcel of land and which will be considered at the same Planning Commission meeting.
- **** Seniors must be at least 62 years of age. Low-income citizens may qualify for reduced fees by filing the same application used to apply for reduced sewer and water rates.

Reviews, Inspections, and Preapplication Conferences

Building Permit Review (Short)	\$25
Building Permit Review (Minor).....	\$95
Building Permit Review (Major).....	\$130
Planning Inspection Fee.....	\$50
Preapplication Conference.....	\$125
Preapplication Conference with Transportation Review	\$200
Sign Permit Review	\$95/sign type
Sign Permit Review (Daily Display or "sandwich board" sign)	\$50

Materials

Many materials are available online for free at www.ci.milwaukie.or.us/departments/planning/planning.html.
 Contact Planning staff for additional information.

Zoning Ordinance.....	\$13
Comprehensive Plan.....	\$15

Comprehensive Plan or Zoning Ordinance Map:

- 11x17 handout (Black & White/Color) No charge/\$2
- GIS maps (e.g., Zoning Map) Full sheet \$45; see Engineering fees for other sizes
- Bluelines (e.g., Zoning Map)..... All sizes \$5

Comprehensive Plan ancillary documents: (most not available online)

- Ardenwald Park Master Plan \$2
- Downtown and Riverfront Land Use Framework Plan..... \$25
- Elk Rock Island Natural Area Management Plan \$8
- Furnberg Park Master Plan \$5
- Homewood Park Master Plan \$1
- Johnson Creek Resources Management Plan \$15
- Lake Road Multimodal Plan..... \$8
- Lewelling Community Park Master Plan \$1
- North Clackamas PFP \$25
- Town Center Master Plan \$15
- Scott Park Master Plan..... \$2
- Spring Park Master Plan..... \$5
- Springwater Corridor Master Plan \$8
- Transportation System Plan
 - Full Document 49
 - Executive Summary..... \$15
 - CD..... \$3.50
- Water Tower Park Master Plan \$2
- Wichita Park Master Plan \$2
- Vision Statement (one page) No charge

Sign Ordinance	\$5
Land Division Ordinance	\$5
Downtown Design Guidelines (Black & White/Color).....	\$10/\$35
Downtown and Riverfront Public Area Requirements	\$16
Other informational handouts (10 pages or less).....	No charge
Other informational handouts (over 10 pages)	At cost

BUILDING

Section I. Residential Building Permits

A. Structural Permits—Valuation shall be calculated in accordance with OAR 918-050-0100.

1. Permit Fee

Permit fees from calculation of total valuation from the square footage of the improvement	
\$1-\$500	\$18.75
\$501-\$2,000	\$18.75 plus \$2.89 per \$C over \$5C to \$2K
\$2,001-\$25,000	\$62.10 plus \$11.54 per \$K over \$2K to \$25K
\$25,001-\$50,000	\$327.52 plus \$8.58 per \$K over \$25K to \$50K
\$50,001-\$100,000	\$542.02 plus \$5.77 per \$K over \$50K to \$100K
\$100,001 and up.....	\$830.52 plus \$4.88 per \$K over \$100K
Minimum permit fee.....	\$75.00

- 2. Initial Plan Review Fees** 65% of the permit fee
- 3. Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)
- 4. Third Party Plan Review Fee (for transfer of plan review to a third party)** 10% of the permit fee (\$65.00 min.)

B. Mechanical Permits—Fees per current Mechanical Permit application

Minimum Permit Fee..... \$60.00

1. HVAC

For the installation of:	
a. Air handling unit including ducts:	
Up to 10,000 cfm.....	\$23.00
Over 10,000 cfm	\$26.00
b. Air conditioning/heat pump (site plan required).....	\$40.00
c. Alteration of existing HVAC system.....	\$18.50
d. Boiler/compressor	\$18.50
e. Install/relocate/replace furnace/burner including ductwork and vent:	
Up to 100,000 BTU/H.....	\$18.50
Over 100,000 BTU/H.....	\$22.00
f. Install/relocate/replace heaters (room, suspended, wall- or floor-mounted)	\$18.50
g. Vent for other than furnace	\$18.50

2. Environmental Exhaust and Ventilation

For the installation of:	
a. Appliance vent	\$15.00
b. Dryer exhaust.....	\$12.00
c. Each hood that is served by a mechanical exhaust or air conditioning.....	\$10.00
d. Exhaust system with single duct (bath fan) each.....	\$8.50
e. Exhaust system apart from heating or air conditioning.....	\$12.00

3. Fuel Piping and Distribution

a. LPG-NG-Oil fuel piping:	
Up to 4 outlets (includes gas tag).....	\$22.00
Each additional outlet over 4.....	\$2.00

4. Other Listed Application or Equipment

a. Decorative fireplace or insert	\$35.00
b. Woodstove/pellet stove.....	\$47.00
c. For each appliance or piece of equipment regulated by the code but not classed in other appliance categories, for which no other fee is listed in this code, or for which there is an alteration or extension of an existing mechanical system	\$18.50

City of Milwaukie Fees & Charges

Adopted June 17, 2008/Effective July 1, 2008—Resolution #__-2008 (except as noted)

Page 7

5. Stand-alone Fire Suppression Systems (requires a backflow device installed by licensed plumbing contractor or persons exempt from licensing)

0 sq. ft. to 2,000 sq. ft.....	\$90.00
2,001 sq. ft. to 3,600 sq. ft.....	\$135.00
3,601 sq. ft. to 7,200 sq. ft.....	\$169.00
\$7,201 sq. ft. and greater	\$315.00

C. Plumbing Permits—Fees per current Plumbing Permit application

1. Total Bathrooms Per Dwelling

1 bath dwelling (includes 1 kitchen).....	\$335.00
2 bath dwelling (includes 1 kitchen).....	\$370.00
3 bath dwelling (includes 1 kitchen).....	\$440.00
Additional bathroom/kitchen	\$175.00

Includes the first 100 ft. of water piping, sanitary and storm sewer lines, hose bibs, icemakers, underfloor low point drains, and rain drain packages that include the piping, gutters, downspouts, and perimeter system.

2. Additions, Alterations, and Repairs \$16.75/fixture

3. Building Sewer Connection \$57.00

4. Multipurpose or Continuous Loop Fire Suppression Systems

0 sq. ft. to 2,000 sq. ft.....	\$90.00
2,001 sq. ft. to 3,600 sq. ft.....	\$135.00
3,601 sq. ft. to 7,200 sq. ft.....	\$169.00
\$7,201 sq. ft. and greater	\$315.00

5. Minimum permit fee..... \$60.00

D. Other Inspections and Fees

1. Inspections outside of normal business hours..... \$98.00/hr. (min. charge 2 hrs.)
(Must be preapproved by applicant)

2. Inspections for which no fee is specifically indicated..... \$68.00/hr.
(Must be preapproved by applicant)

3. Reinspection fee..... \$58.00/hr.

4. Replacement sheets..... \$23.00/sheet

5. The minimum fee shall be..... \$50.00

6. Investigation fee..... Amount of subject permit fee

7. Temporary Certificate of Completion..... \$50.00

E. Manufactured Dwelling and Cabana Installation Permits— All jurisdictions in the Tri-County area shall charge a single fee for the installation and set-up of manufactured homes. This single fee shall include the concrete slab, runners, or foundations when they comply with the prescriptive requirements of the Oregon Manufactured Dwelling standard, electrical feeder and plumbing connections, and all cross-over connections.

1. Installation permit..... \$445.00

2. Earthquake-resistant bracing..... \$135.00

3. Reinspection..... \$135.00

4. Statewide code development, training and monitoring fee (in addition to all other manufactured dwelling fees and charges)..... \$30.00

Section II. Commercial/Industrial Building Permits

A. Structural Permits—Valuation shall be calculated in accordance with OAR 918-050-0110.

1. **Permit Fee**
 Permit fees from calculation of total valuation from the square footage of the improvement

\$1-\$500	\$18.75
\$501-\$2,000	\$18.75 plus \$2.89 per \$C over \$5C to \$2K
\$2,001-\$25,000	\$62.10 plus \$11.54 per \$K over \$2K to \$25K
\$25,001-\$50,000	\$327.52 plus \$8.58 per \$K over \$25K to \$50K
\$50,001-\$100,000	\$542.02 plus \$5.77 per \$K over \$50K to \$100K
\$100,001 and up.....	\$830.52 plus \$4.88 per \$K over \$100K
Minimum permit fee.....	\$75.00
2. **Initial Plan Review Fees** 65% of the permit fee
3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)
4. **Fire and Life Safety Plan Review Fee (commercial only)**40% of structural permit fee
 (Based on valuation of total improvements or \$50.00/hr. to review a Fire and Life Safety Master Plan)
 (Hourly charge must be approved by Applicant)
5. **Seismic Site Hazard Report Review** 1% of total structural and mechanical fees

B. Mechanical Permits—Valuation shall be calculated on the value of the equipment and installation costs.

1. **Use this section for commercial installation, replacement or relocation of nonportable mechanical equipment or mechanical work not covered previously. Indicate the value of all mechanical labor, materials, and equipment.**
 Permit Fee:

\$1 to \$5,000	\$60.00
\$5,001 to \$10,000.....	\$60.00 plus \$1.71 per \$C over \$5K
\$10,001 to \$100,000.....	\$145.50 plus \$10.50 per \$K over \$10K
\$100,001 and up.....	\$1,090.50 plus \$7.25 per \$K over \$100K
Minimum permit fee.....	\$60.00
2. **Plan review fee** 25% of mechanical permit fee
3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions** \$70.00/hr. (min. charge 1 hr.)

C. Plumbing Permits

1. **Each fixture**..... \$16.75
2. **Utilities per 100 feet**..... \$62.00
 - a. Catch basin..... \$27.00
 - b. Drywells each \$27.00
 - c. Footing drain (per 100 lin. ft.)..... \$53.00
 - d. Rain drain connector..... \$27.00
 - e. Manholes each..... \$53.00
3. **Piping (per 100 lin. ft.)**..... \$62.00
4. **Building Sewers (per 100 lin. ft.)**..... \$62.00
5. **Initial Plan Review Fees** 30% of the Plumbing permit fees
6. **Plan Review Fees Required/requested by Changes, Additions, or Revisions** \$70.00/hr. for commercial
7. **Minimum permit fee**..... \$60.00
8. **Medical Gas Permits:** Valuation shall be calculated on the value of the equipment and installation costs.
Medical Gas Permit Fees:

\$1-\$5,000	\$60.00
\$5,001-\$10,000	\$60.00 plus \$1.71 per \$C over \$5K
\$10,001-\$100,000	\$145.50 plus \$10.50 per \$K over \$10K
\$100,001 and up.....	\$1,090.50 plus \$7.25 per \$K over \$100K
Minimum permit fee.....	\$60.00

D. Other Inspections and Fees

- 1. Inspections outside of normal business hours \$98.00/hr. (min. charge 2 hrs.)
 (Must be preapproved by applicant)
- 2. Inspections for which no fee is specifically indicated \$68.00/hr.
 (Must be preapproved by applicant)
- 3. Reinspection fee \$58.00/hr.
- 4. Replacement sheets \$23.00/sheet
- 5. The minimum fee shall be \$50.00
- 6. Investigation fee Amount of subject permit fee
- 7. Temporary Certificate of Occupancy \$180.00
- 8. Change of use/occupancy \$300.00

E. Deferred Submittal Fee (in addition to project plan review fee)
 (OAR 918-050-0170) \$250.00 + 10% of deferred item permit fee
 per deferred submittal (minimum \$300.00)

F. Phased Permit Fee (in addition to project plan review fee)
 (OAR 918-050-0160) \$250.00 + 10% of total project permit fee per phase
 (minimum \$300.00, not to exceed \$1,500 per phase)

Section III. Permit Related Fees

- A. A State surcharge shall be collected in an amount as required by State law.**
- B. Electrical permit fees shall be as adopted in Resolution 19-2003, adopted by the City Council on May 6, 2003 (effective July 1, 2003) with the following exceptions:**

- 1. The state surcharge shall be the amount required by State law as noted in Section III.A of this resolution.
- 2. The Minor Labels program will be deleted as required by SB 512 and SB 587.

C. House Moving/Demolition Permits
 2,000 sq. ft. or less \$78.00
 Each additional 1,000 sq. ft. \$38.00
 Plan Review Fee 65% of the permit fee

D. Prefabricated Structures(Per current permit fees)

E. Temporary Structures(Per current permit fees)

F. Manufactured Dwelling Parks and Mobile Home Parks Per current State of Oregon permit fee
 (OAR. Division 650. Table 1) plus 30%

G. Recreational Parks and Organizational Camps Per current State of Oregon permit fee
 (OAR. Division 650. Table 1) plus 30%

H. Miscellaneous Building Valuations

1. Retaining Walls	
To 8 ft. high, including footing.....	\$254.00/lin. ft.
Over 8 ft. high.....	\$276.00/lin. ft.
2. Fences	
Over 6 ft. to 8 ft. high.....	\$15.00/lin. ft.
3. Concrete Slabs on Grade Foundations —For house moves, modular buildings, pole buildings, etc.	
Plain concrete:	
4-in. slab.....	\$3.00/sq. ft.
5-in. slab.....	\$3.10/sq. ft.
6-in. slab.....	\$3.25/sq. ft.
Reinforced concrete.....	Add \$1.15/sq. ft.
4. Crawl Space Foundations	
For house moves, modular, etc.	\$7.50/sq. ft.
5. Accessory Buildings	
With floor slab.....	\$55.00/sq. ft.
Without floor slab.....	\$28.00/sq. ft.
6. Pole Buildings	
Up to and including 14-ft. eave height.....	\$32.00/sq. ft.
Over 14-ft. eave height.....	\$45.00/sq. ft.
For insulation:	
Roof—add.....	\$.35/sq. ft.
Slab—add.....	\$.35/sq. ft.
Wall—add.....	\$.35/sq. ft.
For slabs on grade.....	see Section III.H.3 for fees
7. Swimming Pools (pool only/deck extra)	
Concrete or gunite.....	\$70.00/sq. ft.
Plastic below ground.....	\$45.00/sq. ft.

Section IV. In-Fill and Grading

A. In-Fill and Grading Permit Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards.....	\$35.00
101 to 1,000 cubic yards.....	\$45.00
1,001 to 10,000 cubic yards.....	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

B. In-Fill and Grading Plan Review Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards.....	\$35.00
101 to 1,000 cubic yards.....	\$45.00
1,001 to 10,000 cubic yards.....	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

C. Other Inspections and Fees

1. Inspections outside normal business hours	\$75.00/hr. (min. charge 2 hrs.)
2. Reinspection fee	\$75.00/hr.
3. Inspections for which no fee is specifically indicated	\$75.00/hr.

