

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION****August 19, 2008**

Mayor Bernard called the work session to order at 5:30 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, City Attorney Bill Monahan, Operations Director Paul Shirey, Water/Wastewater Supervisory Ronelle Sears, and Utility Specialist II Jim Lund.

Public Safety Advisory Committee Interviews

Mayor and Council interviewed Ray Bryan for reappointment as the Historic Milwaukie Neighborhood representative.

Proposed Amendments to Milwaukie Municipal Code Chapter 13.12.063 – Fats, Oil, and Grease (FOG) Control

Mr. Shirey reported 13 months ago he brought an ordinance to amend the fats, oils, and grease (FOG) control section of the code to Council. They began implementation of that by notifying those who fell under the regulation. They had been implementing the program for nearly a year. At a meeting in June one of the businesses subject to FOG control brought forward a series of concerns about whether coffee shops were regulated under the code and or any business that conformed at the time of building codes and retrofit according to FOG regulations. They had provisions in the original ordinance that were passed in July 2007 in terms of penalties that did not conform to our current practice in administering civil penalties for non-compliance. They had gone back and reexamined the ordinance and made a number of proposed amendments. One of the amendments was to clarify that coffee shops would be subject to FOG regulation as a food facility as defined in new provisions of the code. They amended the penalties applicable to violators. In May in response to the concern by some of the coffee shop owners they started to draft an agreement that would allow for the City to incur the expense of installing a grease trap at the sink in the facility and measure the accumulation of FOG. After 6 month if there was more than an inch of accumulation then the owner would reimburse the City for the cost of the installation and proceed with a program to regularly clean out the grease trap and conform to the code. If there wasn't more than an inch of accumulation then the owner could choose to take it out or continue to use the trap. They held that in abeyance during the time that this question came up and met with three of the coffee shop owners a couple of weeks ago to explain what they are doing. He couldn't say that any of them were happier with what they were proposing because rather than excluding or excepting they were including those businesses as FOG generators and subject to FOG control. Staff included some disgusting pictures of these traps and a couple of establishments that served coffee and what that looked like. They included a list in attachment F of food service companies subject to this ordinance in this City. In attachment E they listed the cities they knew that had FOG regulations and those that did and did not include coffee shops. Attachment D was the explanation of why coffee

CITY COUNCIL WORK SESSION – AUGUST 19, 2008**APPROVED MINUTES****Page 1 of 9**

shops should be subject to regulation and the federal regulations regarding the discharge of fats, oils, and grease. One of the original questions was why are we doing it and where is the authority? Should coffee shops be subject to this regulation, and if not, why? Staff recommended adopting the proposed language and continuing to offer the installation at the City's cost for the three subject coffee shops.

Councilor Barnes had been trying hard to understand both sides since the last discussion. Great American Video was about the same size. What did they have to say?

Mr. Shirey introduced Jim Lund, Wastewater Specialist II and Ronelle Sears, Storm and Wastewater Supervisor.

Mr. Lund said the initial up front cost was a concern to Great American Video. They understood what the ordinance required and why we were doing it. One of the photos in the staff report was from Great American Video. Since the fixture had been installed it had obviously been working. Their initial reaction was that it would be costly, but they were willing to comply because there could be a concern or an issue.

Councilor Barnes noted some people at home put grease down their sinks without thinking, so why focus on restaurants? She knew there were regulations, but she wondered how much we put in the system other ways as well.

Mr. Lund agreed that did happen in homes. The point was getting it where it was concentrated and getting businesses involved to handle it up front. That was the key. He said a public outreach about grease should be considered.

Councilor Chaimov commented on the list of restaurants and coffee shops provided. Why did it say there is no grease at Big Town Hero and Quizno's? What did that mean?

Mr. Lund said all of their foods come prepared, prepackaged, and pre-sliced. When they took it out of the package it went directly into the sandwich. There were no dishes involved in the process, so they were not FOG-producing businesses. That was why there was separation among the businesses.

Councilor Chaimov said his interest was in making sure the City was imposing this ordinance on facilities that made enough of a difference to our water system and pipes to require compliance. Was there a way to quantify the level at which a business was considered to be contributing enough to require them to install the equipment.

Mr. Shirey replied the quantification was a tough issue. The really big producers were subject to an entirely different set of requirements, and the smaller producers were a challenge to measure. They knew that when throwing things like coffee and cream down the sink contributed fats and oils. Great American Video was their best opportunity to give an example of what that created because they installed the trap. That was one of the reasons why they wanted to go ahead with the program to install at the City's expense at the 3 coffee shops to actually get a measurable result. Every other jurisdiction they talked to that regulated small producers said the issue was that enough accumulation from those businesses all added up. There was no control mechanism for municipalities to target homes; they tried to education people. There was the ability and a trend to regulate this source of FOG in the system. No one was measuring; they tried that and realized it did not work. You have to install a grease trap to make the measurement.

Mr. Lund gave an example of why it could not be measured even on a large producer. There was a meat packing company in Clackamas and one of the problems was backups in that area. They would try to quantify by measuring it, and you could do it. The problem was that the grease was a stratospheric and clings to the pipe.

Councilor Chaimov understood Great American Video had a service that came in periodically to clean out the trap, and from that they knew how much was pulled out. Was that something that could be applied at other places?

Mr. Shirey replied measuring could not be done without installing a trap.

Councilor Chaimov understood the City was saying if an inch was found, then the business has to pay for it. It struck him that an inch, depending on the size of the trap, was not a sufficient way to quantify. Could it be done by weight?

Mr. Lund said they tended to go by percentages because even though there may or may not be a weight quantification one had to figure out how much was being put into the system. One had to look at the cumulative effect on the system. Even if it went all the way to the City pipe, once it hit the 8-inch sewer line it stopped and built up, and water could not pass.

Mr. Shirey did not know how much was enough because there was no standard to go by. He did not know of another community that was doing that. He did not have a way of saying one pound or a gallon or a different measure of some kind was a threshold at which a business would need to install a trap.

Councilor Chaimov assumed the City would require installation and depending on how much was collected the business may or may not have to pay for the trap. He was looking for a reasonable amount.

Mayor Bernard thought there needed to be an established amount and that the City should not arbitrarily tell people they need a trap.

Councilor Loomis thought there needed to be a comparison with other restaurants. If they were putting out the same as a household, it would be hard to hold the business to that standard. The installation was not cheap. Great American spent \$1,600 plus the pumping fee every 6 months.

Mr. Lund said initially the cycle would be 8 weeks, and from that point on service would be pushed out as appropriate so additional costs were not incurred.

Mr. Shirey said the problem was that all grease traps were not built alike. They came in different sizes and of course they would accumulate at different rates depending on a number of variables. That was why most communities adopted that if a business meets the food service definition then the assumption is you would accumulate in some fashion grease, fats or oils. It did not matter if it was a gallon or 600.

Mr. Swanson explained when this came up in June he wanted to have some time and have them look at it again as he was skeptical. In the end he said to go forward because of the impact. The impact was not a single place. It was a cumulative effect of multiple businesses. It was a standard that needed to be made up because in order to measure you had to have a grease trap. The question was if a grease trap was required. In order to come up with a standard you have to have it. We have said an inch of grease on the surface would be a trigger point at which there was responsibility. Anything less than that, the City would cover the cost of installing the trap, which was a standard. If one looked at the Brookside station one saw a layer of grease on top of all of the other stuff. It

would probably be the easiest thing to measure because there was no standard for grease traps. All traps were not created equal. Consequently if you were to do a pound measurement it would be difficult to come up with a standard. The one-inch was something that was available. He believed that the coffee shops did create a serious enough problem given more than one was dumping into the system. Staff was trying to afford some protection to the infrastructure.

Mayor Bernard did not feel anyone on Council disagreed with that idea, but there are so many different sizes of traps and accumulation could vary. It seemed to him a pound measurement made more sense than an inch measurement unless they were all the same size traps.

Mr. Lund said when the cleaners clean the traps they look at it and they can see the depth. You cannot weigh it out because the haulers come in with a sucker hose that pulls everything out. They based everything on a percentage. The percentage was based on the water level compared to the fat level. The reason they use that particular factor was because there were different sizes of traps. Once it gets to a certain point it starts bypassing the trap and is not working. That was why they used a percentage value. One also had to take the amount of solids on the bottom into account.

Mr. Shirey explained there were baffles so when the water moved through them the water stopped if it got too full and went right across the top.

Councilor Barnes asked if the six other cities with regulations had specifics.

Mr. Lund replied they were all inclusive.

Mr. Shirey said that was the method staff proposed with the exception of the three coffee shops. They would be a special exception to the rest of the program.

Councilor Chaimov noted Pietro's complied and asked what happened if after a year they found not much was contributed. If we were applying a standard to coffee shops, should it apply to Pietro's too?

Mr. Lund said County was planning on adopting a FOG program that he understood would include coffee shops.

Mr. Shirey understood that the County was going to do what staff proposed. He needed to leave with some direction on what to come back to Council with.

Councilor Chaimov's preference was that staff show Council using its best judgment an amount that would show up in traps and was enough to require that business to cover the expense of putting in the trap and below which the public should cover the expense.

Mr. Shirey asked about the business that had already installed their traps?

Mayor Bernard did not believe there should be an exception.

Councilor Chaimov said that was the issue they had to confront.

Mayor Bernard was concerned about opening the City up to liability for making the exception for the three shops.

Councilor Chaimov did not see it as an exception for three coffee shops. It had to be applied across the board or not at all. He would like to hear what was the staff's best judgment.

Mr. Swanson commented there were a number of businesses in town that saw this as a need. Starbuck's did it as a policy. Another business owner saw it as

good business and citizenship and did not expect compensation. There were people that saw it as good public policy so went ahead and did it. They did not expect any compensation. There were a substantial number of people that did comply. He was not very supportive of putting in a grease trap and paying for it if something did not happen. He thought that ignored the fact that a number of people did it voluntarily as they saw it as a good thing. He saw this as supporting a different behavior.

Councilor Chaimov might ultimately agree that no exceptions are warranted, but he would like to have the ability to weigh the options.

Mr. Shirey said the staff recommendation was a 40-pound trap and one inch accumulation. That was the smallest size trap which he assumed would go into the coffee shops and was the most appropriate size for that kind of business.

Councilor Chaimov did not see making an exception for coffee shops because he did not see why a coffee shop was any more or less likely to cause a problem than Big Town Hero or Milwaukie Bowl. The basis was that it was either prepackaged or it was not, and things went down drain. His perspective was if things were going in the drain it did not matter whether it was a coffee shop or any other establishment. There ought to be a single standard applicable to everyone. Wichita Pub should be held to the same standard that coffee shops were.

Mr. Shirey said we are too late for that. If we would have talked about this a year ago before the ordinance was implemented that would have been fine. That did not work here. He believed we needed to either do the coffee shop thing or make everyone comply that meets the definition.

Mr. Lund said part of the problem with having an oversized tank was that if it was not pumped out the tank would begin rotting because of the pH drop. Then not only do you incur the cost of the maintenance, but the cost of replacement.

Councilor Loomis said he spoke with Great American Video and was told it was not something they wanted to do; they were just complying. The owner described himself as a left wing greenie, but did not feel it was really necessary. If it were not retroactive it would be a different thing. It was a tough time for businesses, and any added expense was difficult. We cannot compare them to Starbuck's. He needed something that was measurable. How often did it need to be pumped out? He had a feeling that citizens were contributing more than the coffee shops.

Mr. Swanson said he would not speculate on what WES would do, but if the County was adopting the same standard he would not be surprised if a wholesale customer would have to adopt similar standards. His point was if county did adopt the FOG ordinance in the same manner as proposed here, that as a wholesale customer there would come some point at which Milwaukie would be requested to adopt the same standard. They would not be happy having district customers limited in some way and wholesale customers having an easier ride.

Councilor Chaimov did not have a problem with the requirement. It was a question of who paid for it. He would like staff to come back with an ordinance that included some cutoff, and then Council could vote.

Mr. Shirey understands the request, but he was not certain he could bring back what Councilor Chaimov was asking for. It would be good to get some clarity on what the County was going to do.

Councilor Chaimov said the impossibility of the task might influence a direction.

Councilor Barnes asked if we could see what other jurisdictions did outside of Oregon?

Mr. Lund said it was more common on the east coast, and they actually charged a yearly permit fee to administer and inspect. Portland was considering it because of DEQ restrictions.

Wastewater Contract and Proposed Rates

Mr. Swanson said there were three separate. Questions 1 and 2 related to Community Partnership process. Did City Council wish to continue into the next phase and if so who would you want to represent you? Staff recommended continuing. The last group came up with some principles one of which was the Kellogg Treatment Plant recommendation. Everyone was asked to buy into the principles. The City's goal was still to decommission Kellogg, not to make the footprint smaller. Before leaving tonight we want to make sure that they told Mr. Kuenzi if the City wished to continue and who would represent it in the process.

Mr. Swanson thought there might have been some misunderstanding. In December 2007 WES reviewed the information. The reason we are here was that we did have some problems with what was being proposed. The last time he invited Mr. Kuenzi to make some restatements and to answer any questions because ultimately we did have a big issue in front of us, which was the big decision on the wastewater treatment agreement and proposed rates.

Mr. Kuenzi distributed a summary presentation on the Community Partners Task Force. The item on Kellogg remained open. The Task Force got to a sticking point over the Kellogg Treatment Plant question. This was about the best you could do at this point with the Kellogg question until we started to go forward putting binding agreements in place, and then start making decisions as a whole. They looked at the cost of decommissioning Kellogg Treatment Plant and doing the replacement at Tri-City at a cost of about \$150 million. The Task Force was not willing at this point to say the group would absorb that cost. It did not mean that as we went forward in the future they would not reconsider it. Going into the process he would not put too much weight on this. His gut feeling was you go forward, and the decommissioning would be a business decision when it costs more to invest in Kellogg than it did to replace that capacity elsewhere. There was a business argument to be made there, and the timing was not right as part of this process.

They were asking Council to ratify those recommendations and appoint someone to the next group to work out those binding agreements. The intergovernmental agreement (IGA) was a separate issue. There was no guarantee that the community partners forum would go forward. He hoped that it did because he believed there was a real benefit to everyone by going forward. They still have to have an IGA in place between CCSD#1 and Milwaukie for those services. When he came on December 4, 2007, Mr. Kuenzi asked to look at options for distributing equally and fairly the cost of the Phase 1 program across all customers whether you were inside or outside of the District on a contractual basis. They came back to the board with four different options. The Board landed on the case for Milwaukie and Johnson City that are not in the District. That meant that Milwaukie would be equally sharing the cost of those improvements that were needed within CCSD#1 and fell back to the existing customer base. They stripped out the growth component of the Phase 1 improvement program because CCSD#1 would get a portion of those revenues through system development charges (SDC) so they did not think it was fair to

charge wholesale customers for that growth component. They took the remaining \$64 million for the cost of improvements and billed that against all of the customers. He pointed to a figure of \$20.12 per connection was their first stab at what that would look like for Milwaukie. The Council directed him to go forward with that concept and develop a new IGA between the City and CCSD#1. As the Community Partners went forward the IGA may be folded into the binding agreement or it may continue to hold depending on what Council wanted to do. They needed to have an agreement in order to go forward.

