

MINUTES

MILWAUKIE CITY COUNCIL REGULAR SESSION
JANUARY 2, 2007

OATH OF OFFICE

Municipal Court Judge Ron Gray administered the Oaths of Office to Mayor Jim Bernard and Councilors Susan Stone and Deborah Barnes.

CALL TO ORDER

Mayor Bernard called the 1997th meeting of the Milwaukie City Council to order at 7:17 p.m. in the City Hall Council Chambers.

Present: Council President Deborah Barnes and Councilors Carlotta Collette, Joe Loomis, and Susan Stone

Staff: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, and Police Chief Larry Kanzler

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda:

- A. Minutes of the November 21, 2006 Regular Session
- B. Resolution No. 1-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating *The Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the Papers of Record for the City of Milwaukie.
- C. Minutes of the November 21, 2006 Joint Milwaukie/Metro Council Work Session

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- David Aschenbrenner

Mr. Aschenbrenner thanked the Council for listening to the public and making the hard decisions. It took a lot of patience, study, and work. He thanked staff from the top down for its hard work. The City needed people to get involved and engage in discussions to help find solutions for the City's current projects. He urged people to work toward solutions and answers rather than just highlighting the problems to help

CITY COUNCIL REGULAR SESSION – JANUARY 2, 2007

APPROVED MINUTES

Page 1 of 9

make the City better than it was today, better than it was yesterday, and as good as it possibly can be in the future.

- **Corky Coreson**

Mr. Coreson spoke in opposition to some of the proposals about density and light rail the last time he spoke to Council. He represented a group of people that had a similar view. They were trying to take some position and not just sit on their cans and complain. This was a perfect segue to what Mr. Aschenbrenner said earlier. Mr. Coreson was absolutely new to the political process and was totally lost. He did not know how to get involved other than to dive right in, so that was what they were doing. He put together a website that was designed to create a conversation about issues, and he was pleased with the comments. Whether they were in agreement with his ideas or not, the comments were considered and intelligent and courteous for the most part. It cannot be regarded as factual data upon which one might make a decision. It was just a place for people to talk. He was delighted that people were diving into it. The group he was with felt there was not a lot of substantial data to support what the public thought about a lot of these projects, and specifically the Milwaukie Town Center Project and light rail. They want to go to the public and ask questions. They talked about constructing a questionnaire and spreading it throughout the City and putting some boots on the ground. When he started doing that he ran up against a problem. One cannot just ask people a question without background. One cannot go up to people and ask 'how do you feel about density?' That did not mean anything. Did that mean townhouses? Did that mean 12-story apartment complexes? People needed background. In constructing the background his would be pretty negative. They could not really gather data with just their opinions because it would be skewed. Mr. Coreson was there to ask for a volunteer from Council, staff, or a citizen that was knowledgeable about the issues. They decided the best way to create a questionnaire was to do it in the format of the voters' pamphlet with arguments pro and con followed by the question. He intended to have a questionnaire completed by January 17 to get people to ask some questions and fill out the survey. He wanted someone to write the argument in favor of the issues he opposed. That way it would not be canted, and the data would be something other than opinion.

Mayor Bernard asked what issues Mr. Coreson opposed. Was it density or transportation? For some reason he felt at the last meeting that Mr. Coreson felt Milwaukie was an island and had control of the traffic going through the community. The City actually had no control over that. Over the years certain segments of the community used certain tools to protect themselves from transportation impacts. Before writing an argument, Mayor Bernard wanted to hear what Mr. Coreson's group was opposing.

Mr. Coreson had not suggested Milwaukie was an island in regards to traffic. The last time he addressed Council he had suggested there were existing codes in place that restricted people's ability to increase density. What he was hearing with projects like the one being proposed on the Texaco property was that some wanted to change it and increase density. He and the group suggested was that if density were increased then greater transportation problems were created. The more people, the more transportation issues. To control the issue of mass transit, one should control the population issue. There were already things in place to do that. Councilor Barnes made a good point at the last meeting about looking down the road 50 to 100 years and what would be left for future generations. He concurred that was a good question to ask. He also suggested that the Council's predecessors had asked that same question of themselves. That was why the City had ordinances and codes that prevented from going up too high and from building too densely on smaller pieces of property. He

gathered the question had to do with light rail as a solution to what was left for the children.

Councilor Barnes explained she had not really said that. She wanted to see the big picture. What she had seen was that there was not a lot of good pre-planning that resulted in current situation. Past Councils had not taken up the hard questions that this Council was now facing with street maintenance, sewer rates, water rates, and other similar issues. This body has had to deal with all those issues. Her thought had always been that the Council needed to think about the children and grandchildren. What would Milwaukie look like in 50 years? She asked Mr. Coreson if he thought anyone on Council wanted a five- to six-story building on the Texaco site because that seemed to be the common misconception in this community.

Mr. Coreson thought that would be a logical conclusion from reading the request for proposals (RFP).

Councilor Barnes polled the Council for the record. She was not in favor of a five- or six story building there.

Councilor Stone and **Mayor Bernard** were similarly not in favor of a five- or six-story building

Councilor Collette would be in favor of a 5th story if it was setback with a nice public amenity and river views. No one she had spoken to was in favor of a six- or seven-story building.

Councilor Loomis was not in favor of a five- or six-story building.

Councilor Barnes noted a majority of the Council disputed the rumor that had gone on for almost a year. No one on Council wanted anything above five stories.

Mr. Coreson thought he was clear in respect to the five stories. He understood it was not consistent with existing building codes. Members of his group opposed changing existing building codes to go higher, and they opposed light rail. They would like to know how many people agreed or disagreed in the citizenry. If he went out to talk to the City Council and the data came back overwhelmingly that his neighbors disagreed, then he would shut up. For now he did not believe there was any compelling data about what the general public felt. They would like to go to the general public and ask some questions. Do you support this kind of a structure? Do you support the idea of changing existing building codes to build higher? Do you support light rail? Would you support the funding without knowing what it was right now? Are you in favor of all this? Do you want to see it happen? From the conversations on the website he was expecting to see a more polarized argument. He expected to see people for it or against it. He surprised to see how many viewpoints there were.

Councilor Stone asked how many responses there were.

Mr. Coreson replied it was not that high. A lot of people were looking, but only about 50 people have commented. As the web master he looked at the addresses, and he saw a small group of people talking back and forth. He could also see how many people were hitting. People were showing interest but not weighing in.

Councilor Barnes appreciated the fact that Mr. Coreson had come forward. She brought up the idea of having a reputable firm poll the community and talked to the City Manager about the issue of light rail that had polarized the community for a long time. Mr. Zumwalt said the community voted against light rail, but the polls showed that people were in favor of it. That made some sense in that people would say one thing and vote another. Should the money be spent in the City of Milwaukie to have the most

reputable pollster come in and poll this community – Milwaukie only? Should City money be spent to do that?

Mr. Coreson replied that was a loaded question because the quality of the data was based on the quality of the question. With respect to light rail the real issue was that most people voted with their checkbooks. What will the effect be on my wallet? It would be hard to ask if people were in favor of it if it was not clear how it would be funded. They did not know at what level they would be asked to participate in said funding. He would ask when the City talked about federal funding that it include the caveat that this was not money from heaven. Federal funding was tax dollars and not a charitable contribution. He thought it would be a good idea for a reputable polling company, but they would need to give them the background.

Councilor Barnes asked Mr. Coreson to hold off on the January 17 deadline and set up times to meet with Council and staff to determine a list of questions and find out how much Hibbetts would charge.

Mr. Coreson agreed, and Councilor Collette offered to help.

Mayor Bernard added that federal money for transit would go somewhere. People have paid for it already. Brining that money back to Oregon created many jobs other than keeping people on TriMet and Metro payrolls.

Mr. Coreson would not feel good that his money was paying for a project in a community that it did not want.

Councilor Collette commented that if Milwaukie did not want the money other communities would be lining up for it. Lake Oswego and Tigard wanted transit dollars. It was not as if people would not be paying taxes. Someone would get it, and the intent was to make sure the Milwaukie community got its share.

Councilor Stone agreed federal dollars did not just come from heaven. She wanted to make sure people realized it was their money. The point was to make sure that taxpayer dollars were well spent. The real question for her about light rail was that it was prohibitively expensive, and did it really serve the commuting public? She stated it did not. This line served only 1% to 2% of the commuting public. She was all for trains and public transit, but it needed to be something that really worked and gave people the best bang for the buck.

- **Rosemary Crites, 4917 SE Aldercrest Road**

Ms. Crites spoke as a concerned promoter of Milwaukie. It was clear there was not a lot of money around. She was there to address the Arco station and the fuel tax situation. Gas stations have a very small margin. Arco's business was cut by about 50% with the McLoughlin Boulevard traffic changes. This was a small business, and it would be in a real crunch with the fuel tax. Did we want to crucify the existing businesses to reach the objective? She thought businesses should be taken care of to make sure they made it versus running them out of town. More businesses would come in, but the City should keep an eye on the ones it had.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

Adoption of a Street Surface Maintenance Program – Ordinances, second reading

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

Ms. DuVal polled the Council: Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye' and Councilor Loomis voting 'no.'

ORDINANCE NO. 1966:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.25 – STREET SURFACE MAINTENANCE PROGRAM, ADOPTING A STREET MAINTENANCE PROGRAM AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

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

Ms. DuVal polled the Council: Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye' and Councilor Loomis voting 'no.'

ORDINANCE NO. 1967:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30 – PRIVILEGE TAX AND IMPOSING A PRIVILEGE TAX ON ELECTRIC UTILITIES.

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

Councilor Stone raised the issue for discussion. She voted against this ordinance, and the Council had received some correspondence since the last meeting two weeks ago. She felt this ordinance put the five or six Milwaukie service stations at an economic disadvantage. It diminished the competitive edge with other stations. Prior to the public testimony two weeks ago she was even wondering if the City could count on this funding because people did go elsewhere for their gas if they could find it cheaper. She believed \$0.02 per gallon was enough to make people go to another service station for a cheaper rate at the pump. After she heard the public testimony Councilor Stone realized the negative impact it would have on the Milwaukie stations. It did not seem fair to her in terms of those businesses being able to compete with like businesses. She voted against it because she did not believe the City could count on this particular amount of funding. She recalled it was estimated that it could generate \$125,000 to \$200,000 annually because there was no control over where people might buy their gas. Secondly, it did put these five or six stations at an economic disadvantage. She thought it was unfair to the businesses.

There was no further correspondence from the other stations.

Mayor Bernard asked if the Association represented the other stations. The Council had only heard from one of the Milwaukie stations.

Councilor Collette was concerned about the difficulty of the legislature's adopting a gas tax increase, and she did not believe the cities should count on the state's doing it. She did not like the idea of putting the Milwaukie stations at a disadvantage. At the same time staff worked very hard to find a balanced program that contributed funds from various sources. This was the only one element that did not tax only Milwaukie residents. She supported it, but she suggested Milwaukie send a letter to the state legislators asking them to take the leadership role and help the cities. It was a difficult decision particularly since it was a relatively small contribution to the package.

Mr. Firestone knew that the Petroleum Association represented a large number of stations in the state. He did not know specifically about those in Milwaukie.

Councilor Barnes understood that this tax would be repealed if the state increased the gas tax rates.

Mr. Swanson replied the overall street maintenance funding program ordinance provided that if additional revenues came in from state and federal sources, then these would be adjusted.

Mr. Firestone added the first ordinance that was adopted was written that if there were increases from additional state gas tax revenues or from the County then there would be a dollar for dollar reduction. If the additional revenue came from gas taxes, then the local gas tax would be lowered.

Councilor Collette understood ordinance was not effective until July 1. Theoretically the legislative session ended in June, so she urged people to contact their senators and representative to help turn this around to protect the local gas stations.

Councilor Barnes urged the Petroleum Association to contact its lobbyist to make this a top priority before the legislature. This was a top issue with the League of Oregon Cities (LOC), and she felt everyone could work in tandem. This ordinance would not go into effect until July, so she suggested moving ahead.

Mayor Bernard understood Tigard adopted a local gas tax last week, and other cities around the state were doing the same. There was a real message being sent to the legislature.

Mr. Swanson stated section 3.25.030 was just adopted, and subsection A dedicated all of the funds collected pursuant to the three funding sources to street surface maintenance only. Subsection B stated that a dollar for dollar reduction would be made first on the local fee or tax most similar to the newly established fee or tax if in fact programs of county, regional, state, or other entities raised an amount greater than those in effect at the time of the adoption of this ordinance. There was a specific provision that if the state adopted a gas tax, this was where it would come from.

Councilor Stone agreed with Councilor Collette that the City needed to protect its local stations, but she disagreed in terms of waiting to see if the legislature would pass the gas tax. She thought they needed to be protected now. She urged the Council to consider a different vote and not pass this ordinance. She did that because of the letter from the Romain group. The Council heard testimony two weeks ago talking about the Oregon Petroleum Association urging the Council not to adopt this. In talking with counsel after the meeting she asked what the chances were that this would be referred to the voters.

Mr. Firestone replied that the City of Tigard adopted a similar tax two weeks ago, and within a day or two the group began the referendum process. Signatures were now being gathered. In at least two other cities, the Association was successful in getting the matter referred to the voters where it was defeated.

