

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 20, 2007**

CALL TO ORDER

Mayor Bernard called the 2002nd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, Police Chief Larry Kanzler, Community Services Director JoAnn Herrigel, Engineering Director Gary Parkin, Transportation Liaison Gavin Hales

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****E. Invitation to the Grand Opening of the North Clackamas Park Ballfields**

Dan Zinzer invited Council and citizens to the grand opening of the North Clackamas Park athletic fields on April 21.

Mayor Bernard said his father dedicated that Park in 1965, and he looked forward to having the new fields.

C. Milwaukie Police and Reserve Officers of the Year

Chief Kanzler recognized **Reserve Officer Randy Hauskins** for his outstanding performance and his donation of over 300 hours helping make the City of Milwaukie a safe place to live.

Sgt. Steve Bartol received the 2007 Police Officer of the year award. He was chosen because of his commitment to the organization for the past 20 years. He brought the department up to state standards in firearms qualifications and raised officer skill levels.

Chief Kanzler reported the Milwaukie Part 1 crime rate was down 28% which was the highest in the nation, and he attributed it to the commitment of the officers and the community.

Councilor Barnes noted the final chapter of the Matel Sanchez matter had been closed mainly because of the good work by the Milwaukie Police Department.

B. Citizen Acknowledgement for Service to the Community

The City Council acknowledged **Mike Shepard** from the Historic Milwaukie Neighborhood for his service to the community in graffiti removal.

Recognition of Stewart Taylor

Mr. Swanson recognized Mr. Taylor for his service to the City of Milwaukie as the finance director and for the high standards by which he operated. He wished Mr. Taylor well in his new position with the City of Albany.

D. Doug Newman Memorial Trail Award Honorable Mention

Mr. Swanson presented Ms. Herrigel with a certificate of honorable mention for the Doug Newman Memorial Trails Award from the Oregon Parks and Recreation Department. Although she came in second to the father of trails in the State of Oregon, in Milwaukie she would get the parks award, the trails award, the riverfront award, the utility franchise fee award, the public involvement award, and others.

G. Metro Update by District 2 Councilor Brian Newman

Metro Councilor Brian Newman provided updates on the natural areas bond measure that passed November 2006 and the Regional Transportation Plan (RTP). The bond measure was a regional general obligation (GO) bond referral to acquire natural areas, open space, and capital improvements in parks throughout the region. It passed in all three counties even though there were a number of other money measures on the ballot. The total package was about \$227 million which was just increased by \$6 million because Metro got a AAA bond rating from Moody's in addition to the one from Standard & Poors. About \$168 million would go to regional acquisition, \$44 million to local share which was a direct pass through to local governments and parks districts based on a per capita basis, and \$15 million in grants. Citizens of Milwaukie stands to benefit in all three categories. There were two regional acquisition target areas in or near Milwaukie. Those were the Willamette Greenway and Johnson Creek Greenway. The first acquisition from the bond measure was made around Johnson Creek as part of the Three Bridges project. It was a one-acre, close-in urban site. He asked the Council to pass any leads of land for sale from willing sellers within those two target areas. Milwaukie would receive \$657,751 in local share funds, and the North Clackamas Parks and Recreation District (NCPRD) would receive about \$2.4 million. Eligible projects in Milwaukie included acquiring natural areas along Johnson and Kellogg Creeks, enhancing natural areas and/or paths at the Milwaukie Riverfront Park, developing a trail in the Minthorn Wetland, developing a play area at Homewood Park, enhancing wetlands and developing trails in Spring Park, acquiring a future park or natural area land in the Lake Road Neighborhood. The capital grants were an effort to democratize the program and encourage residents to come forward with their ideas for projects or acquisitions. One of the conditions was that the money had to be spent on public land because these were public bonds.

Councilor Newman discussed the Regional Transportation Plan (RTP). Last week the Metro Council affirmed the Joint Policy Advisory Committee on Transportation (JPACT) recommendation to award \$1.1 million for the design and engineering work on the Kellogg Dam and bridge replacement. The RTP was the bible of all the transportation projects, policies, and programs in the region. The federal government required that Metro maintain the Plan as a federally designated metropolitan planning organization. The current update began with a visioning process to identify a transportation system that would support that vision. JPACT went through the process and affirmed the first step. Further, the new Plan would be fiscally realistic and have a connection to the available resources. He provided a handout that summarized the project. From now until the end of April, Metro would go through a project solicitation process that would dovetail nicely with Milwaukie's work on its Transportation System Plan (TSP).

Councilor Loomis suggested the additional \$6 million from the bond issue go toward the local share portion.

H. Update on Planning and Public Involvement for South corridor Phase 2: Portland-Milwaukie Light Rail

Mr. Asher introduced Bridget Wieghart, Project Manager, and Karen Withrow, Public Involvement Specialist. Metro prepared a report summarizing the comments from the March 5 open house. Ms. Herrigel would address upcoming outreach opportunities scheduled for summer and fall that would be followed by meetings with property owners close to the alignments. Next spring there would be a public comment period on the Draft Environmental Impact Statement (DEIS), and public hearings in the summer.

South Corridor Phase 2, the Portland-Milwaukie light rail project, was shown on March 5. It would connect Portland State and downtown Milwaukie or someplace south in Clackamas County. South Corridor Phase 1 was the I-205 project, and this was the next step. There were still some questions about the alignment in Milwaukie. The locally preferred alternative (LPA) came down McLoughlin Boulevard, cut through the North Industrial District, and terminated at Lake Road. There was a working group that lasted almost a year, and it was determined that the preference was that light rail skirt behind the North Industrial Area on the Tillamook Branch and terminate just south of Lake Road at Kellogg Lake. Since Kellogg Lake was no longer available as a terminus the question was where the project should end in Clackamas County. There needed to be a park-and-ride at the end of the line. One of the things being considered at this time was going further south either to Oregon Department of Transportation (ODOT) site at Sparrow or to Park Avenue to capture the northbound traffic. There was also a question about the location of a bridge in Portland. Since there had been a lot of development in the South Waterfront District, the Carruthers crossing may need to be a little further south. There were questions at both ends of the line about what should be studied.

The point of the open house was to let people know the project was beginning again and bring them up to speed on some of the new features including the southern extension. People were also reminded there was still a question about the alignment itself. About 150 people attended the open house at the Clackamas ESD building.

Ms. Wieghart summarized the overall comments from the 67 attendees that submitted feedback forms. 78% of the respondents lived within two miles of the alignment, and 25% lived within ¼- mile of the alignment. 68% of the respondents were commuters and residents, and some operated businesses or worked near the alignment. In the average week a vast majority of people traveled regularly between Milwaukie and downtown Portland, and less than 25% traveled less than one time per week. 87% went to downtown Portland by car, 7% by bus, and 6% carpooled or used some other mode. People learned about the open house by a variety of ways. 76% thought the open house was worthwhile, and very few thought it was not worthwhile at all. 79% agreed or strongly agreed they were listened to by staff at the open house, and 3% disagreed with that statement. She summarized the written comments by characterizing the most frequent kinds of responses.

Question #1 was if there were other design options you would like the project team to consider? There were not a lot of suggestions for new design options, and most gave feedback on the options presented. The most frequent response expressed interest in light rail going further south to destinations such as Gladstone, Oregon City, and Lake Oswego. Many respondents expressed support for light rail and for it to be constructed soon. A few respondents expressed a preference not to build light rail. There was no clear consensus on the design options. A number of respondents specifically expressed support for a terminus at Park Avenue while a smaller number expressed concern about terminating at Park Avenue. Several people expressed concerns about the impacts to the Trolley Trail. Several respondents expressed opposition to light rail and/or park-and-ride in downtown Milwaukie. There were several suggestions about

the park-and-ride at Southgate. Some expressed support, and others expressed concern over this option. A couple of respondents had concerns about public safety.

Question # 2 had to do with the most important things people got out of the meeting. Most reported it was learning about the design options. There were comments about future sessions and others who should be involved in future outreach.