Chris Storey, CCSD#1 Attorney, said the IGA in addition to reflecting the Board direction also tried to address the plethora of previous IGA's between Milwaukie and CCSD#1. By his count there were 13 different IGA's ranging from 1986 to current. A lot of them had bits and pieces that were useful, but most had fallen by the wayside. The purpose was to reflect the rates and the responsibilities of management. The first section defined various terms in the agreement. Section 2 referred to the services that were to be provided by CCSD#1. That was pulled from a 1990's IGA with updated language that reflected the current regulatory environment. The main differences were in section 3-rates and how they were assessed. The previous mechanism in place was that there was a meter at the pipe that delivered sewage to Kellogg, and they measured the flow into the plant. At the end of the year they created a percentage that when multiplied by the operating costs determined Milwaukie's charge for the year. There was no true capital component; it was purely an O&M charge. As capital facilities needed updates there were separate amendments to the IGA to reflect the capital charges that went against Milwaukie's percentage. The new rate arrangement was intended to short circuit that process by building in both a capital and normal O&M expense component leveled over time as part of a standard wholesale rate. Instead of measuring at the Plant they measure it per customer/per household. They charge out on an EDU basis and allocated the anticipated borrowing costs for this \$64 million, the cost of O&M they anticipate, and the cost of capital. The initial calculation was a little different than before. The costs came out to \$22.05. As part of the conversation with the Board they thought that was a pretty steep jump and they wanted to reduce that. In section 3.3 there was a phase in of the rate that would be charged which would start at \$18 per EDU per household per month. It then phases up to \$20 and then \$22 after 3 years.

Mike Kuenzi said one of the reasons they went to a fundamental shift in the way we charge was because they never knew what they were going to charge the City and the City never knew what you were going to pay until the end of the year. This year you got hit up for \$1.8 million and last year it was about \$1.2 million it was all over the map because of the flow, and the changes or expenses. This way the City would know what you owe and the City could plan for a 3 to 5 year horizon.

Mayor Bernard said the City had no input on capital expenditures.

Mr. Storey mentioned that the remainder of the agreement was intended to reflect prior existing agreements as far as coordination of the system, SDC charges, coordination of pre-treatment programs and other issues.

Mr. Kuenzi said the Mayor was right. The City was not in the District so it had no say in planning although he knew several people from Milwaukie had attended meetings and given input into the project. That was the contractual arrangement at this point. There were some choices. The City could join the District, which would give it a say in the participation in that process. The City could continue

the way it was. His perspective was that it was best right now for the City to push Community Partnership and have a seat at the table moving forward.

Mayor Bernard asked if Milwaukie had the option of buying from someone else?

Mr. Kuenzi replied the City could buy from Oak Lodge or Portland.

Mr. Swanson did not think Portland was an option because it was so expensive. He supposed Milwaukie could build its own facility. He did not believe Oak Lodge was interested in taking wholesale customers. What we had was some different perceptions of history. In 1970's a bunch of folks likely went to the Elks to talk about wastewater treatment. At the time the City had its collection system. When it came time to create District 1 the reason the City did not become part of the District was because it was created both to finance the collection system and the treatment system. Milwaukie already had a collection system, so financially the choice would have been made to become a wholesale customer of the resulting District. Over time Milwaukie suffered for what was basically a wise business decision back then. On the other hand they had made some very unwise business decisions because the agreement they entered into with the District did not provide for equity. It basically put the City on the hook for 40% of the local share to the construction of Kellogg Treatment Plant and some interceptors. The City funded 40%, but he did not believe it had ever used 40% of the plant capacity. Any capacity issues that had been raised over the last 34 years had not been a result of the City. Now Milwaukie was being asked to deal with capacity issues even though it was not using it. There was also a problem with the risk premium, which would be a revenue bond.

Mr. Kuenzi said it would be a 20% fee to cover the fact that CCSD#1 ratepayers are incurring the debt in Milwaukie, as the City is not financially responsible for that debt. There were ways around that. If Milwaukie wanted to take on a proportional share of that debt in terms of responsibility they could build that in to get rid of the fee. He was not sure how to do that legally since the City was not part of the District, but there were some options. Milwaukie could walk away from this agreement right now with no debt obligation because the entire debt obligation is on CCSD#1.

Mr. Swanson said realistically the chances of walking away were zero. He did not see much risk for the District. Milwaukie was actually in the risk position because it was on a month-to-month contract that could be canceled with 180-days' notice. He thought the City had been unfairly characterized over the years as a leech on the system because it was not part of the District. Quite to the contrary the City had spent a substantial amount of money to pay for capital, and those who would argue that the City was somehow living off of the District were either misinformed or uninformed. The new methodology of charging based on EDU was something the City was interested in. Right now the ability to predict was pretty weak, and that part of it worked in our favor.

Mr. Storey said the EDU was an assumption that the rules say each household contributed about this much so the households were not actually metered. A Laundromat, for example, would be more than one EDU. It was a standard rate that was adopted industry wide.

Mr. Monahan said there was probably more work to do to analyze the agreement than what he had done to this point. He was looking for Council direction and primary issues.

Councilor Barnes would not approve the IGA because of a number of issues many of which had been brought up at the table. There was still a lot of work to

be done so Milwaukie and its citizens were not put in a bad position. The staff report talked specifically about finance fees, and risks to the City were huge for her. She did not want to leave the City open to that. More important was the cost to Milwaukie. They had discussed this and had their updates on the Community Project. Milwaukie sat at the table and said what it was willing to do. It still bothered her that no one stood up and said Milwaukie had done this this and this, and we were willing to look into it. She could not support the IGA that was before the body now. Milwaukie staff needed to sit down with County staff and work this out so it did not open Milwaukie residents and the City legally to more risk and it needs to be more fair and equitable. Milwaukie had done more than its share supporting CCSD#1 as a whole for many years. There were a few bad IGAs in the past, and she did not want to continue that.

Mr. Kuenzi was not aware there was anything in front of the City Council in final form. There was still work to be done. Mr. Swanson had been very clear that there were some issues that needed to be worked out. Some he was not sure could be worked out, and some of them they could try to resolve. They were still a couple of months away before having a final IGA to vote on.

Mr. Swanson said this was nowhere near final. It would be good for Mr. Kuenzi to hear from Council.

Mr. Kuenzi said there were two issues that came up in staff discussion: equity and rate. The rate reflected exactly what the increase was to CCSD#1 ratepayers. He was not sure there was a lot of room there. Certainly if the equity issue was important he could quickly arrange a discussion. With the amount of available talent the language details could certainly be worked out in order to move forward.

Councilor Stone arrived at 6:39 p.m. due to work constraints.

Councilor Chaimov wanted to see the regional partnership program continue and suggested Councilor Barnes continue in that capacity. As to the agreement he thought the key issues had been identified. If the City and County staffs continue to work together, he was confident that they would come up with an agreement that was satisfactory to both sides.

Councilor Loomis echoed Councilor Chaimov's comments. It was a work in progress.

It was Council consensus to continue the process with Councilor Barnes as the City's representative.

Mr. Kuenzi hoped to get things moving by mid-September because he would like to get through the agreements by the end of the year.

Mayor Bernard adjourned the work session at 6:41 p.m.

Pat DuVal

Pat DuVal, City Recorder

WORK SESSION

AGENDA
WORK SESSION
MILWAUKIE CITY COUNCIL
AUGUST 19, 2008

MILWAUKIE CITY HALL

Second Floor Conference Room
10722 SE Main Street

A light dinner will be served.

WORK SESSION – 5:30 p.m.

Discussion Items:

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1.	5:30 p.m.	Public Safety Advisory Committee Interviews <ul style="list-style-type: none">• Laurie Wells (At-large)• Ray Bryan (Historic Milwaukie)	Mayor and Council	1
2.	5:45 p.m.	Proposed Amendments to Milwaukie Municipal Code Chapter 13.12.063 – Fats, Oil, and Grease (FOG) Control	Paul Shirey	4
3.	6:00 p.m.	Wastewater Contract and Proposed Rates	Mike Swanson	36
4.	6:45 p.m.	Adjourn		

EXECUTIVE SESSION

Executive Session: The Milwaukie City Council may go into Executive Session 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.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- 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.

**CITY OF MILWAUKIE
APPOINTED ADVISORY BOARD APPLICATION**

Name: Laurie Wells Date: _____

Street address: 9105 SE 32nd ave #20

Mailing address if different than home address: _____

Business Phone: _____ Home Phone: 503-786-8115

E-mail address: LaurieWells2003@yahoo.com

How long have you been a Milwaukie resident? 5 1/2 years

Are any members of your household currently serving on a City of Milwaukie Advisory Board or Commission? If so, which one. _____

Are you a registered voter in Milwaukie? yes

How did you hear about the position? my Neighborhood Assn

Occupation: medically retired Employer: N/A

Employer's Address: N/A Phone: N/A

Please list any prior civic or professional activities. Former member of Rose City Council

I volunteer w/ Ardenwald NDA club, I just went through the Citizens Police Academy, I'm a Veteran (US Air Force + Army NG)

Why have you applied for this position? my NDA president asked me if I would be interested - I said yes and my NDA voted me in - unanimously.

What special training, skills, or experience have you had that would be pertinent to this application? 15 yrs prior military experience, also - I was my unit's Security Manager when stationed in London, and won Security Manager of the QTR for my Security Program

Board(s) or Commission(s) in which you are interested. PSAC - member at large

Please complete this form fully so City Council can evaluate your application. Thank you for the extra time and effort. Please return to City Recorder's Office, 10722 SE Main Street, Milwaukie, OR 97222, or fax to 653-2444. If you need additional information, please call 786-7502.

Received by City _____
Interviewed _____
Commission _____

Information Sent _____
Appointed _____
Term Expires _____

HISTORIC MILWAUKIE NDA MINUTES JULY 14, 2008

Our meeting was held in the Library Pond House. 17 people attended the meeting which started a little after 6:30 pm. Our staff liaison for the meeting was Mary Rowe.

The Milwaukie City Council held a public hearing on the proposed light rail LPA at 7 pm the same evening. A few members needed to attend and announced they would be leaving early.

First on the agenda was Ed Pareki. Ed is the project manager for the renovation of a building located at 2025 SE Jefferson St in downtown Milwaukie. Currently the building is occupied by a thrift store and a chiropractor. The plan is to completely renovate the building interiorly and exteriorly. Ed brought with him plans for the project. He was asked many questions about the project and also his Main/Monroe project. At least two members expressed their affection for the thrift store located in the building.

The group was asked to express their opinion of the project and it was given an 100% thumbs up.

Next, Tonya Burns from the North Clackamas Parks District talked about Kronberg Park. Recently she led a 30 person volunteer cleanup project that picked up the trash, and began eliminating the invasive species. The park is home to some very invasive plants, garlic mustard, knotweed, clematis and blackberries are the most evident. Her goal is to eliminate them and plant native plants. She is relying on volunteers for this effort. She is also coordinating with the city parks department and board.

Tonya was asked about the general maintenance and up keep to the park. In her opinion, until the park has a management plan it will not receive additional maintenance. Members of the NDA expressed their desire to get some permanent trees planted, so they could get established regardless any long term plan. Tonya was thanked for her efforts.

Third on the agenda was Val Hubbard. Previously, Val volunteered to organize a float for the Milwaukie Parade. Val presented a great idea; she has found a 57 pickup that will lead our NDA. We will assemble and 9:00 am. The final details are still being worked out. Several people committed to walking or riding. We will be treating the parade watchers with something they will like and advertising our NDA picnic.

Next we discussed our annual summer picnic. After discussion it was decided that we have it at the Waldorf School, on Friday August 8th, at 6:00 pm. Ed Zumwalt will find a musician to entertain. The NDA will provide beverages and fried chicken. The rest of the meal will be potluck. Several people volunteered to pass out flyers, inviting the neighborhood residents.

Following, the parade discussion, we were educated on the November Library District bond measure. Despite the fact that citizens in the region have already voted for permanent library funding, that funding is in jeopardy due in part to tax limitation

measures passed by voters. The goal is to get an independent funding measure that is dedicated only for libraries.

After the library discussion, Ray Bryan, asked for a few minutes regarding the NDA's representative on the PSAC committee. The group was asked if any one else was interested in serving on the PSAC committee, Ray was approved to continue for another two years.

Ray also asked the members for suggestions on the recently approved traffic and pedestrian management program. Three suggests for projects were given to Ray after the meeting. They are with out specific details but include the intersection of 21st and Harrison (traffic and pedestrian). Hwy 224 and Oak St. (pedestrian), and Washington St between St Johns Catholic Church and Milwaukie High School (pedestrian)

The last item on the agenda was the fireworks display for the upcoming Milwaukie Daze celebration. Ed Zumwalt has volunteered his time to help with the music and fireworks portion of the event. He has been told that help is needed to sponsor the fireworks. The members of the Historic Milwaukie NDA voted unanimously to apply for \$600 in grant funds to be leveraged in any way possible to encourage additional donations to the event from other organizations and NDA's

The meeting was adjourned by chair
Dion Shepard.

Respectfully submitted by Ray Bryan



To: Mayor and City Council

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

From: Paul Shirey, Operations Director
Ronelle Sears, Storm/Wastewater Supervisor
Jim Lund, Stormwater Specialist
Alex Campbell, Economic Development Coordinator

Subject: Proposed Amendments to Milwaukie Municipal Code Chapter
13.12.063 Fats, Oils and Grease (FOG) Control

Date: August 5, 2008 for August 19 City Council Work Session

Action Requested

Consider and discuss proposed amendments to section 13.12.063 FOG control section of the Milwaukie Municipal Code (MMC) to achieve the following:

1. Clarify uses subject to regulation
2. Amend penalties applicable to violations to conform to existing Code

The Code amendments are shown in Attachment A in redline/strikethrough version and Amendment B in final form.

History of Prior Actions and Discussions

July 17, 2007 Ordinance #1972 - Amending Title 13 – Public services to remove general requirements and create an inspection and enforcement program that will aid the Operations Department.

June 3, 2008 City Council discussion following comments made during audience participation regarding FOG control ordinance.

Background

At a Council meeting on June 3, 2008, a coffee shop owner complained that City FOG regulations should not apply to their businesses. It was argued that the amount of FOG generated by coffee shop and food preparation businesses is minimal and will not harm the City's wastewater lines. It was maintained that the code language is unclear and may not, in fact, apply to coffee shops. One business that also serves breakfast and lunches and sells coffee argued that they do not prepare food on site, they simply dispense it and should therefore be exempt. Council directed staff to reexamine the FOG ordinance and to consider the issue of whether to regulate coffee shops that do not also produce food on site.