Councilor Stone referred to the letter dated December 22, 2006 from Paul Romain that openly invited the City to reconsider the vote and to work with him to establish a state gas tax increase. She thought Milwaukie should seriously consider doing that. She agreed with Councilor Collette that the Council needed to send a letter through the League of Oregon Cities to appeal to the legislators to get this changed. To impose this only on a few service stations in Milwaukie was not justified or fair because it took away the competitive edge. She was willing to work toward some legislation because everyone was hurting. Everyone was in the same boat. She did not want to see this referred to the voters because it was a waste of time, money, and resources when the City could concentrate on getting some real legislation to occur.

Mr. Firestone had heard and seen some things but had not looked at each city with a gas tax and if there had been any effort to try to stop it. The Petroleum Association would probably have more information.

Councilor Stone commented there was some time because the ordinance would not take effect until July.

It was moved by Councilor Barnes and seconded by Mayor Bernard for a brief recess to speak with someone in the audience. Motion passed unanimously. [5:0]

Councilor Barnes asked to reopen the discussion. She wanted to reconsider her vote to change the wording.

Mr. Firestone said one options even though it had been moved and seconded was to make a motion to continue this matter to a future date.

It was moved by Councilor Barnes and seconded by Councilor Stone to continue the matter to the second Council meeting in April. Motion passed unanimously. [5:0]

Mr. Swanson read the title which was, "an ordinance of the City Council of the City of Milwaukie creating and imposing a tax on motor vehicle fuel dealers; providing for enforcement, administration and collection of the tax; and amending the Municipal Code by adding a new Chapter 3.40."

Councilor Barnes added it was a matter to timing. The legislature began next week and by mid-April the City would know where this was going. The Council could make a decision one way or the other at that time.

Councilor Stone suggested waiting until June.

Councilor Barnes said this was a compromise with those who brought forward the concern.

Councilor Stone did not want to see the City get into a pickle if the legislature had not made a decision.

Mr. Firestone said it could be continued in April.

Councilor Collette was still very concerned about the need to send the legislature a strong message. As communities backed out of making the strong decision, it was easier for the legislature to not make the strong decision. At some point the cities needed to tell the state it had to lead. Local businesses could not be put in jeopardy because the state lacked leadership. He felt voting today would send a stronger message than waiting until April. If a compromise had been reached, she was willing to reconsider her vote.

Mr. Swanson understood Councilor Collette's position. On December 19 Mr. Romain was clear about the vulcanization of the gas tax and that the Association was committed to passing a reasonable gas tax. In a sense this put something over the Association's head that could be used. This particular City was waiting for leadership in the legislature before subjecting its five stations to an additional \$0.02 per gallon tax. He believed the Association would work hard with the other organizations to bring it to bear.

Mr. Firestone clarified there were 13 jurisdictions in the state that had gas taxes – two counties and 11 cities. He was not sure if it was that the Association did not oppose the tax or if the ordinances were successful. The Council could in the interim take action by adopting a resolution urging the legislature to act and even stating the Council's intent to enact an ordinance if the legislature did not act.

Mayor Bernard believed that was the Council's intent at this time, and he recommended that the Council write a letter to its legislators.

The motion to continue the matter to second Council meeting in April passed unanimously. [5:0]

Councilor Barnes asked that the letter written to the house and senate transportation committee chairs.

B. Authorization to Purchase Emergency Operations Center (EOC) Equipment -- Resolution

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution authorizing the city manager to purchase audio and video equipment from CompView to complete the upgrade of the City's EOC." Motion passed unanimously. [5:0]

RESOLUTION NO. 02-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO PURCHASE AUDIO AND VIDEO EQUIPMENT FROM COMPVIEW.

C. Council Report

Councilor Stone thanked the citizens of Milwaukie for their support over the past four years and looked forward to their continued support. She would work hard to ensure their interests were represented and tax dollar were spent wisely. She hoped to have a cohesive Council that would be productive and work together.

Councilor Barnes echoed those sentiments. She had just signed on as a lobbyist for the Oregon Association for Career and Technical Education. The legislation she proposed was being moved through the session through Sen. Schrader and was co-signed by ten lawmakers to look at the merits of professional/technical education on Oregon. On a personal note, a young man asked permission to marry her middle daughter.

Councilor Collette reported on the Clackamas Community College School Board and announced an interim president had been hired.

Mayor Bernard would be in Salem the following day with other Mayors to talk with legislative assistants. He would be in Washington, D.C. in March with the Joint Policy Advisory Committee on Transportation (JPACT). He announced the Willamette Falls TV Community News Show beginning February 23, 2007.

Councilor Collette wished State Rep. Carolyn Tomei a happy birthday.

Mr. Swanson announced that this would be the last City document Mr. Firestone would sign before going to the City of Newport where social gaming was allowed. He would bring the social gaming matter up at the next work session. He discussed the Council all-day Teambuilding Session with Dr. Bill Grace on February 10.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 8:17 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL JANUARY 2, 2007

MILWAUKIE CITY HALL

10722 SE Main Street

1997th MEETING

REGULAR SESSION – 7:00 p.m.

Oaths of Office for Mayor Jim Bernard, Councilor Susan Stone, and Councilor Deborah Barnes – Administered by Municipal Court Judge Ron Gray

I. CALL TO ORDER
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Metro Update (Councilor Brian Newman)

3. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

A. November 21, 2006 Regular Session Minutes

B. Designate Papers of Record for the City of Milwaukie -- Resolution

4. AUDIENCE PARTICIPATION *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. PUBLIC HEARING *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None Scheduled

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. **Street Maintenance Funding Program Adoption – Ordinances, second readings (Kenny Asher & Alex Campbell)**
 - B. **Authorization to Purchase Emergency Operations Center (EOC) Equipment – Resolution (Chief Larry Kanzler)**
 - C. **Council Reports**
7. **INFORMATION**
 - A. **Minutes of the November 21, 2006 Joint Milwaukie/Metro Council Work Session**
 - B. **Minutes of the November 8, 2006 Citizens Utility Advisory Board Meeting**
 - C. **Minutes of the November 11, 2006 Riverfront Board Meeting**
8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
November 9, 2006**

CALL TO ORDER

Mayor Bernard called the 1994th meeting of the Milwaukie City Council to order at 6:59 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Mike Swanson, City Manager	George MacGregor Civil Engineer
Kenny Asher, Community Development/Public Works Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Announcements

Mr. Swanson announced that he had excused the City Attorney from the meeting pursuant to Resolution 9-2003 because in his judgment there were no issues that would require legal counsel.

Mayor Bernard said there were several items that were not discussed in the work session and asked Mr. Swanson to go over those.

Municipal Court Judge Contract

Mr. Swanson would bring this new two-year agreement beginning January 1, 2007 to the City Council. He suggested the monthly payment be increased to \$1,800. Staff was preparing a recommendation for misdemeanor court, and the number of court citations was up. He would include a provision to the agreement for adding days and compensation if necessary.

Liaison to the Riverfront Park Design Project

Mr. Swanson reported the City went out with a request for proposals (RFP) for design services on August 11, and David Evans and Associates (DEA) was selected. Ms. Herrigel asked that a Council member be designated as a member of the design review group.

Mayor Bernard moved to appoint Councilor Loomis, and Councilor Barnes seconded.

Councilor Stone said she was interested in being the liaison.

Councilor Barnes believed that Councilor Loomis had been the most active of the Council members involving the riverfront. She suggested that Councilor Loomis be the liaison with Councilor Stone as the alternate. She felt he would bring valuable experience to the group.

Councilor Loomis was interested, and he felt everyone was qualified and shared the same vision of completing the park. He asked if this was a one-person situation.

Mr. Swanson replied Ms. Herrigel had talked about a liaison to keep the rest of the Council informed. The process would be fairly intense in the next few months with public open houses and stakeholder meetings. He believed that Ms. Herrigel envisioned one person, but that was up to the Council.

Councilor Collette did not think it was a matter of Councilors attending the meeting but who should be the liaison. These were public meetings, so anyone interested could go. There would be no Council decision making, so she did not see a conflict with others attending although one point of contact would be best.

Councilor Stone was very interested in the process. She attended the last meeting and was interested in Kronberg Park. They were trying to get MTIP funds for that, and they were all connected. If the City only needed one person she would like to be considered the alternate. She would like to continue to be informed.

Mayor Bernard and Councilor Barnes accepted the amendment that Councilor Loomis would be the primary and Councilor Stone would be the alternate Council liaison to the Riverfront Park Design Project.

The group discussed the potential for a quorum and the need to be cautious about discussions at the meetings.

Motion passed unanimously. 5:0

Student of the Month

Michael Parker was honored as the Milwaukie High School Student of the Month. As well as being an accomplished athlete, Mr. Parker was ranked second in his senior class with a 3.98 GPA. He was the chief information officer for the Tech Cadre, National Honor Society President, and organizer of the Active Support System Involving Students Today (ASSIST) program. Mr. Parker will attend Oregon State University.

Kelly Carlise, Milwaukie High School Principal, reported that the school held its 11th Annual Living History Day with over 600 veterans and their spouses attending. Students are preparing for a blood drive and canned food drive. On the academic front the school was working on a program to help students with reading problems.

Councilor Collette announced the City's CodeRED emergency notification service was operational and encouraged people to visit the City's website or phone the police department business office to register their non-published numbers, cell phones, and recently-acquired addresses and phone numbers.

Councilor Barnes asked how non-English speaking residents would be notified.

Mr. Swanson thought someone skilled in other languages would have to be on duty when the emergency came into the center. He would check with Chief Kanzler. He stressed the importance of registering cell phones since they are not address specific as were land lines.

2006 Umbrella Parade

Chelsea Bantz, Milwaukie High School senior, had chosen to revive the Umbrella Parade as her senior project and encouraged people to attend the December 9 event in conjunction with the City Hall tree lighting.

CONSENT

It was moved by Councilor Collette and seconded by Councilor Barnes to approve the Consent Agenda:

- A. City Council Minutes of October 17, 2006**
- B. OLCC Application for Chan's Steakery, 10477 SE Main Street – Change of Ownership**
- C. Resolution No. 52-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 9015 SE Regents Drive and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200(D).**

Motion passed unanimously. 5:0.

AUDIENCE PARTICIPATION

- **Ed Zumwalt**

Mr. Zumwalt vice chair of the Historic Milwaukie Neighborhood District Association (NDA). He wished to make several remarks about the decision handed down on November 9 regarding the Milwaukie High School sign. The first item he wanted to talk about was e-mail from Councilor Collette after the decision. It was well done and quite comprehensive. She wondered in her e-mail how the Historic Milwaukie NDA would react. A lot of it depended on how the leadership in the neighborhood reacted. He wanted Councilor Collette to know they were reacting fine and would take the high road as always. Right after the decision was handed down by the Planning Commission, he made an appointment with Kelly Carlilse, Ms. Townsend, and two other neighborhood members. During the phone conversation and in the meeting he hinted strongly that he wanted to go with the monument type of sign, but that did not happen. It came here, and the City Council made its decision. He subsequently contacted Mr. Carlilse again, and two members of the neighborhood association met with him and Ms. Townsend. They agreed to come to the next neighborhood meeting. Somehow the cart got before the horse. Usually when there was an appeal or whenever someone put something before the Planning Commission the planning department suggested strongly in writing that they visit the neighborhoods and let them know in advance. He did not know if it was neglect or oversight or what, but the High School did not do that. That might have saved a lot of trouble. All sorts of people came to the meetings and talked about what they were going to do to their houses or businesses. The High School neglected to do that, and he thought that was a step that hurt everyone. If they had been to the neighborhood meeting, there might not have been such a hue and cry. When you know about something you don't stand up and scream. He would keep the Council posted on what was happening. One other thing about the petitions – he did not like to make a big thing about that. Several of the neighborhood people were upset because a person that lived in the neighborhood and worked at the Annie Ross House signed the petition, and she was chastised for it. He did not think that should happen because this is a democracy, and she could sign anything she wanted to. Everyone scrutinized anything handed down by the City

City Council Regular Session – November 21, 2006

Draft Minutes

Page 3 of 8

Council, and it hit the paper. It should be technically and legally correct, and there should not be a breath of impropriety about it. This time it did hit the papers. It affected the City Council, the citizens, and the City. He was quite sure in this case it might have caused a couple of ripples with the Planning Commission.

Mayor Bernard owned a business right down the street from the High School, and an appeal notice went to that address. He assumed notices went to everyone in the area surrounding the High School. It was a public notice that there was an appeal. There was no question of impropriety on the City Council. Mr. Zumwalt may have thought that, and the paper may have written it but had not talked to the Council members voting to approve the application. Generally speaking he disagreed that the general consensus in the community was that there was some impropriety on Council. That was not his understanding of what the general public felt.

Mr. Zumwalt asked if he had checked with everyone. If it made the paper there was a sense of impropriety. Whether there was or not that was why everyone had to be so careful.

Councilor Collette thought Mr. Zumwalt had made a good point. She assumed that the School or Ms. Townsend had met with the NDA early on. She understood Mr. Zumwalt had met with her before the matter went to the Planning Commission.