ENGINEERING

Inspections and Permits

Right-of-Way Inspection Permit	\$150
Right-of-Way Use Permit	\$30
Subdivision Const. Inspect. (Street/Sewer/Water/Storm Sewer)	5.5% of Total Const. Cost (min. \$500)
Public Impvts. Const. Inspection (Comm./Ind./Misc. Dev.)	5.5% of Total Const. Cost (min. \$500)
Street Opening Inspection Fee	\$85
Right-of-way/Street Opening Reinspection (beyond standard of 2 for R-O-W and 1 for street opening)	\$85
Street Opening Deposit	\$1,500 (Performance bond amount at discretion of City Engineer)
Right-of-Way Usage for Wireless Communication Facility	\$250/month per antenna per utility pole
Sewer Inspection (residential)	\$57
Sewer Dye Test	\$57
Moving Buildings	\$200 + \$65/hr. staff time + \$1,000 deposit

Materials (Engineering)

Public Works Standards	\$30
Sewer TV Inspection Tape	\$25

Electronic Drawings

Paper—all sizes	\$5-\$45/hr. for additional work
Other format	\$7
Reproduction charges	\$1 for first page/\$.10 each additional page

Printed and Electronic Maps (GIS)

Standard selection of GIS maps

Full Sheet (34" x 44")	\$45
1/2 Sheet (22" x 34")	\$35
1/4 Sheet (17" x 22")	\$25
1/8 Sheet (11" x 17")	\$15
Electronic file (via electronic mail in PDF, JPG, GIF or TIF formats)	\$15
Electronic file (for mailed media, which includes postage, handling and media charges)	\$22

Aerial maps

Full Sheet (34" x 44")	\$50
1/2 Sheet (22" x 34")	\$40
1/4 Sheet (17" x 22")	\$30
1/8 Sheet (11" x 17")	\$20
Electronic file (via electronic mail in PDF, JPG, GIF or TIF formats)	\$15
Electronic file (for mailed media, which includes postage, handling and media charges)	\$22

Custom maps:

Flat charge per hour plus cost of materials	\$55
Electronic file (for mailed media, which includes postage, handling and media charges)	\$7

Erosion Control

Technical Guidance Handbook	No charge
Minimum Charge for Clearing/Construction*	\$75
Minimum charge applies if:	
<ul style="list-style-type: none"> • Over 500 sq. ft. of disturbed soil • Not in or around a sensitive area (NR Zone, wetlands, conservancies, and streams) • Value of structure/remodel doesn't exceed \$20,000 	
Clearing/Construction for Single-Family Residential	\$380
Rate if certified in erosion control**	\$225
Clearing/Construction for Multifamily Residential	\$490
Rate if certified in erosion control**	\$335
	(additional \$40 per ½ acre over 1 acre)
Clearing/Construction for Subdivision/Commercial/Industrial	\$623
Rate if certified in erosion control**	\$467
	(additional \$40 per ½ acre over 1 acre)
Additional Site Visit (due to code enforcement)	\$65

*Erosion control certification discount does not apply

**Certification requires 4 hours of training in erosion control every 2 years

WATER

Service and Equipment

Connect Service 5/8" or 3/4" Residential Service	\$2,460
Connect Service 1"	\$2,547
Connect Service 1 1/2"	\$2,923
Connect Service 2"	\$3,067

Equipment

3/4" Meter	\$208
1" Meter	\$301
1 1/2" Meter	\$510
2" Meter	\$625
Hydrant Meter Deposit	\$2000
	(Refundable less water usage)

Miscellaneous

Delinquent Account—Past Due Notice	\$10
Delinquent Account—Notice of Termination	\$30
Failed Arrangement Shut-off	\$30
After-hours Restoration of Service	\$80
	(Monday-Friday 5:00-8:00 p.m.; Saturday and Sunday 8:00 a.m.-5:00 p.m.)
Information Research	\$44/hr.
Reimbursement District Fee	To be determined by scope of project

SYSTEM DEVELOPMENT CHARGES & CONSTRUCTION EXCISE TAXES

Transportation System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)
 Trip generation rates for each land use type are derived from the Institute of Transportation (ITE) report Trip Generation (7th Edition, 2003). Trip rates are expressed as vehicle trips entering and leaving a property during the p.m. peak travel period.

Transportation SDC **\$1,599.77 per trip**

Stormwater System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)
 Stormwater unit is equal to 2,706 square feet of impervious surface on the property. Each single-family residential property is 1 stormwater unit.

Stormwater SDC:

Reimbursement \$273.09 per stormwater unit
 Improvement..... \$776.32 per stormwater unit
 Administration \$80.80 per stormwater unit
TOTAL.....**\$1,130.22 per stormwater unit**

Wastewater System Development Charge (adopted Res. 44-1994, Nov. 1, 1994)
 A wastewater unit is equal to 16 fixture units derived from Table 7-3 of the Oregon Plumbing Specialty Code. Each residential dwelling unit is 1 wastewater unit.

Wastewater SDC:

Reimbursement \$327 per wastewater unit
 Improvement..... \$566 per wastewater unit
TOTAL.....**\$893 per wastewater unit**

Water System Development Charge (adopted and indexed for inflation Res. 40-2007, June 19, 2007)

Meter Size	Reimbursement	Improvement	Administration	TOTAL
5/8"x3/4"	\$503.23	\$418.34	\$70.58	\$992.14
3/4"x3/4"	\$754.85	\$627.50	\$105.86	\$1,488.21
1"	\$1,258.08	\$1,045.84	\$176.44	\$2,480.35
1.5"	\$2,516.15	\$2,091.68	\$352.88	\$4,960.71
2"	\$4,025.85	\$3,346.69	\$564.60	\$7,937.13
3"	\$8,051.69	\$6,693.38	\$1,129.20	\$15,874.27
4"	\$12,580.77	\$10,458.40	\$1,764.38	\$24,803.54
6"	\$25,161.53	\$20,916.80	\$3,528.75	\$49,607.08
8"	\$40,258.45	\$33,466.88	\$5,646.00	\$79,371.34
10"	\$57,871.52	\$48,108.64	\$8,116.13	\$114,096.29
12"	\$113,226.89	\$94,125.61	\$15,879.38	\$223,231.88

Parks and Recreation System Development Charge

Collected for the North Clackamas Parks and Recreation District (adopted Clackamas Board of County Commissioners, Ordinance 09-2007, Oct. 25, 2007)

Parks and Recreation SDC:

Single-Family Residential	\$3,985 per dwelling unit
Multifamily Residential	\$3,608 per dwelling unit
Nonresidential.....	\$60 per employee*

* Number of employees calculated according to type of business and building square feet.

School Construction Excise Tax

Collected for North Clackamas School District (adopted North Clackamas School District, December 6, 2007)

School Construction Excise Tax:

Residential	\$1 per square foot*
Commercial	\$0.50 per square foot**

*Residential additions under 1,000 square feet exempted.

**Total fee capped at \$25,000 per project. Private schools, churches, public improvements, low-income (HUD) housing, hospital improvements, improvements to religious facilities, or agricultural buildings are exempt.

Metro Construction Excise Tax

Collected for Metro (adopted Metro Council March 2)

Metro Construction Excise Tax \$0.12 per \$100 of permit value

*Permits for construction projects valued at \$100,000 or less will be exempted from this tax as well as permits for development of affordable housing units and permits issued to 501(c)(3) nonprofit organizations for other projects aimed at serving low-income populations. Permits for construction valued at more than \$10 million will be assessed a flat \$12,000 fee (0.12 percent of \$10 million).

BUSINESS REGISTRATION

Standard base fee	\$100
Reduced standard base fee*	\$40
New business commencing between July 1 and December 31	\$50
Change in business ownership fee	\$10
Fee for each FTE	\$3
Penalty	\$10% of base fee each calendar month and fraction thereof delinquent
Temporary Business (2 weeks or less)	\$25
Duplicate receipt	\$10

*The purpose of the reduced standard base fee is to provide a cost benefit for small businesses already registered with the city. First time applicants and start-up businesses are not eligible. To qualify, a registered business must submit acceptable documentation showing annual gross income (receipts) from the business of less than \$10,000.00 in a calendar year. The only acceptable documentation is the one or two year's previous IRS Form 1040 together with a copy of Schedule C (home-based businesses) or Schedule E (rental properties). If the documents are presented in person, the city will not retain a copy. If the documents are mailed, the copies will be reviewed and shredded.

The reduced fee is only available to qualified businesses December 1 through January 31 of the renewal year. All renewals received and/or submitted after January 31 must pay the full standard base fee.

PARKING

Monthly Permit	\$25
6-month prepay permit	\$125
Parking without a permit	\$25
Overtime parking	\$15
Parking in disabled space	\$250 min./\$600 max.

POLICE

Permits/Licenses

Adult Business	\$372
Alarm Permit—Residential (seniors 60+ exempt from fee requirement)	\$15
Alarm Permit—Business	\$21
Gun Background Check	\$21
Liquor License (Original Application)	\$108
Liquor License (Name or other change)	\$83
Liquor License (Renewal Application)	\$36
Liquor License (Temporary License)	\$10

Police Reports

Dispatch Tape Copy	\$26
Video Tape Copy	\$31
Police Report	\$15
Copy of Field Contact Report (FCR card)	\$5

Police Services

False Alarm Response (first three)	No charge
False Alarm Response (each alarm after third)	\$160
Vehicle Impound	\$50
Fingerprinting	\$10
Loud Party Response—first response	Warning
Loud Party Response—second response and/or each subsequent response in 24-hr. period	\$50

LIBRARY

Charges

Microfilm Copies.....	\$0.10
Photocopies:	
Black and White.....	\$0.10
Color	\$0.90

Fines

Overdue Fine (all materials):

- Adult..... \$0.25/day (\$3 max.)
- Juvenile..... \$0.10/day (\$1 max.)

Missing Barcode.....	\$1
Missing Book Jacket	\$2
Missing Barcode and Book Jacket.....	\$3
Books on Tape Cassette.....	\$7
Juvenile or Adult Books on Tape—Vinyl Case.....	\$5
Juvenile Kit—Plastic Bag	\$2

Media Cases:

Cover sheet	\$1
Video Box	\$1
DVD Case.....	\$1
CD Case	\$1
CD-ROM and Audiobook Cases.....	\$2

Missing Pages and Booklets	Refer to Librarian
Lost Item	Actual Retail Cost
Damaged Material.....	Replacement Cost
Lost Library Card.....	\$1
Public Computer Printing	First 5 free then \$0.10 per page

MISCELLANEOUS

Photocopies

Staff Assisted/Research Required:	
Black and White.....	\$0.30
Color	\$1
Unassisted:	
Black and White.....	\$0.05
Color	\$0.75

Other Copying/Service

Audio tape	\$10
Video tape	\$20
Transcription (per hour).....	\$30

Photographs

Photo CD.....	\$5 per disc
Color photos on photo quality paper	\$3 per page
Color photos on standard copy paper	\$1 per page

Financial Reports

Comprehensive Annual Financial Report.....	\$45
Annual Adopted Budget	\$45

Miscellaneous

Sidewalk Bench annual fee.....	\$74
Sidewalk Use—Vendor Fee	\$10
Major Community Event.....	Actual Direct Cost
Block Party—Misc. Event.....	Actual Direct Cost
Returned Check Charge	\$30
Lien Search	\$27
Postage and Handling	\$2 + postage cost

RECYCLING

Down to Earth Day

Automobile Load	\$2
Station Wagon.....	\$2
Small Pickup	\$5
Standard Pickup.....	\$6
Large Truck.....	\$8
Small Trailer	\$5
Large Trailer	\$6
Unmounted Tires (each)	\$1.50
Residual Solid Waste Permit Registration	\$100
Residual Solid Waste Tonnage Fee	\$2.80/ton

TELECOMMUNICATIONS

Registration fee	\$36
Franchise review deposit	\$5,000
Community Service Use—Wireless Communication Facility (see PLANNING fees)	
Right-of-Way Usage for Wireless Communication Facility (see PLANNING fees)	

BILLABLE HOURLY RATES

Hourly rates for employee services are billed at the actual cost per hour for that employee. The following is given as an estimate only of what the rate will be.

Community Development and Public Works Administration

Community Development and Public Works Director	\$76
Resource and Economic Development Specialist	\$45
Office Supervisor.....	\$39
Administrative Specialist III	\$36
Administrative Specialist II	\$32

Engineering

Engineering Director	\$67
Civil Engineer	\$53
Associate Engineer	\$43

Planning

Planning Director.....	\$67
Senior Planner.....	\$53
Associate Planner	\$45
Assistant Planner	\$41

Building

Building Official	\$58
Building Inspector.....	\$45
Permit Technician	\$36

Operations

Operations Director	\$67
Operations Supervisor	\$50
Fleet Supervisor	\$48
Facilities Maintenance Coordinator	\$43
Water Quality Coordinator.....	\$41
Asset Management Technician.....	\$39
Utility Specialist II	\$39
Mechanic.....	\$36
Utility Worker II.....	\$39
Utility Specialist I	\$32
Utility Worker I.....	\$32

Code Compliance

Code Compliance Coordinator.....	\$39
Code Compliance Assistant.....	\$32

Records and Information Management (RIM)

Senior Administrative Specialist.....	\$57
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To: Mayor and City Council

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

From: Paul Shirey, Public Works Operations Director
Willie Miller, Facilities Coordinator

Subject: Award On-Call Contract for Landscaping Services

Date: May 28, 2008 for June 17 City Council Meeting

Action Requested

Authorize the City Manager to execute a contract and issue a purchase order with Bizon Landscape Services in an amount not to exceed \$38,500 per year for a maximum of two years for **landscape services**.

History of Prior Actions and Discussions

Over the past six months, City Council has approved the following four contract awards for the Facilities Department.

November 6, 2007 Resolution #66-2007 Skilled carpentry

January 15, 2008 Resolution #09-2008 HVAC

January 15, 2008 Resolution # 08-2008 Plumbing

January 15, 2008 Resolution # 10-2008 Electrical

These are for on-call services for one-year terms, including renewal options for up to five years based on a not-to-exceed dollar value per year. In the past the City has retained landscape services through non-competitive, direct awards to service providers that do not strictly conform to public contracts law in Oregon. Because the value of each one-year contract was below \$25,000, Council did not need to approve them. Bizon Landscape Services of Sherwood Oregon is the current provider.