Efforts to enforce compliance at coffee shops in town resulted in compliance by several coffee shops and were resisted by three others. In response to these concerns staff developed a compromise approach in May of this year. The City would agree to install grease traps at City expense and periodically inspect the traps for up to six months to check the rate of FOG accumulation in the traps. If the traps collected more than one inch of FOG in that time, the shop owner would reimburse the city for the cost of the trap and installation. If less FOG accumulated, reimbursement would not be required. Following the comments at the June 3 Council meeting from some of those shop owners, staff shelved the compromise agreement in order to focus on amending the FOG regulations originally adopted in June 2007.

Fats, oils and grease (FOG) control is considered a best management practice and has been part of most publicly operated wastewater collection and treatment systems for the past 40 years. FOG is contributed to the waste stream through sinks that drain to the public sanitary sewer system and from grills and deep fat fryers and similar devices. FOG naturally congeals which can cause sewer line backups and overflows and causes corrosion of the collection pipes, resulting in higher maintenance and replacement cost over time.

FOG control also meets federal requirements for POTW (publicly owned treatment works) in accordance with EPA mandates (40 CFR 403) for wastewater treatment discharges. (Attachment C) Milwaukie originally agreed to mandate FOG control under the terms of its agreement with Clackamas County, which operates the Kellogg wastewater treatment plant. Milwaukie adopted FOG control language in its Code in 1989 but did not enforce the Code because of challenges in administering the regulations.

City Council modified MMC 13.12.063 in 2007 (Ordinance #1972) and staff began enforcing FOG control in August 2007, relying on the practices of similarly sized

communities in the metro area. The City added the FOG program administration to the Waste Water Specialist's duties.

Uses subject to regulation were defined under the Code at that time to include "...business that prepare and or package food or beverages for consumption, on or off the site..." defined to include food courts, food manufacturers (below a specific discharge volume), food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools and all other food service facilities not listed..." Ordinance #1972 approved in 2007 provided an administrative fine of up to \$1,000 per day for noncompliance.

In August 2007, the Waste Water Specialist compiled a list of all businesses in the city potentially subject to the FOG ordinance and notified each business of the regulation. (Attachment F). Inspections were then scheduled to determine the need for installation of a trap or interceptor to manage the FOG generated by the business. Some businesses already had FOG control mechanisms (traps or interceptors), some were required to modify their existing devices and others required to install new devices. Of the original forty businesses inspected were, 36 are now in compliance or working toward compliance, three are in noncompliance (coffee shops) and one (Café Bonjour) has been notified that they are in violation with a court date established.

Recommended Code Changes

Staff recommends that the FOG control ordinance be amended to make a series of changes to the Code adopted last year by Ordinance # 1972 . Changes of substance include:

1. Add coffee shops, convenience stores and cafeterias as examples of food service facilities subject to regulation.
 - Coffee shops dispose of waste milk products and coffee down sink drains and generate FOG in the form of oils and fats. Most coffee shops also sell food that, even though pre-packaged, requires some level of handling (reheating and disposal) that results in food and FOG being washed down the drain. There is little doubt that coffee shops generate FOG. (see Attachment D)
2. Clarify the definitions of grease and grease traps and grease interceptors.
 - Clarify the fact that "grease" as defined in the Code refers also to fats and oils, which are therefore subject to grease control devices such as traps.
3. Eliminate reference to quantitative measure (100 ml) of grease as a condition subject to enforcement.
 - Most municipalities do not set a quantitative threshold for FOG because it is nearly impossible to obtain a reliable measure of FOG in wastewater.

4. Enhance the requirements for demonstrating management and legal disposal of effluent from grease traps. The current language in the Code is silent on whether a business is required to retain the services of a pumping company to service their grease trap and does not require evidence of legal disposal.
 - Staff proposes that businesses that would prefer to avoid the on-going expense of using a disposal company to clean and service their traps, must supply evidence of legal disposal of trap effluent.
5. Refine language regarding enforcement and civil penalties for noncompliance
 - Code language from July 2007 incorrectly referred to administrative remedies (Milwaukie has no administrative enforcement processes, only civil penalties) for noncompliance instead of civil penalties. The revised language conforms to existing enforcement practices with fines ranging from \$150-\$500 per day for violations.

Staff met with the representatives of the three small- to medium-size coffee shops that are not yet in compliance with the FOG program in July 2008 to fill them in on the latest developments around the FOG issue. The owners were told that staff believes that coffee shops should be included within the program and planned to present amendments to the MMC regarding FOG control language for Council consideration in September.

The coffee shop owners requested that no retrofits of coffee shops be required. They offered the following arguments, staff responses are provided in italics.

- They were not made aware of any requirement to install a grease trap at the time their original plumbing plans were approved by the City; retro-fitting a grease trap is a relatively expensive proposition relative to their total business income. *[Although it was not enforced, City Code did call for traps to be installed and it was an existing best practice in the industry.]*
- Retrofit could require substantial modifications to existing shop layouts. *[A typical grease trap is not so large as to require a total kitchen or serving area redesign.]*
- Small coffee shop contributions to the overall problem are not significant, compared to residential customers. *[Staff has evidence (Attachment D)that coffee shops in Milwaukie do produce significant FOG.]*
- The City should consider some kind of voluntary compliance with practices to minimize FOG contributions from small coffee shops. *[Staff does not believe that such practices would eliminate FOG contributions.]*

Shop owners requested staff provide information on how other jurisdictions in Oregon with FOG programs deal with pre-existing coffee shops. (Attachment E)

Concurrence

City Manager and City Attorney concur with the recommendations of staff.

Fiscal Impact

The Waste Water fund will incur a cost to install grease traps in up to three coffee shops at a cost of roughly \$5,000 per shop if the agreement proposed by the City is signed by the parties. Depending on the results of the test period, the City may or may not recover this expense.

Work Load Impacts

The revised amendments do not alter the time or cost of enforcing the FOG control ordinance.

Alternatives

1. Request that staff to return with proposed amendments to FOG control ordinance for adoption.
2. Consider exemptions of certain uses or other exceptions from FOG control. The City would accept the increased likelihood of FOG related maintenance costs for Wastewater department.

Attachments

- A. Proposed Code amendments (strikeout) to MMC 13.12.063
- B. Proposed Code amendments (clean version) to MMC 13.12.063
- C. National Pretreatment Program (40 CFR 403), EPA Office of Water, July 2007
- D. Coffee shop FOG memo, including photos
- E. List of communities with FOG control ordinances
- F. List of businesses subject to regulation and status of compliance

ATTACHMENT A

13.12.063 Fats, oils and grease control.

http://www.qcode.us/codes/milwaukie/view.php?topic=13-13_12-13_12_063&frames=on - startContent

A. Purpose. The city of Milwaukie finds that, in order to provide for the public health and welfare, and to comply with the laws and regulations of the state and the United States Government, it is necessary to set uniform requirements for all users of the city's sanitary sewer system to include, but not limited to, the following:

1. To establish the appropriate authority for the city to condition or deny discharges to the city sewer system;
2. To prevent the introduction of excessive amounts of grease into the city sewer system;
3. To prevent the clogging or blocking of the city sewer lines due to grease build-up causing backup and flooding of streets, residences, and commercial buildings;
4. To implement a set of procedures to recover the costs incurred when grease blockages require the city to engage in cleaning and maintenance of sewer lines and the disposal of grease blockages;
5. To implement a procedure to recover costs from the parties responsible for contributing waste products to the city system for the cost of any liability incurred by the city for damage caused by grease blockages resulting in the flooding of streets, residences or commercial buildings;
6. To establish enforcement procedures for violations of any part or requirement of this section; and
7. To establish the authority for the city to carry out routine and non-routine monitoring (sampling and inspections) of the grease traps of any food service facility either in the city or outside, that contributes waste products that enter the city system.

B. Applicability. The terms and conditions of this section shall apply to all food service ~~providers to include restaurants, cafeterias, food preparation facilities, convenience stores preparing fast foods for sale, grocery stores providing cooked foods for sale, and other food preparation~~ facilities.

C. Definitions.

"City" means the city of Milwaukie Oregon, employees of the city, or an authorized agent of the city.

"Discharger" means the food service facility that is discharging gray water to the city sewer system.

“Food service facility” or “facility” means any business which prepares and/or packages food or beverages for sale or consumption, on or off site, with the exception of private residences. Food service facilities shall include, but are not limited to food preparation facilities, food courts, food manufacturers with an average daily discharge volume of up to twenty-five thousand (25,000) gallons per day ~~or less~~, food packagers, restaurants, cafeterias, grocery stores, convenience stores, coffee shops, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools, and all other food service facilities not listed, herein.

“Garbage disposal” means a device which shreds or grinds up waste materials into smaller portions for discharge into the city’s sanitary sewer system.

“Gray water” means all of the liquid contained in a grease interceptor that lies below the floating grease layer and above the food solids layer.

“Grease” means a material either liquid or solid, composed primarily of fat, oil and grease from animal or vegetable sources. The terms “fats, oils, and grease (FOG),” “oil and grease” or “oil and grease substances” shall all be included within this definition.

“Grease interceptor” or “interceptor” means a device located underground and outside of the food service facility designed to collect, contain or remove food wastes and greaseFOG from the wastestream while allowing the balance of the liquid wastes (gray water) to discharge to the wastewater collection system by gravity. Interceptors shall have at least one inspection hatch on the top surface to facilitate inspection, cleaning, and maintenance.

“Grease trap” means a device located in a food service facility or under a sink designed to collect, contain, or remove food wastes and greaseFOG from the wastestream while allowing the balance of the liquid waste (gray water) to discharge to the wastewater collection system by gravity. Traps shall have a removable lid on the top surface to facilitate inspection, cleaning, and maintenance.

“Grease trap service company” means a person, or company, who provides maintenance services for grease traps and interceptors. Maintenance service to include cleaning, minor repairs, grease and solids removal from the interceptor, and transport of the removed material to an appropriate recycling or disposal facility.

“Waste grease” means fats, oils, and grease that can be collected following use and prior to discharge to the sewer or interceptor. Waste grease is collected from pans, deep fat fryers, and cooking grills.

D. Grease Interceptor/Trap Required.

1. General Requirements. Grease interceptors and/or traps shall be provided by the food service facility owner, ~~when, in the opinion of the city, they are necessary~~ to prevent ~~grease in excessive amounts~~ FOG from entering the sanitary sewer system. Owner shall

provide documentation and/or calculations on all sizing and model selections to the city building division for approval prior to installation. The grease or interceptor shall be located as to be easily and safely accessible for cleaning and inspection. All prospective grease trap users must provide manufacturer's capacity data and an estimate of the product rate at the facility that is within the capacity of the grease interceptor or trap to be approved by the building permit department.

2. Existing Facilities. For the purposes of sizing and installation of grease interceptors/traps, all food service facilities existing within the city's sewer system service area, whether within, or without, the city limits, prior to the effective date of the ordinance codified in this section shall be allowed to operate and maintain existing grease interceptors/traps provided their grease interceptors or grease traps are maintained in efficient operating conditions.

On or after the effective date of said ordinance, the city ~~may~~shall require an existing food service facility to install, operate and maintain a new grease interceptor or trap that complies with the requirements of this section or to modify, repair or replace any noncompliant interceptor or trap within ninety (90) days of written notification by the city when any one or more of the following conditions exist:

~~a. The facility is found to be contributing grease and oil in quantities greater than one hundred (100) mg/L (or ppm) or necessitates increased maintenance on the wastewater collection system.~~ ~~b.~~ The facility does not have a grease interceptor or trap.

~~b.~~ The facility has an undersized, nonrepairable or defective grease interceptor or trap.

~~c.~~ Remodeling of the food preparation or kitchen waste plumbing system is performed which requires a building permit to be issued by the city.

~~d.~~ The existing facility does not have plumbing connections to a grease interceptor or trap in compliance with the requirements of this ordinance, or current building codes.

3. New Facilities or New Interceptor Installations. Grease interceptors or traps shall be located in the food service facility's lateral sewer line between all fixtures which may introduce grease into the sewer system and the connection to the city's wastewater collections system. Garbage disposals, dishwashers and restrooms shall not be plumbed to the grease interceptor. Automatic hood washers, floor drains in food preparation and storage areas shall be plumbed to the grease interceptor. Sanitary facilities (restrooms) shall not be plumbed to the grease interceptor under any circumstance.

E. Maintenance of Grease Interceptor/Trap Required.

1. Maintenance. All grease interceptors and grease traps shall be continuously maintained in satisfactory and effective operational condition by the discharger at the discharger's expense. Typically maintenance consists of the removal of floatable solids

and settleable solids collected in the grease interceptor/trap; and the cleaning of the walls and piping.

2. Routine Maintenance Schedules. The discharger is responsible for establishing a routine maintenance schedule that includes the routine removal of floatable and settleable solids and cleaning of the interceptors/traps. The maintenance frequency should be such that the interceptor/trap does not allow fats, oils, grease,~~oils,~~ and food solids ~~from leaving to leave~~ the interceptor and ~~entering~~enter the city sewer collection system. The amount of time between pumping and cleaning services is dependent on the volume of wastes discharged, the volume of the interceptor/trap, and the physical integrity of the interceptor/trap structures and piping. It is the discharger's responsibility that the interceptors/traps are routinely inspected and repaired as needed.

3. Record Keeping Requirements. The discharger is responsible for maintaining appropriate maintenance records that documents the routine pumping, cleaning, and repairs made to interceptors and traps. Where the discharger hires a grease trap service company to clean the interceptor/trap and remove and dispose of the accumulated grease and solids, a copy of the pumping manifest or billing must be retained with the maintenance records. Where the discharger does not hire a grease trap service company the discharger shall maintain a receipt for proper disposal of the accumulated FOG and solids. All maintenance records should include at a minimum the following information:

- a. Name of facility;
- b. Date service performed;
- c. Total volume of the interceptor/trap;
- d. Total volume of material removed from the interceptor/trap;
- e. List of all deficiencies identified from an inspection of the empty interceptor/trap;
- f. Name and address of the grease trap service company;
- g. ~~Address of the grease trap service company;~~ ~~h.~~ Name and address of final disposal site;
- ~~h.~~ Signature of the grease trap service company employee performing the work;
- ~~i.~~ ~~j.~~ Signature of the discharger's employee observing and accepting the services.
- i. Receipt for payment for proper disposal of FOG and solids, if such services are not provided by a grease trap service company.

4. Record Retention. All grease interceptor/trap maintenance records shall be retained for a period of no less than, three (3) years. These records shall be retained at the food service facility and shall be made available for inspection by the city.

F. Disposal of wastes from interceptors and traps. Storage, handling, transportation and disposal of all wastes from interceptors/traps shall be performed in accordance with applicable federal, state and local regulations that pertain to the type and/or class of waste. Materials removed from waste interceptors/traps must be disposed of at ~~legally~~State of Oregon Department of Environmental Quality (DEQ) designated locations for those specific type wastes. Materials removed from waste interceptors/traps shall not be discharged to the city sanitary sewers or storm drains.