Councilor Stone thought it was a good public process but was frustrated with the number of people there because it was hard to hear when talking to staff people. She would have liked to have seen a full presentation from Metro staff. There was a PowerPoint, but most people were gravitating toward the room with the big posters. It was hard to get around to each one of them because of the number of people. She understood why it was done as it was, but it would have been helpful. She asked when the public got a chance to be a part of the process in terms of voting on how they wanted this federal money spent. It was always her understanding that light rail would have to come to the vote of the people.

Ms. Wieghart replied part of the SDEIS process starting in May and lasting for about a year was to develop a funding plan. They would be looking at about 60% federal funding and the balance from local funding options. Some sources would require a vote while others would not.

Councilor Stone thought that even before allocating \$1 million to a study one would want to know the constituency even supported going down that avenue.

Councilor Barnes thought it was a great way to hold an open house where every voice could be heard. She liked being able to talk with staff one-on-one. It seemed like a more productive format than a roomful of people screaming at each other over a contentious issue.

Councilor Stone thought it was great too but would have preferred a presentation and then the one-on-one.

Mr. Asher thought it was a reunion event and good for people to get together. The project was far more than the City of Milwaukie, so it needed to be done at a pace that supported the whole project.

Ms. Herrigel said it was important to get the word out that there was a Citizens Advisory Committee (CAC) to the light rail project. People who really wanted a voice in how the project formed and the process it went through could get involved. Information was available both on the City and Metro websites, and Milwaukie will use its various databases to solicit interest. There will be about six Milwaukie representatives on the 20-person Committee.

Mr. Asher said the deadline for applications was April 16, and the steering committee that included Mayor Bernard would make the final selection.

Ms. Herrigel said staff would coordinate a series of three meetings in April where people could look at the segments near their homes and businesses. Staff would meet those who had specific questions. Another Council update was planned for early May. The intent of the segment-focused meetings was to look at maps more closely and give people a chance for more direct input.

Councilor Stone asked how the study could go forward without a vote of the people.

Mr. Asher replied this Council and others had already adopted a resolution that said there would be a South Corridor Project that would build light rail in Clackamas County in two phases. One was in the I-205 corridor, and the second was on the McLoughlin Boulevard Corridor which this Council approved and then modified in another action. Both times Milwaukie affirmed that was what it wanted to see happen. Light rail was off

the table entirely after 1998 when there was a vote. People in Clackamas County, Milwaukie, and the southeast Portland neighborhoods went to Metro and said it might be premature to eliminate light rail as an option. If funding was available, then it could be done. There was a Metropolitan Transportation Improvement Program (MTIP) allocation of \$2 million to do the study which was matched by the local partners. No vote was required to do a study like that. The refinement work had been going on since September and would be wrapped up in May.

Councilor Stone recalled Clackamas County voted it down. When she said constituents she was not just referring to the people who lived in Milwaukie. It was not necessarily funding. It was if light rail came, then this was where they wanted it to go. She still thought even if there was money to study and it was available it was still the people's money. She would feel a whole lot better about this project. Mr. Swanson said it earlier when he talked about the situation with Mr. Taylor and what to do in terms of the Fire District dilemma when a mistake was found. It was not the right thing to do even though it was legal. Even though this was legal was it really the right thing to do? The entire County voted it down. She was certainly not a light rail proponent, and everyone knew that. She had reasons she felt were based on facts. She felt strongly that people should say where they wanted their federal dollars going especially now when federal money was so tight. Especially when there was no money for road improvements or freight rail infrastructure. She was really concerned and would feel a whole lot better about proceeding with the study let alone building it if it were put to the voters. Say this is what we are thinking and ask the voters to anoint it.

Mr. Swanson responded to the funding question. The 1998 vote was whether or not to authorize local funding for an actual project. The project had gone through the same exercise that was just beginning which was the environmental process. At this point there was not really a lot to vote about because there were not many specifics. There were alternative alignments in the North Industrial Area and serious questions about the bridge in Portland. Metro, the lead agency in terms of transportation planning, would undertake the study. Part of the study would be a finance plan. It may well be that there was a gap in the local match that would require some local funding plan that would require a vote. At this point in time there was nothing to submit to votes because this was the beginning stage of the design proposal. The current \$4 million in federal and local money would go to look at alternatives. Part of the public process was to gauge people's interest in various alternatives. The jury was still out on whether there would be a vote. Right now Metro was engaged in developing a proposal that would include a finance plan, alignments, and environmental issues. Once that plan was together, the parties would know whether or not there would have to be money sought from local governments. He heard someone refer to a 40% match which at \$800 million was \$320 million. The jury was out until the plan had evolved, and that was the only work being undertaken right now.

I. Quiet Zone Update

Mr. Hales reported on recent staff activity on a possible quiet zone designation as directed by the City Council at its November 9, 2006 work session. In November 2006 staff reported to Council on options for mitigating train horn noise and improving railroad crossing safety in the City. At that time staff reported in excess of 31 trains a day utilized the Union Pacific mainline as it passed through the City. Each of the trains was required by federal law to sound its horn in a three-part sequence as it approached each of the City's four at-grade rail crossings. At that time staff also discussed the establishment of the Train Horn Quiet Zone including the installation of federally approved Supplementary Safety Measures (SSM) which were engineering improvements at the rail crossings. Staff also discussed the potential cost of the SSMs and estimated the sound shed impacted by the train horn noise. At that time Council

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directed staff to generate a log of persons interested in a quiet zone and noting how long those persons had lived in the City of Milwaukie, and provide case studies demonstrating the safety benefits of quiet zone.

Mr. Parkin reported two of the three crossing for which a quiet zone would be established were being redesigned as part of a Community Development Block Grant (CDBG) project. Those were the 37th Avenue and Oak Street crossings. Those grants would provide the pedestrian improvements that were also required in a quiet zone. There was an opportunity to piggyback to get the permitting process done at one time. The engineering and design work contracts could also be joined.

Mr. Hales said in terms of community feedback on the quiet zone issue, staff provided information about the possibility of establishing a zone in the February *Pilot* and on the City website. As of the writing of his report, 115 citizens expressed an interest in the proposed quiet zone with a vast majority of those indicating support. The average length of residency for supporters was 14 years and 16 years for opponents. A complete list of interested persons was included as an attachment to the staff report. Mr. Todd Schwartz, an interested citizen, attended several neighborhood meetings and compiled his own list of supporters that included 26 people not previously listed in the attachment to the staff report. In response to the request for information on safety benefits, attachment 3 was a Federal Railroad Administration (FRA) report detailing the safety benefits of quiet zones. In summary at a minimum the establishment of a quiet zone crossing safety was improved to nationwide standards. At present Milwaukie with its existing safety devices was more dangerous than the national standards. The report also mentioned additional benefits from quiet zones that were not easily quantified including reductions in property damage, train delay, and community disruption.

Mr. Parkin reported staff was still working on issues related to the median barriers, and none of them seemed insurmountable at this point. The main issues appeared to be at Harrison, and there were several options being considered.

Mr. Hales reported that staff had met with representatives of the Milwaukie Marketplace and the Hector Campbell, Ardenwald, and Linwood Neighborhood District Association (NDA) chairs to discuss the potential access conflicts and the improvements to those crossings. The Marketplace representative expressed support for the proposal provided that the freight access issues particularly at Oak Street were resolved. Neighborhood chairs expressed support for a reconfiguration of the intersection of 37th and Railroad Avenues that would preserve the existing turn movements.

Mr. Parkin reported the cost of the medians was about \$300,000 compared to over \$1 million to install the four-quadrant gates. More than half the cost for the median barriers was to build infrastructure to maintain some of the access requirements. The \$300,000 cost for the median barriers was in addition to the CDBG project.

Mr. Hales added that would also include the reconfiguration of 37th and Railroad Avenues plus sidewalk improvements equivalent to Oak and 37th improvements at Harrison Street in order to meet the relevant safety standards. The gap was \$320,000 for all three intersections.