Background

For a number of years, the City has managed its landscape maintenance needs by using on-call contractors. Bizon Landscape Services (Bizon) is currently under contract that expires at the end of the fiscal year. The value of the current contract is \$15, 250.

Bizon provides turf maintenance (mowing, edging, weeding and occasional fertilization) plant bed weeding and pruning, and irrigation regulation and maintenance at most of the city's facilities and green space in public rights-of-way.

The City owns and manages five (5) occupied building sites and several well sites, lift stations, and other small structures that require landscape maintenance services, as well as various planted areas within public rights-of-way. A list of facilities included in the proposed contract (Attachment A) and a location map is attached (Attachment B)

City parks maintenance is provided under contract through N. Clackamas Parks Authority (NCP). This agreement was only recently approved so that the combination of the NCP agreement and this proposed contract will result in the care and maintenance of all the City's greenscape. A few of the city's other natural or "green" areas are maintained periodically under a contract with the Clackamas Sheriff's office using community service workers. The City does not employ personnel necessary to provide this level of landscape maintenance nor does it own the equipment necessary to do this type of work.

The City recently advertised for bids for landscape maintenance services. A mandatory pre-bid conference was held recently and attended by one qualified contractor. After advertising on two separate occasions over the past six weeks, the City still only received one bid from Bizon Landscape Services. The Bizon proposal was \$65,364 for 37 individual sites based on an hourly rate of \$28.00 (see Exhibit A- City Owned Property List).

Due to budget constraints about \$34,000 (19 sites) had to be cut from the proposal. Therefore, the contract will be \$38,500 (includes a 10% contingency) and cover 18 sites. The 19 sites taken out of the contract include all the Water Department sites (well houses, pump stations and reservoirs), some of the right-of-way areas and a storm water detention pond. Each of the departments responsible for these areas will use other means to address the landscape maintenance needs at these sites. There will be an option to renew the contract for one fiscal year for up to a total of two years. The contract will be extended only if the previous year's projects were completed to the City's satisfaction.

This contract is the fifth and last of five contracts with outside vendors that are designed to meet the needs of the Facilities Department into the coming year and beyond.

Concurrence

The Finance Director and Community Services Director concur with this action.

Fiscal Impact

The fiscal impact to Facilities contract services is a maximum of \$38,500 per year. This includes a 10% contingency. Funds are included in the Contractual Services budget of the Facilities Department in the FY 2008/2009 approved budget. The Facilities Department will continue to make this a part of its budget request for the following four fiscal years.

The Facilities department is funded through an annual occupancy charge assessed to all city departments based upon total square footage occupied. Over the next four fiscal years, inflation will erode the buying power of this contract and may require an increase to occupancy charges.

Work Load Impacts

The Facility Maintenance Coordinator (FMC) will schedule the landscape maintenance work, most of which is regular and routine. Occasionally special projects come up or emergencies arise. This contract requires oversight and monitoring on a regular basis but consumes normally less than four hours per month.

Alternatives

1. Approve as recommended. This will result in continuation of the type of landscape maintenance the City has been getting at all of its facilities.
2. Deny request. The City would be required to take crews away from utility system maintenance to perform a basic level of service.

Attachments

1. Resolution Awarding a Contract for Landscape Maintenance Services
2. Scope of Services
3. List of City owned facilities and greenscape in public rights-of-way
4. Map of facilities and greenscape areas

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND ISSUE A PURCHASE ORDER WITH BIZON LANDSCAPE SERVICES FOR LANDSCAPE MAINTENANCE SERVICES IN THE AMOUNT OF \$38,500 PER YEAR FOR A MAXIMUM OF TWO YEARS.

WHEREAS, The City is not equipped or sufficiently staffed to maintain its landscape and greenscape resources and must contract for those services from an outside vendor; and

WHEREAS, The City recently advertised for proposals for landscapae maintenance services and received one proposal from Bizon Landscape Services; and

WHEREAS, Bizon Landscape Services was determined to be the most responsive proposer; and

WHEREAS, The contractor proposed a price lump sum price for services ; and

WHEREAS, The City has five (5) major building sites and other small habitable structures and greenscape areas within public rights-of-way that require landscape services services, and

WHEREAS, Staff anticipates a need for these services up to \$35,000 per year, with an option to renew the contract each fiscal year for up to a total of five years, and

WHEREAS, Funds are included in the Contractual Services budget of the Facilities Department in the FY 2007/2008 approved budget,

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to execute a contract in the amount of \$38,500 per year for a period not to exceed two years for a maximum amount of \$77,000 with Bizon Landscape Services and to sign a purchase order for \$38,500 for services in FY 2007/2008.

Introduced and adopted by the City Council on June 17, 2008.

This resolution is effective on

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

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City Attorney

ATTACHMENT 2

SECTION 2: DETAILED SCOPE OF WORK AND SUPPLEMENTAL INFORMATION

2.0.0 DETAILED STATEMENT OF WORK - CITY OF MILWAUKIE FACILITY MAINTENANCE LANDSCAPE MAINTENANCE SPECIFICATIONS

SPECIFIC TASKS TO BE PERFORMED

I. TURF AREA MAINTENANCE

A. MOWING

All turf areas shall be inspected and policed for litter and debris prior to each mowing, and disposed of.

1. Irrigated Lawns: All turf is to be mowed starting in February and ending in November. Mow one time in February, weekly beginning in March, through the end of October. Mow three times in November. Total mowing for the year would be 38 times.

2. Mowing height: All irrigated lawn areas shall be no less than 1-1/2", not to exceed 2-1/2": between mowing operations. The turf shall be cut at a uniform height; scalping and uneven cutting shall be prevented. Mower blades shall be maintained in good condition for an even cut. All cut grass shall be picked up and disposed off site.

B. EDGING

All sidewalks, curb lines, concrete slabs, bed edges and the immediate high visual areas shall be mechanically edged as needed to maintain a neat, clean appearance, approximately twice per month. However, the low visual perimeters such as road shoulders, outlying tree circles, bed edges, etc., may be chemically contained, but at no time will there be more than 1/2" of visual desiccated plant growth along the contained areas.

C. TRIMMING OR WEED EATING

Trimming shall be performed around all road signs, guard posts, trees, shrubs, utility poles and other obstacles. The grass to be trimmed shall not be trimmed to less than the desired height of cut determined by the mowing operation.

D. SWEEP/BLOW SIDEWALKS AND WALKWAYS

At the conclusion of each visit, sidewalks and walkways adjacent to work areas are to be swept or blown clean.

II. SHRUB BED MAINTENANCE

A. GROUND POLICING

All grounds will be policed weekly throughout the year for weeds, paper, and debris. Beds will be kept weed free at all times.

B. PLANTING BED MAINTENANCE

All planter beds in high traffic areas will be rake through once per quarter to remove debris and promote an attractive appearance.

C. PRUNING

Minimal pruning shall be done only to enhance and control natural growth. Tree pruning is limited to 15'. Dead, damaged and diseased portions of the plant will be removed. All cuts shall be flush and clean, leaving not stubs or tearing of bark. All major pruning shall be done following flowering or during plant's dormant season. Emergency or minor pruning shall be done when needed.

1. Shearing of plantings shall not be permitted.
2. Provide remedial attention and repair to shrubs and trees as appropriate by season or in response to incidental damage.
3. Maintain tree alignment, provided by guying, or staking, in sound condition; periodically check all ties to ensure against injury to the cambium layer. Remove guys when they are no longer necessary.
4. Prune shrubbery to maintain proper size in relationship to adjacent plantings and intended function.
5. Prune trees as required to remove weak branching patterns and maintain balance of head growth development. Remove lower limbs when obstructing vehicular or pedestrian clearances. Remove lower branches of conifer trees when in conflict with growth of planting beneath.
6. Prune ground cover plantings as required to restrain perimeter growth to within planting bed areas where adjacent to walks and curbs. Tip prune selected branchlets of low growing shrub or ground cover masses to maintain even overall heights and promote fullness.

D. LEAF REMOVAL

Removal of all leaves from all lawns, planter beds, sidewalks and walkways will be completed throughout the year as needed to maintain a clean appearance throughout.

E. SUMMER AND WINTER ANNUALS

Materials and labor for the installation of annual color to the designated areas will be provided on an additional service basis. Check Annual Calendar.

F. IRRIGATION EQUIPMENT AND OPERATION

1. Starting in April of each year, a start up of the irrigation system would begin. Check for proper operation and working of all irrigation heads. Establish time settings and intervals of irrigations water applications for each value of all irrigation zones. Make changes when necessary to correspond to variable watering requirements for lawn or planting areas.

2. Observe operation of all irrigating heads at least once each operating month. Check for coverage and plugged heads; balance system and clean heads as required to maintain system in proper working order.
3. Perform necessary site visits and observations to maintain the proper amounts of moisture in soils to promote healthy and vigorous plant growth. Correct conditions of over or under watering as may be determined by weekly observations during the irrigations season.
4. Shut-off and completely drain system(s) no later than November 1st. Turn off all main supply valves, open all manual drain valves; gravity drain, and bleed valves on back flow preventions devices. Perform winterization prior to specified dates in the event of earlier freezing weather.
5. Repair and/or replacement for and work damaged or otherwise affected by causes beyond contractor's control is the responsibility of the owner.

G. EXCLUSIONS

The parties expressly agree that contractor will not perform the following work unless contracted for on a separate basis:

1. Trimming of trees over 15 feet tall
2. Cleaning and/or repairing from acts of vandalism, natural disasters, or acts of God (Example: Freeze, Wind, Fire, Rain, Etc.)
3. Bark dust will be applied at a cost per unit when ordered. This includes bark and labor.

H. EXTRA WORK BILLINGS

All extra work will need prior permission from the owner or designated contract administrator. All extra work will be billed at the contractors' standard hourly rate.

**CITY OF MILWAUKIE
ANNUAL LANDSCAPING MAINTENANCE SCHEDULE**

CITY OF MILWAUKIE													
Facility Maintenance – Annual Landscaping Maintenance Schedule													
Function	Frequency												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	
Mowing		X	X	X	X	X	X	X	X	X	X		
Edging		X	X	X	X	X	X	X	X	X	X		
Weed eat/Hand Clip		X	X	X	X	X	X	X	X	X	X		
Sweep/Blow Walks	X	X	X	X	X	X	X	X	X	X	X	X	
Police/Hand Weed	X	X	X	X	X	X	X	X	X	X	X	X	
Trim Ground Cover			X			X				X			
Leaf Control	X										X	X	
Pruning	As Required												
Irrigation	Turn on and off – Monitor as needed												
Seasonal Color	Time and materials with approval												

All tools and equipment will be incidental to the hourly cost and the contractor will be responsible to furnish all related necessary materials and supplies to complete the project and protect the surrounding work area.

Clean up relating to licensed Landscaping services will be required daily and upon completion of each project.

CITY OF MILWAUKIE – LANDSCAPING VERSION – CITY OWNED PROPERTY LIST – Page 1

June 4, 2008 – (Sites in gray shading NOT included in contract)

ATTACHMENT A

AREA 1	#	Buildings	Name	Addresses	Usage	Size Of Parcel-In Sq.Ft.	Bid Amt
	1		City Hall	10722 SE Main St	City Administration	Bldg Sq Ft (9885) Lot Size - 42,000	\$6,072.00
	2		PSB	3200 SE Harrison	Police & Fire	Bldg Sq Ft (32,487) Lot Size - 130,304	\$4,051.00
				6101 SE JCB		2-Bldgs Sq Ft (17,521) Lot Size - 307,200	\$5,288.00
	4		Library	10660 SE 21st St	Library	Bldg Sq Ft (14,173) Lot Size - 74,100	\$5,796.00
	5		Bertman House	11022 SE 37th	Lease to tenants	Bldg Sq Ft (2888) Lot Size - 17,406	\$817.00
	6		N. Clackamas Parks Maint.	9989 SE 40th	N.C. P. Maintenance	Lot Size - 90,000	\$1,391.00
	7		Old PW Shop	3806 SE Harvey	Old P.W. Shop/Storage	Same as N. Clack. Prk. Maint.	\$1,237.00
	8		Water Shop 40th & Harvey	9951 SE 40th Ave	Water Shop(Built in 1962)	Same as N. Clack. Prk. Maint.	\$1,545.00
	9		Pond House	2215 SE Harrison	Library Storage	Bldg Sq Ft (1774) Lot Size-not determined	\$1,490.00
							\$27,687.00
YEARLY COST							
AREA 1	#	Well/Water Sites	Name	Addresses	Usage	Size Of Parcel-In Sq.Ft.	Bid Amt
				9890 SE 40th			N/A
				9951 SE 40th St			\$1,545.00
				3800 SE Harvey			\$1,391.00
							\$1,049.00
							\$1,049.00
					Well		\$1,325.00
							\$817.00
							\$2,650.00
					Water Reservoir		N/A
					Water Reservoir		\$4,085.00
					Pump Station		\$1,325.00
							\$15,236.00
YEARLY COST							
AREA 3	#	Lift Stations	Name	Addresses	Usage	Size Of Parcel-In Sq.Ft.	Bid Amt

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ATTACHMENT 3

					Public Road Right of Way - 12,584	\$2,882.00
YEARLY COST						\$2,882.00

CITY OF MILWAUKIE - LANDSCAPING VERSION - CITY OWNED PROPERTY LIST - CONT. - Page 2
APRIL 28, 2008

AREA 4	#	Other	Name	Addresses	Usage	Size of Parcel-In Sq. Ft.	Bid Amount
			Logis Easement			1,984	\$1,160.00
			Lacynta Ln Easement	W. End of Lacynta Ln.			\$1,081.00
			Islands on Washington (2ea)	Penzance and 3055			\$720.00
			Islands on Monroe (2ea)	25th and 28th		270	\$720.00
			Island on 32nd (1ea)	32nd at Meek		93	\$680.00
			Washington and Oak	Planted Cul-D-Sac end of 32nd			\$1,435.00
	28		McLoughlin Blvd	Kellogg Ck to Scott St - Eastside & Center Landscape Strip at Monroe			\$4,370.00
YEARLY COST						\$10,166.00	