Mr. Zumwalt said they did not meet with the applicants before the Planning Commission ever. He asked where she got that idea. Councilor Barnes? They never showed up at the NDA meeting. He did not know how anyone could get that idea

OTHER BUSINESS

A. Proposed Resolution Naming Tax Lots 11E36CB2800, 11E36CB3000, 11E36CB3100 Robert Kronberg Park

Mr. Swanson reported on June 6, 2006, the City Council approved a motion naming what it thought was the whole transfer from Dena Swanson to the City in December 1991 as Robert Kronberg Park. However, only one of the tax lots was named in the resolution, and that was tax lot 3100. That was an error. When one reviewed the deed the transfer was three parcels. When the resolution was drafted for the June 6 hearing lots 2800 and 3000 were overlooked. The proposed resolution corrected that error and re-identified tax lots 2800, 3000, and 3100 as being the parcels collectively named Robert Kronberg Park.

It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution naming tax lots 11E36CB2800, 11E36CB3000, 11E36CB3100 Robert Kronberg Park.

Mr. Zumwalt thanked the City Council for correcting the problem and putting it to rest.

Ms. Swanson said at the time the property was donated it was the desire that it be a park, and she asked that it be identified as Robert Kronberg Park.

Councilor Stone commented it had been a long time coming, and she was glad this was clarified in order to move on and hopefully get a master plan on the books. She believed there had been three meetings on what to do with Robert Kronberg Park, and Ms. Swanson attended one of them. Because this sits right

next to a couple of other parcels of land to the south that were part of that area that used to be called Kellogg Lake Park she wondered what was going to happen with that. She knew she proposed it at the meeting when it was made official to designate that one tax lot for use as a park in Ms. Swanson's late husband's honor. She proposed at that time to this Council why not use the whole space for a park because she did not know what else could be done with it. She was throwing that out for discussion at this meeting.

Ms. Swanson asked if that was donated.

Mayor Bernard replied that it was purchased for greenspace with Metro funds.

Councilor Stone said that was not her understanding. Her understanding was that it was purchased with Metro money specifically for a park. She believed that was the intent. She thought there was someone in the audience that could talk a more thoroughly about it than she. Les Poole and his family also donated some of that property.

Councilor Loomis recalled at the time that Ms. Herrigel said she would bring it back for Council consideration at some time. The Council wanted to move forward and take care of Ms. Swanson's wishes by honoring Mr. Kronberg. There were other issues surrounding those other pieces of property, and Ms. Herrigel was concerned about taking away from the moment. He expected it would come back to Council.

Motion passed unanimously. [5:0]

RESOLUTION NO. 53-2006:

**A RESOLUTION NAMING TAX LOTS 11E36CB2800,
11E36CB3000, AND 11E36CB3100 ROBERT KRONBERG PARK**

B. Feasibility Report on New Century Players' Proposal to Renovate and Occupy City Property at 37th Avenue and Washington Street

Mr. Asher announced that Gary Parkin would join City staff as the new engineering director. George MacGregor was acting Engineering Director in the interim.

Mr. MacGregor announced that the City had been awarded a grant for sidewalks on Logus Road. This was a great example of the City and its residents working together on a project that was beneficial to all.

Jeff Klein, Lewelling NDA Chair and Planning Commission Chair, said this project covered Logus from Stanley to 49th Avenue, so the neighborhood would continue to work on the remaining 7 blocks. There were some neighbors that had been talking about sidewalks on Logus Road for 40 years, so this was really exciting. Both Mr. MacGregor and Mr. Campbell played important roles in obtaining the grant. This would be a green street design that handled stormwater on-site. The NDA was very enthusiastic about the potential for this project and ones in the future.

Mr. MacGregor said the grant was for \$445,000. That combined with money from the County and City the total would be approximately \$750,000. Innovative on-site stormwater treatment methods would be considered that would both reduce costs and benefit the environment. The vision for Logus Road was to tread lightly so the neighborhood character would be preserved while improving pedestrian safety.

Mr. Klein commented on Lewelling NDA's run of luck. This grant combined with the park funds was almost \$1 million that enriched the neighborhood.

Councilor Collette noted Lewelling was an environmental school, so this would be a great learning experience for the students.

Mr. Asher commented that the green street treatment and tree preservation elements worked in the grant's favor. He reported that New Century Players was a young non-profit that focused on live entertainment, and it was looking for office space. New Century Players was represented at this meeting by Kelley Marchant, Managing Director, Gordon Mouser, Artistic Director, and John Moran, Board member. Ms. Marchant who was interested in locating free space in Milwaukie contacted Mr. Asher. The group wants to build community in Milwaukie through live theater, and people like Jim and Siri Bernard, Deborah Barnes, and Wilda Parks were involved from the beginning. The City owns property at 37th Avenue and Washington Street that was used for government offices since 1971. The house has been empty for a couple of years and was showing signs of neglect. He thought this use would be a win/win for both the City and the non-profit organization. Community development staff would evaluate the New Century Players' proposal.

- **Kelly Marchand, Managing Director, and Gordon Mouser, Artistic Director**

Ms. Marchand thanked the community for its support.

Mr. Mouser had been involved in some facet of theater for his entire life, and it took community backing for it to survive. Art was a part of the community, and the Players' mission was to involve the community and create a sense of pride. He cited the importance of the Lakewood Theater in the revitalization of downtown Lake Oswego. He urged the Council to help the organization with its space needs because the City would be repaid tenfold.

Ms. Kelley added that the New Century Players had just finished the 10th production with 1,100 in attendance, and people were auditioning for shows. She hoped the City would partner with the Players.

Mr. Asher reviewed the New Century Players' proposal. The intent would be to lease the property for a nominal fee. The lease would bind the non-profit to complete certain repairs and updates to the house within a given timeframe. While the Players were still in start up mode in its balance sheet, it did have a lot of sweat equity available. John Moran, board member, prepared a proposal equal to about \$35,000 in labor and materials to bring the house up to standards. The City's building official said the proposal was generally in order. Well #7 was on the site, but because the building had been used for offices for a number of years this would not be an incompatible situation. Any concerns about parking and use of pesticides would be addressed in the lease. Since this structure has been used as a community service use over the years this would fall into line. Hector Campbell NDA chair did not have any outright objections and thought there might be some synergy between this use and the Milwaukie Museum. Milwaukie Museum Curator Madalaine Bohl was supportive of someone's using the house. If the Council felt this proposal fit with the City's vision, then staff would begin the next steps with the City Attorney for future Council approval.

Councilor Loomis supported moving forward. The house was donated to the City, and Ms. Bohl was not interested in using it for the Museum. The New Century Players have been active in the community for the past three years.

Councilor Stone thought it was a great idea of getting a theater group in Milwaukie. She recalled attending the Lake Oswego theater many years ago, and it has managed to survive. In regards to the house it would probably not be used as a performance space, so there would not be that many trips in and out per day. She was interested in knowing how much it costs to run a company like this as a non-profit. The staff report mentioned leasing it for a dollar a year for infinity. Was that the plan? Would they pay the property taxes?

Mr. Asher replied the Players were an exempt non-profit organization and the property was exempt because it was publicly owned. The term of the lease would have to be worked out. The City would be helping the company get on its feet, and ideally in time they would pay a lease rate.

Councilor Stone thought it was a great use for the house, and it would be a great addition to get a theater company based in Milwaukie.

Councilor Collette was excited this might go forward. During the League of Oregon Cities Conference she heard community was a gathering of people with shared experiences. The arts help make sure those experiences are positive. New Century has been in the block since day one, and just this year there were 1,100 more people with shared, positive experiences. She did not believe that could be undervalued. There had been a discussion of other arts groups having office or meeting space in the house. She could imagine some landscaping or painting in the area between the house and the Museum to integrate the buildings and make the corner stand out.

Councilor Barnes talked with Wilda Parks during the Centennial about the dream of a theater group. Ms. Marchant also runs the Young Leaders Program for the North Clackamas Chamber of Commerce, and her connection opens so many doors in the community for the arts. She supported this use of the property.

Mayor Bernard was supportive.

There was consensus on Council to move forward.

Mr. Asher said there was still a lot of work to do on the proposal, and staff would come back to Council when there was something substantive.

- **David Aschenbrenner, Hector Campbell NDA Chair**

He welcomed the New Century Players to the Neighborhood and invited them to attend the meetings. He hoped the proposed agreement would come to the Neighborhood for its comments. He would like to see a linkage with the Museum.

Councilor Loomis hoped the group would consider making its name New Century Players of Milwaukie.

Mr. Swanson commented on the value of volunteers in the community. Jim Wiley passed away on October 29, 2006 whom he got to know while working on the Pioneer Cemetery. Mr. Wiley was a member on the non-profit group that asked to take over responsibility for the Cemetery. He was one of the members of the Board of Trustees appointed by the Circuit Court. Donations may be made in his name to the Pioneer Cemetery or American Cancer Society.

Milwaukie City Council and staff wished Ann Hupp, former Mayor Bill Hupp's wife, a happy birthday.

C. Council Reports

City Council Regular Session – November 21, 2006

Draft Minutes

Page 7 of 8

Councilor Loomis would chair the Milwaukie Center March for Meals.

Councilor Stone attended the Riverfront Board and looked at some interesting draft plans. She attended the MTIP listening post and testified for the 17th Avenue bike lane projects and the Milwaukie Kronberg site culvert project. She suggested a work session on the fees for abating nuisances to better understand the process and where the money went when the lien was paid off.

Councilor Collette testified at the MTIP listening post and attended Metro's session on the point forecasting method. She attended the Ardenwald Neighborhood Association meeting, and the group was making plans to adopt families for the holidays. There were numerous meetings at Clackamas Community College to discuss current issues.

Councilor Barnes also testified at the MTIP listening post. She met with Jeff Klein and Catherine Brinkman of the Planning Commission regarding the Council's decision on the Milwaukie High School sign, and she felt they had come to an understanding. She had a great deal of respect for the Planning Commission and was concerned that this had become an emotional decision.

Mayor Bernard attended two street maintenance funding open houses and the Oregon City MTIP listening post. He thanked Dion and Mike Shepherd, Ray Bryan, and others who helped plant the traffic islands on Monroe and Washington Streets.

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

Mayor Bernard adjourned the meeting at 8:14 p.m.

Pat DuVal, Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE *CLACKAMAS REVIEW*, *THE OREGONIAN* AND *THE DAILY JOURNAL OF COMMERCE* AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

WHEREAS, ORS 192.620, Public Meetings Law Policy, requires an “Informed public aware of the deliberations and decisions of the governing bodies”; and

WHEREAS, ORS 193.010 defines a newspaper of general circulation, and ORS 193-020 defines a newspaper in which public notices may be published; and

WHEREAS, the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* meet the needs of the City and the requirements of State statutes,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the papers of record for the City of Milwaukie.

Introduced and adopted by the City Council on January 2, 2007.

This resolution is effective on January 2, 2007.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan, LLP



To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Adoption of a Street Surface Maintenance Program

Date: December 22, 2006 for January 2, 2007

Action Requested

Adopt a Street Surface Maintenance Program ("Program") per Milwaukie City Council Resolution No. 35-2006, adopted by City Council on July 18, 2006.

The three ordinances attached adopt the City of Milwaukie Street Surface Maintenance Program, and three new revenue sources to fund that program:

- A Street Maintenance Fee assessed to residential and non-residential City of Milwaukie public utility payers
- A 1.5% Privilege Tax on PGE electricity assessed to City of Milwaukie residential and non-residential PGE utility payers
- A \$0.02 per gallon motor vehicle fuel tax assessed to motor fuel pumping station businesses located in the City of Milwaukie.

The purpose of the program is maintaining, repaving and rebuilding major City Streets.

Background

In a February 2006 work session, Council directed staff to solicit business and community input through a thorough and open-minded outreach effort, with the expectation that options would be presented to Council in July 2006.¹

In July 2006, following a broadly supported staff recommendation, Council passed Resolution 35-2006, which directed staff to design a program that would,

¹ See City Council minutes, Work Session, February 21, 2006

over time, raise the entire street network's Pavement Condition Index rating to the "Good" range and maintain it at that level.

On December 19, 2006, Council held a public hearing on the three proposed ordinances. After hearing correspondence, a staff presentation, and public testimony, Council discussed the proposal. Council voted to approve each of the three ordinances on the first reading. None of the votes were unanimous. As such, a second reading is required prior to the ordinances going into effect.²

If adopted as recommended, Program implementation would commence immediately. The revenue mechanisms will go into effect on July 1, 2007 under provisions outlined in the three ordinances attached to this report.

Ordinance Summary

A. Ordinance No. _____

Ordinance No. _____ has two parts. First, it establishes the City of Milwaukie Street Surface Maintenance Program, which includes program goals, staff responsibilities, project selection criteria, an annual reporting requirement, and implementation procedures. Second, this ordinance establishes a Street Maintenance Fee, which is dedicated to street surface maintenance only. The Street Maintenance fee is projected to contribute \$700,000 towards the \$1.2 million revenue target.

The fee is based on an estimate of the number of motor vehicle trips generated by each city utility customer. The monthly rate for a single-family household would be fixed at \$3.35. Fees for businesses would range from a minimum of \$3.35 to \$250 per month, based on building size and business type.³

The ordinance provides a method for customers to request a review of their Street Maintenance Fee to ensure that it accurately reflects actual trip generation patterns. This process is described more fully in the Program document.