Audience Participation

- **Bob and Michele Brandt, Milwaukie**

The Brandt's had live in Milwaukie for almost 30 years and recently moved to the south part of Milwaukie where the train horns were an issue. They had a desire to see the town progress and implementation of a quiet zone would help increase property values. It was a better vision for the town.

Mr. Brandt had been a railroad engineer for 35 years, and he found it very disruptive to his sleep. A son recently moved into the North Main Village where the noise was very annoying. He would appreciate a quiet zone in Milwaukie.

- **Sarah & Edmund Pierzchala, Milwaukie**

Ms. Pierzchala introduced her traumatized and sleep-deprived family. They lived 50-feet from the proposed MAX line. She asked if this quiet zone study had anything to do with the line next to the Waldorf School that moved freight nightly.

Mayor Bernard explained this study did not address those tracks and noted they had not been used a lot until recently.

Mr. Asher added the noise impacts of light rail would be studied in the SDEIS.

Councilor Barnes said staff was working on the issue, and concerns were being duly noted.

CONSENT AGENDA

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

- A. City Council Minutes of the February 6, 2007 work session
- B. Resolution No. 12-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving an Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) for the Lake Road Multimodal Improvements
- C. Resolution No. 13-2007: A Resolution of the City Council of the City of Milwaukie, Oregon Transferring Appropriation Authority and Authorizing the City Manager to Sign an Intergovernmental Agreement with ODOT to Improve Sidewalks on Logus Road
- D. Resolutions Making Appointments and Reappointments to Various Advisory Boards and Commissions
 1. Resolution No. 14-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Alicia Hamilton to the Milwaukie Ledding Library Board
 2. Resolution No. 15-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Robert Biswas-Diener to the Milwaukie Ledding Library Board
 3. Resolution No. 16-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Bob Cooper to the Milwaukie Park and Recreation Board
 4. Resolution No. 17-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Kate MacCready to the Milwaukie Park and Recreation Board
 5. Resolution No. 18-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Ed Miller to the Milwaukie Citizens Utility Advisory Board

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- **Charlene Barrager, Milwaukie**

Ms. Barrager, a self-appointed neighborhood spokesperson, addressed development of a landlocked parcel. There was a shared driveway going back to a lot that was good sized, but it was not being called a flag lot. Because it was not called a flag lot, it fell under a different stipulation. There were no easements and no buffer zones, so this house would be built directly behind hers and behind a house on Harlene. All of the vegetation was removed, and more than that there was a shop that was going behind another house. She had become a regular attendee at the Planning Commission where she was told its hands were tied. The property was platted years ago, and there was nothing that could be done. She asked for at least a buffer zone. She and her husband planted some small arborvitae, but she could not afford to plant very big ones. She was sad to report there was only one tree left on the lot. It was standing alone, and its roots had been disturbed. People were very concerned the tree was a safety hazard. She was concerned about how many more lots there were like this and how many on her street. She found another landlocked parcel that had been platted for a house. The only access was the driveway that existed on a house in front of it. Milwaukie was facing this, and according to the planners their hands were tied. It was private property, and people could do as they pleased. She tried to find out when it was platted, and it was like peeling an onion. That lot was called Homewood Park and apparently it was a large division when development came in. The lots morphed into these things, and after a while there was a property that had no access. She asked if all the rights rested with the people who owned the lots. Did the people on adjacent lots have no rights to ask for a buffer zone? She provided a photo of the house in the development and the location of the silt fence.

Mayor Bernard explained property rights were very important in Oregon. He was sure the planning staff would help in any way possible. He commented on a recent Measure 37 claim where the Council waived flag lot pole standards. When the Council worked toward adopting a tree ordinance there was such a public outcry the matter was dropped.

Ms. Barrager chose to buy in Milwaukie two years ago because she wanted a one-level house. Growth was coming and it needed to be managed, and aesthetics needed to be figured in. She appealed to the City Council to at least think about this matter. She attended the light rail open house and understood an unbelievable amount of growth was coming. She wanted to go on record that there may be a safety issue with the tree.

Councilor Stone asked the planning staff if there was anything that could be done to make the developer protect the adjacent property. Why not have something as simple as if you come in to develop a piece of property then you should not infringe on the privacy of another home.

Ms. Barrager asked for a waiver to put in an 8-foot fence, but it was denied. Light would shine in her bedroom because of the typography.

Ms. Mangle did not have all the information with her, so she would come back with an update. There were standards in the City that required public access to a parcel. This was an anomaly in that it was approved that way years ago by a previous Planning Commission. The City standards were in place to prevent that from happening, but she agreed Ms. Barrager's fears were real. Staff was limited to the codes in place and what could be imposed on developers.

Ms. Barrager said there were four houses impacted by this, so it was not just one person.

Councilor Stone thought the code needed to be amended. She was concerned a waiver could not be granted for a fence that was only two feet taller than regulation. That seemed ridiculous. People should be able to protect their land and their home and their privacy.

Ms. Mangle would have to talk with engineering and planning, but one had to keep in mind how other properties were impacted by the higher fence. She would be happy to continue discussions with Ms. Barrager.

Ms. Barrager said this was her last hope. She did not vote yes on Measure 37 and actually believed in infill rather than building on farmland. She did not object to the house being built. Her issue was with the buffer zone and lack of privacy. She may be forced to sell her house.

PUBLIC HEARING

Motion to consider Continuation of Amendment to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3

Mr. Swanson reported in May 2006 the Planning Commission recommended both changes to the Comprehensive Plan and amendments to the code dealing with a number of issues including major utility facilities. Two of the recommended code amendments would have added sections 19.321.7 and 19.321.3. Those sections would have stated the City's policy was to make reasonable efforts to bring about the decommissioning of the Kellogg Treatment Plant, declare the Plant a nonconforming use, set a deadline for removing nonconforming community service uses which in the case of Kellogg would be December 31, 2015, and establish civil penalties for failure to decommission the Plant by that deadline. The Planning Commission recommended adoption of those and other code amendments and changes to the Comprehensive Plan.

The first Council hearing was June 20, 2006 which was in the middle of the Citizens Advisory Council (CAC) process regarding development of a wastewater strategic plan in Clackamas County Service District #1 (CCSD1). His recommendation had been to continue for a period of time consideration of the code amendments to give the process a chance to proceed. Adoption of them at the time would likely have set people further apart than they were. The City Council did in fact continue them. In addition the attorneys continued to delay on following through on the Land Use Board of Appeals (LUBA) appeal on the adoption of the Comprehensive Plan amendments recommended by the Planning Commission. Last month he brought the issue before Council and recommended a continuation of the adoption of the code amendments to July 17, 2007 that was the date of the LUBA appeals. At that time Council determined that in order to put some pressure on the process that the matter be continued for a month and determine at that time whether to adopt the code amendments. Councilor Stone was appointed as the City's representative on the site selection committee. The County also began to form the regional stakeholders group, and Councilors Barnes, Collette and Loomis would receive calls about getting that group together. He recommended continuing month to month. He thought pressure needed to be applied to the County, CAC, TriCity, and others. Adoption of them may happen in the next few months if things did not move forward, but at this time adoption would likely separate the parties further. He would meet with Mr. Mantay for a wastewater briefing. He was concerned that he saw a potential solution as being that CCSD1 lost some of its customer base to TriCity through de-annexations and/or Damascus going with TriCity. Kellogg would be backed into the position of being a viable alternative. Mr. Swanson was somewhat concerned about the way things seemed to be going. At this time he recommended continuing the matter to a date certain to the second meeting in April. He was not sure

about the outcome of either the site selection committee or the regional group. He saw a decision by default on the part of the County. It was almost as if Clearwater and the CAC options were in a foot race, and he was not sure that would serve Milwaukie's interests.

It was moved by Councilor Barnes and seconded by Councilor Collette to approve a motion that would continue consideration of a Planning Commission recommendation to amend MMC 19.321.7 and 19.321.3 to April 17, 2007.