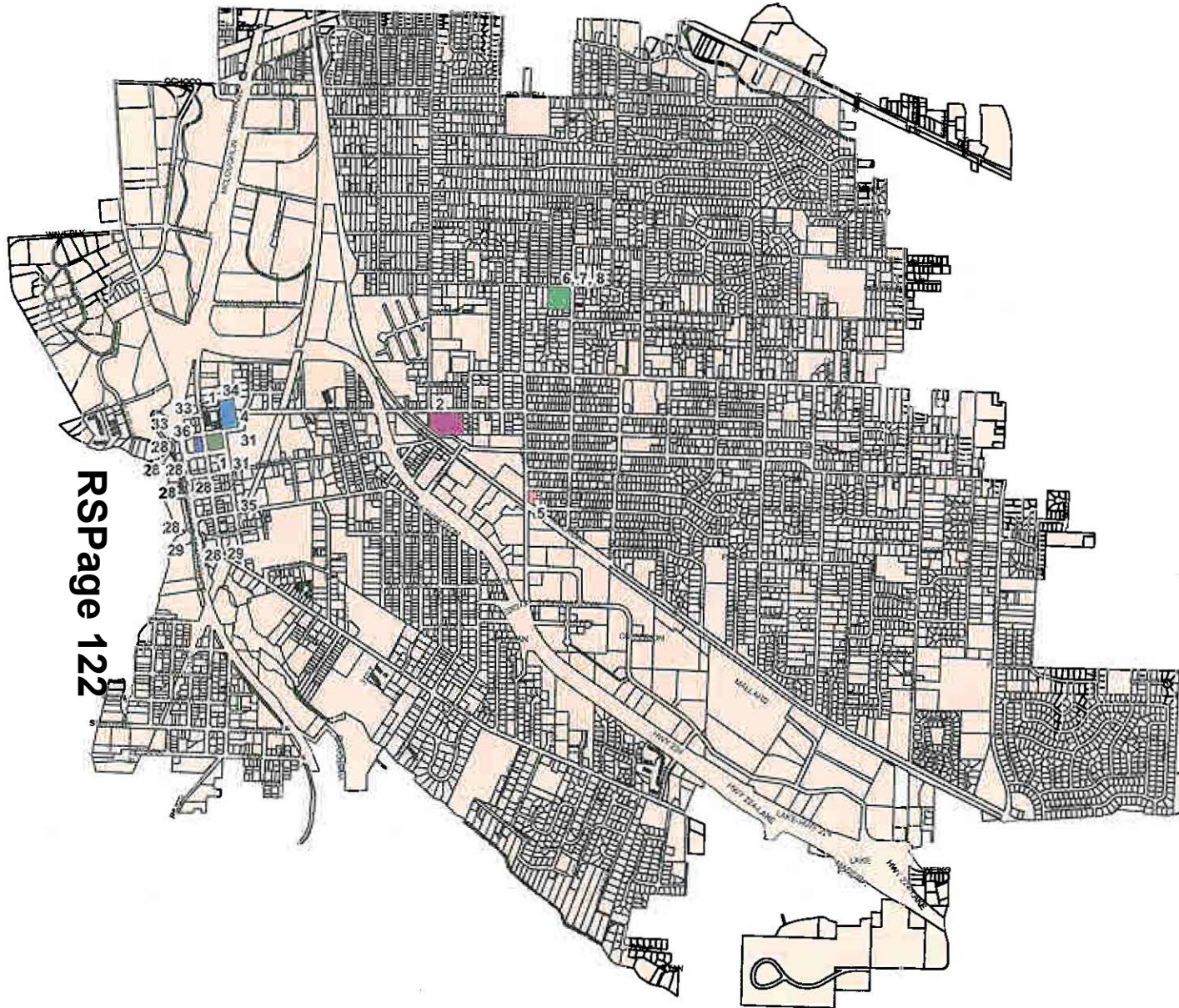
RSP Page 120















AREA	#	Bulbouts	Name	Addresses	Usage	Size of Parcel-In Sq. Ft.	Bid Amount
	29		Main & Washington	All Corners		520	\$585.00
	30		Main & Jefferson	SW		570	\$585.00
	31		Main & Monroe	NE/NW		769	\$585.00
	32		Main & Jackson	All Corners		455	\$585.00
	33		Main & Harrison	SE/SW/NE		322	\$585.00
	34		21st & Harrison	NW		330	\$386.00
	35		21st & Washington	SE		2,737	\$386.00
YEARLY COST						\$3,697.00	

AREA 6	#	Parking Lots	Name	Addresses	Usage	Size of Parcel-In Sq. Ft.	Bid Amount
	36		City Hall-Paid	10721 SE Main St	Parking Lot	21,008	\$4,040.00
YEARLY COST						\$4,040.00	

AREA 7	#	Detention Pond	Name	Addresses	Usage	Size of Parcel-In Sq. Ft.	Bid Amount
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City of Milwaukie Landscaping Areas



	1		30
	2		31
	4		32
	5		33
	6, 7, 8		34
	28		35
	29		36

- 1 City Hall
- 2 PSB
- 4 Library
- 5 Bertman House
- 6 N. Clackamas Parks Maintenance
- 7 Old PW Shop
- 8 Water Shop 40th & Harvey
- 9 Pond House
- 28 McLoughlin Blvd
- 29 Main & Washington
- 30 Main & Jefferson
- 31 Main & Monroe
- 32 Main & Jackson
- 33 Main & Harrison
- 34 21st & Harrison
- 35 21st & Washington
- 36 City Hall-Paid / Parking Lot

RSPage 122



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: June 3, 2008
Subject: **O.L.C.C. Application – 7 Star Market – 10598 SE 32nd Avenue**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from 7 Star Market – 10598 S.E. 32nd Avenue.

Background:

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

5.
PUBLIC HEARING



To: Mayor and City Council
From: Mike Swanson, City Manager
Subject: Resolutions Regarding State Revenue Sharing
Date: June 10, 2008 for June 17, 2008 City Council Meeting

Action Requested

Consider testimony received during the public hearing and approve the resolutions declaring the City's election and qualification to receive State Revenue Sharing.

Background

In order for the City of Milwaukie to receive a share of state revenues apportioned and distributed to the cities of the state during fiscal year 2007-2008 as provided in ORS 221.770, the City Council must enact an ordinance or resolution expressing that election and file the same with the Oregon Department of Administrative Services no later than July 31.

The City Council can show eligibility of the City of Milwaukie to receive State Revenue Sharing by adopting a resolution that certifies that the City offers four or more of the required municipal services.

Concurrence

The City Manager acting as the Budget Officer concurs with the proposed resolutions.

Fiscal Impact

The resolutions declare the City's election and qualification to receive State Revenue Sharing in fiscal year 2008-2009.

RESOLUTION NO. _____

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

WHEREAS, the City of Milwaukie desires to receive a share of state revenues apportioned and distributed to the cities of the state during fiscal year 2008-2009 as provided in ORS 221.770; and

WHEREAS, ORS 221.770(1)(a) requires that any city electing to receive a distribution must enact an ordinance or resolution expressing that election and file the same with the Oregon Department of Administrative Services no later than July 31; and

WHEREAS, ORS 221.770 (1)(b) requires that any city electing to receive a distribution must hold at least one public hearing at which citizens have the opportunity to provide written or oral comment on the possible uses of the distributions; and

WHEREAS, the City must certify its compliance with the statutory provisions to the Oregon Department of Administrative Services before July 31.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon as follows:

Section 1. The City of Milwaukie hereby elects to receive distributions of state revenues during fiscal year 2008-2009 pursuant to ORS 221.770(1)(a).

Section 2. The City Council hereby certifies that it conducted a public hearing, after giving public notice, on June 17, 2008 and called for written and oral comment on the possible uses of the distributions and that the hearing complied with ORS 221.770(1)(b) and (c).

Section 3. The City Recorder is directed to certify compliance with the public hearing requirements with the Oregon Department of Administrative Services by July 31, 2008.

Section 4. This resolution shall be effective immediately upon its passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on June 17, 2008.

James Bernard, Mayor

Date

Attest:

Pat DuVal, City Recorder

Approved as to form
RAMIS, CREW, CORRIGAN, LLP

City Attorney

RESOLUTION NO. _____

**A RESOLUTION CERTIFYING SERVICES
FOR STATE REVENUE SHARING**

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

- (1) Police protection
- (2) Fire protection
- (3) Street construction, maintenance, and lighting
- (4) Sanitary sewer
- (5) Storm sewers
- (6) Planning, zoning, and subdivision control
- (7) One or more utility services

and

WHEREAS, city officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:

- Police protection
- Street construction, maintenance, and lighting
- Sanitary sewer
- Storm sewers
- Planning, zoning, and subdivision control
- One or more utility services

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on June 17, 2008.

This resolution shall be effective immediately upon its passage.

James Bernard, Mayor

Dated

Attest:

Pat DuVal, City Recorder

Approved as to form
RAMIS, CREW, CORRIGAN LLP

City Attorney

CITY OF MILWAUKIE

CERTIFICATION

I certify that a public hearing before the City Council was held June 17, 2008 giving citizens opportunity to comment on the use of State Revenue Sharing.

Pat DuVal, City Recorder



To: Mayor and City Council
From: Mike Swanson, City Manager; Ignacio Palacios, Finance Director
Subject: Resolution Adopting the FY 2008-2009 Annual Budget
Date: June 10, 2008 for June 17, 2008 City Council Meeting

Action Requested

Consider testimony received during the public hearing and approve the resolution adopting the budget and capital improvements plan, making appropriations, and declaring and categorizing taxes for fiscal year 2008-2009

Background

The Budget Committee of the City of Milwaukie met and adopted its Approved Budget on May 21, 2008. A financial summary of the approved budget and a notice of budget hearing before the City Council were published in the "Clackamas Review" on Wednesday, May 23, 2007 according to the requirements of Oregon Local Budget Law (ORS 294.416). The City Council may take action to adopt the budget once the budget hearing has been held and testimony has been heard and considered.

The legal publication contains several budget issues that differ from the budget you are adopting (these have been summarized in the attached Exhibit A). These changes are a result of the 'cleaning up' and reconciliation of the approved budget document to the City's CIP Plan and updated information not available at the time of approval of the 2008-09 Proposed Budget by the Budget Committee.

Concurrence

The City Manager acting as the Budget Officer concurs with the proposed resolution.

Fiscal Impact

The resolution adopts the fiscal year 2008-2009 annual budget of \$44,736,924.

RESOLUTION NO. _____

**A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING
APPROPRIATIONS, AND DECLARING AND CATEGORIZING
TAXES FOR FISCAL YEAR 2008-2009**

WHEREAS, the Budget Committee of the City of Milwaukie met and approved the Proposed Budget on May 21, 2008; and

WHEREAS, the Notice of Budget Hearing and Financial Summary were published in the "Oregonian" on June 12, 2008 as required by ORS 294.416; and

WHEREAS, a public hearing was held on June 17, 2008; and

WHEREAS, the changes in the Proposed Budget have been accepted and are attached as Exhibit A

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon as follows:

Section 1. The City Council of the City of Milwaukie hereby adopts the budget for fiscal year 2008-2009 in the sum of \$44,736,924. A copy of the budget document is now on file at City Hall, 10722 SE Main Street, Milwaukie, Oregon.

Section 2. The amounts for the fiscal year beginning July 1, 2008 and for the purposes shown below are hereby appropriated as follows:

General Fund		Bike Path	
Library Services	2,008,497	Capital Outlay	30,000
Community Services	1,520,900	Contingency	<u>28,321</u>
Code Enforcement	300,451	Total	58,321
Public Access Studio	143,500		
Police Administration	407,469	Neighborhood Grants	
Police Field Services	6,668,523	Capital Outlay	87,892
Police Support Services	443,997		
Planning	850,365	Public Safety Facility Debt Service	
Municipal Court	70,173	Materials and Services	465,845
Intergov/Interfund	<u>1,179,919</u>	Contingency	<u>258,155</u>
Total	13,593,794	Total	724,000
		Pension Debt Service	
		Materials and Services	226,880
Administrative Services		Transfers	<u>16,200</u>
City Council	57,492	Total	243,080
City Manager	651,151		
City Attorney	275,000	Building Inspections	
Human Resources	317,318	Personal Services	184,420
Finance	498,468	Materials and Services	123,131
Records and Info Management	726,792	Capital Outlay	50,000
Information and Technology	950,366	Transfers	55,718
Photocopies	<u>57,209</u>	Contingency	<u>58,781</u>
Total	3,533,796	Total	472,050
		Streets/Surface Maintenance	
Computer Reserve		Materials and Services	32,000
Materials and Services	29,971	Capital Outlay	920,000
Capital Outlay	175,000	Transfers	161,484
Contingency	<u>160,327</u>	Contingency	<u>73,516</u>
Total	365,298	Total	1,187,000

Streets/State Gas Tax

Personal Services	396,233
Materials and Services	913,501
Transfers	721,078
Contingency	<u>85,979</u>
Total	2,116,791

Streets SDC

Capital Outlay	54,150
Transfers	80,000
Contingency	<u>33,850</u>
Total	168,000

Streets Capital and Reserve

Capital Outlay	592,100
Contingency	<u>91,000</u>
Total	683,100

Water

Personal Services	436,685
Materials and Services	1,189,288
Debt Service	133,475
Capital Outlay	130,600
Transfers	419,381
Contingency	<u>81,808</u>
Total	2,391,237

Water SDC

Capital Outlay	32,000
Transfers	413,074
Contingency	<u>106,892</u>
Total	551,966

Water Capital and Reserve

Capital Outlay	686,000
Contingency	<u>100,000</u>
Total	786,000

Wastewater

Personal Services	384,915
Materials and Services	2,464,923
Capital Outlay	25,000
Transfers	817,839
Contingency	<u>150,979</u>
Total	3,843,656

Wastewater SDC

Capital Outlay	180,000
Transfers	2,550
Contingency	<u>1,156,840</u>
Total	1,339,390

Wastewater Capital and Reserve

Capital Outlay	412,666
Transfers	11,639
Contingency	<u>1,421,111</u>
Total	1,845,416

Stormwater

Personal Services	343,928
Materials and Services	752,910
Capital Outlay	10,000
Transfers	479,839
Contingency	<u>148,592</u>
Total	1,735,269

Stormwater SDC

Capital Outlay	80,000
Contingency	<u>179,207</u>
Total	259,207

Stormwater Capital and Reserve

Capital Outlay	139,666
Contingency	<u>147,224</u>
Total	286,890

Community Development Admin

Personal Services	889,637
Materials and Services	<u>632,198</u>
Total	1,521,835

Engineering

Personal Services	505,241
Materials and Services	<u>267,127</u>
Total	772,368

Fleet Services

Personal Services	490,620
Materials and Services	917,889
Capital Outlay	21,000
Transfers	<u>250,775</u>
Total	1,680,284

Fleet Services Capital and Reserve

Capital Outlay	335,000
Contingency	<u>1,747,815</u>
Total	2,082,815

Facilities Management

Personal Services	182,018
Materials and Services	987,800
Debt Service	57,912
Capital Outlay	375,000
Transfers	<u>219,426</u>
Total	1,822,156

Knutson Cemetery Trust		Unappropriated Reserve	
Materials and Services	3,000	General Fund	500,000
Contingency	<u>35,513</u>		
Total	38,513	Total Budget	44,736,924
Library Endowment			
Capital Outlay	40,900		
Forfeiture Trust			
Capital Outlay	5,900		
Total Appropriations	44,236,924		

Section 3. The City Council of the City of Milwaukie hereby imposes the taxes provided for in the adopted budget at the rate of \$4.1291 per \$1,000 of assessed value for operations and in the aggregate amount of \$578,947 for bonds. These taxes are hereby imposed and categorized for tax year 2008-2009 upon the assessed value of all taxable property within the City.