B. Ordinance No. _____

The second ordinance places a PGE Privilege Tax of 1.5% on all electricity sold by PGE in the City. PGE would pass on the tax to customers as a line item on electricity bills. A typical residential electric bill would increase roughly \$1 per month. The Privilege Tax is estimated to generate \$300,000 annually.

In recognition of the annual cost burden placed on the Street Fund due to the Fund's payment of street lighting electricity costs, the ordinance commits PGE Privilege Tax revenues to the Street Surface Maintenance program exclusively. The Program does not require (nor does staff recommend) transferring payment

² See City Council minutes, Regular Session, December 19, 2006.

³ For a detailed schedule of the various residential and non-residential fees, see pp. 11-13 of the Program. The method used to develop the fees is described in detail in Appendix A of the Program. The Program was provided as an attachment to the staff report for the December 19 public hearing.

for street lighting to the General Fund. This is in keeping with Council's direction in resolution 35-2006 to minimize negative impacts on the General Fund.

C. Ordinance No. _____

The third ordinance establishes a Local Gas Tax of \$.02 per gallon tax on all motor vehicle fuel sold in the city. The annual revenue target for the Local Gas Tax is \$200,000. The tax would be paid by local gas stations and funding would be passed through to the City on a quarterly basis. Revenues are dedicated to street surface maintenance.

This multiple mechanism approach was designed to distribute the burden of the program as widely and fairly as possible. The total cost to fund the Program for a typical Milwaukie household is approximately \$60 per year.

Concurrence:

Community Services, Engineering, Streets, Planning, Community Development, and Finance worked together closely in the development of this proposal. PGE has been consulted on Privilege Tax implementation issues. ODOT Fuels Tax Group was consulted on local gas tax ordinances. The CUAB was briefed regularly and concurs with the recommendation. The Planning Commission, Budget Committee Chair, and all the NDAs were consulted and expressed support.

Fiscal Impact:

The fiscal impacts of the Program are significant and positive. The Program is self-funding (no new sources of revenue are required other than those identified). *The program has been designed such that it can be managed with existing staff.*

Annual revenue estimates for the three ordinances are:

- Street Maintenance Fee: \$600,000 to \$700,000
- PGE Privilege Tax: \$300,000
- Local Gas Tax: \$125,000 to \$200,000

These annual revenues are net positive to the city, in that they do not replace existing revenues, nor do they create additional expenses to be covered by other funds. The revenues will be accounted for in a new Street Surface Maintenance fund dedicated to street surface maintenance, against which materials, services and capital expenditures will be charged.

The set up and establishment of the program and its elements may have a small financial impact (less than \$10,000 in the first year) due to the possibility of some custom programming to enable the city utility billing system to include the street maintenance fee.

Work Load Impacts:

Initial set up of the billing system, including assigning the street maintenance fees, will require contributions of staff time from Finance, Engineering, Planning and Community Development. *The program has been designed such that it can be managed with existing staff.*

Alternatives:

Staff strongly recommends that Council adopt the Program as proposed. The Program is built to raise the Pavement Condition Index of the entire street system to the “Good” range and to maintain it at that level. Not raising the condition of the network, and/or not maintaining it at that level, would continue the pattern of neglect that the Program, after many years, would finally reverse.

Attachments:

Attachment 1: Street Maintenance Program Ordinance

Attachment 2: PGE Privilege Fee Ordinance

Attachment 3: Local Gas Tax Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.25 – STREET SURFACE MAINTENANCE PROGRAM, ADOPTING A STREET MAINTENANCE PROGRAM AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

WHEREAS, the purchasing power of revenue received by the City as its share of state gas tax revenues has been decreasing; and

WHEREAS, revenue from other sources, combined with the City’s share of gas tax revenues, has been insufficient to allow the City to both develop new transportation infrastructure as needed and maintain existing streets; and

WHEREAS, regular maintenance of streets is cost-effective because deteriorated streets are significantly more expensive to repair and maintain; and

WHEREAS, poorly maintained streets may create safety problems; and

WHEREAS, a properly maintained street system is cost-effective, provides for increased safety, supports property value appreciation, prolongs the life of public and privately owned motor vehicles, and contributes to a more attractive community; and

WHEREAS, the City has prepared a Street Maintenance Program, attached as Exhibit A; and

WHEREAS, the City needs additional revenue streams to properly maintain its street system on a timely basis;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 3.25 – Street Surface Maintenance Program, to read as shown on the attached Exhibit B.

Section 2. This ordinance shall take effect 30 days after passage.

Read the first time on December 19, 2006, and moved to second reading by 4 - 1 vote of the City Council.

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

Attachment 1

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney

EXHIBIT A



STREET SURFACE MAINTENANCE PROGRAM



December 2006

Authorized per City Council Resolution No. 35-2006
and Ordinances No. _____ & _____

Chapter 3.25

STREET SURFACE MAINTENANCE PROGRAM

Sections:

3.25.010	Definitions
3.25.020	Administrative Officers
3.25.030	Dedication of Revenues
3.25.040	Annual Street Surface Maintenance Program Report
3.25.050	Street Maintenance Fee
3.25.060	Determination of Street Maintenance Fee
3.25.070	Administration of Street Maintenance Fee
3.25.080	Waiver of Street Maintenance Fee in Case of Vacancy
3.25.090	Relief for Low Income Residential Customers from Street Maintenance Fee
3.25.100	Street Maintenance Fee Appeal Procedure
3.25.110	Exceptions to Street Maintenance Fee
3.25.120	Street Maintenance Project Selection
3.25.130	Street Maintenance Project Schedule and Narrative
3.25.140	Severability

3.25.010 Definitions.

As used in this Chapter, unless the context requires otherwise:

- (A) "Developed Property." A parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.
- (B) "Dwelling Unit." As defined in Section 19.103.
- (C) "Gross Square Footage." The area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.
- (D) "Multi-unit Residential Property." Residential property consisting of two or more dwelling units. For the purposes of this ordinance, condominiums and individual mobile home units are also classified as multi-unit residential properties.
- (E) "Non-Residential Property." Any property that is not residential property.

- (F) “Residential Property.” A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.
- (G) “Responsible Party.” The person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City’s water and/or sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a City utility bill, “responsible party” shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the City.
- (H) “Single Family Residential.” Residential property that has only detached dwelling units.
- (I) “Street”. A public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this ordinance, county, state and federal roads are excluded.
- (J) “Street Surface Maintenance Program.” Program established by this chapter to maintain, repair and reconstruct City of Milwaukie streets. Activities include the administration of the Street Maintenance Fee; preventive maintenance, rehabilitation and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.
- (K) “Trip Generation.” The average number of vehicle trips, as determined by reference to the Manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) (“ITE Manual”), 7th edition.
- (L) “Use Category or Category of Use.” The Code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.

3.25.020 Administrative Officers

(A) Except as provided in subsections (2) and (3) of this section, the Engineering Director shall be responsible for the administration of this ordinance. The Engineering Director shall be responsible for developing administrative procedures for the ordinance, and consideration and assignment of categories of use subject to appeal to the City Council.

(B) The Engineering Director and the Streets Supervisor shall be jointly responsible for annually developing and updating a five-year Street Surface Maintenance Program project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects.

(C) The Community Development and Public Works Director shall provide an annual report on the Street Surface Maintenance Program to City Council.

(D) The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City compliance with street cut repair policy.

(E) The Finance Director shall be responsible for the administration and collection of fees under this ordinance.

3.25.030 Dedication of Revenues

(A) All funds and all proceeds from funds collected pursuant to this chapter shall be used for the Street Surface Maintenance Program.

(B) Upon the establishment of County, regional, State or other programs providing monies to the City for street maintenance at rates or annual amounts greater than those in effect at the time of adoption of this ordinance, local fees or taxes shall be reduced in an equal amount to the additional monies made available to the City for street maintenance. The dollar-for-dollar reductions shall be made first in the local fee or tax most similar to the newly established fee or tax. If the City share of the new fee or tax exceeds the annual revenue of the reduced local fee or tax, the City shall reduce another fee by the excess amount. The selection of the second fee to reduce shall be at the discretion of Council. Revenues from the Motor Vehicle Fuel Tax established under Chapter 3.40 and any utility privilege tax, including the Electric Utility Privilege Tax under Chapter 3.30 shall not be considered additional monies or new revenue. Annual variations in the City share of State Gas Tax revenues absent a change in the allocation method or tax rate shall not be considered additional monies or new revenue. Any reduction in the Street Maintenance Fee shall be shared proportionally across all billing categories, residential and non-residential. The fee per trip

charge shall be reduced for all non-residential bills and the residential bills shall be reduced by the same percentage.

3.25.040 Annual Street Surface Maintenance Program Report

(A) Each spring the Community Development and Public Works Director shall prepare and present to Council the “Annual Street Surface Maintenance Program Report.”

(B) The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

3.25.050 Street Maintenance Fee

(A) A Street Maintenance Fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.25.050.

(B) The Street Maintenance Fee is also imposed and levied on the property owner of the developed property in the event of non-payment by the responsible party.

3.25.060 Determination of Street Maintenance Fee

(A) Residential Fees.

1. Single Family Residences shall be charged \$3.35 per month.
2. Multi-Family Residences, except for Elderly Housing, mobile home parks, and Congregate Care, shall be charged \$2.10 per month for each dwelling unit.
3. Elderly Housing and mobile homes parks will be charged \$1.40 per month for each dwelling unit.
4. Congregate Care facilities will be charged \$.70 per month for each dwelling unit.

(B) Non-residential fees.

1. Category Assignment. Each Non-Residential Developed Property in the City shall be assigned to a Category of Use according to the land use type listed in sub-section C.
2. Upon request of the customer, the Engineering Director shall review the Category of Use assignment. The Engineering Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of Category of Use shall not be considered a land use decision as that term is defined in ORS 197.015.
3. Fee calculation. The Street Maintenance Fee shall be calculated by multiplying the number of Units (listed in subsection C) by the trip rate per unit for that assigned Category of Use and then by the monthly per trip charge of \$0.35 to establish the monthly fee to be billed.
4. Fee maximum. The maximum monthly Street Maintenance Fee for non-residential accounts shall be \$250 per property. The maximum shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2008.
5. Fee minimum. The minimum monthly Street Maintenance Fee for non-residential accounts shall be \$3.35.

(C) Category of Use.

1. Category 1 shall be estimated at 0.75 trips per Unit. Land Uses include elementary and middle schools, private schools (K-12), and lodge/fraternal organizations. ITE Codes 520, 521, 522 and 591.
2. Category 2 shall be estimated at 2 trips per Unit. Land Uses include general heavy industrial, mini-warehouses, city parks, high schools, colleges, and furniture stores. ITE Codes 120, 151, 411, 530, 540, 550 and 890.
3. Category 3 shall be estimated at 4 trips per Unit. Land Uses include manufacturing, warehouses, utilities, county parks, religious institutions, and nursing homes. ITE Codes 140, 150, 170, 412, 560, and 620.
4. Category 4 shall be estimated at 8 trips per Unit. Land Uses include general light industrial, industrial park, motels, golf courses, general office, single tenant office buildings, office parks, research and development centers, and drinking places. ITE Codes 110, 130, 320, 430, 710, 715, 750, 760, and 836.

5. Category 5 shall be estimated at 16 trips per Unit. Land Uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores. ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861, and 870.
6. Category 6 shall be estimated at 32 trips per Unit. Land Uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical-dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores. ITE Codes 420, 491, 492, 493, 494, 495, 565 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862, and 863.
7. Category 7 shall be estimated at 64 trips per Unit. Land Uses include government office buildings, quality restaurants, and gas stations. ITE Codes 730, 831, 844, 846, and 854.
8. Category 8 shall be estimated at 128 trips per Unit. Land Uses include US Post Offices, fast food restaurants, convenience markets, and banks. ITE Codes 732, 833, 834, 851, 911, and 912.
9. Category 9 shall be estimated at 200 trips per Unit. Land Use is a multipurpose recreational facility. ITE Code 435.
10. Category 10 shall be estimated at 440 trips per Unit. Land Use is a movie theater. ITE Code 444.

(D) Units. The Unit used in calculating the Non-Residential Street Maintenance Fee shall be one (1) thousand square gross square feet of building area, with the following exceptions. The Unit for parks, golf courses, cemeteries, marinas, and multi-purpose recreational facilities shall be one (1) acre. The Unit for schools and colleges shall be one (1) student. The Unit for lodges shall be one (1) member. The Unit for hotels or motels shall be one (1) room. The Unit for self-service car washes shall be one (1) wash stall. The Unit for tennis courts or racquet clubs shall be one (1) court. The Unit for quick lubrication vehicle stops or gas stations shall be one (1) fueling or service position. The Unit for movie theaters shall be one (1) screen.

(E) Unlisted uses. In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Director of Engineering shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Director

of Engineering shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Director of Engineering under this section may be reviewed under the procedure described in section 3.25.100, sub-section (B). The result of the review may be appealed to the City Council by filing a notice of appeal within 10 days of the date notice of the result of the review is mailed to the property owner.