G. Collection, Storage and Disposal of Waste Grease and Solids. Dischargers are encouraged to collect excess oil and grease from deep fat fryers, pots, and pans prior to washing. This waste grease and oil should be collected and stored in appropriate containers that are ~~appropriated~~appropriately labeled. The collected waste grease and oil should be collected by a waste grease service company for disposal. In no case shall the discharger dispose of deep fat fryer oils and other collected waste greases and oils by discharge to the grease interceptor/trap or to the city sewer system.

H. Clean up of Spilled Grease and Oil. The discharger shall clean up all spilled grease and oil using appropriate tools including a mop and bucket. Bucket contents may be discharged to the grease interceptor/trap, and solid greases and oils that can be manually picked up should be held in the waste grease collection containers for final disposal. In no instance shall spilled grease and oils be washed to the stormwater drains. In the event that the city is required to clean up a grease and oil spill generated by a discharger, the city is authorized to assess cost recovery fees to the discharger for all reasonable documented costs associated with the clean up.

I. Use of Chemicals and Other Additives. The use of chemicals, emulsifying agents, enzymes, microorganisms and/or other additives that are added to the grease interceptors/traps to reduce or eliminate the pumping and cleaning of the interceptor/trap is prohibited. Dischargers currently using a chemical or other additive must halt such use immediately on the effective date of this ordinance or be subject to citation and fine under subsection K of this section.

J. Right of Access. The city, employees of the city, or authorized agents of the city, have the authority to enter the property of the discharger to conduct inspections of the entire facility, including the interceptors, traps, cooking and storage areas, restrooms, offices, service areas, and other areas of the facility. The city is also authorized to collect samples of any wastestream, including the discharge from the facility and the interceptors and traps. The city may obtain search warrants for inspection and sampling purposes. Failure to grant access may result in the suspension of sewer and water services provided by the city.

K. Enforcement. ~~Failure~~ A person failing to comply with the provisions of this section is ~~considered a misdemeanor and~~ subject to the short form uniform citation and complaint method and enforcement actions under the procedures within Chapter 1.08 of city codes. In addition, to these misdemeanor enforcement actions the city is authorized to take the following actions to achieve compliance to this section.

1. Mandatory Interceptor/Trap Service. The city may issue an order requiring the discharger to conduct interceptor/trap maintenance services within a mandatory time period. The cost of the services shall be the direct responsibility of the discharger.

2. Mandatory Interceptor/Trap Service Schedule. The city may impose a mandatory pumping and cleaning schedule to assure the proper maintenance of an interceptor not properly maintained by the discharger. The cost of the services shall be the direct responsibility of the discharger. Mandatory service schedules may cover a time period of up to three (3) years.

3. Cost Recovery. The city may assess the discharger the amount of those expenditures made by the city to clean up or prevent sewer blockages and overflows caused by the discharge from a food service facility. The city may also recover costs associated with any testing performed for reasons associated with violations or repeat offenders.

4. ~~Administrative Fines. The city may assess fines to the discharger, not to exceed one thousand dollars (\$1,000.00)~~ Civil Penalties. A person found to have committed a violation of this title shall be assessed a penalty of not more than five hundred dollars (\$500.00) per day per violation, for violations of this section.

~~a. Unpaid charges, fines, and penalties shall, after sixty (60) calendar days, be assessed an additional penalty of twenty-five (25) percent of the unpaid balance, and interest shall accrue thereafter at a rate of one (1) percent per month. The city may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine. A lien against the user's property will be sought for unpaid charges, fines, and penalties.~~

~~b. Users desiring to dispute such fines must file a written request for the city to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the city may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user.~~

~~c. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.~~

5. Emergency Suspensions. The city may immediately suspend a discharge and/or water services, after informal notice to the discharger, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present

or cause an imminent or substantial endangerment to the health or welfare of persons.
(Ord. 1972 § 1, 2007)

Document comparison by Workshare Professional on Monday, July 28, 2008
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Legend:	
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Statistics:	
	Count
Insertions	31
Deletions	32
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	65

ATTACHMENT B

13.12.063 Fats, oils and grease control.

A. Purpose. The city of Milwaukie finds that, in order to provide for the public health and welfare, and to comply with the laws and regulations of the state and the United States Government, it is necessary to set uniform requirements for all users of the city's sanitary sewer system to include, but not limited to, the following:

1. To establish the appropriate authority for the city to condition or deny discharges to the city sewer system;
2. To prevent the introduction of excessive amounts of grease into the city sewer system;
3. To prevent the clogging or blocking of the city sewer lines due to grease build-up causing backup and flooding of streets, residences, and commercial buildings;
4. To implement a set of procedures to recover the costs incurred when grease blockages require the city to engage in cleaning and maintenance of sewer lines and the disposal of grease blockages;
5. To implement a procedure to recover costs from the parties responsible for contributing waste products to the city system for the cost of any liability incurred by the city for damage caused by grease blockages resulting in the flooding of streets, residences or commercial buildings;
6. To establish enforcement procedures for violations of any part or requirement of this section; and
7. To establish the authority for the city to carry out routine and non-routine monitoring (sampling and inspections) of the grease traps of any food service facility either in the city or outside, that contributes waste products that enter the city system.

B. Applicability. The terms and conditions of this section shall apply to all food service facilities.

C. Definitions.

“City” means the city of Milwaukie Oregon, employees of the city, or an authorized agent of the city.

“Discharger” means the food service facility that is discharging gray water to the city sewer system.

“Food service facility” or “facility” means any business which prepares and/or packages food or beverages for sale or consumption, on or off site, with the exception of private residences. Food service facilities shall include, but are not limited to, food preparation facilities, food courts, food manufacturers with an average daily discharge volume of up to twenty-five thousand

13.12.063 Fats, oils and grease control.

A. Purpose. The city of Milwaukie finds that, in order to provide for the public health and welfare, and to comply with the laws and regulations of the state and the United States Government, it is necessary to set uniform requirements for all users of the city's sanitary sewer system to include, but not limited to, the following:

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(25,000) gallons per day, food packagers, restaurants, cafeterias, grocery stores, convenience stores, coffee shops, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools, and all other food service facilities not listed, herein.

“Garbage disposal” means a device which shreds or grinds up waste materials into smaller portions for discharge into the city’s sanitary sewer system.

“Gray water” means all of the liquid contained in a grease interceptor that lies below the floating grease layer and above the food solids layer.

“Grease” means a material either liquid or solid, composed primarily of fat, oil and grease from animal or vegetable sources. The terms “fats, oils, and grease (FOG),” “oil and grease” or “oil and grease substances” shall all be included within this definition.

“Grease interceptor” or “interceptor” means a device located underground and outside of the food service facility designed to collect, contain or remove food wastes and FOG from the wastestream while allowing the balance of the liquid wastes (gray water) to discharge to the wastewater collection system by gravity. Interceptors shall have at least one inspection hatch on the top surface to facilitate inspection, cleaning, and maintenance.

“Grease trap” or “trap” means a device located in a food service facility or under a sink designed to collect, contain, or remove food wastes and FOG from the wastestream while allowing the balance of the liquid waste (gray water) to discharge to the wastewater collection system by gravity. Traps shall have a removable lid on the top surface to facilitate inspection, cleaning, and maintenance.

“Grease trap service company” means a person, or company, who provides maintenance services for grease traps and interceptors. Maintenance service to include cleaning, minor repairs, FOG and solids removal from the interceptor, and transport of the removed material to an appropriate recycling or disposal facility.

“Waste grease” means fats, oils, and grease that can be collected following use and prior to discharge to the sewer or interceptor. Waste grease is collected from pans, deep fat fryers, and cooking grills.

D. Grease Interceptor/Trap Required.

1. General Requirements. Grease interceptors and/or traps shall be provided by the food service facility owner to prevent FOG from entering the sanitary sewer system. Owner shall provide documentation and/or calculations on all sizing and model selections to the city building division for approval prior to installation. The grease interceptor or trap shall be located as to be easily and safely accessible for cleaning and inspection. All prospective grease interceptor or trap users must provide manufacturer’s capacity data and an estimate of the product rate at the facility that is within the capacity of the grease interceptor or trap to be approved by the building permit department.

2. Existing Facilities. For the purposes of sizing and installation of grease interceptors/traps, all food service facilities existing within the city's sewer system service area, whether within, or without, the city limits, prior to the effective date of the ordinance codified in this section shall be allowed to operate and maintain existing grease interceptors/traps provided their grease interceptors or grease traps are maintained in efficient operating conditions.

On or after the effective date of said ordinance, the city shall require an existing food service facility to install, operate and maintain a new grease interceptor or trap that complies with the requirements of this section or to modify, repair or replace any noncompliant interceptor or trap within ninety (90) days of written notification by the city when any one or more of the following conditions exist:

- a. The facility does not have a grease interceptor or trap.
- b. The facility has an undersized, nonrepairable or defective grease interceptor or trap.
- c. Remodeling of the food preparation or kitchen waste plumbing system is performed which requires a building permit to be issued by the city.
- d. The existing facility does not have plumbing connections to a grease interceptor or trap in compliance with the requirements of this ordinance, or current building codes.

3. New Facilities or New Interceptor Installations. Grease interceptors or traps shall be located in the food service facility's lateral sewer line between all fixtures which may introduce grease into the sewer system and the connection to the city's wastewater collections system. Garbage disposals, dishwashers and restrooms shall not be plumbed to the grease interceptor. Automatic hood washers, floor drains in food preparation and storage areas shall be plumbed to the grease interceptor. Sanitary facilities (restrooms) shall not be plumbed to the grease interceptor under any circumstance.

E. Maintenance of Grease Interceptor/Trap Required.

1. Maintenance. All grease interceptors and grease traps shall be continuously maintained in satisfactory and effective operational condition by the discharger at the discharger's expense. Typically maintenance consists of the removal of floatable solids and settleable solids collected in the grease interceptor/trap; and the cleaning of the walls and piping.

2. Routine Maintenance Schedules. The discharger is responsible for establishing a routine maintenance schedule that includes the routine removal of floatable and settleable solids and cleaning of the interceptors/traps. The maintenance frequency should be such that the interceptor/trap does not allow fats, oils, grease and food solids to leave the interceptor and enter the city sewer collection system. The amount of time between pumping and cleaning services is dependent on the volume of wastes discharged, the volume of the interceptor/trap, and the physical integrity of the interceptor/trap structures and piping. It is the discharger's responsibility that the interceptors/traps are routinely inspected and repaired as needed.

3. Record Keeping Requirements. The discharger is responsible for maintaining appropriate maintenance records that documents the routine pumping, cleaning, and repairs made to interceptors and traps. Where the discharger hires a grease trap service company to clean the interceptor/trap and remove and dispose of the accumulated grease and solids, a copy of the pumping manifest or billing must be retained with the maintenance records. Where the discharger does not hire a grease trap service company the discharger shall maintain a receipt for proper disposal of the accumulated FOG and solids. All maintenance records should include at a minimum the following information:

- a. Name of facility;
- b. Date service performed;
- c. Total volume of the interceptor/trap;
- d. Total volume of material removed from the interceptor/trap;
- e. List of all deficiencies identified from an inspection of the empty interceptor/trap;
- f. Name and address of the grease trap service company;
- g. Name and address of final disposal site;
- h. Signature of the grease trap service company employee performing the work, if applicable;
- i. Signature of the discharger's employee observing and accepting the services.
- j. Receipt for payment for proper disposal of FOG and solids, if such services are not provided by a grease trap service company.

4. Record Retention. All grease interceptor/trap maintenance records shall be retained for a period of no less than, three (3) years. These records shall be retained at the food service facility and shall be made available for inspection by the city.

F. Disposal of wastes from interceptors and traps. Storage, handling, transportation and disposal of all wastes from interceptors/traps shall be performed in accordance with applicable federal, state and local regulations that pertain to the type and/or class of waste. Materials removed from waste interceptors/traps must be disposed of at State of Oregon Department of Environmental Quality (DEQ) designated locations for those specific type wastes. Materials removed from waste interceptors/traps shall not be discharged to the city sanitary sewers or storm drains.

G. Collection, Storage and Disposal of Waste Grease and Solids. Dischargers are encouraged to collect excess oil and grease from deep fat fryers, pots, and pans prior to washing. This waste grease and oil should be collected and stored in appropriate containers that are appropriately

labeled. The collected waste grease and oil should be collected by a waste grease service company for disposal. In no case shall the discharger dispose of deep fat fryer oils and other collected waste greases and oils by discharge to the grease interceptor/trap or to the city sewer system.

H. Clean up of Spilled Grease and Oil. The discharger shall clean up all spilled grease and oil using appropriate tools including a mop and bucket. Bucket contents may be discharged to the grease interceptor/trap, and solid greases and oils that can be manually picked up should be held in the waste grease collection containers for final disposal. In no instance shall spilled grease and oils be washed to the stormwater drains. In the event that the city is required to clean up a grease and oil spill generated by a discharger, the city is authorized to assess cost recovery fees to the discharger for all reasonable documented costs associated with the clean up.

I. Use of Chemicals and Other Additives. The use of chemicals, emulsifying agents, enzymes, microorganisms and/or other additives that are added to the grease interceptors/traps to reduce or eliminate the pumping and cleaning of the interceptor/trap is prohibited. Dischargers currently using a chemical or other additive must halt such use immediately on the effective date of this ordinance or be subject to citation and fine under subsection K of this section.

J. Right of Access. The city, employees of the city, or authorized agents of the city, have the authority to enter the property of the discharger to conduct inspections of the entire facility, including the interceptors, traps, cooking and storage areas, restrooms, offices, service areas, and other areas of the facility. The city is also authorized to collect samples of any wastestream, including the discharge from the facility and the interceptors and traps. The city may obtain search warrants for inspection and sampling purposes. Failure to grant access may result in the suspension of sewer and water services provided by the city.

K. Enforcement. A person failing to comply with the provisions of this section is subject to the short form uniform citation and complaint method and enforcement procedures within Chapter 1.08 of city codes. In addition to these enforcement actions the city is authorized to take the following actions to achieve compliance to this section.

1. Mandatory Interceptor/Trap Service. The city may issue an order requiring the discharger to conduct interceptor/trap maintenance services within a mandatory time period. The cost of the services shall be the direct responsibility of the discharger.

2. Mandatory Interceptor/Trap Service Schedule. The city may impose a mandatory pumping and cleaning schedule to assure the proper maintenance of an interceptor not properly maintained by the discharger. The cost of the services shall be the direct responsibility of the discharger. Mandatory service schedules may cover a time period of up to three (3) years.

3. Cost Recovery. The city may assess the discharger the amount of those expenditures made by the city to clean up or prevent sewer blockages and overflows caused by the discharge from that discharger. The city may also recover costs associated with any testing performed for reasons associated with violations or repeat offenders.

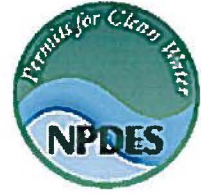
4. **Civil Penalties.** A person found to have committed a violation of this title shall be assessed a penalty of not more than five hundred dollars (\$500.00) per day per violation, for violations of this section.