	General Government	Excluded from Limitation
General Fund	\$4.1291/\$1,000	
Public Safety Debt Service		\$578,947

Section 4. The City Council of the City of Milwaukie hereby adopts the City of Milwaukie 2009-2013 Capital Improvement Program (CIP) for fiscal year 2008-2009. A copy of the CIP document is now on file in City Hall, 10722 SE Main Street, Milwaukie, Oregon.

Section 5. The City Council of the City of Milwaukie hereby adopts the pay table for fiscal year 2008-2009 and includes it as part of the adopted budget.

Introduced and adopted by the City Council on June 17, 2008.

This resolution takes effect immediately upon adoption.

James Bernard, Mayor

Dated: _____

Attest:

Pat DuVal, City Recorder

Approved as to form:
Ramis, Crew, Corrigan, LLP

City Attorney

City Council Exhibit A 2008-09 Budget

Dept/Line Item	Approved Bud Comm	Adopted by City Council	Change
General Fund			
Other Revenues	-	(300)	(300)
Transfers	(166,445)	(186,445)	(20,000)
Transfer from Fund 720	(47,350)	(67,350)	(20,000)
214 - Community Services	300,451	300,751	300
Rents & Leases	-	300	300
Contingency & Reserve	1,240,000	1,260,000	20,000
Contingency	740,000	760,000	20,000

Street Cap & Reserve			
Revenue	(152,700)	(214,800)	(62,100)
FundBalance/Working Cap	(152,700)	(214,800)	(62,100)
Capital Outlay	530,000	592,100	62,100
37th/Oak RR Xing	-	11,000	11,000
Logus Road Phase I	450,000	501,100	51,100

Wastewater			
Other Financing Sources	-	(11,448)	(11,448)
Interest Earned	-	(5,000)	(5,000)
Bad Debt Recovery	-	(3,000)	(3,000)
Other Revenues	-	(3,448)	(3,448)
Contingency & Reserves	139,531	150,979	11,448
Contingencies	139,531	150,979	11,448

Stormwater SDC			
Capital Outlay	-	80,000	80,000
King Road Storm Improve	-	80,000	80,000
Contingency & Reserve	259,207	179,207	(80,000)
Contingencies	259,207	179,207	(80,000)

Fleet Reserve			
Capital Outlay	170,000	335,000	165,000
Mini Vactor	70,000	235,000	165,000
Contingency & Reserve	1,912,815	1,747,815	(165,000)

Facilities			
Fund Bal/Working Cap	(175,000)	(270,000)	(95,000)
Capital Outlay	300,000	375,000	75,000
Cash Spot Demolition	-	75,000	75,000
Transfer Out	47,350	67,350	20,000

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher

Subject: City of Milwaukie-TriMet Umbrella Agreement for Transit Improvements in Downtown Milwaukie 2008-2018

Date: June 6, 2008 for the June 10 Work Session and June 17 Meeting

Action Requested

For the June 10 work session, no action is requested. The work session will enable staff and council to discuss the terms of the agreement and should provide staff with direction for finalizing the agreement with TriMet before adoption.

For the June 17 meeting, staff will provide Council with a finalized agreement and a resolution seeking the Council's approval. The agreement and associated resolution will likely be finalized just prior to the council meeting. Staff will provide copies to the Council upon finalization and will be prepared to discuss, with TriMet's participation, any changes or questions that Council may have about the final form and substance of the agreement.

It will be important that such issues get raised and deliberated on at the work session on June 10th, so staff from the City and TriMet can be adequately prepared to address them either in the final agreement or at the regular session on June 17th.

The TriMet board is scheduled to take action on the agreement at its June 25th meeting.

History of Prior Actions and Discussions

May 2008 – Work session discussion on the Umbrella Agreement with TriMet and City staff.

2007-2008 – Various actions and discussions regarding items that are in the Umbrella Agreement, including downtown bus facilities, light rail alignments, light rail station design, safety and security, and downtown revitalization.

Background

City and TriMet staff have been working an agreement in one form or another since the fall of 2007. The two organizations recognize their joint interest in serving Milwaukie, north Clackamas County and the region with high quality, convenient public transit, which is expected to include light rail in the SE McLoughlin corridor with construction of the Phase 2 South Corridor Light Rail Project.

Light rail will provide a reliable, high frequency transportation option for Clackamas County commuters, and will benefit north Clackamas County residents and workers by providing car-free linkages to multiple destinations on the TriMet system. But as importantly for the City of Milwaukie, the Project offers the City a transportation investment that can help catalyze Milwaukie's revitalization in keeping with Milwaukie's vision and land use plans.

The two organizations recognize that achieving the best possible light rail project in Milwaukie, and assuring that it helps improve the overall transit environment in downtown Milwaukie, will require exceptional coordination and partnership. The City and TriMet have a longstanding relationship and history of working on projects together. However, this Umbrella Agreement (Attachment 1) attempts to formalize how that relationship can be strengthened as part of the decision to construct a significant new transit facility in Milwaukie. Staff believes that the agreement (and the light rail project) obliges both organizations to make good on a broad set of past and present expectations held by their respective publics.

The Umbrella Agreement should be read as a statement of intent to develop plans, agreements, funding strategies, service enhancements, operating agreements, development agreements and facility improvements (included bus facilities) over the next ten years (2008-2018) that will help ensure maximum benefit to transit patrons and Milwaukie residents and businesses, and to greatly enhance the likelihood of continuous and committed coordination between the two organizations. Two diagrams regarding bus facility improvements are included in this report as Attachment 2.

Concurrence

The City Attorney, City Manager, Police Chief, Finance Director and Planning Director have all contributed to parts of the agreement, concur with its substance and are

prepared to discuss the details of the agreement with the Council on the 10th and/or 17th. The Directors of Engineering and Operations provided input also.

Fiscal Impact

The agreement includes a \$5 million commitment from the City to help finance the light rail project. This will have a fiscal impact to the City in future budget years, as will the return on that investment, likely to come in the form of higher land values in Milwaukie and associated increased property tax receipts as a result. The City Manager and Finance Director are prepared to discuss fiscal impacts from the project with the Council. Additional information can be made available for the Council as part of the staff report that will be prepared for the Locally Preferred Alternative adoption action scheduled for July 15th.

Work Load Impacts

There are workload impacts from this agreement anticipated for all of the Community Development and Public Works Departments, as well as for the Police Department, the Community Services Department, the Finance Department and all of the administrative departments that provide internal support to these departments. Council should be aware of these workload impacts and recognize that the ten year work program outlined in this agreement is a significant undertaking for the City and a commitment to TriMet that the City is prepared to dedicate the resources necessary to make good on the Agreement.

The Agreement also describes the addition of an FTE to assist City staff on the light rail project, paid for by the project. This will considerably lessen the staff's burden on project monitoring and development, although the Directors expect that many Project responsibilities will still fall heavily on their departments.

There remains an issue of not having sufficient space at the JCB facility to accommodate this, or any other, new staffer.

Alternatives

Council can elect not to act on this agreement at this time. Instead it can defer the decision until after the light rail LPA adoption process. Alternatively, it can seek some other means for strengthening the relationship and clarifying the "roadmap" with TriMet.

Staff strongly recommends against either of these alternatives, as staff feels that the timing and form of this agreement provide the best apparent way forward to accomplish

the community's interests in light of the enormous transit investment that is planned for the City.

Attachments

1. Draft Umbrella Agreement (Memorandum of Understanding) between the City of Milwaukie and TriMet
2. Proposed Downtown Milwaukie Bus Routes – Existing and Proposed with light rail in 2015.
3. Resolution

DRAFT

MEMORANDUM OF UNDERSTANDING

**TriMet and City of Milwaukie
Umbrella Agreement
For Transit Improvements in Milwaukie 2008-2018**

June 5, 2008

This Memorandum of Understanding (“MOU”), dated June ____, 2008, is by and between the City of Milwaukie (“Milwaukie”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively the “Parties”).

A. Recitals

TriMet and Milwaukie have a joint interest in serving Milwaukie, north Clackamas County and the Portland Metro region with high quality, convenient public transit, expected to include light rail in the SE McLoughlin corridor with construction of the Phase II South Corridor Light Rail Project (“Project”). The Project will provide a reliable, high frequency transportation option for Clackamas County commuters, and will benefit north Clackamas County residents and workers by providing car-free linkages to multiple destinations in the TriMet system.

As importantly for the City of Milwaukie, the Project offers the City a transportation investment that can help catalyze Milwaukie’s downtown revitalization as described in local and regional land use plans.

The Parties recognize that serving the public interest requires exceptional coordination and partnership, and that the relationship between the Parties must be strengthened as part of the decision to construct a significant new transit facility in Milwaukie.

B. Function of this Memorandum Of Understanding

This non-binding Memorandum of Understanding (“MOU”) is a framework for developing subsequent and more definitive agreements between the Parties and is a statement of intent to develop plans, funding strategies, service enhancements, and facility improvements over the next ten years. Although this MOU does not contain definitive dates by which the specified activities contained herein must occur, this is due to the fact that the Project is currently at a preliminary stage. However, the Parties agree to proceed as quickly as is reasonable and to pursue the development of the Project and the activities related thereto in a timely manner.

C. Background and Understandings

1. Light Rail Local Match Commitment

a. Background

Milwaukie and TriMet are two of several partners in the Project, all with an interest in the Project's success and each with a relative obligation to the "local match" portion of the Project funding. The State of Oregon has committed \$250,000,000 to the Project. The remainder of the local match portion is being sought from all Project Partners. The total amount of the local match will not be known until 2011 or 2012.

b. Understandings

Milwaukie expects to contribute \$5,000,000 and TriMet expects to contribute \$30,000,000 toward the local match. The Parties will make these commitments through a funding agreement, which is expected to be finalized by December 31, 2008. The Parties recognize that amendments to the Project scope will necessarily occur during final engineering and construction, and also that opportunities to improve the Project may present themselves by improving how the Project integrates with City plans, utilities and infrastructure. If such scope changes occur, the financial commitments of the Parties may change and Project staff or partners may request approval of additional funding by the Milwaukie City Council. Such changes will be addressed by amending the funding agreement between the Parties.

2. Light Rail Safety and Security

a. Background

TriMet recognizes that the expansion of its transit system brings increasing law enforcement obligations, and TriMet and Milwaukie also recognize that additional actions should be taken to raise public confidence in Clackamas County regarding transit safety and security. To those ends, TriMet has recently expanded its Transit Police force, and has initiated a continuing process to evaluate and improve overall system safety, including a determination of the number of officers required. TriMet and Milwaukie recognize that establishment of a South Precinct in Clackamas County will help in this cause by raising the police presence and interoperability between TriMet security forces and those of local jurisdictions in Clackamas County. Milwaukie has encouraged TriMet to locate the South Precinct office in the City of Milwaukie. TriMet seeks to expand the effectiveness and deployment of its Transit Police Division safety and security operations on the TriMet transit system, in particular by assigning additional sworn officers to the South Precinct. Milwaukie also seeks to enhance security measures on TriMet's transit system and the Project. The parties agree that a focused presence of additional police personnel and the establishment of a South Precinct would be effective measures to expand and enhance MAX and transit system safety and security.

b. Understandings

The Parties recognize that transit system safety and security is a cooperative effort requiring coordinated strategies, design efforts, operations and information sharing between transit police and local jurisdiction law enforcement. The Parties agree that this coordinating function will improve through an ongoing forum among command staff of the TriMet Transit Police, the Milwaukie Police, the Clackamas County Sheriff and others with law enforcement jurisdiction in

the Clackamas County area of the TriMet district. TriMet agrees to coordinate and participate in this forum by the opening of the I-205/Portland Mall light rail project.

TriMet is currently working to establish a South Precinct prior to the time Portland to Milwaukie light rail opens, and will enter into a separate agreement with police agencies related to the establishment and operation of the South Precinct.

TriMet will communicate and collaborate with Milwaukie's public safety officials on safety and security issues throughout the Project's planning, design, engineering, construction and operational phases. In the design stage of the Project, the Parties will collaborate in applying Crime Prevention Through Environmental Design (CPTED) principles to the design of Project elements in Milwaukie. The Parties will have in place a Security Operations Plan for the Project prior to the Project's opening, taking into consideration appropriate input from other impacted law enforcement agencies. TriMet will install security cameras and appropriate lighting at Project Park and rides and stations built in Milwaukie, and will take measures to promote effective law enforcement capabilities at park and rides in Milwaukie.

Prior to the Project completion, TriMet will provide at its cost an information campaign to the Milwaukie community to regarding safe and unsafe activity near the rail right of way. TriMet will also conduct focused informational outreach to students, parents and teachers of the Portland Waldorf School, St. John the Baptist School, and Milwaukie High School.