3.25.070 Administration of Street Maintenance Fee.

(A) Under the supervision of the Finance Director, the “Street Maintenance Fee” shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those Developed Properties not utilizing City water and sewer. In the event of non-payment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.

(B) In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer and Street Maintenance fees, credit shall be given first to the Street Maintenance fee, second to the sanitary and storm sewer service charges and third to the charges for water service.

(C) Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection of charges owing. The City’s enforcement rights shall be cumulative.

3.25.080 Waiver of Street Maintenance Fee in Case of Vacancy

(A) When any property within the City becomes vacant and water service is discontinued, a waiver of the Street Maintenance Fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer and street maintenance charges.

(B) For purposes of this section, “vacant” shall mean that an entire building or utility billing unit has become vacant or continuously unoccupied for at least 30 days. “Vacant” shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.

(C) Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether water service is restored.

3.25.090 Relief for Low Income Residential Customers from Street Maintenance Fee

The Street Maintenance Fee shall not be billed to those households included in the “Low Income Utility Program.”

3.25.100 Street Maintenance Fee Appeal Procedure

(A) Any owner who disputes any interpretation given by the City as to the Category of Use assigned to such owner’s property pursuant to this ordinance may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this ordinance within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the Street Maintenance Fee charged under this ordinance shall become effective with the next billing cycle.

(B) A utility customer may request a review of the Category of Use assigned. The Engineering Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Director shall make a determination based on the evidence provided and provide notice the customer.

(C) An owner who disputes an interpretation made by the Engineering Director as to the assigned Category of Use under this ordinance, shall submit a written appeal to the City Manager within 10 days from the date of notice of the City Engineer’s determination under subsection B of this section, together with a filing fee in the amount of \$300. The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate Category of Use has been assigned to the property.

(D) The City Manager shall schedule the matter for City Council review and notify the appellant not less than 10 days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Engineering Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the Category of Use shall be limited to whether the appellant has been assigned to the appropriate Category of Use. If the Council

should determine that a different Category of Use should be assigned, it shall so order, provided no refund of prior Street Maintenance Fees shall be given. Only where the Council decision results in a change in Category of Use will the filing fee on the appeal be re-funded. The Council decision shall be final.

3.25.110 Exceptions to Street Maintenance Fee

The following shall not be subject to the Street Maintenance Fee:

- (A) City-owned parking lots.
- (B) Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
- (C) Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, non-rolling storage areas and areas used for the transfer of rail-transported goods to non-rail transport, which areas shall be subject to Street Maintenance Fees.

3.25.120 Street Maintenance Project Selection

The Engineering Director and Public Works Operations Director shall annually update a five year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.25.130 Street Maintenance Project Schedule and Narrative

The street maintenance project schedule shall include a narrative description of street conditions, the project selection criteria, and a history of projects completed as part of the Street Surface Maintenance Program. The street maintenance project schedule and narrative is a public record. The street maintenance project schedule and narrative shall be prepared annually and presented to City Council as part of the Community Development and Public Works Director's annual report on the program.

3.25.140 Severability

In the event any section, subsection, paragraph, sentence or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the Street Maintenance Fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing

contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30 – PRIVILEGE TAX AND IMPOSING A PRIVILEGE TAX ON ELECTRIC UTILITIES.

WHEREAS, electric utility franchisees benefit from the use of City rights of way and impact those rights of way by using a portion of the right of way and by regular use of the rights of way by trucks and other equipment installing, moving and repairing the franchisees' facilities; and

WHEREAS, the City has prepared a Street Maintenance Program, attached as Exhibit A:

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 3.30 – Electric Utility Privilege Tax to read as follows:

CHAPTER 3.30

ELECTRIC UTILITY PRIVILEGE TAX

(A) An electric utility privilege tax is imposed on all electric utilities having or required to have a franchise in the City. The privilege tax is one and one-half percent of the electric utility's adjusted gross revenues, as defined by the ordinance granting the franchise to the utility. The City Manager shall notify its current franchisee in writing of the adoption and terms of the Electric Utility Privilege Tax. Payment of all Privilege Tax proceeds collected by an electric utility shall be paid to the City on the same schedule as the utility's franchise fee payments.

(B) All proceeds of the electric utility privilege tax shall be used for the street surface maintenance program established under Chapter 3.25.

Section 2. This ordinance shall take effect 30 days after passage, but the tax imposed by Section A shall be payable only on revenues received for service after July 1, 2007.

Attachment 2

Read the first time on December 19, 2006, and moved to second reading by 4 – 1 vote of the City Council.

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney

EXHIBIT A



STREET SURFACE MAINTENANCE PROGRAM



December 2006

Authorized per City Council Resolution No. 35-2006
and Ordinances No. _____ & _____

Contents

1. Problem Definition
2. Existing Conditions
 - a. Street Network
 - b. Street Fund
3. Authority
4. Program Goals
 - a. PCI Index
 - b. Deferred Maintenance
 - c. Maintenance
 - d. Stopgap
 - e. Program Cost
5. Responsibilities
6. Project Selection
7. Annual Reporting
8. Project Implementation
9. Dedication of Funds
10. Street Maintenance Fee
 - a. Residential Street Maintenance Fee
 - b. Non-Residential Street Maintenance Fee
 - c. Street Maintenance Fee Review Process
 - d. Street Maintenance Fee Billing
 - e. Low Income Exemption
11. Local Gas Tax
12. PGE Privilege Tax

Appendix A: Transportation Utility Fee: The Oregon Experience, Prepared by Carl D. Springer and John Ghilarducci

Appendix B: Pavement Management Budget Options Report, Prepared by Engineering Information Services, Inc.

1. Problem Definition

Milwaukie's local streets are in a state of rapid decline, some have already failed, and funding is not adequate to turn the situation around. If nothing is done, the roads will worsen and the cost to remedy the situation will skyrocket.

Milwaukie city officials are responsible for maintaining 138 lane miles of paved roadway. The replacement value of Milwaukie's street system was estimated at \$65 million in 2004 – a figure that is rapidly rising with the escalation of construction costs.

A July 2004 report by the consulting firm EIS Inc. rated Milwaukie's overall street network condition as a 67 (out of 100), which placed the City's street network in the upper range of the "satisfactory" condition. However, EIS Inc. also concluded that the cost of the city's deferred street maintenance was growing rapidly and that the City was not allocating sufficient funds to address street maintenance needs. EIS projected that by 2006, absent a new maintenance effort, the overall street network condition would fall to 63. Because maintaining streets is much more cost-effective than rebuilding them after they have failed, deferred maintenance costs can build up very quickly as streets pass the point at which they can be rehabilitated.

The City of Milwaukie is not alone in this predicament. The 2004 Regional Transportation Plan describes the problem this way:

... revenues from the State Highway Trust Fund, which is funded from the state gas tax revenues and related truck fees and vehicle registration fees, has become the primary source of transportation funding for many jurisdictions in the region. The problem the region is facing by relying primarily on this revenue source is that it is subject to two factors that reduce its purchasing power over time: inflation and increasing fuel efficiency. Therefore, the gas tax cost per mile driven in Oregon (in current \$) has decreased from 2.6 cents per mile in 1970 to 1.3 cents per mile today.¹

2. Existing Conditions

A. Street Network

Based on a 2004 visual inspection by EIS Inc., 60% of Milwaukie's streets were in good condition, 17% were in satisfactory condition; and 22% were in fair to poor condition. That 2004 data was combined with a 2006 staff score and the results of an earlier study to arrive at a "composite" condition score. (The earlier study, conducted in 1995, tested sub-surface conditions, which were not reflected in the 2004 assessment.)

¹ Regional Transportation Plan, Chapter 5: Growth and the Priority System, page 5-34.

Pavement conditions were ranked again, based on the composite score, and then divided into four groups, from poor to good. This ranking placed 55% of the street system in good condition, 18% in satisfactory condition, and 27% in the fair and poor categories.

Good condition streets require the least costly preventive maintenance (crack sealing) in order to extend the useful life of the pavement surface. At the opposite extreme, many of the 27% of the streets in the fair to poor category require full or partial reconstruction, which typically involves rebuilding the base and adding all new pavement. The 18% in satisfactory condition require rehabilitation, which typically involves grinding off the deteriorated top layer, adding a layer of "fabric," and a pavement overlay.

B. Street Fund

The Oregon State Gas Tax, which is assessed per gallon on motor vehicle fuel sold statewide, is the Street Fund's primary revenue source for flexible funding. The tax has not been increased since 1993. In 1995-1996, the City's share of Gas Tax revenues was \$906,065; the projection for 2006-2007 is \$959,646. The second source of flexible revenues for the Street Fund is franchise fees, collected from other City utilities (water, storm and wastewater). Franchise fees total about half of Gas Tax revenues (\$490,198 in 2004-2005; \$546,650 projected for 2006-2007).

While Street Fund revenues have remained largely flat, the cost of road construction and maintenance has increased substantially, particularly in recent years. According to the Federal Highway Administration's surfacing price index, \$128 worth of surfacing projects in 1995 would cost \$215 today.² Milwaukie's share of state gas tax proceeds are down nearly 40% over the past decade when adjusted for this inflation in costs. Clackamas County's 2006 construction bids are coming in at approximately 30% higher than just one year ago.

In recent years, the City has enjoyed success competing for grants and loans for specific capital projects. In the 2006-2007 budget, these accounted for just over \$1 million in revenue. Such funds are dedicated to specific projects and cannot be expended on maintenance.

Street expenditures in 2004-2005 totaled \$2.2 million. These expenditures broke down as follows:

- 32% to capital expenditures;

² "Price Trends for Federal-Aid Highway Construction," Third Quarter 2005, U.S. Department of Transportation, Federal Highway Administration. Available on-line at: <http://www.fhwa.dot.gov/programadmin/pt2005q3.pdf>.

- 20% to contributions to support or administrative functions (transfers to Engineering and Community Development Administration, and General Administrative Services Charge);
- 17% to maintenance;
- 13% to street light electricity costs;
- 9% to overhead (the vast majority for vehicle fuel, maintenance, and replacement fee); and
- 8% to reserves for future capital projects.

The Street Department maintains multiple aspects of the street system. Based on FTE assignments and allocable materials and services costs, staff estimates that in 2004-2005, out of a total maintenance budget of \$378,000: 24% went to right-of-way maintenance (mowing, removing branches, etc.); 23% was devoted to emergency street repairs (i.e., filling potholes and patching); 16% was spent on sign and signal maintenance; 15% went to street sweeping; 13% went to street marking and striping; and 8% was devoted to preventive surface maintenance (crack sealing as needed).

The preventive surface maintenance expenditures do not include any rehabilitation or reconstruction projects, which the city cannot currently afford. In recent years, the city's CIP has included an "unfunded" \$200,000 line item for overlay (rehabilitation) projects in the unfunded category. Though the \$200,000 figure has been somewhat arbitrary, these past CIP's are a record of the City's ongoing recognition of the street network's unmet maintenance need.

3. Authority

City Ordinance No. ___ establishes the Street Surface Maintenance Program ("SSMP") and a Street Maintenance Fee. City Ordinance No. ___ establishes a one and one-half percent (1.5%) PGE Privilege Tax. Ordinance No. ___ establishes a local gasoline tax of two (2) cents per gallon. (Details on the operation of these revenues are below in Sectiona 10, 11, and 12, respectively.) The ordinances dedicate all revenues from these sources to street surface maintenance and repair and those activities necessary to carry out the program, such as condition assessment and inspection.

4. Program Goals

A. *PCI Index Goals*

Pavement Condition Index, or PCI, is a measure of the status of street surface, ranging from 0 to 100. A newly constructed street would have a PCI of 100 and failed street would have a PCI of 25 or less. The "Good" range is from 70 to 100. An ideal (the most

cost-effective) maintenance program is possible with a network average in the low 80's. The goal of the City of Milwaukie Street Surface Maintenance Program is to bring all major streets to a point where the cost-efficiencies of good preventive maintenance are enjoyed, approximately 75 or above, and maintain them at that level. Progress towards this goal will be assessed in the annual program report.

B. Deferred Maintenance Goals

The goal of the SSMP is to reduce the deferred maintenance backlog and, ultimately, to eliminate it. This requires both reconstruction projects and rehabilitation projects (overlays). Eliminating deferred maintenance on larger streets will be prioritized. Reconstructions on local streets would be addressed only after all Preventive Maintenance needs have been addressed and after larger streets are brought up to the "good" range.

C. Maintenance Goals

The SSMP's maintenance goal is to prevent any street from deteriorating to the point of requiring reconstruction. (Many Milwaukie streets that require reconstruction were not constructed with adequate bases). This requires an aggressive program of crack sealing and rehabilitation as required. These activities will be prioritized over reconstructions of already failed streets.

D. Stopgap Goals

"Stopgap" refers to emergency repairs to keep streets in a serviceable condition (e.g., pothole patching). These are temporary and do not extend the pavement life. Current Street Fund revenues are adequate to perform needed stopgap repairs. The SSMP stopgap goal is to continue to adequately fund and repair trouble spots throughout the City, with the expectation that this need will diminish as the network is improved.

E. Program Cost Goals

The overall revenue goal is \$1.2 million per year for the first ten years, or \$12 million total (2006 dollars). The annual cost of maintaining only major streets thereafter could be achieved at roughly half that budget. A continuation of the higher level of funding would allow the City to address local streets as well. The program progress report will allow Council to reassess the level of revenue and activity annually.