5. **Emergency Suspensions.** The city may immediately suspend a discharge and/or water services, after informal notice to the discharger, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. (Ord. 1972 § 1, 2007)



National Pretreatment Program

(40 CFR 403)



Controlling Fats, Oils, and Grease Discharges from Food Service Establishments

Summary

The National Pretreatment Program provides regulatory tools and authority to state and local POTW pretreatment programs for eliminating pollutant discharges that cause interference at POTWs, including interference caused by the discharge of Fats, Oils, and Grease (FOG) from food service establishments (FSE). More specifically, the Pretreatment Program regulations at 40 CFR 403.5(b)(3) prohibit "solid or viscous pollutants in amounts which will cause obstruction" in the POTW and its collection system.

What is the environmental problem with FOG discharges into sewers?

EPA's Report to Congress on combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs) identified that "grease from restaurants, homes, and industrial sources are the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and blocks flow." See Impacts and Controls of CSOs and SSOs, EPA-833-R-04-001, August 2004.

Controlling FOG discharges will help POTWs prevent blockages that impact CSOs and SSOs, which cause public health and water quality problems. Controlling FOG discharges from FSEs is an essential element in controlling CSOs and SSOs and ensuring the proper operations for many POTWs. The interference incidents identified in CSO/SSO report to Congress may indicate the need for additional oversight and enforcement of existing regulations and controls. See 71 FR 76660 (21 December 2006).

What is the source of FOG at Food Service Establishments?

FOG wastes are generated at FSEs as byproducts from food preparation activities. FOG captured on-site is generally classified into two broad categories: yellow grease and grease trap waste. Yellow grease is derived from used cooking oil and waste greases that are separated and collected at the point of use by the food service establishment.

The annual production of collected grease trap waste and uncollected grease entering sewage treatment plants can be significant and ranges from 800 to 17,000 pounds/year per restaurant.

What is the legal authority for POTWs to require FSEs to control FOG discharges?

The National Pretreatment Program already provides the necessary regulatory tools and authority to local pretreatment programs for controlling interference problems. Under the provisions of Part 403.5(c)(1) & (2), in defined circumstances, a POTW must establish specific local limits for industrial users to guard against interference with the operation of the municipal treatment works. See 46 FR 9406 (28 January 1981).

Consequently, pretreatment oversight programs should include activities designed to identify and control sources of potential interference and, in the event of actual interference, enforcement against the violator.

What can FSEs do to control FOG discharges?

Food service establishments can adopt a variety of best management practices or install interceptor/collector devices to control and capture the FOG material before discharge to the POTW collection system. For example, instead of discharging yellow grease to POTWs, food service establishments usually accumulate this material for pick up by consolidation service companies for re-sale or re-use in the manufacture of tallow, animal feed supplements, bio-fuels, or other products.

Additionally, food service establishments can install interceptor/collector devices (e.g., grease traps) in order to accumulate grease on-site and prevent it from entering the POTW collection system.

How should FSEs design and maintain their FOG controls?

Proper design, installation, and maintenance procedures are critical for these devices to control and capture the FOG. For example,

- ◆ Interceptor/collector devices must be designed and sized appropriately to allow FOG to cool and separate in a non-turbulent environment.
- ◆ FSE must be diligent in having their interceptor/collector devices serviced at regular intervals.

The required maintenance frequency for interceptor/collector devices depends greatly on the amount of FOG a facility generates as well as any best management practices (BMPs) that the establishment implements to reduce the FOG discharged into its sanitary sewer system.

In many cases, an establishment that implements BMPs will realize financial benefit through a reduction in their required grease interceptor and trap maintenance frequency.

What are some POTWs doing today to control FOG discharges from FSEs?

A growing number of control authorities are using their existing authority (e.g., general pretreatment standards in Part 403 or local authority) to establish and enforce more FOG regulatory controls (e.g., numeric pretreatment limits, best management practices including the use of interceptor/collector devices) for food service establishments to reduce interferences with POTW operations (e.g., blockages from fats, oils, and greases discharges, POTW treatment interference from *Nocardia filamentous* foaming, damage to collection system from hydrogen sulfide generation).

For example, since identifying a 73% non-compliance rate with its grease trap ordinance among restaurants, New York City has instituted a \$1,000-per-day fine for FOG violations.

Likewise, more and more municipal wastewater authorities are addressing FOG discharges by imposing mandatory measures of assorted kinds, including inspections, periodic grease pumping, stiff penalties, and even criminal citations for violators, along with 'strong waste' monthly surcharges added to restaurant

sewer bills. Surcharges are reportedly ranging from \$100 to as high as \$700 and more, the fees being deemed necessary to cover the cost of inspections and upgraded infrastructure.

Pretreatment programs are developing and using inspection checklists for both food service establishments and municipal pretreatment inspectors to control FOG discharges. Additionally, EPA identified typical numeric local limits controlling oil and grease in the range of 50 mg/L to 450 mg/L with 100 mg/L as the most common reported numeric pretreatment limit.

How can CMOM help control FSE FOG discharges?

EPA expects that blockages from FOG discharges will decrease as POTWs incorporate FOG reduction activities into their Capacity, Management, Operations, and Maintenance (CMOM) program and daily practices. CMOM programs are comprehensive, dynamic, utility specific programs for better managing, operating and maintaining sanitary sewer collection systems, investigating capacity constrained areas of the collection system, and responding to SSOs.

Collection system owners or operators who adopt FOG reduction activities as part of their CMOM program activities are likely to reduce the occurrence of sewer overflows and improve their operations and customer service.

Where can I get more information?

For more information on developing local limits is in the Local Limits Development Guidance, EPA-833-R-04-002A, July 2004, and EPA's Pretreatment Web site, http://cfpub.epa.gov/npdes/home.cfm?program_id=3.

CMOM information is located in the following document, Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems, EPA-305-B-05-002, January 2005, <http://cfpub.epa.gov/npdes/ss0/featuredinfo.cfm>.

Additional information is also available from your state or EPA Regional Office.

Why is My Coffee Shop Regulated As A Fats, Oils, and Grease Producing Restaurant?

Many coffee shops/restaurants do not understand the impacts a coffee shop has on sanitary sewer system. After all, they are merely making a drink, which is a hot liquid and flows easily down the drain and away from the establishment.

Unfortunately for the public utility it is connected to, there is an unseen impact on the underground infrastructure.

Coffee beans contain 15% oil per bean, when we are talking about the quantity it takes to make one pot of coffee, or concentrating it, for a shot of espresso, that's a lot of beans.

Also, many people prefer to use milk products in their coffee drink, these milk products may contain more or less an average of 3% milk fat content per ounce of milk product. Milk cream is obviously higher than the previously stated amount. Once this milk goes down the drain, it cools and congeals to the inside of the wastewater pipe. This action causes excess cleaning requirements in the section of pipe affected. This problem may also cause an issue with upstream users of the wastewater system.

MMC 13.12.060 (C) Except as provided in this section, no person shall discharge or cause to be discharged any of the following waters, or wastes to any public sewer:

MMC13.12.060 (C)(8) Any waters or wastes containing suspended solids of such a character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant

Another issue at hand is the coffee itself has a lowered pH, which is what determines the difference between alkalinity and acidity. Normal pH of wastewater has a level of 6.5 to 7.5 on average. When coffee is introduced to the wastewater line it has an average pH of 5.0. This creates a problem within the infrastructure that causes excessive rusting of metal parts and abrasion of concrete pipes.

Due to the costs of replacing infrastructure in the wastewater system, we have deemed it necessary to ensure that all Fats, Oils, and Grease producing establishments be regulated.

MMC13.12.060 (C)(6) Discharge regulations states- "Any waters having a pH lower than 5.5 or higher than 9.0, or having any other corrosive property capable of damage or hazard to structures, equipment, and personnel of sewage works."

Further, as this liquid enters the system it tends to congeal to the sides of the pipes when this happens it can cause an issue with backups, which are very costly and damaging to all upstream from the blockage.

Currently, the two traps that are in coffee shops in Milwaukie, both produce FOG. They have a scheduled rendering company come by and pick up their grease every other month. This seems to be an adequate schedule at this time.

Fats and solids are seen consistently every other month when the traps are cleaned. One of the coffee shops uses very small pitchers in order to alleviate waste from the production of their drinks. Most drinks take one-half pitchers of milk and larger drinks take one. Even with this amount of product management there is still a waste flow that occurs due to the nature of the business. Larger coffee businesses that have issues with FOG, use interceptors that are upwards to 1500 gallon. One particular coffee shop, which is in a nearby community, gets cleaned every month on a regular basis due to loading requirements of the trap. One specific coffee shop chain understands that this is a consideration that must be made with all new construction, and is willing to retrofit as necessary.

ATTACHMENT E

Cities in Oregon with FOG control ordinances

The following Cities regulate FOG, including coffee shops:

Wilsonville
Vancouver
Newberg
Hillsboro
Beaverton
West Linn

City of Salem has a FOG ordinance and exempts “espresso shops”

City of Tigard regulates all business that obtain food handling permits from the State

ATTACHMENT F

FirstName	LastName	JobTitle	Compliance Status	Company	SiteAddress	MailingAddress	City
A Todd	Freeman	Resturant	Complied/ Installed	Mike's Drive-in	3045 SE Harrison	10695 SE 42nd	Milwaukie
		Resturant	Complied/repairs	Taco-Bell #4088	11000 SE Oak St.	PO Box 35520	Louisville
		Resturant	Complied/ Installed	Libbey's Resturant	11056 SE Main St.	11056 SE Main St	Milwaukie
		Resturant	Complied/ Installed	Mekong Thai Cuisine	10880 SE McLoughlin Blvd.	10880 SE McLoughlin Blvd.	Milwaukie
		Resturant	In Compliance/ repairs	McGraths Fish House	11050 SE Oak St.	1935 SE Davcor St	Salem
		Resturant	In Compliance/ repairs	Shari's Resturant	11030 SE Oak St.	9400 SW Gemini Dr.	Beaverton
Jack	Donaugh	Resturant	In Compliance/ repairs	Wichita Pub	6106 SE King Rd.	6106 SE King Rd.	Milwaukie
Jack	Donaugh	Resturant	Complied/ Installed	Mo-betta Deli	6110 SE King Rd.	6110 SE King Rd.	Milwaukie
Holding's Inc.		Resturant	Enforcement/ Repairs	Expressway Resturant	10970 SE Oak St.	10970 SE Oak St.	Milwaukie
Alex	Schwindt	Resturant	Same as Above	McDonalds Resturant	10970 SE Oak St.	10970 SE Oak St.	Milwaukie
Katrina	Coy	Resturant	Enforcement	Brew Bar and Grill	10933 SE Main St.	10933 SE Main St.	Milwaukie
		Food Preparation	No Grease	PaPa Murphy's	10604 SE 42nd	10604 SE 42nd	Milwaukie
Young Min	Chang	Resturant	Enforcement/ Repairs	Happy Café	4620 SE International Way 100	4620 SE International Way 100	Milwaukie
Si Bin	Ma	Resturant	Complied	Chan's Steakery, Inc	10477 SE Main St.	10477 SE Main St.	Milwaukie
Larry	Pemberton	Resturant	Complied	Meadows Lounge	5823 SE Jonhson Creek Blvd.	9922 SE Linwood Ave.	Milwaukie
Christina	Poppmeier	Resturant	In Compliance	Amadeus Manor Inc.	2122 SE Sparrow St.	444 Ridgeway Rd	Lake Oswego
		Resturant	Complied/ repairs	Super Burrito Express	10506 SE 42nd Ave.	8963 N. Berkeley Ave	Portland
Tung Sang	Wong	Resturant	Complied	Wong's Garden Resturant	10820 SE Oak St.	10820 SE Oak St.	Milwaukie
Saing	Suon	Resturant	In Compliance	Chopsticks Express	10801 SE Main St. #0	10801 SE Main St. #0	Milwaukie
		Resturant	Enforcement/Installed	Peitro's Pizza	10300 SE Main St.	10300 SE Main St	Milwaukie
Brian	Essig	Resturant	Enforcement/Installed	The River Road House	11921 SE 22nd Ave.	11921 SE 22nd Ave.	Milwaukie
David	Hearing	Resturant	Complied	Sully's Café	2035 SE Jefferson	2035 SE Jefferson	Milwaukie
		Resturant	Complied	Subway	10818 A SE Oak St.	10818 A SE Oak St.	Milwaukie
		Resturant	Complied/ Repairs	Jo's Place Saloon	4400 SE International Way	7121 SE Renada St	Milwaukie
Nadine	Senn	Resturant	No Grease	Big Town Hero	4630 SE International Way 201	4630 SE International Way 201	Milwaukie
		Resturant	May Go to Enforce	Rose & Thistle	2105 SE Washington St.	PO Box 2232	Milwaukie
Soonok	Yoon	Deli	Complied/ Installed	The Deli	4106 SE International Way D10	4106 SE International Way D10	Milwaukie
Michelle	Husted	Resturant	No Grease	Milwaukie Bowl	3056 SE Harrison	3056 SE Harrison	Milwaukie
		Resturant	Complied	Subway	10818-A SE Oak St.	10818-A SE Oak St.	Milwaukie
Patrick & San	Conner	Resturant	Complied/ repairs	Davincis Italliano Ristorante	12615 SE McLoughlin	12615 SE McLoughlin	Milwaukie
		Resturant	No grease	Quiznos	10983 SE Oak St.	4425 N Winchell St.	Portland
		Resturant	Complied/ repairs	Bob's Red Mill	5000 SE International Way	5000 SE International Way	Milwaukie
		Coffe shop	Enforcement/ In Proc.	Café Bon Jour	4630 SE International Way #200	4630 SE International Way #200	Milwaukie
		Coffe shop	Non-Compliant	Spring Creek Coffe House	10600 SE McLoughlin	7677 SW 87th Ave.	Portland
		Coffe shop	Non-Compliant	Purdy's Pit Stop	3120 SE Harrison	3120 SE Harrison	Milwaukie
		Coffe shop	Complied/ Installed 2	Starbucks Coffee #3374	10826 SE Oak St.	PO Box 34067-TAX	Seattle
Kent D	McCarty	Coffe shop	Complied/ Install	Great American Video & Ess	6130 SE King	6130 SE King	Milwaukie
Ray	Peck	Coffe shop	Non-Compliant	Wind Horse Coffee and Tea	10611 SE Main St.	10611 SE Main St.	Milwaukie
		Food Preparation	In Compliance/ repairs	Albertson's	10820 SE Oak St.	PO Box 20	Boise

		Food Preparation	Enforcement/ Install	Town Deli & Grocery	2036 SE Monroe St.	2036 SE Monroe St.	Milwaukie
		Food Preparation	In Compliance	Safeway #2690	4320 SE King Rd.	PO Box 29096 MS 6531	Phoenix
		School	In compliance	Milwaukie High School	11300 SE 23rd Ave.	11300 SE 23rd Ave.	Milwaukie
		School	In Process	Waldorf (private)	2300 SE Harrison	2300 SE Harrison	Milwaukie
		School	No Grease	Milwaukie Grade School	11250 SE 27th Ave.	11250 SE 27th Ave.	Milwaukie
		School	In Process	Linnwood Elementary	11909 SE Linwood Ave.	11909 SE Linwood Ave.	Milwaukie
		School	In Process	Ardenwald Elementary	8950 SE 36th Ave.	8950 SE 36th Ave.	Milwaukie
		School	No Grease	Campbell	11326 SE 47th Ave.	11326 SE 47th Ave.	Milwaukie
		School	No Grease	Lewelling	5325 SE Logus Rd.	5325 SE Logus Rd.	Milwaukie
		School	No Grease	Rowe Middle School	3606 SE Lake Rd	3606 SE Lake Rd	Milwaukie
		Hospital	In Process	Milwaukie Providence Hospi	10150 SE 32nd Ave	10150 SE 32nd Ave	Milwaukie
		Bar/ Eatery	Enforcement/ Install	River Roadhouse			



STARBUCKS

AMERICAN VIDEO AND EXPRESSO #2





To: Mayor and City Council

From: Mike Swanson, City Manager

Subject: Council-Staff Discussion on Wastewater Treatment and Proposed Rates

Date: August 8 for August 19, 2008 Work Session

Action Requested

No action is requested, however staff seeks Council input and guidance in light of a recently proposed wholesale wastewater treatment agreement (including a new wholesale treatment rate) from Clackamas County Service District No. 1 (CCSD1). Of particular importance is council direction on a proposed “provisional partnership committee” to define a regional wastewater treatment approach.