3. Light Rail Facility Design, Engineering, Construction and Maintenance

a. Background

The Federal Transit Administration ("FTA") is a partner in the Project, and the FTA and other Project partners will play a role in the design, construction and funding of the Project. During design and construction of the Project, the Parties will be required to accommodate various competing interests and needs. Recognizing that flexibility regarding the design and construction of the Project is important, the Parties understand that the presence of light rail in downtown Milwaukie causes unique concerns in that Milwaukie desires to maximize downtown Milwaukie real estate for transit-oriented development and desires to locate light rail support infrastructure, such as substations, operator break rooms or surplus storage track for trains, in such a way that these facilities are integrated into the surrounding environment to the extent practicable in light of other Project goals and funding limitations. TriMet is also aware that Project design in the City of Milwaukie is subject to Milwaukie design guidelines and regulations, and that the Milwaukie community will have the opportunity to comment and influence the design of Milwaukie's light rail station and park and ride elements.

b. Understandings

The Parties agree that they will enter into a Design and Construction IGA that will clarify each party's roles and responsibilities regarding the design and construction of the Project. The Design and Construction IGA will address various Project issues, and will formalize TriMet's agreement to collaborate with City staff in designing and constructing the Project elements that

will be built in Milwaukie, and to allow Milwaukie staff to have the opportunity to influence the design of Project elements in Milwaukie, with the understanding that certain Project elements tolerate minimal design discretion. Milwaukie is prepared to assign staff to the Project as necessary to oversee coordination and facilitation of the City's various roles in the design, permitting and construction of the Project. However, Milwaukie does not have the resources to dedicate staff to the Project at the required level of involvement. The Design and Construction IGA will fund one Milwaukie FTE beginning with FTA approval of Preliminary Engineering to address the staffing needs of the City and any other Project financial obligation to Milwaukie for providing the necessary staff support.

TriMet will develop a Conduct of Construction plan with its construction contractor that will address construction-related concerns from Milwaukie schools, businesses, neighborhoods and property owners affected by construction. Prior to completion of the Project, the Parties agree to establish a Project Maintenance Agreement to clarify maintenance responsibilities between the Parties for the light rail facilities within the City.

4. Light Rail Mitigation Measures

a. Background

The Supplemental Draft Environmental Impact Statement ("SDEIS") for the Project was published in The Federal Register on May 9, 2008. The Parties expect to select the locally preferred alternative ("LPA") in the summer of 2008 and complete the Final Environmental Impact Statement ("FEIS") in the summer of 2009.

b. Understandings

The Parties agree that the best possible Project is one that integrates into the Milwaukie community as comfortably as possible for adjacent land users, with minimal disruption to existing ecosystems and businesses. Although both Parties recognize that federal processes are in place to define certain impacts and require certain mitigations, TriMet agrees to exert its best efforts to mitigate the concerns listed in this section, along with other concerns that Milwaukie may provide to TriMet prior to completion of the FEIS. Milwaukie agrees to exert its best efforts to help TriMet meet the needs of adjacent land users and other interested parties while accomplishing the Project in a manner that allows it to be successfully funded, built, operated and integrated into the regional light rail system.

Issues requiring mitigation could include freight access in the North Industrial district; noise and vibration concerns near the Portland Waldorf School; safety and security concerns near the Waldorf School, St. John's Catholic School and Milwaukie neighborhoods; construction-related concerns from affected businesses, schools and parks users; and environmental and recreational concerns near Kellogg Creek and the Trolley Trail.

Regardless of findings in the Final Environmental Impact Statement, TriMet understands Milwaukie's desire to limit light rail train noise within the Milwaukie downtown area. The Parties agree that they will collaborate to jointly pursue a Quiet Zone designation or equivalent

from the Federal Railroad Administration (“FRA”) for the SE Harrison, SE Monroe, SE Washington and SE 21st Avenue intersections of the alignment. TriMet agrees that to the extent practicable it will seek to design the Project in a way that it believes will increase the likelihood of FRA approval of the Quiet Zone designation.

5. Transit Facilities, Amenities, and Programs

a. Park and Ride Facilities

i. Background

The Project will require a considerable effort to fully integrate and develop the transit facilities and amenities that are required, and the Project will necessitate a considerable increase of park and ride capacity in and around Milwaukie. Milwaukie recognizes this necessity and supports the establishment of park and ride facilities that comply with transit policies enumerated in the City’s Transportation System Plan. Of the four park and ride facility locations studied for the project, two are within the city limits (Southgate/Milwaukie and McLoughlin/Washington) and two are just outside city limits (Tacoma and Park Avenue). There will be impacts in Milwaukie from building any of the four facilities.

ii. Understandings

To successfully achieve its purpose and need, the Project requires a considerable attention and effort to fully integrate and develop park and ride facilities, bus shelters, and to accommodate bus layover needs in Milwaukie. The Parties agree that the EIS process will suitably address the traffic, environmental and other related impacts from construction of these facilities and that mitigation due to the traffic generated at these facilities will be especially important.

The Parties agree to establish a Parking Agreement to address any relevant issues if construction of a park and ride facility in downtown Milwaukie is included in the Project. Such an agreement shall consider the existing policies of TriMet and Milwaukie regarding park and rides and Town Center development, as well as best practices from elsewhere on the TriMet and other transit agency systems. The intent of the Parties is that such a park and ride in downtown Milwaukie would be a pedestrian-friendly, multi-level, mixed use structure for both transit and municipal use.

b. Bus Facilities

i. Background

Milwaukie’s 2007 Transportation System Plan (“TSP”) update surveyed the Milwaukie community’s transportation needs, resulting in a Plan with exceptionally high community approval. The TSP contains over 100 transportation improvement projects desired in Milwaukie. The second highest ranked project on this list is “Downtown Transit Center Improvements,” which includes the “dissolving” of the transit center currently occupying parts of 21st Street and Jackson Street in downtown Milwaukie. TriMet has supported the concept of dissolving the

transit center through its work with Milwaukie in the 2003 light rail "Working Group" process and the 2007 TSP update process. Dissolving the transit center will occur by improving and distributing downtown bus boarding/deboarding activity with new architectural shelters and amenities, and by physically separating the bus layover function from the shelter areas, with the layover function preferably (per City policy) located outside the downtown core. In late 2006 and early 2007, Milwaukie and TriMet collaborated with the Milwaukie community to select a new layover facility site. At a City Council meeting on April 3, 2007, TriMet agreed to focus on using the former Southgate theater site for the layover facility, a decision that conformed to Milwaukie's preference.

In March 2008, as the light rail Project advanced, it was recognized that a park and ride facility at the Southgate site may be a short-term facility that might not fit into the eventual design of the light rail line and that the layover function might not be accommodated at the Southgate site for financial and operational reasons. TriMet and Milwaukie therefore seek to relocate the downtown transit center, separate its functions, and complete the facility improvements that are warranted in downtown Milwaukie.

Prior to the construction of the Project, TriMet expects to begin to establish a pair of Bus Stop Shelter Areas in downtown Milwaukie, with high quality bus shelters and related amenities. It is expected that one of these Bus Stop Shelter Areas will be located at or near the existing transit center location at 21st and Jackson Street and the other at or near the intersection of 21st and Washington Street. The Parties recognize the location of the proposed stop at SE 21st and SE Washington Street may need to be modified depending on the selection of station(s) location for the light rail project. The Parties recognize that locating the layover facility near one of the Bus Stop Shelter Areas minimizes fiscally and environmentally irresponsible out-of-direction bus travel.

ii. Understandings

The Parties agree that they will enter into a separate binding agreement to create improved Bus Stop Shelter Areas in downtown Milwaukie, under which TriMet will agree to pursue Federal Transit Administration concurrence to use the balance of federal grant funds appropriated for transit improvements in Milwaukie (approximately \$420,000) for this purpose and Milwaukie will agree to identify an appropriate site that meets the needs of both Parties and sufficiently integrates these facilities into the future Project, and to provide the necessary approvals for installation of the shelters at the chosen site. The agreement will also address the bus stop standards, shelter types, and amenities to be installed. The Parties will use their best efforts to finalize this agreement no later than December 2008. Any remaining Bus Stop Shelter Area improvements in Milwaukie will become part of the Project. TriMet will also continue to reformat bus service so as to reduce bus layovers in Downtown Milwaukie, with layovers limited to only those required by lines 70 and 75 by September 2009. As part of the design of the Project, TriMet agrees that, to the extent practicable, it will design any downtown bus layover sites at a location that creates minimal visual and functional disruption to nearby residential, commercial and industrial uses and protects neighboring uses from visual and functional disruptions. Milwaukie agrees to work with TriMet help locate an appropriate site and to permit the bus layover facility. This may include processing a Community Service Use application,

allowing bus stop zones, curb extensions and/or managing the reallocation of on or off-street parking spaces as necessary

c. Joint Development

i. Background

Enhancing Milwaukie's viability and vitality as a Town Center is a basic Project goal and is fundamental to the region's continued investment in the light rail system. Public investment in the Project can and should stimulate related public and private investment in Milwaukie's land, building stock and businesses to increase economic opportunity in Milwaukie and the region. The FTA recognizes and encourages joint development that enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation. The Project is likely to present joint development opportunities that both Parties believe could boost Milwaukie's revitalization efforts.

ii. Understandings

TriMet and Milwaukie agree to examine joint development opportunities on sites that are appropriate for such usage and, if appropriate, to enter into future agreements regarding joint development. TriMet agrees to include joint development in the New Starts submittal. Potential sites that may be appropriate for joint development may include the following:

- a. The "triangle site" of vacant land west of 21st Street and north of Lake Road;
- b. The "Cash Spot site" located at McLoughlin Boulevard and Washington Street;
- c. Sites near the Tacoma Station and Park and Ride.

The Parties also agree to work jointly with ODOT to develop an appropriate end use plan for the Historic ODOT Building and ODOT yard at Main Street and Beta Street

D. Authorization

Each party represents that it has the authority to enter into this MOU on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this MOU.

CITY OF MILWAUKIE

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By: _____
Date: _____
James Bernard, Mayor

By: _____
Date: _____
Fred Hansen, General Manager

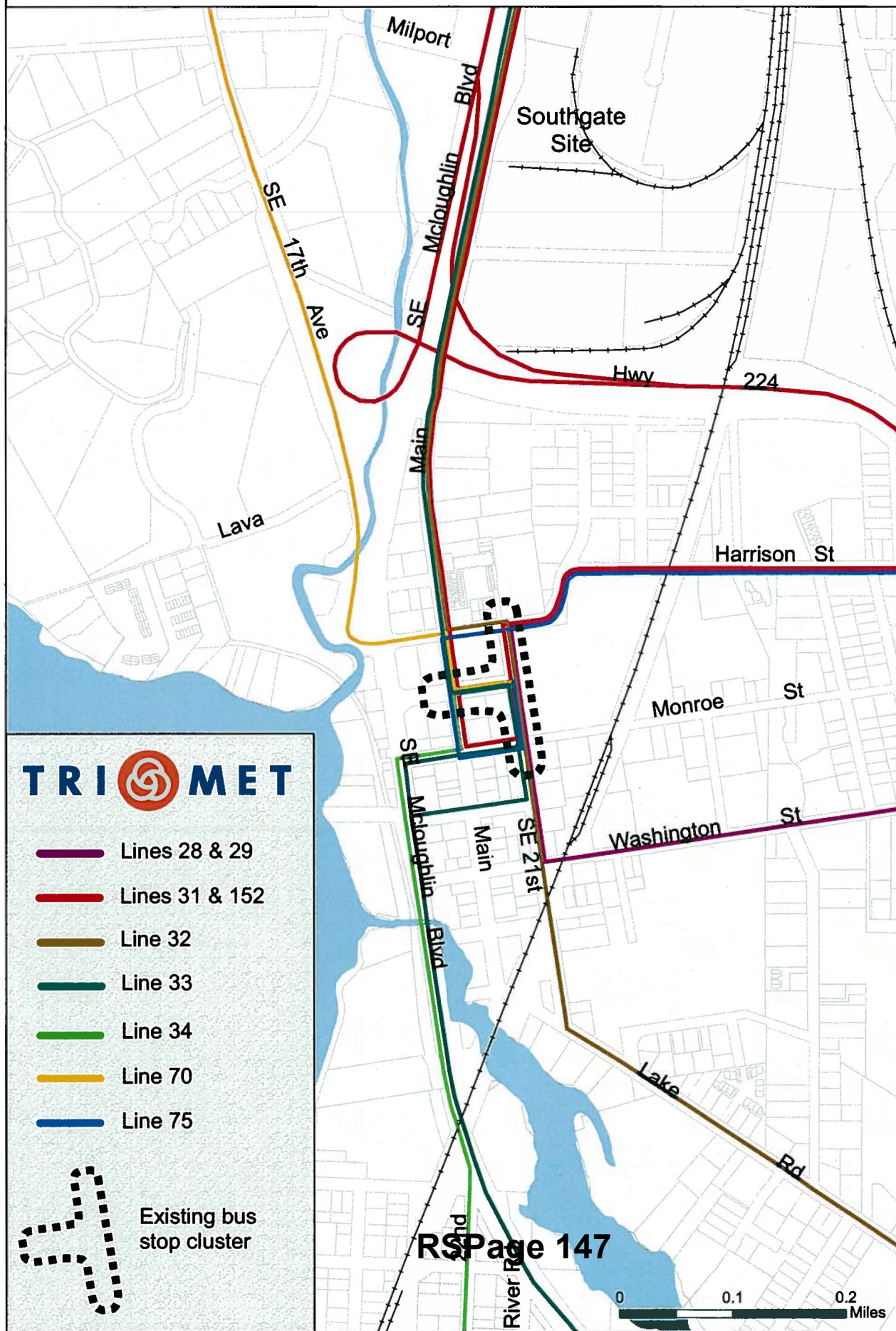
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Milwaukie City Attorney