Councilor Stone thought the Council would adopt this any way. She was frustrated because the Council had never sat down and talked with these people. The Council talked about doing that but had not. Mr. Swanson was meeting with Mantay and that was okay, but she wanted a roundtable discussion with the CAC and County. She wanted to talk about a solution.

Mr. Swanson said that discussion was supposed to happen with the regional group. All the parties were being invited to the table.

Councilor Stone said no one knew when that was going to happen. It has been talked about for months.

Councilor Collette thought it would begin soon. There were one-on-one conversations with Carie Fox who was facilitating the regional group.

Councilor Stone thought it was frustrating, and it was no secret Milwaukie was trying to do this. She did not understand why the amendments were not adopted since it was already out there.

Mayor Bernard did not think legal fees should be spent on LUBA if there was a solution out there.

Councilor Barnes added it was a matter of keeping options open. She asked Mr. Swanson to keep the Council informed of the meeting schedule.

The motion passed unanimously. [5:0]

It was moved by Mayor Bernard and seconded by Councilor Barnes to temporarily suspend the Council rules in order for the City Manager to introduce a proposed resolution to approve the settlement agreement with the Stanley Tool Company and Providence Health Systems. Motion passed unanimously. [5:0]

OTHER BUSINESS

A. Settlement Agreement in the Matter of the City of Milwaukie v. Stanley Tools, Inc. et al, Clackamas County Circuit Court Case CCV0210478 and Authorizing the City Manager to sign the Agreement

Mr. Swanson provided a proposed resolution approving a settlement agreement in the matter of the City of Milwaukie v. Stanley Tools, Inc. et al. This item was not on the agenda this evening, and it was policy to deal with items placed on the agenda available to the public one week prior to the meeting. This was an extraordinary case and was why Council was asked to suspend its rules. This was a suit instituted by the City against Stanley Tools, Providence, and Ingersoll-Rand for the water contamination issues. The suit was filed in 2002. A few months ago the circuit court granted motions for summary judgment in favor of the defendants, and the City asked that the court reconsider its decision. The effect of granting the motion for summary judgment was to dismiss the allegations. The judge was considering the City's motion to reconsider his decision. Stanley Tools approached the City and made an offer less than the \$200,000. In executive session the City Council requested the City Attorney return to Stanley and

seek a \$200,000 settlement. Presentation of that to Stanley eventually resulted in the agreement to settle for that amount. Mr. Swanson received the final settlement agreement today so drafted the resolution. The judge requested that everything be wrapped up at this meeting. He noted this settlement did not release Ingersoll Rand, and he understood that company did not know this settlement had taken place. Ingersoll Rand would continue in the role of defendant. If the judge did not reverse his ruling, then the City was prepared to file an appeal. If the judge reversed his ruling, then Milwaukie would go to trial against Ingersoll Rand. Any defendant that was not released was subject to joint and several liability. Any judgment against Ingersoll Rand would be reduced by only \$200,000 that was the subject of this settlement. He noted that paragraph 3.2 read, "the City releases and forever discharges Stanley and Providence, their predecessors and successors..." His question was if that referred to them as organizations or real property owners. Milwaukie did not want to release any predecessor or successor because of their status as a real property owner. The intention of the drafter, Stanley's attorney, was that it only related to the status as an organization, and a letter was provided outlining the intent. Mr. Crew felt that was sufficient to move ahead.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution approving the settlement agreement in the matter of the City of Milwaukie v. Stanley Tools, Inc. et al, Clackamas County Circuit Court Case No. CCV0210478 and Authorizing the City Manager to sign the agreement.

Mr. Swanson added the letter would be submitted with the settlement agreement along with the resolution giving him the authority to sign the agreement on behalf of the City of Milwaukie. Stanley and Providence would simultaneously with the execution of the settlement agreement issue a letter explaining it was their intent that the settlement agreement released only defendants Stanley and Providence.

Motion passed unanimously. [5:0]

RESOLUTION NO. 19-2007:

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT IN THE MATTER OF CITY OF MILWAUKIE v. STANLEY TOOLS, INC. ET AL, CLACKAMAS COUNTY CIRCUIT COURT CASE NO. CCV0210478 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT

B. Council Reports

Councilor Barnes attended the Elks dinner, and the members appreciated the proclamation. She continued to testify in Salem on the senate bill. She would speak with Carie Fox, and she urged that people keep each other informed. She would attend the Officers of the Year dinner and take part in the SERT exercise.

Councilor Stone attended the Safeway grand opening and was pleased there were few issues with the traffic configuration on King Road and 42nd Avenue. She attended the Milwaukie Town Center open house, Riverfront Board meeting, and the Historic Milwaukie NDA meeting.

Councilor Collette testified in Salem on photo radar for Milwaukie. The Governor's Deputy toured downtown Milwaukie and met with Dark Horse Comics and others. She attended the Clackamas Community College Blue Ribbon Committee meeting on the expansion of the Harmony Campus and encouraged communications with the neighborhood. She met with TriMet staff to talk about light rail near the schools. The Ardenwald Neighborhood was working on a Bureau of Environmental Services (BES)

grant for work in Tideman-Johnson Park. She would meet with representatives from Historic Milwaukie to discuss neighborhood concerns.

Councilor Loomis attended the Milwaukie Town Center Project meeting and the March for Meals Walk and was working with the Meals on Wheels program.

Mayor Bernard congratulated Dark Horse on its movie *300* that had grossed more than \$170 million. He talked with North Clackamas School District Superintendent Ron Naso about South Corridor project involvement. He attended the Milwaukie Town Center Project open house. Mr. Zumwalt announced he would no longer be involved with the Riverfest, and Mayor Bernard asked for volunteers to help with the event. He would also be working Meals on Wheels, traveled to Washington, D.C. representing cities in Clackamas County, and spent a lot of time in Salem on behalf of the City, JPACT, Chamber of Commerce, and the Clackamas County Business Alliance.

Mayor Bernard read announcements including the date of the Friends of the Library Plant Sale, the Transportation System Plan (TSP) survey, Down-to-Earth Day on May 5, and Fines for Food week April 15 – 21 at the Ledding Library. He announced the "If I Were Mayor" contest.

Councilor Stone thought the Council was going to talk about the letter that went out about the \$250 million in lottery funds for light rail. There was a lot of e-mail dialogue between her and Mayor Bernard. **Mr. Swanson** did not send the letter.

Mayor Bernard announced the Council would meet in executive session pursuant to ORS 192.660(2)(i) performance evaluation of public officer and employee.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 9:17 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
MARCH 20, 2007

MILWAUKIE CITY HALL
10722 SE Main Street

2002nd MEETING

REGULAR SESSION – 7:00 p.m.

- I. CALL TO ORDER**
Pledge of Allegiance

- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, & AWARDS**
 - A. Milwaukie High School Student of the Month – Alicia Tallman**
 - B. Citizen Acknowledgement for Service to the Community – Mike Shepard**
 - C. Milwaukie Police and Reserve Officer of the Year -- Sgt. Steve Bartol and Reserve Officer Randy Hauskins**
 - D. Doug Newman Memorial Trail Award Honorable Mention -- JoAnn Herrigel**
 - E. Invitation to the Grand Opening of the North Clackamas Park Ballfields – Dan Zinzer, North Clackamas Parks and Recreation District**
 - F. Update on Planning and Public Involvement for South Corridor Phase 2: Portland-Milwaukie Light Rail**
 - G. Metro Update by District 2 Councilor Brian Newman**
 - H. Quiet Zone Update by Gavin Hales and Gary Parkin**

- 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. City Council Minutes, February 6, 2007 Work Session**
 - B. Approval of an Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for the Lake Road Multimodal Project -- Resolution**
 - C. Logus Road Sidewalks Project: Intergovernmental Agreement (IGA) & Budget Authority -- Resolution**
 - D. Resolutions Making Appointments and Reappointments to Various Advisory Boards and Commissions**
 - 1. Alicia Hamilton, Library Board**
 - 2. Robert Biswas-Diener, Library Board**
 - 3. Bob Cooper, Park and Recreation Board**
 - 4. Kate MacCready, Park and Recreation Board**
 - 5. Ed Miller, Citizens Utility Advisory Board**

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.)*

Motion to Consider Continuation of Amendment to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3 (Mike Swanson)

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.)*

Council Reports

7. **INFORMATION**

Center/Community Advisory Board Minutes, January 12, 2007

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluations of public officers and employees. 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.