History of Prior Actions and Discussions

December 2007 Work Session - Mr. Mike Kuenzi, Director of Clackamas County Water Environment Services (WES), briefed City Council on CCSD1’s interim capacity management plan and the establishment of a Community Partners Task Force constituted to examine the potential for a community collaboration on wastewater management.

2006-07 – various Council discussions and reports from staff regarding efforts to regionalize, consolidate or otherwise improve wastewater treatment in north Clackamas County.

Background

CCSD1 Interim Capacity Capital Improvement Plan

Over the past year or so, CCSD1 developed a new capacity management plan that would allow maintenance at Kellogg and provide additional capacity at Kellogg in the near-term. The new capacity management plan would:

- Address past environmental violations at the plant;
- Address the inadequacy of existing capacity at the plant; and
- Address future capacity needs in the CCSD1 service area under a voluntary compliance agreement with DEQ.

The new capacity management plan includes:

- Critically needed mechanical upgrades at Kellogg (related to water quality and deferred maintenance), including new “hydraulic” capacity to handle severe wet weather events;
- New capacity at the Tri-City’s plant; and
- “Downloading” (i.e. decreasing demand) on the Kellogg plant by constructing a new pipeline to divert Kellogg-bound sewage to the Tri-City’s plant.

CCSD1 believes this set of improvements will provide sufficient capacity for eight to ten-years worth of growth. The total cost is approximately \$116 million, with the vast majority (roughly \$110 million) to be spent on the new capacity at Tri-City’s and the new diversion pipeline. CCSD1 has conducted several community processes to help affected stakeholders understand and participate in the planning progression, in which Milwaukie has been continuously involved.

Wholesale Agreement between CCSD1 and the City of Milwaukie

Clackamas County (on behalf of CCSD1) and the City of Milwaukie have entered into a number of agreements since 1970 related to wastewater treatment services at the Kellogg Creek Treatment Plant. In 1970, the City of Milwaukie agreed to pay its share of operational costs and 40% of the cost to construct the plant. The original 1970 agreement has been amended several times. The County has consistently charged the City a percentage of operating and capital costs at the plant based on the relative share of capacity that has been used by the City and its customers. Over the past ten years, the City has paid roughly between \$1 million and \$1.7 million a year to CCSD1, with the amount depending on the capital improvements made at the plant during a given year.

The existing agreement does not sufficiently address a multitude of issues that arise in the shared use of the plant, including ownership rights, governance, liability, rate structuring, term, etc. Given the insufficiency of the existing agreement and the scale and cost of the proposed improvements, CCSD1 is seeking a new agreement with the City.

Clackamas County/WES, on behalf of CCSD1, presented staff with a new IGA for wastewater services (attachment 1). The IGA covers a wide range of issues, virtually all of which establish additional rights for the WES and CCSD1 vis-à-vis the City. Staff has a number of concerns about the agreement that are detailed in Attachment 2 and not summarized in this report. Instead, staff will focus the remainder of the report on the proposed rate structure.

Proposed Rate Structure

Within the agreement, WES proposes a new rate structure that would apportion City rates/costs based on the City's share of total customers in the service area. (The ratio of Equivalent Dwelling Units, or "EDUs", in Milwaukie to EDUs in the entirety of CCSD1's service area.) The existing agreement bases the City share of operational and capital costs on the percentage share of actual capacity used (i.e., average measured flows). City staff considers this a useful change that would provide the City more predictable treatment costs from year-to-year.

However staff has concerns about the rate structure. The proposed wholesale rate is designed to cover three basic costs:

- Approximately \$850,000/year as Milwaukie's share (about ¼) of operations and maintenance (O&M) expenses. This is a reduction of roughly \$150,000 per year compared to the average O&M costs allocated to Milwaukie over the past five years under current the current agreement.
- Approximately \$1.3 million/year as Milwaukie's share of the capital cost of the interim capacity management plan. Of the \$116 million total price tag of the capacity management plan, WES is allocating 58%, or \$66 million, to existing customers. Milwaukie is being asked to pay ¼ of that \$66 million over 20 years. This represents a significant increase over the current rate, driven mostly by the size and cost of the new investments proposed.
- In addition to the \$1.3 million annual cost to Milwaukie for capital improvements, CCSD1 would also charge approximately \$460,000/year as a "finance fee." This was justified by CCSD1 to Milwaukie staff as a "risk premium," calculated as the cost of an additional 1% in interest on the full \$66 million of capacity improvements allocated to existing customers.

The new wholesale rate is proposed to be phased in over a three-year period, at the end of which time Milwaukie's wholesale treatment costs would be roughly twice what they are today. To pay that wholesale rate would require the City to increase sanitary sewer rates. A typical residential sewer charge in the City is \$20 to \$25 per month, of which just over 40% covers wholesale treatment costs. To pay double the wholesale treatment cost, typical Milwaukie rates would increase to \$30 to \$40 per month, with roughly 60% paying for wholesale treatment. In terms of a per-EDU cost, wholesale treatment costs would change from approximately \$11 per month to \$22 per month by FY 2010/2011. The retail rate changes could be phased in over three years, matching the wholesale rate change.

Staff believes the proposed IGA and associated rate structure are not reasonable and that it is not in the City's interest to move forward without resolution of the following issues:

- CCSD1's position, supported by the County, is that Milwaukie has no ownership rights nor ownership equity in the existing plant, despite the City's initial and ongoing investment in Kellogg's capacity. Similarly, the proposed rate structure (and any subsequent rate adjustments) presume an expectation that Milwaukie should pay for capacity expansions (now and in the future), and do so without any correlating rights or control.
- Milwaukie is expected to participate in proportion to our share of EDUs in the current service area to address a *current capacity shortage* in the district. However, the City (which is not a part of the district) paid for the construction and maintenance of 4MGD in plant capacity and has never exceeded that usage. Therefore, it is staff's position that the City does not and has not contributed to the current capacity shortage.
- Milwaukie is being asked to participate in a capital expansion project in order to *increase capacity* for the larger district (not the City of Milwaukie), and is also proposed to subsidize CCSD1's borrowing costs through payment of a finance fee. The nature and extent of City participation in a CCSD1 capital expansion project deserves careful scrutiny.
- The finance fee is proposed to compensate for the district's risk, but this raises several questions about the actual risk, the City's justifiable responsibility in mitigating that risk, the appropriate price for that mitigation, the methodology being used to assess the fee, and alternative approaches that could also compensate for risk. For example, the IGA proposes that the City subordinate any other municipal debt to its rate payments to CCSD1, as another risk mitigation measure to be borne by the City.
- None of the measures, assumptions or justifications presented to Milwaukie squarely address one of Milwaukie's key goals; the decommissioning of Kellogg

and related reclamation of the city's waterfront. Were this goal included as part of CCSD1's capacity expansion plans, there would be more common ground on which the city and CCSD1 could negotiate. Without this component, it is difficult to find common ground.

Community Partners Task Force

The Community Partners Task Force, with representatives from each of the sewer service providers in north Clackamas County, was asked to explore the possibility of regional cooperation on wastewater treatment. The group did reach consensus that there were potential savings on needed long-term capacity improvements that could be realized through a cooperative approach, and reported a series of recommendations back the Clackamas Board of County Commissioners. (See attachment 3.)

The City of Milwaukie has been asked to affirm the principles developed through the "community partner dialogue" and to provide a city representative for a "provisional partnership committee" tasked with developing a legal and governance structure through which regional treatment capacity improvements could be coordinated and funded.

Staff believes the City should continue with the process but explicitly withhold concurrence on one assumption in the "fairness and equity" principles. Assumption F reads:

"There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible."

Staff does not believe this principle contributes to the "fairness and equity sought for each partner" (in this case, the City of Milwaukie). In fact, staff believes that fairness and equity for Milwaukie has receded through the recent Community Partners' processes. Staff concerns include:

- This position reverses the CCSD1 governing board's (the Board of County Commissioners) previous position on decommissioning Kellogg. (The previous position clearly stated the goal was closure, whereas the above language only mentions reducing the plant footprint.)
- The decommissioning has been recently linked to "economic feasibility." This language is unclear. Staff would argue that taking concrete steps towards decommissioning are clearly economically feasible now. On the other hand, this language could provide cover for those who would argue that decommissioning should only take place if or when it is the lowest cost option.

- The downloading of the plant and new capital investments at the plant included in the proposed interim capacity project very likely extend the useful life of the plant.
- The voluntary compliance agreement between CCSD1 and DEQ enables the plant to continue indefinite operations whereas a different remediation strategy may have helped facilitate the plant's decommissioning
- Recent public processes have elevated the concerns and interests of other regional entities above the concerns and interests of Milwaukie

In view of all this, staff believes the City of Milwaukie should continue to participate in the regional discussion, but only with complete transparency about the City's need for a date-certain decommissioning of Kellogg.

Given that decommissioning is not a principle of the Community Partners, not a term of the proposed IGA, and not an end toward which a single dollar of the Milwaukie rate increase will be directed, there remains considerable work ahead for the City and its regional partners.

Concurrence

The City Manager has developed these recommendations through consultations with the Directors of Community Development/Public Works, Operations, and Engineering, and the Resource and Economic Development Specialist.

Fiscal Impact

These issues have very significant fiscal implications for the City. On one hand, the WES/CCSD1 rate proposal implies a capital cost contribution from the City of \$1.74 million per year, for twenty years. On the other hand, a resolution of these issues that would allow redevelopment of the plant site would generate \$50 million in new private investment (based on a conservative estimate by Johnson Gardner). That scale of new investment would mean an increase in City property tax revenues of \$150,000 per year.

Work Load Impacts

Council's direction on participation in the provisional partnership committee could have work load impacts on the staff, as will continued negotiations with the district on the proposed treatment IGA.

Alternatives

Council's positions on each issue (the proposed treatment IGA, the proposed wholesale rate, and the next phase of the community partners task force) could take the form of

rejection, approval, or approval with some reservations or caveats. On the whole, staff's recommendation is to continue to cooperate for a cost-effective, efficient and environmentally sound wastewater treatment strategy for the region that takes the Kellogg Plant out of commission by an agreed-upon date.

Attachments

1. Proposed Wholesale Treatment IGA
2. City Manager communication to Mr. Kuenzi regarding proposed new wholesale treatment IGA and rate
3. Community Partners Task Force – Summary Report and Recommendations

Milwaukie IGA DRAFT v. 1
June 13, 2008

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
AND
THE CITY OF MILWAUKIE
FOR THE PROVISION
OF WASTEWATER TREATMENT SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATMENT SERVICES (this "Agreement") is entered into this _____ day of _____, 2008 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, a county service district and the CITY OF MILWAUKIE, an Oregon municipality.

RECITALS

WHEREAS, the Parties are authorized to enter into agreements regarding the provision of services to their residents, customers and service areas pursuant to their respective charter or principal acts and ORS 190.010; and

WHEREAS, the Parties share a substantial common boundary and interlinked wastewater systems; and

WHEREAS, CCSD No. 1 and Milwaukie are currently parties to the Prior IGAs regarding the contractual provision of wastewater treatment and related services to Milwaukie by CCSD No. 1; and

WHEREAS, CCSD No. 1 anticipates constructing new treatment capacity and upgrading existing conveyance systems to the Tri-City Plant that requires a substantial expenditure of capital funds; and

WHEREAS, CCSD No. 1 and Milwaukie desire to terminate the Prior IGAs and enter into a new agreement to reflect a Wholesale treatment rate structure based on a per-equivalent dwelling unit basis instead of an assessment for operations and capital based on Flows and Load; and

WHEREAS, the Parties desire to provide for public health and safety, compliance with state and federal environmental laws, coordination of statutes, ordinances, and methods of implementation; and application of codes, implementation, and enforcement practices.

NOW THEREFORE, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 “BCC” means the Board of County Commissioners of Clackamas County, acting as the governing body of CCSD No. 1.

1.2 “BOD” means biochemical oxygen demand, a discharge category contained in the NPDES Permit with a restriction.

1.3 “CCSD No. 1” means the Clackamas County Service District No. 1 or its successor, as such entity’s boundaries may be adjusted by annexation or other boundary actions from time to time.

1.4 “DEQ” means the Oregon State Department of Environmental Quality, or its successor.

1.5 “Domestic Sewage” means sanitary wastes normally collected from residential establishments, and shall include commercial and industrial wastes of similar strength to residential wastes or quality, and other commercial and/or industrial wastes that are pre-treated in accordance with CCSD No. 1 and/or Milwaukie requirements meeting DEQ and EPA guidelines. Domestic Sewage shall exclude ground water, storm water, drain water and industrial waste not pre-treated in accordance with CCSD No. 1 and/or Milwaukie requirements meeting DEQ and EPA guidelines.

1.6 “EPA” means the United States Environmental Protection Agency, or its successor.

1.7 “Equivalent Dwelling Unit” or “EDU” is a unit of measure applied to a user of the sewage system. The number of Equivalent Dwelling Units assigned to any such user (for example, an apartment house, motel, school, hospital, nursing home, and any other public, industrial, or commercial establishment) shall be the numerical ratio of the monthly volume of wastewater contributed by such user to the monthly volume of wastewater contributed by a typical single family residence. ~~at~~ ?

1.8 “Flow” means that certain volume of wastewater as measured by gallons per day that is delivered to a wastewater treatment system.

1.9 “Force Majeure Event” means each and any of war, insurrection, terrorism, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the party to be excused.