5. Responsibilities

By ordinance, the following responsibilities are established within the city government:

The Engineering Director and the Streets Supervisor are jointly responsible for annually developing and updating a cost-effective 5-year SSMP project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects. The Engineering Director is responsible for sharing the CIP with non-city utilities and coordinating all City capital projects with the various private utilities to the extent possible.

The Engineering Director is responsible for the contracting of services to complete projects funded by the Program.

The Engineering Director is responsible for assigning non-residential utility customers to Trip Generation Categories, using his or her best professional judgment and the criteria provided for in the ordinance, and for ruling on requests for category adjustments. (See Sections 10 B and 10 C for more detail.)

The Engineering Director is responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City utility compliance with street cut repair policy

The Community Development and Public Works Director is required to provide an annual report on the Street Surface Maintenance Program to City Council and the public each spring. See Section 7 for the elements of that report.

The Finance Director is responsible for billing, collection, and dedicated allocation of Street Surface Maintenance Program revenues.

6. Project Selection

As part of the annual Capital Improvement Plan development process, the Public Works and Engineering departments update the SSMP project schedule for the coming five years. In addition, a more detailed schedule of crack sealing and similar preventive maintenance projects for the up-coming summer is developed. The project list development begins with the recommended maintenance program produced by a Pavement Management System (PMS) software application. The Engineering Director and Street Operations Supervisor select a package of treatments that best match the

recommendations generated by the PMS software with local knowledge of street condition, the cost benefits of grouping multiple projects (both coordinating with other utility projects and tackling adjacent streets where possible to minimize mobilization costs), and other project needs (for instance, recently built new projects that require overlays to match grades).

In allocating resources among projects, staff prioritizes projects with the greatest return (i.e., street life extension versus cost). Remaining funds are dedicated to reconstruction projects on significant routes. These routes are prioritized according to their functional classification within the City Transportation System Plan, with adjustments made by the project selection team based on school routes, freight routes, emergency routes, safety considerations, traffic patterns, and cost-effective contracting practices.

Table 1 (below) provides a model for the first two 5-year SSMP project schedules. Staff anticipates refining and adjusting this plan based on continued research on best practices, unpredictable weather events, and shifting patterns of traffic.

By tracking and recording completed repair and maintenance projects in the PMS database, the Engineering Department maintains the quality of the data used to inform the project selection process. In addition, the entire database is updated every 3 to 5 years with the results of a complete visual inspection of the street network condition. Finally, on an occasional basis (every 10 – 15 years) the City contracts for “deflection” testing to assess the sub-surface condition of streets.

Table 1. Model SSMP Project Schedule, Years 1 - 5.

<u>Year</u>	<u>Activity</u>	<u>2006 PCI</u>	<u>Activity Type</u>	<u>Cost Estimate</u>
Year 1	Billing & Program Setup		SSMP Program Expense	\$25,000
	Pavement Assessment (Deflection)		SSMP Program Expense	\$80,000
	Oak Street (224 to Monroe)	55	Overlay/Rehab	\$85,802
	37th Ave. (Lake to Wister)	53	Overlay/Rehab	\$72,162
	Washington St (McLoughlin to Oak)	69	Overlay/Rehab	\$181,098
	42nd (Harvey to JCB)	55	Overlay/Rehab	\$137,283
	Logus (Stanley to 51st)	60	Overlay/Rehab	\$55,019
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
			<i>Total</i>	<i>\$761,364</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$800,000</i>
		<i>Balance</i>	<i>\$38,636</i>	
Year 2	King Road (43rd to Hollywood)	40	Reconstruct	\$770,816
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
			<i>Total</i>	<i>\$895,816</i>
		<i>Revenue Est (+ prev bal)</i>	<i>\$1,038,636</i>	
		<i>Balance</i>	<i>\$142,820</i>	
Year 3	Linwood Ave. (Railroad to Monroe)	79	Overlay/Rehab	\$334,423
	Lake Road (Shell Ln to Kuehn)	53	Overlay/Rehab	\$311,491
	Roswell (32nd to 42nd)	52	Reconstruct	\$252,165
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
			<i>Total</i>	<i>\$1,048,079</i>
		<i>Revenue Est (+ prev bal)</i>	<i>\$1,142,820</i>	
		<i>Balance</i>	<i>\$94,740</i>	
Year 4	Washington Street (37th to 40th)	66	Overlay/Rehab	\$27,878
	27th (Lake to Washington)	72	Overlay/Rehab	\$103,545
	Harrison Phase 1 (McLoughlin to 42nd)	44	Reconstruct	\$740,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
			<i>Total</i>	<i>\$1,021,423</i>
		<i>Revenue Est (+ prev bal)</i>	<i>\$1,094,740</i>	
		<i>Balance</i>	<i>\$73,318</i>	
Year 5	Pavement Assessment (Visual)		SSMP Program Expense	\$20,000
	Harrison Phase 2 (McLoughlin to 42nd)	44	Reconstruct	\$200,000
	Railroad Ave Phase 1 (Harrison to Harmony)	44	Reconstruct	\$531,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
			<i>Total</i>	<i>\$926,000</i>
		<i>Revenue Est (+ prev bal)</i>	<i>\$1,073,318</i>	
		<i>Balance</i>	<i>\$147,318</i>	

Table 1 Continued. Years 6 -10

<u>Year</u>	<u>Activity</u>	<u>2006 PCI</u>	<u>Activity Type</u>	<u>Cost Estimate</u>
Year 6	43rd (King to Howe) and Howe (to 42 nd)	73	Overlay/Rehab	\$121,074
	River Road (McLoughlin to Lark)	76	Overlay/Rehab	\$95,129
	Railroad Ave Phase 2 (Harrison to Harmony)	44	Reconstruct	\$150,000
	Monroe Street Phase 1 (224 to City limit)	41	Reconstruct	\$431,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
			<i>Total</i>	<i>\$972,203</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,147,318</i>
			<i>Balance</i>	<i>\$175,115</i>
Year 7	International Way (37th to Harmony)	70	Overlay/Rehab	\$373,000
	Monroe Street Phase 2 (224 to City limit)	41	Reconstruct	\$300,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$873,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,175,115</i>
			<i>Balance</i>	<i>\$302,115</i>
Year 8	Harvey Street (32nd Ave past 42nd Ave)	26	Reconstruct	\$303,000
	Home and Wood Avenues	48	Reconstruct	\$688,351
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$1,191,351</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,302,115</i>
			<i>Balance</i>	<i>\$110,764</i>
Year 9	Pavement Assessment (Visual)		SSMP Program Expense	\$30,000
	McBrod Avenue (17th to Ochoco)	27	Reconstruct	\$370,000
	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$1,025,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,110,764</i>
			<i>Balance</i>	<i>\$85,764</i>
Year 10	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Mailwell Avenue (Main St. to Commerce Park)	28	Reconstruct	\$190,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$815,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,085,764</i>
			<i>Balance</i>	<i>\$270,764</i>

Cost estimates include 4.2% inflation in construction costs per year. All reconstruction and rehabilitation costs include a 25% contingency and a 2% inspection cost.

7. Annual Reporting

The Public Works and Community Development Director provides an annual report to City Council. The report includes a narrative description of the overall condition of the street network, findings from new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria, and a report on the previous years projects, projects underway, and the overall program's progress. The Public Works and Community Development Director is required to update Council on the feasibility of the program given trends in revenues and costs.

A summary of the report to Council will be distributed to the community through the website, the Pilot, and Neighborhood Associations.

8. Project Implementation

"In-house" preventive maintenance by City of Milwaukie street crews addresses scattered, relatively small-scale crack sealing needs. Larger projects, such as a street seal or reconstruction project, are contracted through a competitive bid process, as per City and State rules and regulations. Contract work is overseen and managed by Engineering and Streets department staff. Project inspection, including inspection of asphalt mixes, is carried out by City staff or independent, third party contractors. City staff provide contracting guidelines to ensure that requirements are clear, procedures for documenting and correcting unacceptable work are in place, and all performance requirements are reflected in contracts. Forthcoming City of Milwaukie Public Works Standards include a written policy specifying asphalt composition, proportions of mixtures, and required compaction. Adequate funds for contingency, engineering, and inspection are included in the cost estimates used to develop the five-year project schedule.

In order to extend the life of overlay and street reconstruction projects, the City is updating policies on utility cuts and other cuts in the right-of-way. The SSMP ordinance directs the Engineering Director to establish and enforce a moratorium of five years on utility capital projects beneath streets that have been rehabilitated, reconstructed, or newly built. The ordinance also makes clear that the Engineering Director is responsible for sharing the City's Capital Improvement Plan with private utilities on an annual basis. The following practices are under review, to be presented to Council in 2007 with the Public Works Standards and/or the fee schedule update:

- Utility cut permit applicants currently provide a deposit to guarantee patch quality for one year. The City will establish a policy making clear at what point such a deposit will be forfeit and used by the City to repair faulty patches. The amount and duration of the deposit will be reviewed and corrected as part of

the annual fee schedule update. A sliding fee based on cut size will be considered.

- The new Public Works Standards will include a higher standard of repair for any patch made to City streets in the moratorium period.

9. Dedication of Funds

As per the implementing ordinances, all new revenues are dedicated exclusively to street surface maintenance and repair. All new Program revenues will be accounted for in a new fund dedicated exclusively to street surface maintenance. PGE makes its franchise fee payments to the City on an annual (calendar year) basis, the first payment is due by April 2008 and will only include one-half of a year of revenue.

The ordinance requires a reduction of local SSMP fees and/or taxes to balance any new revenue streams dedicated to street maintenance created at the state, county, regional or any other governmental level.

Dedicated street surface maintenance and repair funds are available to pay for contracted services to maintain or improve street surface condition (such as street maintenance, rehabilitation and repair activities, including seal, overlay and reconstruction projects); services in support of that mission (including inspection of contracted work and utility cuts; regular street condition inspections; and training and other services necessary to make the most efficient use of available funds); and additional costs involved in setting up revenue mechanisms such as additional programming necessary to include the street maintenance fee on the City utility bill.

10. Street Maintenance Fee

A. Residential Street Maintenance Fee

By Ordinance No. _____, the street maintenance fee is fixed for single family residences (\$3.35 per month) and multi-family apartments (\$2.10 per month per dwelling unit).

Table 2. Residential Street Maintenance Fee Categories

<i>Category</i>	<i>Typical customer</i>	<i>Unit</i>	<i>Trips Per Unit</i>	<i>Monthly Bill Per Unit</i>
Single Family Residential	Detached house	dwelling units	9.57	\$3.35
Multi-Family Residential	Apartment or condo	dwelling units	6.00	\$2.10
Elderly Housing	Retirement community	dwelling units	4.00	\$1.40
Congregate Care	Long term care facility	dwelling units	2.00	\$0.70

B. Non-Residential Street Maintenance Fee

By Ordinance No. _____, the non-residential street maintenance fee is calculated based on the number of square feet of building area (or alternative unit, such as gas pumps, or members) and a charge per thousand square feet. Each non-residential customer is assigned a category based on the type of business or organization. The fee is based on building size and the number of trips that such an operation typically generates, based on the widely used figures reported in the most recent edition of the International Traffic Engineers (ITE) manual Trip Generation. See Table 3 below.

The monthly non-residential fee is capped at \$250 per property, adjusted annually for inflation.

Table 3. Non-Residential Street Maintenance Fee Categories

Category	Typical customer	Unit	Trips Per Unit	Monthly Bill Per Unit
1	Elem/Middle School; Lodge	students	0.75	\$0.26
		members	0.75	\$0.26
2	Heavy Industrial; High School	k sq feet	2.00	\$0.70
		students	2.00	\$0.70
3	Manufacturing; Warehouse; Religious Institution	k sq feet	4.00	\$1.40
4	Light Industrial; Office	k sq feet	8.00	\$2.80
5	Hospital; Business Park; Auto Care	k sq feet	16.00	\$5.60
6	Recreation Facility; Special Retail; Supermarket	k sq feet	32.00	\$11.20
7	Govt Office; Restaurant; Gas Station	k sq feet	64.00	\$22.40
8	Fast Food; Convenience Store; Bank	k sq feet	128.00	\$44.80
9	Multipurpose recreational facility	acres	200.00	\$70.00
10	Movie theater	screens	400.00	\$140.00

k sq feet: thousand of square feet of building area

C. Street Maintenance Fee Review Process

After a preliminary trip category assignment is made using the ITE standards, a letter is mailed to the utility customer notifying them of the category assigned. Customers are notified that if they believe their categorization overstates actual trip generation, they can request a review of their account. The Engineering Director will conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Department leads the fee review process, with assistance from Planning and Community Development. The Engineering Director makes the final determination based on the evidence provided.

Any customer that is not satisfied with the fee review outcome may appeal the categorization to Council, as provided for in the ordinance.

D. Street Maintenance Fee Billing

The Finance Department is responsible for including the street maintenance fee within the City utility billing system. It is included as a line item on each City utility bill, calculated based on building square feet and a per square foot charge (based on the category structure described above) or fixed according to the residential user rates. The fee goes into effect July 2007.