To: Mayor and City Council

Through: Mike Swanson, City Manager

**From: Kenny Asher, Community Development and Public Works Director
JoAnn Herrigel, Community Services Director**

Subject: Update on Planning and Public Involvement for South Corridor Phase 2: Portland-Milwaukie Light Rail

Date: March 9, 2007 for March 20 Regular Session

Action Requested

None. This is an informational update to summarize the tremendous input gathered at the March 5 South Corridor Open House at the Clackamas ESD facility. This is also an opportunity for project staff to update Council on upcoming project milestones.

Background

On March 5, 2007, staff for the South Corridor Phase 2 Light Rail project from Portland to Milwaukie convened a public Open House focused on the southern portion of the proposed project. Approximately 150 people turned out to ask questions and gather information about the project, which is preparing to go into an Environmental Impact Study phase later this spring.

Project staff from Metro is compiling comments from the event, which will be made available in the next ten days or so. Staff will report to Council on what people wrote down at the event. Staff will make every effort to provide these comments to Council and the public prior to the meeting – although the timing may result in the report being made available at the council meeting on March 20th. In any event, staff will be prepared to summarize the comments and provide general observations from community feedback provided at the Open House.

Additional public involvement opportunities are being discussed between Milwaukie and Metro staff. Staff will report to Council on upcoming Milwaukie events planned for additional dialogue and input to the process.

The project is seeking members of a Citizen's Advisory Committee, which will represent the entire project, from Portland to Milwaukie. Staff will ensure that all interested citizens hear about this opportunity, and will explain the timing of the committee's formation. The South Corridor Phase 2 Steering Committee, on which Mayor Bernard represents Milwaukie, will make the appointments to the Citizen's Advisory Committee.

Finally, staff is preparing to bring the Intergovernmental Agreement between Milwaukie and Metro to Council in early April. The agreement provides Metro with funding from Milwaukie (\$200,000), which helps match the \$2,000,000 federal grant received by Metro for conducting the EIS work. As this agreement nears completion, staff will use this opportunity to remind Council of the various contributions pledged and paid by the project partners, as well as the services that Metro will provide in exchange for Milwaukie's match.

Concurrence

None, as there is no action requested. Metro staff is preparing to join city staff to respond to Council questions, if any.

Fiscal Impact

None, as there is no action requested.

Work Load Impacts

None.

Alternatives

None, as no action is being requested at this time.

Attachments

None.



To: Mayor and City Council

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

From: Gary Parkin, Engineering Director;
Gavin Hales, Transportation Liaison

Subject: Quiet Zone Update II (Railroad Crossing Safety Improvements)

Date: March 9th for March 20th Regular Session

Action Requested

None. This is a report on recent staff activity on a possible Quiet Zone designation, as directed by City Council at its November 9th Work Session.

Background

In November 2006, Staff reported to Council on options for mitigating train horn noise and improving railroad crossing safety in the city. Staff reported that in excess of 31 trains a day utilize the Union Pacific mainline as it passes through the city, and that each of these trains is required by federal law to sound its horn in a four-part sequence as it approaches each of Milwaukie's four at-grade crossings.

Staff discussed the establishment of a Train Horn Quiet Zone including the installation of federally approved Supplementary Safety Measures (SSM's) as well as the potential cost, and the estimated "sound shed" impact of the train horns. Council directed staff to generate a log of persons interested in Quiet Zones (noting how long they had lived in Milwaukie) and to provide case studies demonstrating the safety benefits of Quiet Zones.

CDBG Leverage Opportunity

The 37th Avenue and Oak Street Railroad Crossing Improvement Project (currently being designed with Community Development Block Grant funds)

overlaps part of the Quiet Zone project area. The project will add new sidewalks and will insert concrete panels between the tracks, to help pedestrians safely cross the tracks.

One of the requirements for establishing a Quiet Zone is improving pedestrian crossings within the zone to meet the relevant state standard. This means that the imminent pedestrian improvements at 37th Avenue and Oak Street make it easier and less expensive for the City to pursue a Quiet Zone, should it so desire. For the 37th Avenue and Oak Street crossings, the pedestrian improvements needed to fulfill Quiet Zone requirements will be constructed by the CDBG project. Combining these two projects would save money, reduce project interruption time, and accelerate the railroad permitting process (going through the extensive permit process once, rather than two or three times.)

Community Feedback

Staff provided information about the possibility of establishing a Milwaukie Quiet Zone in the February *Pilot* and on the City website. Currently, 115 citizens have expressed an interest in a proposed Quiet Zone, with the vast majority indicating support. (The average length of residency for supporters is 14 years. The average length of residency for those opposed is 16 years.) The complete list of interested persons is included as Attachment 1 to this report. Additionally, Todd Schwartz, a citizen with a strong interest in this issue, has attended numerous neighborhood meetings and has compiled his own list of supporters for the Quiet Zone, including 26 persons not previously listed. (Attachment 2.)

Safety Benefits

In response to the request for case studies on Quiet Zone benefits, a Federal Railroad Administration's (FRA) report detailing the safety benefits of Quiet Zones is included as Attachment 3 to this report. In summary, this report notes that, at minimum, Quiet Zones improve crossing safety to the nationwide standard. In Milwaukie's case, Quiet Zone improvements would increase safety at all three affected crossings. The report also acknowledges several benefits resulting from Quiet Zones that are not easily quantified, including reductions in property damage, train delay, and community disruption.

Access Conflicts

Staff recently met with representatives of the Oregon Department of Transportation's Rail Division (ODOT-Rail), and Union Pacific Railroad (UPRR) and conducted a review of the Harrison, Oak, and 37th Street crossings. ODOT-Rail and UPRR agree that median barriers or four-quadrant gates are acceptable SSM strategies but they would still need to review a specific proposal. The Diagnostic Review Team identified:

- Potential access conflicts at Harrison and Oak Streets.
- Intersection configuration issues at 37th and Railroad Avenues using a median barrier strategy.
- Additional costs to a four-quadrant gate strategy at all three crossings.

The Review Team has determined that the use of median barriers would result in the following access conflicts:

- At Harrison Street median barriers would limit access to right in, right out only at the car wash north of Harrison Street between 31st Avenue and the rail line.
- At Oak Street, standard median barriers would prevent left turns to and from Campbell Street and left turns out of the freight access-way behind the Milwaukie marketplace.
- At 37th Avenue, the team identified a need to reconfigure the intersection of 37th and Railroad Avenues in order to install median barriers and retain existing turn motions.

Diagrams of median barriers and the resulting conflicts are included as Attachment 4. Arrows in the diagrams indicate turning movements that would be eliminated.

Staff has met with representatives of the Milwaukie Marketplace regarding the Oak Street and 37th Avenue crossings, and with the neighborhood chairs of Hector Campbell, Ardenwald, and Linwood neighborhoods regarding 37th Avenue to discuss these potential access issues. The representative of the Marketplace expressed support for the proposal provided that freight access issues were resolved. The neighborhood chairs expressed support for a reconfiguration of the intersection of 37th and Railroad Avenues that would preserve existing turn movements. Engineering is exploring a number of potential strategies for addressing these problems.

Cost Estimates

The cost of using median barriers at Harrison Street is estimated at \$120,000 including the construction of pedestrian improvements. At Oak Street the cost of using median barriers is estimated at \$30,000. At 37th Avenue the estimated cost of using median barriers is \$170,000 including the reconfiguration of the intersection of 37th and Railroad Avenues. Staff estimates the total cost of using median barriers at all three crossings at \$320,000.