- 1.10 "I/I" means infiltration and inflow into a sewer system.
- 1.11 "Influent Points" means the points at which Milwaukie's Internal System intersects CCSD No.1's Wholesale collection system at the Kellogg Creek Wastewater Treatment Plant.
- 1.12 "Internal System" means all non-Wholesale sewer lines and other sewer facilities upstream from the Influent Points owned and operated by Milwaukie.
- 1.13 "Load" means that certain strength and biological characteristics of wastewater that is delivered to a wastewater treatment system.
- 1.14 "Milwaukie" means the City of Milwaukie as such entity's boundaries may be adjusted by annexation or other boundary actions from time to time.
- 1.15 "NPDES Permit" means a National Pollutant Discharge Elimination System Permit granted to CCSD No.1, pursuant to the Federal Water Pollution Control Act, as amended.
- 1.16 "Parties" means CCSD No. 1 and Milwaukie.
- 1.17 "Pretreatment IGA" means that certain intergovernmental agreement dated July 25, 2002 by and between the Parties regarding the creation and implementation of an industrial pretreatment program.
- 1.18 "Prime Rate" means the interest rate banks charge to large corporations for short-term loans, as published in the Wall Street Journal or other similar publication.
- 1.19 "Prior IGAs" means each and all of those certain intergovernmental agreements dated November 3, 1969 as subsequently amended or supplemented from time to time and all subsequent IGAs regarding similar subject matter, most recently on December 17, 2002, except the Pretreatment IGA.
- 1.20 "Rules" means the Sanitary Sewer Rules and Regulations of CCSD No. 1 as such may be amended from time to time.
- 1.21 "SDCs" means system development charges as established in ORS 223.297 through ORS 223.314.
- 1.22 "TSS" means total suspended solids, a discharge category contained in the NPDES Permit with a restriction.
- 1.23 "Wholesale" means a systemic provision of wastewater treatment services via a wastewater treatment plant or other similar structure, and excluding therefrom the collection and conveyance system (e.g. piping and interceptors) necessary to deliver wastewater to the wastewater treatment plant.

For the purposes of this Agreement, terms used but not defined herein shall have the meaning ascribed to them in the Rules.

SECTION 2. SERVICES PROVIDED BY CCSD NO. 1

2.1 Wastewater Treatment Service. CCSD No. 1 shall receive, transport, and treat Domestic Sewage discharged by Milwaukie on a wholesale per-EDU basis. CCSD No. 1 shall accept such delivery and treat the wastewater in a manner consistent with the requirements of the Clean Water Act and all applicable state laws for the term of this Agreement subject to Section 2.2 hereof and barring foreseen or unforeseen events or circumstances which are beyond CCSD No. 1's control.

2.2 Capacity Limit. CCSD No. 1 may in its sole discretion either (i) limit the amount of Domestic Sewage delivered by Milwaukie, or (ii) levy an additional charge reflecting additional incurred costs, if receipt of such Domestic Sewage is contributing to violations of CCSD No. 1's NPDES Permit or is otherwise required to comply with applicable law, including but not limited to the Clean Water Act or development restriction laws.

2.3 Operation, Replacement, and Maintenance of Facilities. CCSD No. 1 shall be responsible for the operation, replacement and maintenance of all applicable wastewater treatment facilities. Such facilities shall be operated, replaced and maintained in accordance with generally accepted standards, and the standards established by the EPA, DEQ, the Oregon Health Department and other federal, state and local agencies.

2.4 Designation of Service Provider. The Parties agree that Milwaukie shall provide and be responsible for all aspects of its Internal System, the collection (retail) sanitary sewer service and surface water management service and all other acts necessary, customary, and incidental to providing retail sewer service and to deliver all appropriate wastewater to the conveyance and treatment system of CCSD No. 1.

SECTION 3. RATES

3.1 Wholesale Rate. CCSD No. 1 shall assess a per-EDU wholesale rate to Milwaukie that shall be updated from time to time (the "Rate"). Based on current calculations for cost recovery¹, the Rate for wholesale wastewater treatment service for Milwaukie in Fiscal Year 2008/2009 is estimated to be \$22.05 per EDU, as modified by Section 3.3. CCSD No. 1 shall bill Milwaukie monthly for the service based on a formula of the Rate multiplied by the number of EDUs served in Milwaukie, and Milwaukie shall remit payment within thirty (30) days. Late payments by Milwaukie shall accrue an interest penalty of the Prime Rate plus three percent (3%) annual rate, compounding monthly.

¹ Calculations assume approximately 9,815 EDU connections in the City of Milwaukie. Total amount to be charged to Milwaukie per FY08/09 budget is \$218,946.17. **Page 46** the extent the number of EDU connections differs, the rate to be charged will differ.

Nothing contained herein shall be deemed a restriction or a limitation on Milwaukie's ability to add such other charges to its customers as it deems appropriate.

3.2 Modification of Rate. The BCC shall annually have the opportunity to adjust the Rate based on all factors the BCC considers material for making such a decision, including requirements for the maintenance, operation, anticipated capital expenditures, administration, overhead, and expansion of CCSD No. 1's sewer system, and principal and interest, reserve requirements or other financial covenants on any outstanding debt instruments. Milwaukie shall have the opportunity to review any proposed Rate changes and offer comments to the BCC prior to any adjustment.

3.3 Initial Phase-In of Rate. The Rate methodology adopted by the BCC would have produced a Rate for Milwaukie for 2008/09 of approximately \$22.00 per EDU. Recognizing that this Rate would have represented a substantial increase over what Milwaukie is currently charged, the BCC has directed that the full Rate for Milwaukie be phased-in over three fiscal years. The initial Rate for Milwaukie shall be \$18.00 per EDU beginning July 1, 2008 and continuing for the 2008/09 fiscal year. Based on current calculations, the Rate for fiscal year 2009/10 shall be approximately \$20.00 per EDU and the Rate for fiscal year 2010/11 shall be approximately \$22.00 per EDU. This calculation is based on the methodology adopted by the BCC to appropriately insure that Milwaukie is contributing it proportionate amount to the capital program of CCSD No. 1. The calculation for FY2009/10 and FY2010/11 may be adjusted at the sole discretion of the BCC to incorporate actual borrowing amounts and interest rates experienced by CCSD No. 1. Nothing contained herein shall limit or otherwise impair the ability of the BCC to increase the Rate during any period upon a change of circumstances or a revision of calculation, or based on any factors deemed relevant by the BCC, including but not limited to a change of estimated capital expenditures or the estimated number of EDUs in Milwaukie.

3.4 Reporting Requirements. At the time of execution of this Agreement, Milwaukie shall deliver to CCSD No. 1 a written report stating the current number of connections to the Milwaukie system, including an estimate of the number of EDUs of Domestic Sewage being delivered to CCSD No. 1 systems. Milwaukie shall thereafter provide CCSD No. 1 with bimonthly reports on the number of new sewer connections into the City system, and their relative EDU contribution to the wastewater system.

3.5 Connection Audit. CCSD No. 1 shall have the right but not the duty to inspect the records of Milwaukie to confirm the reports provided pursuant to Section 3.4 above. CCSD No. 1 may also inspect all such records to ascertain all pertinent information if Milwaukie fails to make the reports required in Section 3.4 above, and in such instance may hire an outside party to conduct such a review at Milwaukie's expense.

3.6 System Development Charges. The Parties will work cooperatively in sharing information for each to develop revised SDCs in developing a uniform methodology. Each Party shall collect SDCs within its boundaries for its wastewater system. Milwaukie acknowledges and accepts that a component of the Rate structure

included in this Agreement is designed to substitute for SDC funds that would otherwise be available to CCSD No. 1 if Milwaukie was annexed into the district.

3.7 Books and Accounts. Milwaukie shall keep full and complete books of accounts showing the number of connections to its sewerage system, the maintenance and operation costs incurred in connection with the collection and conveyance system, its efforts to reduce "IT" and otherwise comply with Sections 4.2 and 4.3, and its response to emergency and non-emergency spills or additions to the sewerage system. The costs of keeping those books shall be considered an operational cost to Milwaukie. In addition to the right set forth in Section 3.5, ~~CCSD No. 1 shall have the right to audits such books, records and accounts annually.~~ More frequent audits, if requested by CCSD No. 1, shall be at the expense of CCSD No. 1.

3.8 Obligation to Collect. Milwaukie shall collect sufficient funds to pay CCSD No. 1 the amounts required to fulfill Milwaukie's obligations under Section 3.1 hereof. Milwaukie's payments to CCSD No. 1 shall be prior and superior to any charge or lien of any revenue bonds issued by Milwaukie that are payable from the revenues of its sewerage utility rates. Milwaukie shall also establish rates and collect fees sufficient to pay for the (i) maintenance, replacement and operation of Milwaukie's Internal System and surface water system, including Milwaukie's payments to CCSD No. 1 for management of its pretreatment program, and (ii) principal and interest on any city debt instruments financed by revenue and/or that constitute a charge on the revenue of Milwaukie's Internal System.

SECTION 4. SYSTEM MANAGEMENT AND COORDINATION

4.1 Coordination of Systems. CCSD No. 1 and Milwaukie shall coordinate the operations of the wastewater collection, conveyance and treatment systems to optimize treatment and environmental benefits. In the event of plant distress, flash floods, excess infiltration and inflow, illegal materials delivered to the treatment system, or other similar event, CCSD No. 1 shall coordinate with Milwaukie regarding the possible diversion, backup, transfer or other management option for the handling of wastewater flow. To the extent necessary, in CCSD No. 1's judgment, to insure compliance with the NPDES Permit, CCSD No. 1 staff may direct Milwaukie staff to take such actions as are appropriate to avoid violation of the NPDES Permit, including but not limited to diversions, restrictions, cleanup or blocking efforts, or any other action reasonably necessary to avoid damage to the wastewater treatment facility's ability to treat wastewater, any environmental damage, or risks to human health or safety.

4.2 Sewage Quality. The Parties agree to work together to develop ordinances and programs, as needed, to mitigate BOD and TSS levels which are higher than acceptable norms, as determined by either regulatory requirements or by generally accepted environmental practices as such may change over time. The parties shall also coordinate to insure that CCSD No. 1 treatment facilities do not experience NPDES Permit violations with respect to any imposed regulatory guideline, including but not limited to BOD or TSS levels. This includes pretreatment of industrial wastes, management of emergency or non-

emergency spills into the sewer and/or stormwater system, and proper maintenance of collection and conveyance infrastructure.

4.3 Treatment of Domestic Sewage Only. Milwaukie acknowledges and agrees that CCSD No. 1 shall only be required to treat Domestic Sewage. CCSD No. 1 may reject all non-conforming forms of wastewater, and may refuse to transport and/or treat Domestic Sewage from those portions of Milwaukie's sewage collection system which do not conform to DEQ, EPA, or CCSD No. 1 standards for Domestic Sewage.

4.4 Pretreatment Ordinances. Milwaukie has previously implemented a pretreatment program consistent with the Rules, called the "Milwaukie Pretreatment Program" (the "Program"). ~~CCSD No. 1 may require changes to the Program~~ to remain consistent with requirements imposed by state or federal law, the Rules, or current practices of CCSD No. 1, and may include, but is not limited to: developing procedures, forms and instructions; categorizing dischargers; records keeping; compliance tracking; establishment of annual limits; sampling, testing and monitoring; preparation of control documents; enforcement, including collection of fees, penalties, and other extraordinary charges; and preparation of permits.

4.5 Rules and Regulations. ~~Milwaukie shall assure that its sewerage ordinances are at least as effective as CCSD No. 1's Rules.~~

4.6 Milwaukie Internal System. Milwaukie shall operate and maintain its Internal System at its sole expense, including all of its facilities as required to deliver the wastewater to CCSD No. 1's system or facility. Milwaukie shall observe generally accepted standards and practices in the construction, operation, replacement and maintenance of its Internal System with particular attention to the following: (i) minimizing entry in the sewerage system of groundwater and/or I/I; (ii) maintaining a favorable character and quality of Domestic Sewage in accordance with the standards set forth in Section 4.2 hereof; (iii) eliminating septicity and objectionable odors, entry of petroleum waste or other chemicals and/or wastes detrimental to sewer lines, pumping stations, wastewater treatment plants, and the waters of the State of Oregon; (iv) eliminating hazardous and toxic wastes; and (v) ~~maintaining an efficient and economical utility operation while achieving optimum pollution and environmental control~~

4.7 Mutual Notification. The Parties agree to provide each other with written notice of any condition that may violate this Agreement or applicable laws, regulations, or permits. The discharge Party agrees to give verbal notice to the other Party immediately upon becoming aware of the violating discharge. A written report on the nature and amount of the violating discharge will be prepared and provided to the other Party within 24 hours of the time the violating discharge is identified. If the Party does not correct such a condition within a reasonable time of written notice thereof, the offending party shall pay any reasonable and necessary costs and expenses incurred by the other party in connection with such condition. If either Party discharged in to the wastewater system any solids, liquids, gases, toxic substances, or other substance which is reasonably believed to cause or will ~~cause damage~~ to the system, or is creating a public

nuisance or a hazard to life or property, that Party shall discontinue the discharge of such substances. Because substandard condition of Domestic Sewage may cause serious damage to the wastewater treatment facilities, both Parties shall comply with generally accepted standards regarding the composition of Domestic Sewage, and after compliance, may thereafter caused to be arbitrated the allocation of cost associated with necessary corrective actions in accordance with Section 5 of this Agreement.

4.8 Allocation of Penalty. The Parties shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits). In the event CCSD No. 1 is fined or otherwise penalized by local, state, or federal agencies for failure to operate or maintain the wastewater treatment system in accordance with the requirements of the agencies, and it is demonstrated to CCSD No. 1's satisfaction that such violation or failure is due, in whole or in part, to Milwaukie's discharge of Domestic Sewage in violation of this Agreement, then Milwaukie shall pay its allocated share (as determined by CCSD No. 1 or the dispute resolution mechanism pursuant to Section 5, as applicable) of the costs of such fines or penalties, including its share of the associated administrative, legal, and engineering costs incurred by CCSD No. 1 in connection with these fines or penalties.

4.9 Services Provided by Milwaukie.

4.9.1 **Sanitary Sewer.** In any area now or hereafter becoming part of Milwaukie, Milwaukie shall provide all collection sewer services, billing and collection, inspection, and the like with respect to the sewer collection system. Milwaukie shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection sewer facilities, subject to Section 4.6. Milwaukie shall have sole discretion as to the methods of financing such facilities, provided Milwaukie insures compliance with Section 3.8 hereof.

4.9.2 **Surface Water Management.** Milwaukie shall be solely responsible for all aspect of surface water management within its boundaries and to comply with the obligation imposed on it pursuant to the NPDES Permit, its MS4 Permit, and other applicable laws and regulations.

4.10 Services Provided by CCSD No. 1.

4.10.1 **Sanitary Sewer.** In any area now or hereafter becoming part of CCSD No. 1, CCSD No. 1 shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection, conveyance, or treatment sewer facilities. CCSD No. 1 shall have sole discretion as to the methods of financing such facilities.