E. Low Income Exemption

The SSMP includes a complete exemption from the street maintenance fee for those households qualifying for the previously established "Low Income Utility Program".

11. PGE Privilege Tax

By Ordinance No. ____, PGE begins collecting the additional 1.5% Privilege Tax in July 2007. To allow local businesses an adequate planning horizon, advance notice is to be provided upon adoption of the ordinance. Privilege Tax revenues are included in PGE's annual franchise fee payment to the City, due prior to April 1 of the calendar year following collection.

12. Local Gas Tax

City ordinance No. ____ establishes a \$.02 per gallon tax on gasoline sold within the City. The Oregon Department of Transportation Fuels Tax Group collects the tax from local dealers on behalf of the City of Milwaukie. ODOT collects the additional tax from distributors making bulk deliveries of fuel to service stations and other wholesale customers of motor vehicle fuel in the City. Payments are made to the City on a quarterly basis with a reduction for ODOT administrative costs.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CREATING AND IMPOSING A TAX ON MOTOR VEHICLE FUEL DEALERS; PROVIDING FOR ENFORCEMENT, ADMINISTRATION AND COLLECTION OF THE TAX; AND AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.40.

WHEREAS, Milwaukie is an Oregon home-rule municipal corporation having the authority and power under the terms of its Charter to exercise all the powers and authority that the constitution, statutes and common law of the United States and Oregon expressly or impliedly grant or allow as though each such powers were specifically enumerated therein; and

WHEREAS, the City’s authority and power includes the authority to impose a tax on the sale of motor vehicle fuel sold within the City; and

WHEREAS, the City has prepared a Street Maintenance Program, attached as Exhibit A; and

WHEREAS, the City Council wishes to exercise that power and to limit the use of any revenues generated by the tax to purposes associated with the administration, construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the city;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Municipal Code is amended by adding a new Chapter 3.40 to read as shown in the attached Exhibit A.

Section 2: This ordinance shall be effective 30 days after passage. The taxation imposed by Section 1 shall commence July 1, 2007.

Read the first time on December 19, 2006, and moved to second reading by 4 - 1 vote of the City Council.

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

Attachment 3

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney

EXHIBIT A



STREET SURFACE MAINTENANCE PROGRAM



December 2006

Authorized per City Council Resolution No. 35-2006
and Ordinances No. _____ & _____

Chapter 3.40 MOTOR VEHICLE FUEL TAX ORDINANCE

- 3.40.010 Short Title**
- 3.40.020 Definitions**
- 3.40.030 Tax Imposed**
- 3.40.040 Amount and Payment**
- 3.40.050 Permit Requirements**
- 3.40.060 Permit Applications and Issuance**
- 3.40.070 Failure to Secure Permit**
- 3.40.080 Revocation of Permit**
- 3.40.090 Cancellation of Permit**
- 3.40.100 Remedies Cumulative**
- 3.40.110 Payment of Tax and Delinquency**
- 3.40.120 Monthly Statement of Dealer and Fuel Handler**
- 3.40.130 Failure to File Monthly Statement**
- 3.40.140 Billing Purchasers**
- 3.40.150 Failure to Provide Invoice or Delivery Tag**
- 3.40.160 Transporting Motor Vehicle Fuel in Bulk**
- 3.40.170 Exemption of Export Fuel**
- 3.40.180 Sales to Armed Forces Exempted**
- 3.40.190 Fuel in Vehicle Coming into City Not Taxed**
- 3.40.200 Refunds**
- 3.40.210 Examination and Investigations**
- 3.40.220 Limitation on Credit for Refund or Overpayment and on Assessment of Additional Tax**
- 3.40.230 Examining Books and Accounts of Carrier of Motor Vehicle Fuel**
- 3.40.240 Records to be Kept by Dealers and Fuel Handlers**
- 3.40.250 Records to be Kept Three Years**
- 3.40.260 Use of Tax Revenues**
- 3.40.270 Administration**
- 3.40.280 Severability**

3.40.010 Short Title

This chapter shall be known as the "Motor Vehicle Fuel Tax Ordinance."

3.40.020 Definitions

As used in this chapter, unless the context requires otherwise:

(A) "City" means City of Milwaukie and any person, agency or other entity authorized by the City to act as its agent related to administration of the Motor Vehicle Fuel Tax Ordinance or collection of the Motor vehicle fuel tax.

(B) "Dealer" means any person who:(1) Supplies or imports motor vehicle fuel for sale, use or distribution in, and after the same reaches the City,

but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City; or (2) Produces, refines, manufactures or compounds motor vehicle fuels in the City for use, distribution or sale in the City; or(3) Acquires in the City for sale, use or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

(C) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

(D) "Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(E) "Motor Vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

(F) "Motor Vehicle Fuel" Includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

(G) "Person" includes every natural person, association, firm, partnership, or corporation.

(H) "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

3.40.030 Tax Imposed

A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Milwaukie. The City of Milwaukie motor vehicle fuel tax imposed shall be paid monthly to the City.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(B) A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City, upon the sale, use or distribution of the motor vehicle fuel.

3.40.040 Amount and Payment

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the City, in the sale, use or distribution of motor vehicle fuel, shall:(1) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the City as well as all such fuel sold, used or distributed in the City by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.(2) Pay a motor vehicle fuel tax computed on the basis of two (2.0) cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 3.40.200, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.40.050 Permit Requirements

No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

3.40.060 Permit Applications and Issuance

(A) Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing:(1) The business name under which the dealer or fuel-handler is transacting business. (2) The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon. (3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

(D) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.

(E) The City Recorder's Office shall keep on file a copy of all applications and/or permits.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

3.40.070 Failure to Secure Permit

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(B) The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Manager or the City's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.

(C) Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, shall be assessed a penalty of \$250.00 unless modified by Section 3.40.270(a), determined by the City Manager or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the City in the amount of the penalty therein stated.

(D) Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.40.110 with reference to delinquency in payment of the tax or by Court action.

3.40.080 Revocation of Permit

The City shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this Ordinance. The City shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

3.40.090 Cancellation of Permit

(A) The City may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

3.40.100 Remedies Cumulative

Except as otherwise provided in Sections 3.40.110 and 3.40.130, the remedies provided in Sections 3.40.070, 3.40.080, and 3.04.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

3.40.110 Payment of Tax and Delinquency

(A) The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer or fuel-handler therefor.

(B) Except as provided in subsection (D) of this section, to any motor vehicle fuel tax not paid as required by subsection (A) of this section, there shall be added a penalty of one percent (1.0%) of such motor vehicle fuel tax.

(C) Except as provided in subsection (D) of this section, if the tax and penalty required by subsection (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this section.

(D) If the City, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (B) and (C) of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.40.070 has been assessed and paid.

(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(F) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City, as required herein.

3.40.120 Monthly Statement of Dealer and Fuel-Handler

Unless modified by Section 3.40.270(b), every dealer and fuel-handler in motor vehicle fuel shall render to the City, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

3.40.130 Failure to File Monthly Statement

If any dealer or fuel-handler fails to file the report required by Section 3.40.120, the City, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The City, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of \$50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City is prima facie evidence of the facts as shown.

3.40.140 Billing Purchasers

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

3.40.150 Failure to Provide Invoice or Delivery Tag

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

3.40.160 Transporting Motor Vehicle Fuel in Bulk

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the City with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.40.170 Exemption of Export Fuel

(A) The license tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on motor vehicle fuel:(1) Exported from the City by a dealer; or (2) Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.

(B) In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the City an export certificate in such form as shall be prescribed, prepared and furnished by the City, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City may, in a case where it believes no useful purpose would-be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the City and the dealer from whom the motor vehicle fuel was originally purchased of his act.

(E) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.

(F) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.40.180 Sales to Armed Forces Exempted

The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the City; but every dealer shall be required to report such sales to the City, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.40.190 Fuel in Vehicles Coming Into City Not Taxed

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3.40.030 and 3.40.040, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

3.40.200 Refunds

Refunds will be made pursuant to ORS. 319.280 to 319.320.

3.40.210 Examination and Investigations

The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City may make such changes in subsequent reports and payments of such dealers or other persons,

or may make such refunds, as maybe necessary to correct the errors by its examinations or investigations.

3.40.220 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax

(A) Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

(B) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

3.40.230 Examining Books and Accounts of Carrier Motor Vehicle Fuel

The City or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this ordinance.

3.40.240 Records to be Kept by Dealers and Fuel Handlers

Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City or its authorized officers or agents.

3.40.250 Records to be Kept Three Years

Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or its duly authorized agents for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

3.40.260 Use of Tax Revenues

(A) The City Manager shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, and maintenance of public highways, roads and streets within the City of Milwaukee.

(D) The net revenue shall be used for the street surface maintenance program established under Chapter 3.25.

3.40.270 Administration

The City Manager or his designate is responsible for administering this ordinance. In addition, the City Manager may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply: (a) The fuel handler's penalty of Section 3.40.070(C) shall be reduced to \$100.00. And if the Division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.40.070 and this section may be waived. (b) The fuel handler's monthly reporting requirements of Section 3.40.120 and 3.40.130 shall be waived.

3.40.280 Severability

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler, Chief of Police

Subject: Authorization to Purchase Emergency Operations Center (EOC)
Equipment

Date: December 11, 2006

Action Requested

Adopt a resolution authorizing the City Manager to purchase audio and video equipment to complete the upgrade of the City's Emergency Operations Center (EOC) in the amount of \$44,920.07 from CompView.

Background

Funds were approved during the FY 06-07 budget to complete upgrades and automate the City of Milwaukie's Emergency Operations Center in the amount of \$67,072. Staff contacted potential vendors and requested proposals to complete the previous year's initial upgrades. CompView was the only bidder for the project.

CompView provides government infrastructure for education providers and is a preferred vendor through the statewide organization: Oregon Educational Technology Consortium. CompView's proposal is limited to technology equipment and does not include electrical upgrades that will be identified through electrical subcontractor proposals. Electrical upgrades are estimated to be within budget approved funding.

CompView's bid for labor, materials, and training is \$44,920.07, which is consistent with the budget estimate for this project. CompView was the only vendor bidding this project.

Completing the EOC upgrade will serve to capture emergency operations response costs, depict real-time situation and deployment strategies, and record City response cost allowing the City to apply for FEMA reimbursement funding in a timely manner by providing an accurate cost accounting history of the resources expended during the event.

Concurrence

Police Department
IST Staff
Facilities Staff

Fiscal Impact

Budget year 06-07 authorized funding for this project

Work Load Impacts

- Vendor provided labor
- Estimated two-hour staff training to operate the equipment

Alternatives

None – CompView was only vendor who bid the project.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, .

WHEREAS, the City recognizes the need for specialty equipment for emergency service providers like police and fire; and

WHEREAS, vendors of specialty equipment are limited and the specifications and application are mission and task specific; and

WHEREAS, the application, and serviceability of specialty equipment is critical to the mission of public safety, and the order to delivery time is lengthy, and that the possibility of an emergency exits and therefore that this resolution become effective upon approval;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to purchase audio and video emergency operation equipment from CompView in the amount of \$44,920.07 as approved in the FY 2006-07 Police Department budget.

Introduced and adopted by the City Council on December 19, 2006.

This resolution is effective on December 19, 2006.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised)

MINUTES OF THE METRO COUNCIL WORK SESSION MEETING

Tuesday, November 21, 2006
Milwaukie City Hall Work Session Room

Councilors Present: David Bragdon (Council President), Carl Hosticka, Robert Liberty, Rex Burkholder, Brian Newman

Councilors Absent: Susan McLain (excused), Rod Park (excused)

Milwaukie Councilors Present: James Bernard (Mayor), Susan Stone, Carlotta Collette, Joe Loomis, Deborah Barnes

Milwaukie Councilors Absent:

Milwaukie Mayor James Bernard convened the Joint Work Session Meeting at 5:30 p.m.

1. THE MILWAUKIE TOWN CENTER PROJECT DEVELOPMENT GOALS AND PROJECT CRITERIA DISCUSSION

Mike Swanson, Milwaukie City Manager, welcomed the Metro Council and staff. He acknowledged the partnership of the City and Metro over the years. He wanted to review the progress of the Milwaukie Town Center project, to affirm direction, and to answer the electeds' questions. He talked about the history of the site. The plan was adopted in 2000. He appreciated the community involvement. The goal was to reconnect the City of Milwaukie to the Willamette River. He talked about the creativity in engineering and financing that he had experienced, and the decades-long process of accessing and designing the riverfront. He described the process for selecting the consultant. He distributed a handout about the Christmas ships (a copy is included in the meeting record). A major goal was to treat the river as a distinct presence in the area. He spoke about the history of the North Main project and the contributions of Metro staff. During the final stages of North Main, the family operating the Texaco station had their lease run out, and they approached the City. This gave them a full city block, to become the next project and continue the momentum of North Main. The City had also purchased a site on the other end of town. That was an exciting opportunity for a future project. He acknowledged the challenges, such as infrastructure. They were trying to retain Milwaukie's small-town character while providing new options.