The revised cost estimate for using four-quadrant gates at these crossings is \$370,000 each at Harrison and Oak Streets including the installation of pedestrian improvements (at Harrison), the replacement of the existing substandard gate arms (at Oak) and work conducted by the UPRR. At 37th

Avenue, four-quadrant gates are anticipated to cost \$320,000 including UPRR work and reconfiguration of the intersection of 37th and Railroad Avenues. Staff estimates the total cost of using four-quadrant gates at all three crossings at \$1,060,000.

Concurrence

1. Project: Majority of citizen respondents, permitting authorities (ODOT Rail and UPRR)
2. Access Concerns: Site owner of the Milwaukie Marketplace and Ardenwald, Hector Campbell, and Linwood Neighborhood District Association chairs.

Fiscal Impact

Not budgeted, potential funding source could be included in the Street Department budget (Gas Tax and SDC reimbursement) and Fee In Lieu Of funds (for the sidewalk portion at Harrison St).

Work Load Impacts

Workload to continue this would be substantial if a median barrier strategy is utilized. Engineering would design the barriers and sidewalk improvements and Streets would install them. A four-quadrant strategy would reduce staff workload but would accrue substantial cost for work done by the UPRR.

Alternatives

None, as no action is requested.

Attachments

1. List of interested persons.
2. Additional List of Community Support.
3. Safety Benefits of Quiet Zones.
4. Sketches showing proposed medians at the Harrison Street, Oak Street and 32nd Avenue crossings

Attachment 1

Quiet Zone Interested Persons

Anderson, Chuck	Greenwood, Maryland
Anderson, Kori	Guzzo, Angela
Anderson, Rian	Hamersly, Lynne
Aschenbrenner, David	Hamersly, Wayne
Baccitich, Matthew R.	Harmon, Maria
Baldwin, Laurie	Hespen, Margaret
Barbur, Scott	Holzgraf, Betsy
Barrow, Barbara	Ingram, Karen
Bergdorf, Steve	Karr, Mike
Best, Rob	Karr, Shirley
Betschart, Dick	King, Mary
Betschart, Virginia	Kirk, Bonnie
Brandt, Michelle	Kirk, Birdie
Bryan, Pat	Kirk, Roy
Bui, Carrie	Koch, Bonnie
Bui, Donny	Koch, Larry
Burgess, Jeffrey	LaFrank, Gena
Calene, Bethany	Maier, Dave
Calene, Jacob	Martell, Casey
Casey, Mike	Nasty, D
Castillo, Eli	Nellis, Virginia
Castillo, Margaret	Nelson, Liz
Churchill, Scott	Noe, Julia
Conelly, Sean	Park, Timothy
Cross, Becky	Pat, VanOsdol
Dorman, Steven	Patricia
Dorr, Bryan	Petersen, Greg
Eiswerth, Brendan	Petersen, Lowell
Ekeren, Laurie	Pierzchala, Edmund
Elliot, Ben	Pierzchala, Sarah
Elliot, Jennifer	Pollan, Lew
Elliot, Roman	Powers, Elaine
Favorite, Anne	Pugh, Mark
Favorite, Phil	Rand, Steve
Felisiano, Hollie	Ratkowski, Terri
Fitts, Kim	Reichardt, Ron
Foz, Alex	Relei, Steve
Frick, Forris	Richardson, Robert
Gaffney, Sandra	Richardson, Sue
Garrison, Cathy	Rogers, Judy
Garrison, Rob	
Rogers, Mike	

Rolison, Pat
Sanders, Rene
Schwartz, Todd
Sears, Linda,
Sear, Richard
Shannon, Kelly
Shaw, Jim
Shawn, Kelly
Snider, Lillian
Snider, Lisa
Snider, Mike
Snyder, Eugene
Stacey, Mike
Stai, Duwayne
Stephen, Chris
Strader, Tom
Strauss, Ileana O.
Tinat, Ashley
Trulock, Mitchel
Twigg, Joby
Wasko, Beth
Wenger, Casey
Wenger, Laura
West, Mary (?)
Wester, Maribeth M
Winner, Jeff S.
Winner, Lynn S
Wisner, Julie
Younce, Jill
Younce, Tim
Young, Jennifer
Young, Ron
Zitzer, Jean

Attachment 2

QUIET ZONE SUPPORT

Todd Schwartz	13140 SE Nixon Ave	In area for 8 months
Jenny Loehning	13140 SE Nixon Ave	8 months
Wayne Hamersly	13144 SE Nixon Ave	14 years
Lynne Hamersly	13144 SE Nixon Ave	14 years
Bob Naef	13231 SE Nixon Ave	45 years
Yvonne Naef	13231 SE Nixon Ave	45 years
Dion Shepard	2136 SE Lake Road	7 years
Mike Shepard	2136 SE Lake Road	7 years
Scott Churchill	2708 SE Monroe	1.5 years
Val Hubbard	10669 SE 21 st	6 months
Greg Seagler	2244 SE Lake Road	5 years
Susanna Lundgren	2734 SE Lakeside	25 years
Ron Rasch	2734 SE Lakeside	33 years
Ben Stangel	10625 SE 28 th	57 years
Ray Bryan	11416 SE 27 th	6 years
Nancy Adair	2406 SE Harrison	14 years
Ed Zumwelt	10888 SE 29 th	44 years
Gary Klein	10795 SE Riverway Lane	
Brenden Eiswerth	11009 SE 28 th	12 years
John Fussell	5005 SE Hunter Ct	5.5 years
Jean Fussell	5005 SE Hunter Ct	5.5 years
Bonnie Mishler	1976 SE Bluebird	30 years
Gary Michael	11907 SE 19 th	21 years
Mike Gronholm	12212 SE 19 th	5 years
Lisa Gunion-Rinker	3012 SE Balfour	9 years
Cheryl Ausmann-Moreno	10235 SE 40 th	13 years
Nancy Matich	4144 SE Filbert	54 years
John Ellis	4006 SE Harrison	12 years
Jeff Loudon	4209 SE Rio Vista	3 years
David Aschenbrenner	11505 SE Hume	15 years
Gerald Hay	4405 SE Rio Vista	30 years
Julia Noe	11587 SE 45 th	14 years
Sarah Smith	4656 SE Washington	8 years

ATTACHMENT 3

Regulatory Evaluation and Regulatory Flexibility Assessment
for
Use of Locomotive Horns at Highway-Rail Grade Crossings
Final Rule
(49 CFR PARTS 222 AND 229)

Federal Railroad Administration
Office of Safety Analysis
July 21, 2003

4.0 Findings

Implementation of this rule will reduce the risk of collisions at grade crossings by requiring the sounding of the locomotive horn at grade crossings unless it has been specifically determined that the crossings in question have a risk profile that justifies silencing the horn. FRA believes communities will take advantage of the many options available to compensate, in terms of risk, for the silencing of the horn. FRA is confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the interim final rule. Given the high prevalence of existing whistle-ban crossings in the Chicago area¹ and the significant level of interest commenters from this area have shown regarding this rulemaking, Pre-Rule Quiet Zone costs for this area are presented separately from the rest of the nation.

¹ The Chicago area is comprised of the following six counties: Cook, Du Page, Kane, Lake, Mc Henry, and Will.