4.10.2 **Surface Water Management.** Unless otherwise agreed with an appropriate governmental entity, CCSD No. 1 shall be solely responsible for surface water management within its boundaries.

SECTION 5. DEFAULTS AND DISPUTE RESOLUTION

5.1 **Defaults.** Subject to a Force Majeure Event, extensions of time by mutual consent in writing, or the special circumstances described in Section 5.2, failure or unreasonable delay by any Party to substantially perform any provision of this Agreement, or breach of any term of this Agreement, shall constitute a default (a "General Default"). In the event of an alleged General Default, the party alleging such a violation shall give the other party not less than 30 days notice in writing specifying the nature of the alleged General Default and the manner in which the General Default may be cured satisfactorily. During this 30-day period, the party in charge shall not be considered in default for the purposes of termination or instituting legal proceedings. The defaulting party must cure such General Default within such 30 day period unless it submits a written notice to the other party alleging (i) an inability to cure within 30 days and setting forth a plan to expeditiously cure the General Default, or (ii) disputing the General Default notice and requesting dispute resolution as set forth in Section 5.3.

5.2 **Special Defaults.** Except in the case of a Force Majeure Event, failure by Milwaukie to comply with the terms set forth in Section 3, including but not limited to failure to (i) pay amounts due within the proscribed time period, (ii) maintain appropriate records, (iii) disclose new connections or EDU levels, or (iv) prevent inappropriate liens, charges, or superiority claims (each, a "Special Default") shall constitute an immediate and material breach of this Agreement. The occurrence of a Special Default shall immediately vest CCSD No. 1 with the right to terminate this Agreement with 60 days prior written notice to Milwaukie ~~without need of any opportunity to cure or other action, step or process,~~ including any set forth in Sections 5.1 and 5.3.

5.3 **Dispute Resolution Steps.** Except as otherwise provided in Section 5.2, the Parties agree to attempt to settle any disputes or General Defaults pursuant to the following process:

5.3.1 Negotiation. The City Manager of Milwaukie and the Director of CCSD No. 1 or other persons designated by each of the disputing parties will negotiate on behalf of the entities they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each the City Manager and the Director, and as appropriate may be ratified by the governing bodies of the Parties.

5.3.2 Mediation. If the dispute cannot be resolved within 30 days of the beginning of negotiation as set forth in Section 5.3.1, the Parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a mediator. If the Parties cannot agree, the parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name. The two selected shall select a third person. The dispute shall be heard by a panel of three (3) mediators if the Parties did not reach agreement on one mediator, and any common cost of mediation shall be borne equally by the Parties who shall each bear their own costs and fees therefore. If the dispute is resolved at this step, there shall be a written determination of

such resolution, signed by each the City Manager and the Director, and ratified by the governing bodies of the Parties which shall be binding upon the Parties.

5.3.3 Binding Arbitration. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County pursuant to ORS Chapter 36.

SECTION 6. TERM AND TERMINATION

- 6.1 **Term.** This Agreement shall be effective as of July 1, 2008 and terminate on June 30, 2015 unless terminated earlier pursuant to Section 6.2 hereof or extended pursuant to Section 6.4 hereof.
- 6.2 **Early Termination.** This Agreement may be terminated prior to the Termination Date upon (i) the mutual written consent of the Parties, or (ii) upon 180 days prior written notice by one Party to the other.
- 6.3 **Termination of Prior IGAs.** Each and all of the Prior IGAs are hereby terminated and shall have no further force or effect, excepting therefrom the Pretreatment IGA, which shall continue with full force and effect.
- 6.4 **Extensions.** CCSD No. 1 and Milwaukie may by written letter mutually agree to extend the terms of this Agreement in 5 year increments for an additional 20 years.

SECTION 7. ADDITIONAL PROVISIONS

7.1 **Other Necessary Acts.** Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

7.2 **Severability and Waiver.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

7.3 **Amendment.** The Agreement may be amended at any time by mutual written agreement. The Parties specifically acknowledge and agree that this Agreement may require substantive revision if the community partnership for wastewater treatment services under discussion as of the date of this Agreement is formed.

7.4 Force Majeure. In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to a Force Majeure Event.

7.5 No Third-Party Beneficiaries. The parties to this Agreement are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons.

7.6 Nonwaiver. Failure by any party at any time to require performance by any other party or parties of any of the provisions hereof shall in no way affect such party's rights hereunder to enforce the same, nor shall any waiver by any party or parties of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

7.7 Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

7.8 Number and Gender. Whenever applicable, the use of the singular number shall include the plural, the use of the plural number shall include the singular, and the use of any gender shall be applicable to all genders.

7.9 Successors and Assigns. This Agreement is to be binding on the successors and assigns of the Parties hereto. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement.

7.10 Notice. Any notice herein required or permitted to be given, shall be given in writing and shall be effective upon receipt for hand delivery or facsimile or upon actual receipt or 3 days after mailing, whichever is earlier, for notices delivered by U.S. mail, first class postage prepaid, addressed to the Parties as follows:

CCSD No. 1
c/o Water Environment Services
Attn: Director
9101 S.E. Sunnybrook Blvd., 4th Floor
Clackamas, Oregon 97015

City of Milwaukie
Attn: City Manager
10722 SE Main Street
Milwaukie, Oregon 97222

Changes to the above shall be by notice to the other in the manner provided in this Section 7.10.

7.11 No Waiver. No failure by Milwaukie or CCSD No. 1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent on a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

7.12 Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Milwaukie or CCSD No. 1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

[signature page follows]

ATTACHEMENT 2

From: Swanson, Mike
Sent: Monday, June 30, 2008 2:06 PM
To: 'MikeKue@co.clackamas.or.us'
Subject: Draft Wastewater Wholesale Agreement

Mike:

Thanks for stopping by last week to spend a few minutes on the above.

I had a further chance to review it, and I am listing my comments below. I guess that I missed Chris' point that the draft agreement merely covers that which is already covered in past agreements. Perhaps we could have more discussion on that point when we next meet. In any event, here are comments I have come up with thus far:

- Milwaukie would be paying for a portion of the construction of new capital facilities at Tri-Cities and a regional conveyance system without any acknowledgement (or financial recognition) of any equity interest in the current plant or in these future assets. That mistake may have been made before, but I do not want to make it in the future.
- The proposed finance charge (1 percent above borrowing costs) is questionable. What is the argument for the City paying this premium?
- The agreement itself improves the District's borrowing position, and yet the City is simultaneously asked to pay a premium to subsidize the finance costs.
- In order to have a conversation about whether or not this proposal is in the interest of the City, I would like to see a reasonable projection of the City's share of likely capital costs under the existing arrangement.
 - A minimum starting point for this agreement should be a clear statement regarding the commitment not to expand the capacity or footprint at Kellogg. City of Milwaukie ratepayers are being asked to pay into the system at (or above!) the level of members of the district. I believe this provides them grounds to have a voice in the decisions of the district.
 - Given that there are no other negotiations in which the City might reasonably be able to force recognition of its interests, this agreement is the appropriate vehicle.
 - With the exception of the arbitration proceedings, the IGA as proposed is not a reasonable place from which to commence line-by-line negotiations. It is a one-sided document that would leave the City in a much weaker position vis-à-vis CCSD 1 than under the existing outdated agreement.

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- **2.2** CCSD 1 is granted virtually unchecked power to limit Milwaukie's Domestic Sewage and levy additional charges.
- **3.2** The letter of the agreement explicitly allows the BCC to charge Milwaukie ratepayers for virtually any activity of CCSD 1 anywhere in the district. In return Milwaukie ratepayers are provided only the opportunity to comment.
- **3.3** In addition to the enormous rate hike authorized by the BCC (and not yet accepted by the City), rate changes are allowed "during any period" and at BCC's sole discretion for any reason.
- **3.4** Reporting requirements are more onerous for the City.
- **3.5** Penalties for failing to report are more onerous for the City.
- **3.6** The SDC language reinforces the impression provided in 3.2 that Milwaukie rate payers ought to pay for expansion of capacity to serve new growth areas. This is a significant policy shift from the existing arrangement.
- **3.7** Milwaukie's operating practices and procedures are subject to CCSD 1 inspections and audits.
- **3.8** Payment to CCSD 1 is proposed as prior and superior to that of any other Milwaukie debt obligation. I see no compelling reason the City would limit its own ability to borrow in this manner.
- **4.1** CCSD 1 may direct Milwaukie staff to insure compliance with the NPDES permit. This may be a best practice; it isn't currently a CCSD 1 "right."
- **4.4** CCSD 1 is given authority to re-structure or change Milwaukie's pretreatment program at will.
- **4.5** Appears deliberately over-reaching but also vague. CCSD 1 will judge Milwaukie's sewerage ordinances to be effective in what sense?
- **4.6** Milwaukie is being held to a very high standard: achieving "*optimum* pollution and environmental control."
- **4.8** Triggering clause here leaves it entirely to the "satisfaction" of CCSD 1 that the alleged discharge is "in violation of this Agreement." A more specific enumeration of what is intended here would be helpful.
- **5.2** Special Defaults are defined overly broadly (any lack of compliance with any aspect of Section 3) to be considered "special." Given the no fault ability to terminate at 180 days, why is this so strict?

ATTACHEMENT 2

I think it is time to schedule another meeting so we can wrestle with these issues. I am gone this Thursday as well as July 7. Would you e-mail me some dates at which you, Chris, and Doug might be available, and I will check those with Gary and the City Attorney.

Thanks,
Mike

ATTACHMENT 3

Community Partners Task Force – Summary Report and Recommendations

On January 2, 2008 the Clackamas County Board of Commissioners (the “Board”) created a Community Partners Task Force to facilitate discussions between all wastewater service providers in urbanized Clackamas County. The purpose of the Task Force was to explore the formation a collaborative partnership to capture the financial benefits of the economies of scale inherent in large capital investments.

The Task Force was made up of one elected representative from Damascus, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oak Lodge Sanitary District, Oregon City, West Linn, a County Commissioner, two business leaders, two citizens at large and a CAC member from CCSD#1. The Task Force was asked to assess the benefits of regional collaboration and to make recommendations to the Board regarding equity, fairness, and governance of a potential partnership by June 2008.

The Board asked the Task Force to answer three key questions:

Q1. Cost Benefits: Are there compelling financial benefits to ratepayers of each jurisdiction to make collective investment and management across current service district boundaries attractive? If so, what are the financial benefits for the region?

YES.

It makes good financial sense to work together. The analysis indicates that together the community can realize up to a \$300 million savings over the next twenty years by working and investing together. There is broad public support and understanding of the advantages (as demonstrated by survey data) of working together.

Q2. What is an equitable fiscal and operational model for future collective investments in wastewater treatment systems to recognize past and present investments made by participating jurisdictions and ratepayers? How do we ensure that those who benefit the most from development pay their fair share of new investments in public infrastructures? Can equity and fairness for each partner be achieved?

YES.

Regional equity and fairness can be gained if based on clearly defined assumptions. These assumptions are:

- a. The recommendation is to adopt a common regional treatment rate after capacity parity is reached by the participating service providers.

Treatment capacity parity is defined as the point at which all partners have addressed historical deficiencies and face similar capacity needs in the future.

- b. Service partners will make collective decisions regarding all future investments in treatment facilities after capacity parity is achieved.
- c. Decisions about common ownership of assets and district(s) consolidation will be delayed until treatment capacity parity is achieved and a permanent partnership agreement is in place.
- d. Conveyance and collection will remain the responsibility of individual entities. Each entity will be responsible for financing their own conveyance and local collection system to assure equity and fairness while securing the benefits of a regional treatment rate. Local entities may enter into contract relationship with Clackamas County to assist in design, construction, and management of local collection and conveyance systems.
- f. There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible.
- g. Treatment capacity for future community growth will likely be constructed at Tri-City or utilizing another cost effective option after a regional strategy is adopted.
- h. Equity payments, subsidies and/or host fees may not be necessary to achieve equity and fairness.
- i. The partners will make collective decisions about desirable environmental improvements and livability amenities as future investment in regional wastewater treatment facilities are planned.
- j. The Board will facilitate regional equity by implementing a wastewater service policy after capacity parity has been reached. The foundation of this policy will be that no new service will be provided to customers in unincorporated areas outside existing districts. Service districts will only extend new service to areas already within a city boundary.
- k. Unincorporated areas being served before capacity parity is achieved will not be compelled to annex to a city to continue to receive service.
- l. Growth pays for growth through system development charge and related processes and other financial tools.

Q3. How can the financial and governance interests of all participants and their ratepayers be guaranteed into the future? What are the specific terms of these community covenants? Can the region agree to a governance model to guide a regional wastewater capacity management partnership?

YES.

- a. The Task Force recommends the creation of a wastewater partnership to serve as the foundation of regional wholesale wastewater treatment collaboration.
- b. The Task Force recommends adoption of the Washington County Clean Water Services “advise and consent” governance model as the operational model of the proposed wastewater partnership.
- c. The partnership recommends forming an advisory body composed of representatives appointed by each partner entity.
- d. The wastewater partnership will make recommendations about capital improvements, planning, policy, and financial decisions regarding rates, financing, and annual budgets.
- e. The Board is recognized as the legally accountable governing board of the regional partnership. The Board will act on the recommendations of the wastewater partnership, which will serve in an advisory capacity to the Board.
- f. Day-to-day system management, operations, programs, and permitting of partner assets will be or remain the responsibility of the County through its designated agency.
- g. Partners will be bound by all collective recommendations and resulting decisions by the Board.

Additional Task Force recommendations

The Task Force asks the Board of County Commissioners commit to the above recommendations as the foundational assumptions of a regional wastewater management partnership.

The Task Force asks that its recommendations be made explicit County policy through a formal Board action. Once this action is taken, the Task Force recommends the following:

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- a. The Board should ask each partner entity to formally ratify the Board policy action.
- b. All those who ratify the Board's policy will be invited by the Board to form a provisional partnership. The purpose of the provisional partnership is to develop the by-laws, agreements and protocols for a permanent regional wastewater management partnership for consideration by the BCC and each of the partners.
- c. Each partner jurisdiction will nominate one representative to serve on the provisional partnership committee including Damascus, Gladstone, Happy Valley, Milwaukie, Oregon City, West Linn, and Oak Lodge Sanitary District. In addition, the Board will appoint one representative from the CCSD#1 unincorporated area and one representative from the Board.
- d. The provisional partnership will complete its work and submit its recommendations to the Board no later than 10/1/08.
- e. All partners will be asked to ratify and bind themselves to the agreements adopted by the Board.
- f. All parties choosing to ratify the agreements will enter into a permanent regional wholesale wastewater management partnership.

Additional items to be considered by the provisional committee:

- g. The Tri-City equity issues around Kellogg's final disposition need to be addressed by the interim committee.
- h. No regional rate setting will take place until the parties achieve capacity parity. Until then, partners will use their existing rate schedules.