Andy Cotugno, Metro Planning Director, concurred with Mr. Swanson about the cordial working relationship. He spoke about the process of transforming the vision into a real project. We were now seeing the proof of the pudding on the ground. There was an emphasis on keeping to the 2040 vision. He viewed this successful process as an opportunity for the City's electeds to share their experiences and their view of Metro as a good working partner. He felt such projects were an opportunity to encourage Oregon Department of Transportation (ODOT) staff to respect the other traffic in the area, not just to move cars through the neighborhoods. He said that this project was Metro's first transit project that didn't revolve around a light-rail station. Milwaukie was leading the market in that area. He felt the City and Metro shared similar visions, that there was a market for such projects. It was a risk that he felt would pay off. We were trying to provide a model that the private market would see was successful and would want to copy.

Phil Whitmore, Metro Planning Manager, acknowledged the challenges and dead-ends that they had had to work around. He said they had started with a good experience with North Main; it was

Metro's first loan project. The problem with the Texaco site was that, since it was such a desirable project, it took up all the Transit-Oriented Development (TOD) budget. The seller was very supportive and worked with the agency to find terms so that he could see the site turned into something that would benefit the area. On the environmental side, there had been a leak at the site, the tanks had been replaced, and the site had been vented, but it was still a significant cleanup. DEQ had issued a letter of no further action, which was a partial sign-off on future use. He talked about the negotiations involved in making the site acceptable for the project. The plan would drive further mitigation. He talked about the attractiveness of the site for the project, the location which linked North Main to existing downtown Milwaukie. It was an opportunity to create an upper-end development, with river views, that would make the whole area more attractive to private projects.

Mayor Bernard commented that the goals were not to totally change the community. He felt it might be better to say that the projects were providing an opportunity for downtown development. The focus was on the downtown core, not to change the entire community. Councilor Newman clarified that the change that was desired was to change the financial dynamics, not the character of the community.

Kenny Asher, community development public works director for the City of Milwaukie, said 50% of the time was spent chasing money. He acknowledged the work that had been done in laying in some infrastructure that had made his job much easier. He talked about putting the advisory committee together. He thanked the Metro Council for their incredible support, starting with acquisition of the site. He recognized that Metro had put a lot of eggs in one basket in this project and appreciated the support in terms of staff, policy, financial, and site preparation. Staff had been creative and supportive. He reviewed the work done since site acquisition, including the intergovernmental agreement (IGA), financial and community negotiations. The City had made some zoning changes in order to maximize the benefit of the site. There had been some concern in the community about changing the size of the project, but they were working through those issues. He acknowledged the work of the various staff and consultants. He talked about the meetings that had taken place, including concerned citizens. The farmers' market had been a flashpoint. People were also concerned about the IGA, the parking, traffic, environmental issues, and they realized they could have done a better job of communicating to the citizens. There had always been strong commitment from the City to the farmers' market, but that did not come across. There was an opportunity to find an even better site for the market. He talked about the education process in talking to the committee members and citizens. All of this information would be reflected in the formation of the request for proposals (RFP).

Councilor Newman observed that there were also residents of neighboring communities who had been involved, people from farther away who viewed downtown Milwaukie as their downtown. Mr. Asher concurred, recognizing the impact that this area had for people who lived to the south and east. The RFP should be released by the end of the year. He talked about the upcoming process. He saw construction happening in spring 2008. Mayor Bernard thanked Councilor Newman for his efforts in getting Milwaukie on the radar. Councilor Newman in turn thanked the Metro staff who had encouraged him to be creative in finding support for the project. Mayor Bernard empathized with the difficulties presented in getting funding. He hoped there would be future opportunities to collaborate.

Councilor Burkholder talked about the difficulties in getting a successful project built, in the face of resistance to change. He talked about some of the issues involved in creating successful mixed-use developments. He hoped the current project could be used as a laboratory, to learn what

worked and what didn't, and how private investment could best be leveraged and motivated. People were also resistant to accepting more density in order to attract choice investments. He saw this as an educational opportunity. He felt there was a challenge in having some examples in place for people to accept the concept.

Councilor Newman commented that he had recognized a regional pattern of investment—a lot occurred downtown and on the edge, but there was a gap in between, with older malls and infrastructure that were showing signs of age. It did not attract the type of investments most residents wanted. He felt the values that were incorporated into the current projects were very important—community and a thriving economy, and to help the City gain revenue to provide the services people needed. The buildings were not as important as the people they served.

Councilor Collette thought that people did adapt to having a larger project; their sense of scale changed. It took a while for people to accept a construction site; as it turned into a community it would be more accepted. She agreed about the difficulty of changing things too much or too rapidly. Community participation and gradual change were important, as was design. It was a new thing for people here to be living downtown. Councilor Newman shared that one of the residents of the North Main had applied for a position on the riverfront board. That was a great example of how people could become engaged.

Mayor Bernard was impressed at how private investment could be motivated to contribute to public projects. He recognized the reduction in car traffic that could occur with mixed-use. Councilor Collette felt this could be a catalyst for attracting diverse investment. Councilor Loomis said people in the community were very concerned about the impacts of parking, once the projects were in place. The height of the building was of concern to him also. The river views would have to get higher and higher as they stacked back away from the river. He felt the process with staff had been very open and honest. He appreciated Metro's cooperation. He said the farmers' market community came from all over town. Similar activities took place on a daily basis, not just 25 Saturdays. He wanted to be sensitive to the need to keep youth involved, so they would be attracted to stay here. He didn't want people to be priced out of the area.

Councilor Stone was anxious to see what the parking impacts would be once North Main opened. She wondered about underground parking and would like to see more information on that. Councilor Newman said the RFP would be a chance to ask a lot of those sorts of questions. Councilor Stone agreed that the community did not want to see more congestion or density. She would like to see more investment in downtown to attract shoppers.

Mayor Bernard said there was no choice about density. The people were going to be coming here. The choice was to take control of the process and put the growth where we wanted it. His main concern was lack of funds. He was open to being creative and innovative in making this happen.

There being no further business to come before the City of Milwaukie and Metro Councils, Mayor Bernard adjourned the meeting at 6:39 p.m.

Prepared by, ,



Dove Hotz

Council Operations Assistant

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
NOVEMBER 21, 2006**

Item	Topic	Doc Date	Document Description	Doc. Number
1	Town Center	11/21/06	To: Metro Council From: Mayor James Bernard Re: Riverplace Marina to Milwaukie	112106c-01

CUAB MEETING MINUTES
Wednesday, November 8, 2006
Johnson Creek Facility Conference Room
6101 SE Johnson Creek Blvd.

Members Present

Bob Hatz, Chair
Charles Bird, Vice Chair
Betty Chandler
Ed Miller

Staff Present

Paul Shirey, Engineering Director
Mike Clark, Operations Supervisor—Streets/Water
Alex Campbell, Resource and Economic Development Specialist

I. CALL TO ORDER

Chair Hatz called the meeting to order at 6:00 p.m.

II. INTRODUCTIONS—None.

III. CONSENT AGENDA—None.

IV. REPORTS

A. Street Maintenance Program overview

Alex Campbell brought the Board up to speed on the status of the project, noting that Council had given a go-ahead at the July meeting to bring back a funding proposal by the end of December. Three proposed funding sources include a PGE privilege tax, a street utility fee, and a 2-cent gas tax.

Board comments/concerns include:

1. The Board concurs that the PGE tax is very equitable and will free up nearly one-third of the projected annual revenue needed to implement the 10-year project.
2. The utility fee, on the other hand, must include a provision to provide supplemental information supporting a different trip generation figure than the ITE manual.
3. All businesses in the city should be sent an advance notice of their fee before implementing the program.
4. Households who do not own vehicles should not be charged a utility or at least receive a discount.

5. Consider siphoning some street franchise fees to the street maintenance program.
6. Consider a weight factor for businesses that utilize large trucks.
7. Is there a way to “test” the effects of a gas tax to see whether it would put stations out of business?
8. Is there some kind of backup plan if this proposal is not approved?
9. Recommend that, if proposal is defeated, the City not apply for any matching grants. Rather the match funds should be spent on maintenance, not capital.
10. Important to be clear about what would not happen if proposal is defeated and that city could not hope to “stay even” with current road condition—which is not good and continues to decline.

V. DISCUSSION

Shirey briefed the Board on the status of the Clackamas County wastewater study process, noting that the Board of County Commissioners is expected to make some decisions in this regard in the next 60 days.

VI. MATTERS FROM THE BOARD

The Board thanked Paul Shirey for his years of service as Engineering Director to both the City and the Board itself. Shirey was commended for his many accomplishments with the Engineering Department, including stepping up CIP activity and getting projects designed and built, Johnson Creek Blvd. and McLoughlin Blvd. projects, rate studies and utility rate adjustments, the SDC update project, and the road funding proposal. The Board extended their unanimous appreciation and thanks to Shirey.

VII. OTHER—None.

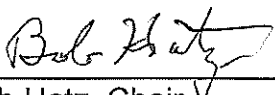
VIII. INFORMATION SHARING—None.

IX. FUTURE MEETING DATE/AGENDA ITEMS

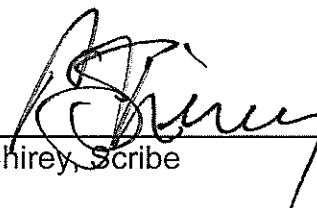
Wednesday, December 6, 2006: Street Maintenance Program—final update

X. ADJOURN

The meeting adjourned at 7:45 pm.



Bob Hatz, Chair



Paul Shirey, Scribe

Riverfront Board Meeting
November 11, 2006
Minutes

Members Present: Wall, Green, Martin, Stacey, St Clair, Klein

Staff: Herrigel

Guests: Gill Williams, Kelly Rodgers (DEA), Andy Jantsky (DEA subcontractor), Councilor Susan Stone, Councilor Joe Loomis, Michelle Bussard, Johnson Creek Watershed Council

Minutes: St. Clair motioned to approve the October 11 meeting minutes. Martin seconded and the motion passed 6-0.

Staff Updates

- Herrigel reported that she'd met with Paul Simonis, captain of the Sternwheeler Rose regarding relocating the sternwheeler to Milwaukie and potentially renting space at the Cash Spot location. She said she'd keep the group posted on further discussions.
- MTIP listening posts continued through Thursday. All were encouraged to either attend or write letters of support.
- Solstice will be December 15th - ships leave River Place at 7 pm
- The Citizen Advisory Group for the Milwaukie Town Center Project (old Texaco lot) will discuss the draft RFP for the project Wednesday Nov 15.

Riverfront Design Discussion

Williams reported that the DEA team had held an internal meeting to develop ideas for the Riverfront concept. He said he wanted to find out from the Riverfront board tonight whether the concept was missing anything. He shared two alternative concepts with the group that still contained the basic "program elements" but shifted them around the site a bit. He further noted:

- This is a small piece of property to fit in a lot of elements
- This needs to be designed with the idea in mind that this will 'be somebody's front window'
- McLoughlin currently separates the Downtown from the Riverfront (creates a seam)
- Tried to create something which would draw people across McLoughlin Blvd
- Tried to enlarge the plaza at Monroe to make McLoughlin secondary
- May consider bollards around parking lot to block parking during off-season
- May be able to move entrance to treatment plant and make sole access to ramp at Washington
- Upstream dock may be preferable
- Sharing boat ramp access with dock access may make ADA access easier

Williams showed the group a concept which shifted the boat ramp to the south so that the boat/car activity was concentrated on the south side of the site, the amphitheater was to the north and pedestrian/bike traffic would not have to mix too much with car traffic.

Stacey: This concept (southern ramp location) takes the focus off the boat ramp, which I like

Wall: If we move the amphitheatre north – are we intruding on the natural area?

Green: How many people accommodated by the amphitheatre shown here? (Gill: 200 with spillover)

Williams: this concept attempts to make use of the existing conditions – like on the topography of the site

Green: Separating auto/boat traffic from human activity is great.

Jantsky: when placing the ramp – one gets a different answer when thinking about users versus habitat or current. All these things must be factored into the site location ultimately.

Wall: I think it's neat getting the ramp out of the middle of the site (St Clair and Stacey concur)

St Clair: How do we find out if it's possible? (Gill It is possible!)

Green: I like removing the seam and pushing the use up toward McLoughlin. I don't like the structure out in the water though – it seems to cut the park in two again.

Bussard: What will the water's edge treatment be? (Gill: we will try to restore as much as possible – we will be regulated there.)

Bussard: How do you channel access to the water in a concerted way?

St Clair: more docks would mean less cars since folks would boat in and tie up instead of driving.

Green: We have an opportunity to improve the transition from urban to natural, at the edge of the proposed plaza. It's important to use the plaza and its edge to demarcate between the two areas and it's important to maintain the natural areas along the river and creeks.

Jantsky: It may be possible to have a summer dock that the City removes in the off season.

Stone: A water feature on the Riverfront would attract kids

Williams: may need to place fountain at higher level so that there is adequate space to bury equipment

Bussard: Klein Point wants a quality of experience to change from urban to natural. It should feel like you are “ a million miles away”

The group discussed the fact that the first open house was planned for November 22nd and that maybe that should be rescheduled for the 28th. All agreed.

It was noted that all questions, ideas or concerns on this project should be channeled to DEA through JoAnn. She will act as the conduit.

Stacey motioned to adjourn. St Clair seconded and motioned passed 6-0.