Total Twenty-Year Costs (PV², 7%)

	Nationwide	Chicago	Rest of Nation
<u>Locomotive Horns Sounded</u>			
Maximum Horn Sound Level	\$ 2,902,478	Not Applicable	Not Applicable
Relocations Due to Locomotive Horn Noise	\$ 1,724,590	\$ 47,927	\$1,676,663
<u>Pre-Rule Quiet Zones</u>			
Advance Warning Signs	\$ 170,493	\$ 33,504	\$ 136,989
Quiet Zones (QZ) w/ CCRI³ < NSRT			
QZ Development, Approval, Certification, Notification, & Initial Inventory Updates	\$ 1,182,292	\$ 59,537	\$1,122,755
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions			
QZ Development, Approval, Certification, Notification, & Initial Inventory Updates	\$ 882,814	\$ 179,248	\$ 703,566
SSMs/ASMs Installation & Maintenance	\$ 1,575,797	\$ 156,604	\$1,419,193
QZs w/ CCRI > 2xNSRT; No Collisions			
QZ Development, Approval, Certification, Notification, & Initial Inventory Updates	\$ 335,529	\$ 211,513	\$ 124,016
Install & Maintain Safety Improvements	\$ 2,200,158	\$1,382,915	\$ 817,243
QZs w/ CCRI > NSRT; With Collisions			
QZ Development, Approval, Certification, Notification, & Initial Inventory Updates	\$ 899,259	\$ 275,733	\$ 623,526
Install & Maintain Safety Improvements	\$ 7,755,538	\$1,650,533	\$ 6,105,005
Periodic Affirmation/Inventory Update	\$ 274,066	\$ 58,426	\$ 215,640
TOTAL PRE-RULE QUIET ZONES	\$15,275,946	\$4,008,013	\$11,267,933
	Total	Non-Existing Quiet Zones	Whistle Bans Est. Post 10/9/96
<u>New Quiet Zones</u>			
Advance Warning Signs	\$ 42,605	\$ 36,832	\$ 5,773
QZ Development, Approval, Certification, Notification, & Initial Inventory Updates	\$ 787,160	\$ 726,564	\$ 60,596
QZ CCRI < NSRT			
Install & Maintain Safety Improvements	\$ 8,234,940	\$7,801,613	\$ 433,327
QZ CCRI > NSRT			
Install & Maintain Safety Improvements	\$12,349,909	\$10,852,960	\$1,496,949
Periodic Affirmation/Inventory Update	\$ 87,182	-----	-----
TOTAL NEW QUIET ZONE COSTS	\$21,501,796	\$19,417,969	\$1,996,645

² The Present Value (PV) of cost and benefit flows is calculated in this analysis. PV provides a way of converting future benefits and costs into equivalent dollars today so that benefit and cost streams that involve different time paths may be compared. The formula used to calculate these flows is: $1/(1+I)^t$ where "I" is the discount rate, and "t" is the year. Per guidance from the Office of Management and Budget, a discount rate of .07 is used in this analysis.

³ Crossing Corridor Risk Index

Annual Update of NSRT/QZRI and
Notification

Federal Railroad Administration

\$25,426

Total Twenty-Year Costs associated with implementation of this rule are estimated to be \$41,430,236 (PV, 20 Years, 7%).

In general there has been a downward trend in collisions at grade crossings nationwide due to the implementation of various private and public safety initiatives such as Operation Lifesaver and other public education and awareness campaigns. Costs presented in this analysis may be overstated to the extent that such initiatives would lead to the eventual implementation of some of the same or equivalent safety measures that this rule requires for the establishment of quiet zones. In such cases, this rule may be merely accelerating implementation and the rate of expenditures.

The safety benefit of this final rule is the reduction in casualties that result from collisions between trains and highway users at public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

The Regulatory Evaluation prepared for the NPRM presented two safety benefit scenarios; one assumed a constant collision rate and the other a 4% annual decline in collision rate. No comments were received regarding these two collision rates. FRA has reviewed trends in collision rates for whistle-ban crossings going back to 1980 and determined that these two rates probably bound the range that will be experienced over the twenty-years that this analysis covers. FRA developed a regression model that closely fits the rates since 1980. This model was used to develop relevant collision forecasts for the next twenty years. None of the forecasted annual collision rates indicates a decline of greater than 4 percent per year. Appendix C presents these findings in detail.

The tables that follow present safety benefits under both scenarios.

**Total Twenty-Year Safety Benefits Monetized (PV, 7%)
Constant Collision Rate (0% annual decline)**

	Nationwide	Chicago	Rest of Nation
<u>Locomotive Horns Sounded</u>			
Maximum Sound Level	-----	Not Quantifiable	-----
Casualties Prevented (Cancellation of W-Bans)	\$8,837,888	\$424,759	\$8,413,129

Pre-Rule Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Nationwide	Chicago	Rest of Nation
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	\$ 8,376,011	\$ 2,465,999	\$ 5,910,012
QZs w/ CCRI > 2 x NSRT; No Collisions	\$19,664,084	\$14,164,517	\$ 5,499,567
QZs w/ CCRI > NSRT; With Collisions	\$44,114,379	\$16,277,752	\$ 27,836,627
Total	\$72,154,474	\$32,908,268	\$ 39,246,206

New Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Total	Non-Existing Quiet Zones	Whistle Bans Est. Post 10/9/96
CCRI greater than NSRT	\$30,675,161	\$25,965,858	\$ 4,709,303
TOTAL	\$111,667,523		

**Total Twenty-Year Collisions and Casualties Prevented⁴
Constant Collision Rate (0% annual decline)**

	Nationwide, Including the Chicago Area		
	Collisions	Injuries	Fatalities
<u>Pre-Rule Quiet Zones:</u>			
Cancellation of W-Bans	57	13	1
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	16	7	2
QZs w/ CCRI > 2 x NSRT; No Collisions	35	17	7
QZs w/ CCRI > NSRT; With Collisions	48	23	8
Pre-Rule Quiet Zone Total	156	60	18
<u>New Quiet Zones:</u>			
	36	34	8
TOTAL	192	94	26

FRA also estimates that reductions to highway vehicle, rail equipment, and track damage over the next twenty years will total nearly \$600,000 assuming a constant collision rate.

⁴ These estimates represent the sum of forecasted collisions and resulting casualties. These are rarely whole numbers. The totals in the table are only the integer portion of the actual forecasts.

**Total Twenty-Year Safety Benefits Monetized (PV, 7%)
Declining Collision Rate (4% annual decline)**

	Nationwide	Chicago	Rest of Nation
<u>Locomotive Horns Sounded</u>			
Maximum Sound Level	-----	Not Quantifiable	-----
Casualties Prevented (Cancellation of W-Bans)	\$6,102,371	\$291,582	\$5,810,789

Pre-Rule Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Nationwide	Chicago	Rest of Nation
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	\$ 5,223,028	\$ 1,574,618	\$ 3,648,410
QZs w/ CCRI > 2 x NSRT; No Collisions	\$13,433,811	\$ 9,676,700	\$ 3,757,111
QZs w/ CCRI > NSRT; With Collisions	\$30,137,393	\$11,120,388	\$19,017,005
Total	\$48,794,232	\$22,371,706	\$26,422,526

New Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Total	Non-Existing Quiet Zones	Whistle Bans Est. Post 10/9/96
CCRI greater than NSRT	\$21,976,553	\$18,602,675	\$ 3,373,878
TOTAL	\$76,873,156		

**Total Twenty-Year Collisions and Casualties Prevented
Declining Collision Rate (4% annual decline)**

	Nationwide, Including the Chicago Area		
	Collisions	Injuries	Fatalities
<u>Pre-Rule Quiet Zones:</u>			
Cancellation of W-Bans	37	8	0
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	9	4	0
1QZs w/ CCRI > 2 x NSRT; No Collisions	22	11	4
QZs w/ CCRI > NSRT; With Collisions	31	15	5
Pre-Rule Quiet Zone Total	99	38	9
<u>New Quiet Zones:</u>	24	22	4
TOTAL	123	60	13

FRA also estimates that reductions to highway vehicle, rail equipment, and track damage over the next twenty years will total approximately \$400,000 under a declining collision rate of 4 percent annually.

Additional benefits that are not quantified in this analysis include reductions in train delays resulting from collisions, and community disruption where horns are sounded resulting from limiting the duration and level of sound emitted by horns. It is very difficult to quantify the value of "quality of life" and other indirect safety benefits which may result from silencing locomotive horns at locations where they currently sound. FRA believes that these benefits are substantial and significant.

It is possible that, in response to the issuance of this final rule, some of these communities may decide to terminate the whistle bans. However, given that the communities were aware of the more onerous proposed requirements, it is more likely that they established these whistle bans with the expectation that they would have to incur at least this level of costs.