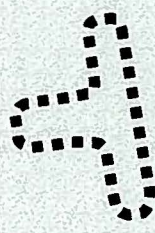
TriMet Legal Department

Current Milwaukie Bus Circulation

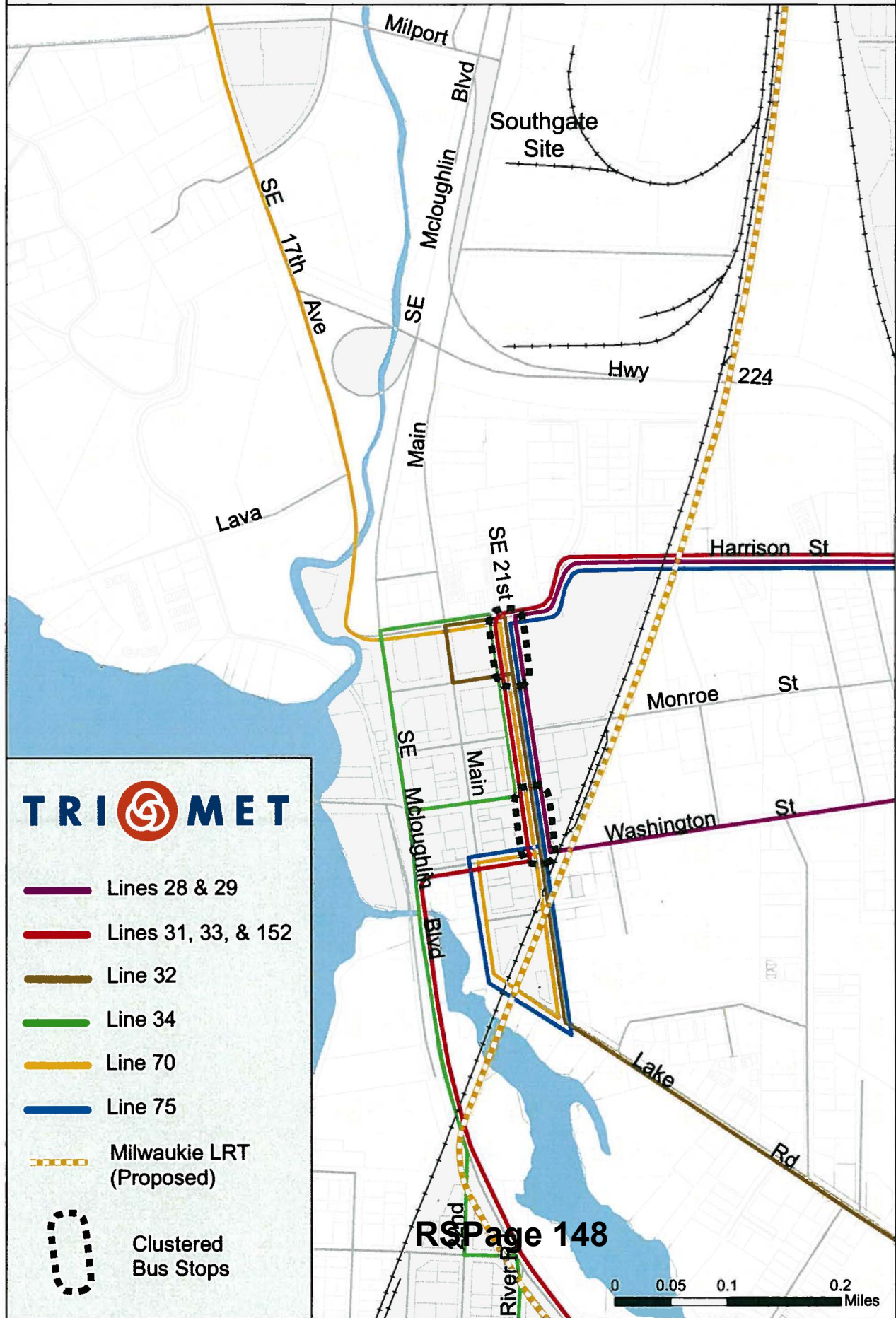


TRI MET

- Lines 28 & 29
- Lines 31 & 152
- Line 32
- Line 33
- Line 34
- Line 70
- Line 75

 Existing bus stop cluster

Future Milwaukie Bus Circulation



ATTACHMENT 3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH TRIMET ESTABLISHING AN UMBRELLA AGREEMENT REGARDING TRANSIT IMPROVEMENTS IN DOWNTOWN MILWAUKIE FOR THE YEARS 2008 TO 2018.

WHEREAS, the City of Milwaukie and TriMet are jointly engaged in planning transit improvements in the south corridor which will serve Milwaukie and influence travel and development patterns in Milwaukie; and

WHEREAS, this planning anticipates the construction of the Portland-Milwaukie light rail project; and

WHEREAS, if the light rail project is to be built in Milwaukie it must be designed, constructed and operated in a manner that integrates successfully with Milwaukie's existing character and functions; and

WHEREAS, achieving this integration requires exceptional coordination and partnership between the City and TriMet, which can be initiated through a Memorandum of Understanding that describes subsequent agreements, strategies, enhancements and facility improvements to be completed over a ten year period; and

WHEREAS, such an agreement aids both the City and TriMet and their respective publics by stating the expectations and understandings of each party at the outset of the light rail project; and

WHEREAS, issues of concern to both the City and TriMet, including light rail financing; light rail safety and security; light rail facility design, engineering, construction, and maintenance; light rail mitigation measures; transit facilities, amenities and programs; and joint development are included in the Memorandum of Understanding; and

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie approves the Memorandum of Understanding, or Umbrella Agreement, with TriMet for transit improvements in Milwaukie 2008-2018.

Introduced and adopted by the City Council on

This resolution is effective on

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)



To: Mayor and City Council

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

From: Paul Shirey, Operations Director

**Subject: Agreement between City of Milwaukie and Clackamas Fire District for
Vehicle Maintenance**

Date: May 28, 2008 for June 17th City Council Meeting

Action Requested

Authorize the City Manager to execute a two-year Intergovernmental Agreement (IGA) between the City of Milwaukie and Clackamas County Fire District #1 (District) to provide Apparatus and Vehicle Maintenance Services.

History of Prior Actions and Discussions

April 7, 1998 City Council authorized the city manager to execute a ten-year agreement with CCFD for the City to provide vehicle maintenance services for District vehicles and equipment.

Background

In 1998 the City of Milwaukie contracted with the District to provide Fire and Life Safety services, transferring responsibility from the then-City operated Fire Department to CCFD. Among other things, the City agreed to transfer fire equipment to the District and to transfer two fire mechanics to City Fleet Services and assume responsibility for maintaining all fire vehicles and apparatus. The City added a third full time mechanic to its Fleet Services roster in 2006. Mechanic's salaries and benefits are fully reimbursed under the IGA. The ten-year IGA with the District expires on June 30, 2008. The District has asked that the City continue to provide fire apparatus and vehicle maintenance for the next two year period (2008/09 to 2009/10).

The proposed IGA differs very little from the original ten-year agreement. Pertinent changes include:

- Change term from ten years to two years
- Add a cost of service matrix as an attachment
- Minor modifications to Level of Service
- Stipulate priority status for maintenance by vehicle type/function
- Delete all references to the transfer of service/equipment/personnel from Milwaukie Department to District
- Clarify language on arbitration for dispute resolution
- Clarify cost of providing 24-hour emergency services

The bulk of the city maintenance activity performed is for specialized fire and rescue apparatus and vehicles. Level of service is defined in Appendix A (attached) of the IGA. Preventive maintenance or "PMs" take the bulk of the mechanic's time, with repairs to equipment as needed taking much of the remainder. Total District vehicles subject to the terms of this Agreement is 71. This includes 31 small trucks and cars and four large truck/SUVs which require annual PM's and safety inspections. Fire apparatus includes 20 fire engines, four ladder trucks, five water tenders, two water rescue, five brush rigs and 4 squad vehicles each of which requires two levels of preventive maintenance annually and in addition, the fire engines, tenders and ladder trucks require annual pump tests.

The IGA calls for the District to pay the City a monthly amount to be agreed upon by the parties in each following year of the agreement. As a matter of practice, the City and District have negotiated a cost of service in the spring preceding the end of each fiscal year with sufficient time to incorporate the cost and revenue into respective budgets. The City prepares a monthly report reflecting all the labor, parts and related overhead charges and is reimbursed by the District on a flat rate basis.

Cost of Service is illustrated in Appendix B attached. Cost allocations were agreed to in the early years of the IGA and remain unchanged in the proposed IGA, with one exception. Rather than have the District pay 40% of a fluctuating cost for the Fleet Department's facility occupancy, a cost contribution is fixed at \$50,000 for the next two years. Staff believes that this represents a more equitable cost share formula for District.

Concurrence

The Fleet Services Manager and Finance Director concur with this recommendation.

Fiscal Impact

None. The revenue from this agreement fully offsets the cost of providing the services and is therefore cost neutral.

Work Load Impacts

Work load will remain the same and will not be affected by the new IGA.

Alternatives

Do not approve contract. This would result in the need to reduce Fleet personnel by three FTE.

Modify contract terms. The District and Staff have reached agreement on the two-year contract following three months of negotiations. The current contract has an automatic 90-day extension from July 1, 2008.

Attachments

1. Resolution
2. IGA With Attachments

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO-YEAR INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS FIRE DISTRICT #1 TO PROVIDE APPARATUS AND VEHICLE MAINTENANCE SERVICES TO THE DISTRICT.

WHEREAS, the City and District have contracted since 1998 for the District to provide Fire and Life Safety services while the City has provided the maintenance of all District vehicles and apparatus; and

WHEREAS, the contract for provision of Fire and Life Safety services is on-going, the intergovernmental agreement for the provision of maintenance services had a term of ten years, through June, 30, 2008; and

WHEREAS, the City and District have negotiated a new intergovernmental agreement that provides for the City to continue to provide maintenance services for the period from July 1, 2008 through June 30, 2010; and

WHEREAS, the new intergovernmental agreement identifies the services to be provided by City, the vehicles and apparatus covered by the agreement, the level of compensation, and other relevant terms;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to execute the Intergovernmental Agreement for Apparatus and Vehicle Maintenance with Clackamas County Fire District #1 for the term July 1, 2008 through June 30, 2010.

Introduced and adopted by the City Council on June 17, 2008.

This resolution is effective on June 17, 2008.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat Duval, City Recorder

City Attorney

ATTACHMENT 2

INTERGOVERNMENTAL AGREEMENT FOR APPARATUS AND VEHICLE MAINTENANCE

THIS AGREEMENT authorized by ORS 190.010 is made this 30th day of June 2008, by and between the CITY OF MILWAUKIE, an Oregon municipal corporation hereinafter referred to as 'CITY,' and the CLACKAMAS COUNTY FIRE DISTRICT #1, an Oregon municipal corporation, hereinafter referred to as "DISTRICT", the promises and agreements of each being in consideration of the promises and agreements of the other.

The parties agree as follows:

1. Term. The term of this Agreement is two (2) years, beginning on the 1st day of July 2008, ending on the 30th day of June 2010.
2. Scope of Services.
 - A. The CITY agrees to provide apparatus and vehicle maintenance to the DISTRICT. In providing these services the CITY shall:
 - 1) Provide apparatus and vehicle maintenance throughout the DISTRICT in a manner consistent with this Agreement between the parties.
 - 2) Provide apparatus and vehicle maintenance throughout the DISTRICT within the following guidelines. See Appendix "A".
 - 3) Maintain, for the DISTRICT, adequate records of past and present activities, which will meet the needs of the DISTRICT for its assessment process from the Commission on Fire Accreditation International and review by Commercial Risk Services (ISO).
 - 4) The CITY shall take all reasonable steps to maintain the DISTRICTS equipment and apparatus in a good state of repair and shall at all times conduct its operations under this Agreement in a safe and professional manner.
 - 5) The parties have utilized the report entitled, Contract Fleet Services for Clackamas Fire District #1, (Report) to guide preparation of this Agreement.
 - B. The CITY agrees to provide the DISTRICT with regular reports of apparatus and vehicle maintenance provided in sections 2A(1) through 2A(5) of this Agreement.
 - C. The CITY shall keep the DISTRICT informed of all new developments, issues, or concerns affecting the fleet operations.
 - D. The CITY will treat demands in all jurisdictions covered by this Agreement with the same priority and equality to insure a consistent standard of performance and equal

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service level. Vehicles and equipment needed for public safety shall have first priority. Priority shall be determined by the mechanics in accordance with a list of vehicles and apparatus that will be agreed upon by the parties and made a part of this Agreement as Appendix "B".

- E. All fire mechanics will be EVT (emergency vehicle technician) certified not later than June 30, 2009. Any future fire mechanics will be EVT certified within six (6) months of their hire. All City employees that drive any district fire apparatus will have a commercial driver's license (CDL).
 - F. The CITY agrees to provide, when requested, 24-hour emergency service, and mobile fueling at emergency operations. Cost of providing this service shall be billed by the CITY on a time and material basis with labor costs at time and one half for fire mechanics as well as other CITY personnel providing emergency service or mobile fueling at emergency operations.
 - G. The City agrees to provide the DISTRICT a Preventative Maintenance schedule for all the DISTRICT'S Fire apparatus including cars and light trucks.
3. Compensation. The DISTRICT agrees to pay the CITY a monthly amount to be agreed upon by the parties in each following year of this agreement beginning July 1, 2008, payable within 15 days of each months end. Payment shall be made in accordance with the following:
- A. By March 30 of each year of this Agreement the CITY and DISTRICT shall renegotiate the service level and/or service cost that will take effect on the following July. In the event the parties cannot agree on the amount of compensation, they shall choose a mutually agreeable third party arbitrator to establish the annual service cost for the coming year. Such arbitration shall not be binding but shall be the basis for the parties meeting to finalize agreement on service level/and or service cost. The cost to provide service that has been negotiated by the parties for 2008/09 is included as Appendix "C" of this Agreement.
 - B. DISTRICT is responsible for paying the cost of service provided by mechanics and other CITY public works personnel that is the result of additional workload, including service provided under section 2.F of this agreement. CITY will calculate the cost of this service and bill DISTRICT for the service. When preparing estimates of the cost of CITY providing this service, CITY shall take into consideration its cost associated with assigning mechanics to fill in for fire mechanics regularly assigned to perform preventative maintenance to DISTRICT vehicles. City shall deduct all personnel costs that are related to non-fire mechanic personnel performing A or B preventive maintenance to DISTRICT apparatus and vehicles when the need for the non-fire related mechanic is directly caused by a fire mechanic being absent for any reason. All personnel costs related to assigning a non-fire mechanic to perform such work under this circumstance shall be deducted and not charged to the DISTRICT by the CITY.

- C. Except as provided in Sections 3F, and 3G, the DISTRICT intends to appropriate funds during the term of this Agreement sufficient to provide the payments required to be made to the CITY during this Agreement.
- D. Funds paid to the CITY by the DISTRICT under the terms of this contract shall be dedicated to the operation, maintenance, equipping, and administration of the fleet services. In the event that the CITY should be dissolved, fleet maintenance fund reserves remaining shall be apportioned with respect to the ratio paid to the fund by the DISTRICT and the CITY; and the portion paid by the DISTRICT shall be returned to the DISTRICT, or may, upon agreement by the DISTRICT, be allocated for fleet services.
- E. It is understood and agreed by the parties that no board member, officer, or other representative of the DISTRICT shall be individually liable for any payments due to the CITY.
- F. None of the provisions of this Agreement shall be construed to create in the DISTRICT any right, interest, or ownership in any real or personal property of the CITY used for the performance of this Agreement.
- G. If, during the term of this Agreement the taxing ability of the CITY and/or the DISTRICT is limited by a state-wide ballot measure, legislative action, or a court decision; and if, as a result of the tax limitation, the CITY is unable to provide the level of service described in Section 2 above, the parties agree to renegotiate in good faith the amount of compensation to be paid to the DISTRICT to reflect the decrease in services provided.
- H. This Agreement is subject to any applicable constitutional debt limitations and is contingent upon funds being appropriated by the DISTRICT. If the DISTRICT fails to appropriate the funds necessary for this Agreement, notice as described in Section 9 shall be given and both parties will immediately negotiate a service transition.

4. Operational Coordination and Supervision.

- A. The DISTRICT will provide a liaison to coordinate with the City's Fleet/Facilities Manager. The Fleet and Facilities Manager will ensure the day-to-day provision of high quality apparatus and fleet maintenance services that is approved by both the CITY and the DISTRICT. All issues will be resolved at the liaison level, if an issue is not able to be resolved in this manner it will be taken to the City Manager and District Fire Chief for resolution. In the event the parties cannot agree on a resolution to the issue a mutually agreeable third party arbitrator will be contacted. Such arbitration shall not be binding but shall be the basis for the parties meeting to finalize agreement on operational and supervision issues. Identity. All CITY fleet maintenance equipment shall continue to display a CITY Logo and may display a DISTRICT Logo. The CITY shall identify that it serves the DISTRICT in all promotional and educational materials related to Fleet Services.

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5. Hold Harmless.

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, CITY shall hold harmless and indemnify DISTRICT, its Directors, employees, and volunteer agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of or resulting from CITY's performance of this Agreement where the loss or claim is attributable to the acts or omissions of the CITY.
- B. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, DISTRICT shall hold harmless and indemnify CITY, its Councilors, employees, and volunteer agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of or resulting from DISTRICT's performance of this Agreement where the loss or claim is attributable to the acts or omissions of the DISTRICT.

6. Termination. This Agreement may be terminated by either party as of the 30th day of June of any year during the term of this Agreement by giving written notice to the other party by September 30 of the prior year

7. Renewal. DISTRICT agrees to give nine (9) months notice to CITY prior to the expiration of this Agreement if DISTRICT intends to renegotiate the Agreement.

- A. If DISTRICT has notified CITY of its intent to renegotiate this Agreement, the parties agree that prior to the termination of this Agreement, they will negotiate in good faith concerning the possible renewal of this Agreement or the making of a new Agreement.
- B. If the DISTRICT has notified the CITY of its intent to renew or renegotiate this Agreement and renewal or successful renegotiation has not been completed before the end of this contract period, this Agreement shall be automatically extended for 90 days to allow continuing negotiations. This Agreement may be extended further by mutual agreement for additional increments up to 90 days each.

8. Discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, or source of income in the performance of this Agreement.

9. Waiver of Breach. A waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

10. Applicable Laws. At all times during the term of this Agreement the DISTRICT and the CITY shall comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof.

11. General Provisions. Unless otherwise specifically prescribed in this Agreement, the following provisions shall govern its interpretation and construction:
- A. When not inconsistent with the context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.
 - B. Time is of the essence of this Agreement. Neither the DISTRICT nor the CITY shall be relieved of its obligation to comply promptly with any provisions of this Agreement by any failure of the other party to enforce prompt compliance with any of its provisions.
 - C. Unless otherwise specified in this Agreement, any action authorized or required to be taken by the CITY shall be taken by the Council or by the City Manager.
 - D. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
12. Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next addressed business day if sent by express mail or overnight air courier to the party to which the notice is being given, as follows:

<p><u>For CITY</u> Mike Swanson City Manager 10722 SE Main Milwaukie, Oregon 97222</p>	<p><u>For DISTRICT</u> Ed Kirchhofer Fire Chief 11300 SE Fuller Milwaukie, Oregon 97222</p>
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Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

13. Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
14. Time Computation. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

City of Milwaukie, an Oregon municipal corporation

Clackamas County Fire District #1, an Oregon special district

by:

Mike Swanson, City Manager

Marilyn Wall
CCFD #1 Board Chair

Don Trotter
CCFD #1 Secretary

Approved as to form:

Bill Monahan, City Attorney

John W. Osburn, CCFD #1 Attorney

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APPENDIX A

The CITY agrees to provide the services listed below. It is understood that this is not an all inclusive list but is intended to display intent and to meet the expectations of the DISTRICT.

1. Provide a schedule for twice a year preventative maintenance on all district fire apparatus. An agreed upon checklist will be utilized.
2. Provide maintenance on district small power equipment as needed (saws, Holmatro tools, fans, etc.).
3. Provide ladder repair.
4. Provide welding on district apparatus as needed.
5. Provide once a year safety checks and P.M. on all staff cars.
6. Provide every 2000-mile safety check and service on front line battalion chief vehicles.
7. Coordinate and schedule all outside repairs and work.
8. Maintain a record and history of all district vehicles.
9. Provide monthly and annual staff reports on labor, parts and expenses.
10. Assist in preparing an apparatus replacement schedule.
11. Coordinate and schedule all D.E.Q. testing that is needed.
12. Assist in the preparation and writing of all Standard Operating Guidelines pertaining to maintenance.

APPENDIX B

Vehicle and Apparatus Preventive Maintenance Priority

First Priority:

All fire fighting equipment including engines, pump trucks, ladder trucks, brush rigs, water tenders, water rescue vehicles, squad vehicles and buses.

Second Priority:

All cars and light trucks.

APPENDIX C

Clackamas Fire District #1 cost to provide service 2008/09					
	Cost	%	08/09 Charge	07/08 charge	% change
Mechanic 1	\$ 72,247.00	100%	\$ 72,247.00	\$ 67,979.00	6.28%
Mechanic 2	\$ 62,326.00	100%	\$ 62,326.00	\$ 59,234.00	5.22%
Mechanic 3	\$ 74,828.00	100%	\$ 74,828.00	\$ 70,189.00	6.61%
Fleet Supervisor	\$ 92,405.00	40%	\$ 36,962.00	\$ 34,850.80	6.06%
Administrative Assistant	\$ 72,004.00	25%	\$ 18,001.00	\$ 16,833.50	6.94%
Facility Charge	\$ 206,983.00	Fixed fee	\$ 50,000.00	\$ 47,749.20	Fixed fee
Facility Maint Expense	\$ 7,875.00	40%	\$ 3,150.00	\$ 3,000.00	5.00%
office Supplies	\$ 3,150.00	40%	\$ 1,260.00	\$ 1,200.00	5.00%
Education and Training	\$ 6,000.00	60%	\$ 3,600.00	\$ 1,600.00	125.00%
Fee and Licenses	\$ 550.00	40%	\$ 220.00	\$ 200.00	10.00%
Vehicle expense	\$ 11,000.00	100%	\$ 11,000.00	\$ 10,000.00	10.00%
Uniforms/coverals	\$ 3,000.00	100%	\$ 3,000.00	\$ 800.00	275.00%
Cost per year			\$ 336,594.00	\$ 313,635.50	7.32%
Monthly cost			\$28,049.50	\$26,136.29	7.32%

7. INFORMATION

**Park & Recreation Board
PARB
Tuesday, April 22, 2008
7:30AM
City Hall – Conference Room
10722 SE Main Street**

Minutes

Type of meeting: Regular

Attendees: Sherri Dow, Kate MacCready, Mart Hughes
Ray Harris, Bob Cooper, Val Hubbard

Staff: JoAnn Herrigel, Joan Young, Kevin Cayson, Tonia Burns

Minutes

March minutes were approved 4-0. (Hughes abstained)

Tonia Burns Introduced

Tonia Burns is the District's new Natural Resources Coordinator. Tonia said she previously worked for Mount Rainier National Park where she coordinated a lot of natural resource inventories and did wetland delineations. Her work for the District will include reading assessments and inventories, working with friends groups, exotic plant control, making sure what the District does is the "right thing" and working with the Stewardship Group for North Clackamas Park.

It was suggested that Tonia go with the PARB members of a tour of the sites in the City with natural areas. Herrigel said she would work with Tonia to coordinate that.

Draft IGA next steps

The group agreed to review the current draft of the revised IGA and get comments to Herrigel before the next PARB meeting (May 27). Herrigel said she would collate the comments and bring them to the May meeting for discussion.

The group further decided that the document should be reviewed by PARB and DAB before going to either City Council or BCC. The following schedule was proposed:

May 27	PARB reviews and comments
June 12	DAB reviews and comments
June 24	PARB reviews any changes proposed by DAB and makes a recommendation for staff to take IGA to City Council.

July 15 Council considers and adopts resolution to approve
August 14 DAB considers and approves a recommendation to send to BCC
for approval

City Updates

- Designs for Spring Park still almost done. Next step will be an RFP for construction (Hughes and Cayson asked for copies of plans)
- Homewood Park RFP is being drafted
- Grant was submitted for \$450,000 from the Oregon Park and Recreation Department for Phase I of the Riverfront Park (includes relocating water line and power poles, grading of upper level of site and installation of a Plaza at Harrison and 99E)

District Updates

- Century Park – excavated a tree stump, redoing basketball court and tennis court. Herrigel asked that a sign be installed at the Park stating what the improvements are that are taking place.
- Tree planting for trees under warranty is taking place at North Clackamas park
- Saturday is Earth Day event at NCP – activates for kids and non-native plant removal
- Trolley Trail meetings announced (Herrigel noted she had walked the Milwaukie portion with Dick Jones, Michelle Healy and Metro and Tri Met staff to look at width of ROW for Trail and Light Rail)
- In June the budget committee will approve the budget including:
 - One new maintenance person
 - Higher utility rates
- Ball fields at Aldercreek completed
- Milwaukie March for Meals made \$20,000 this year (up 4K from last year)
- Stringfield park construction starting in 30 days

Other

- Dow asked if Elk Rock island was open to the public (yes)
- Hughes noted that there are peregrine falcons on the west side of Elk Rock Island (on west of Willamette???)

Harris motioned to adjourn, Dow seconded. Motion passed 5-0.

Riverfront Board Meeting Minutes
April 22, 2008

- Attendees:** Gary Klein, Shane St. Clair, Greg Seagler, Dave Green
- Absent:** Michael Martin, Mitch Wall, Mike Stacey
- Staff:** JoAnn Herrigel
- Guests:** Councilor Greg Chaimov, Madalaine Bohl (Milwaukie Museum), Gill Williams (DEA)
- Minutes:** St. Clair motioned to approve the minutes from the March 25th meeting, seconded by Klein. Motion passed 4-0.

Theme development for Riverfront Park – Madalaine Bohl

JoAnn introduced Madalaine Bohl. She gave a bit of history on the Milwaukie Museum. She also gave information on how to look up history at the museum. She presented the board with historical pictures of the riverfront and businesses near the riverfront. The following is a list of the pictures:

- 1850's – Flour Mill located at Kellogg dam and a Ferry launch on west side of Willamette for boats coming to Milwaukie
- Dec. 25, 1850 – "Lot Whitcomb", the first steamship built on the Willamette, is launched
- 1858 - Standard Mill is built (the only white flour mill on the west coast)
- 1850's & 60's – Ships built in busy shipyard in Milwaukie Marina
- Businesses on the waterfront
 - 1907 – Menefee Shingle Mill
 - 1908 – Hawley Pulp & Paper
 - 1916 – Milwaukie Shingle Mill
 - 1920 – Thompson & Bullis Lath & Shingle Co.
 - 1923 – University Shingle
 - 1929 – Sand & Gravel
 - 1937 – Caffall Bros. Log Boom
 - 1944 – Milwaukie Box & Door Factory
 - 1939 – Eastman's Motor Co.
- 1900's – 300# sturgeon caught in Milwaukie
- 1906 – (Elk) Rock Island Clubhouse built in 1906, burned down in 1916, rebuilt in 1917, burned down again in 1930's and never rebuilt
- 1905 – Gratton's Grove Frier's Club (located on Gary Klein's property) burned down in 1921

Bohl also included a plat map drawn by Lot Whitcomb. She said that Milwaukie had the first steamboat on the Willamette called the Lot Whitcomb. There is not much documentation on Native American people in the area.

Bohl also gave some history of the name “Milwaukie”. Lot Whitcomb named the city after Milwaukee, WI. Originally Milwaukee, WI was spelled Milwaukie and Whitcomb was so impressed by the beauty of the city that he reused the name in its original spelling. There are four Milwaukie/Milwaukees in the country. The Supreme Court ruled that the city must use IE instead of EE because of the confusion.

St. Clair mentioned that there was a lot of ship building and that might be incorporated into the theme of the riverfront park. Klein said there was also a lot of paper and logging. St. Clair asked what the waterfall by the school was and Bohl replied Spring Creek. Herrigel asked when was the city established and Bohl answered in 1947 by Lot Whitcomb. Klein mentioned that Milwaukie is also the home of the original Bing cherry. St. Clair asked what Seth Llewelling’s claim to fame was and Bohl answered that he was a horticulturalist that developed varieties of fruits in Milwaukie. Herrigel asked where the Llewellings came from and Bohl replied Iowa.

Bohl also talked about the cemetery near the Waverly Country Club. There are around 2,000 people in the cemetery and there are still burials and cremations scheduled. They hold events every year on Memorial Day with markers at gravesites with interesting facts. Bohl encouraged the board to visit the cemetery. Everyone thanked Bohl for taking the time to speak with the board.

Project Updates

There will be another meeting for the Light Rail stations at Milwaukie High School on April 28. Staff will be asking two main questions: What’s your favorite station location and should there be two stations or one? The focus of this meeting is on the downtown area. Seagler attended the last meeting, and said there wasn’t enough mention about the consequences of Light Rail in Downtown. Herrigel replied that there was too much information at the meeting and not enough time for comments from the community. She will pass along the concern to be discussed. At the upcoming meeting, there will be a focus on hearing comments from the community.

Williams said that they were finishing the Willamette Greenway Application and storm water application soon.

Herrigel said they would discuss the light rail implications at the next board meeting.

St. Clair suggested that the history of the horticulture could be tied into the current farmer's market. Klein thought that some of the significant trees such as bing cherry or dogwood could be incorporated into the park design. Williams said there are some strict rules on what kind of trees can be planted in the park. He also thought that there might already be some dogwoods in the current plan.

Seagler presented his idea for the sign for Milwaukie Meeting of the Waters. Herrigel said that there might be restrictions on height for a sign going over McLoughlin. Williams said there is going to be a lot of signage in the park itself.

Klein asked if there was any word on the sternwheeler. St. Clair replied as of right now, Paul Simonis is having health issues and looking to sell the business.

Meeting adjourned at 7:37.