New Quiet Zones Not Yet Established

Cancelled Whistle Bans: Most of the New Quiet Zones that include crossings where there were once whistle bans could not exist in absence of this rule because the railroads that operate over these corridors ignored whistle ban ordinances when they were in place. Such railroads were opposed to the increased levels of risk to highway users posed by silencing the locomotive horns. With this rule in place, railroads and communities will be able to establish New Quiet Zones that take into account the safety of motor vehicle operators as well as the desire of the community to decrease noise levels.

Both railroads and community residents should benefit from the requirements of the rule for the establishment of New Quiet Zones. Communities will establish New Quiet Zones only to the extent that benefits of silencing locomotive horns and providing motorists with a certain level of safety exceed the costs of doing so.

Those communities that do not establish quiet zones will retain the status quo and not incur any additional costs or benefits attributable to issuance of this interim final rule.

Communities Without Any Whistle Ban Experience: These communities have contacted FRA and sought guidance on how to establish quiet zones in a manner that does not diminish safety levels for motorists using the crossings in the affected corridors. Clearly these communities have an interest in safety and would probably not establish the quiet zones without voluntarily meeting the requirements of the rule for doing so. In absence of this rule, FRA would likely issue guidance on how to establish quiet zones and these communities would likely follow that guidance.

Potential New Quiet Zone Safety Benefits (at crossings where horns currently sound)

The following sections present potential safety benefits that may accrue if communities with an interest in establishing New Quiet Zones do so. They will only accrue to the extent that communities establish New Quiet Zones. Establishment of these quiet zones will indicate that the value communities place on silencing locomotive horns while providing a certain level of safety for motorists at those crossings meets or exceeds the costs of establishing the quiet zones in compliance with the requirements contained in this rule.

The safety benefits presented in the following sections are based on the same locomotive horn effectiveness rates and safety measure effectiveness rates used to calculate pre-rule benefit estimates. The effectiveness rates of locomotive horns and safety measures at particular crossings in New Quiet Zones may be very different. The potential for crossing safety to decline

significantly in absence of the locomotive horn sound is driven by different factors that are particular to each crossing. Since FRA does not have sufficient information to establish individual crossing effectiveness rates, and since FRA proceeds from the premise that motorists should be provided some form of unequivocal warning regarding the train's approach, FRA is ensuring that motorists are provided with a certain minimum level of protection at crossings in New Quiet Zones by requiring that all crossings in New Quiet Zones have gates.

CCRIs Greater than NSRT(after adjusting for the loss of the horn): Between 1997 and 2001, 44 relevant collisions resulting in three fatalities and eleven injuries occurred at crossings that are expected to form New Quiet Zones with CCRIs above the NSRT (excluding those whistle bans established post October 9, 1996 which were discussed in the previous section). According to a study of locomotive horn effectiveness, horns have average effectiveness rates of 66.8 percent at gated crossings; 30.9 percent at crossings equipped with flashing lights, but no gates; and 74.9 percent at passively marked crossings.

The following tables present relevant collisions and resulting casualties in potential New Quiet Zones for the five-year period 1997 through 2001, as well as a twenty-year extrapolation of the casualties that adjusts for silencing locomotive horns.

Potentially Preventable Collisions at Potential New Quiet Zone Crossings with CCRI Above the NSRT (1997-2001)

1996 – 2000	Maximum Train Operating Speed		Total Collisions
	<= 25 mph	> 25 mph	
Automatic Gates & Flashing Lights	7	8	15
Flashing Lights	8	10	18
Passive Warning Devices	7	4	11
5-Year Total Collisions	22	22	44

**Casualties From Potentially Collisions at Potential New Quiet Zone
Crossings with CCRI Above the NSRT (1996-2000)**

	<u>Fatalities:</u> Maximum Train Operating Speed		<u>Injuries:</u> Maximum Train Operating Speed	
	<= 25 mph	>25 mph	<= 25 mph	>25 mph
1996 – 2000				
Automatic Gates & Flashing Lights	1	0	0	5
Flashing Lights	0	1	1	2
Passive Warning Devices	0	1	2	1
5-Year Total	1	2	3	8

**Potentially Preventable Collisions at Potential New Quiet Zone
Crossings with CCRI Above the NSRT 20-Year Extrapolation and
Adjustment for Loss of Locomotive Horn Warning Effectiveness**

	Maximum Train Operating Speed		Total Collisions
	<= 25 mph	> 25 mph	
1996 – 2000			
Automatic Gates & Flashing Lights	11.69	13.36	25.05
Flashing Lights	10.48	13.1	23.58
Passive Warning Devices	12.25	7.0	19.25
5-Year Total Collisions	59.42	58.46	67.88

Casualties From Potentially Preventable Collisions at Potential New Quiet Zone Crossings in Quiet Zones with CCRI's Above the NSRT – 20-Year Extrapolation And Adjustment for Loss of Locomotive Horn Warning Effectiveness⁶

	<u>Fatalities: Maximum Train Operating Speed</u>		<u>Injuries: Maximum Train Operating Speed</u>	
	<u><= 25 mph</u>	<u>>25 mph</u>	<u><= 25 mph</u>	<u>>25 mph</u>
Automatic Gates & Flashing Lights	6.68	0	0	33.4
Flashing Lights	0	5.24	5.24	10.48
Passive Warning Devices	0	7	14	7
20-Year Total	6.68	12.24	19.24	50.88

Calculation of Potential 20-Year Safety Benefits for New Quiet Zones with CCRI > NSRT

Safety benefits are estimated using the same methodology as was used for the safety benefits of Pre-Rule Quiet Zones and assuming that safety measure implementations are distributed evenly in the first three years of the rule. Exhibit 5 presents annual estimates.

Estimated total twenty-year safety benefits (including those resulting from the installation of flashing lights and automatic gates at crossings not already equipped with these) that would result from the establishment of New Quiet Zones that include crossings with whistle bans established after October 9, 1996, former whistle-ban crossings, and crossings in communities that have expressed an interest in establishing quiet zones are as follows:

Whistle Bans Established Post Oct. 9, 1996

<u>Scenario</u>	<u>Collisions</u>	<u>Injuries</u>	<u>Fatalities</u>	<u>20-Year NPV</u>
Constant Rate	9	4	2	\$ 4,709,303
Declining Rate (4%/yr)	6	2	1	\$ 3,373,878

⁶ For crossings with automatic gates 67%, for crossings equipped with flashing lights 31%, for crossings with no automatic warning devices 75%.

Communities Where Horns Sound Routinely

<u>Scenario</u>	<u>Collisions</u>	<u>Injuries</u>	<u>Fatalities</u>	<u>20-Year NPV</u>
Constant Rate	13	14	2	\$25,965,858
Declining Rate (4%/yr)	9	10	1	\$18,602,675

Total Potential Safety Benefits of Establishing New Quiet Zones

Total under a constant collision scenario \$30,675,161(PV)

Total under a declining collision rate scenario: \$21,976,553(PV)

CCRI Less than NSRT (after adjusting for loss of horn): There are 195 crossings in the WBJs in this category. Between 1997 and 2001, four relevant collisions occurred at crossings that could be included in New Quiet Zones with CCRI's below the NSRT. No casualties resulted from these 4 collisions. This is not very surprising given that most of the crossings where bans were once in place have very low train traffic levels. FRA believes that many such former whistle bans will not be included in New Quiet Zones. Specifically, FRA has identified 63 former whistle-ban crossings with average daily train traffic levels of less than one.

The following table presents the relevant collisions in potential New Quiet Zones for the five-year period.

Potentially Preventable Collisions at Potential New Quiet Zone Crossings in Quiet Zones with CCRI's Below the NSRT (1997 – 2001)

	Maximum Train Operating Speed		Total Collisions
	<= 25 mph	> 25 mph	
Automatic Gates & Flashing Lights	1	0	1
Flashing Lights	0	0	0
Passive Warning Devices	1	2	3
20-Year Total Collisions	2	2	4

A twenty-year extrapolation that adjusts for silencing locomotive horns yields a total of 28 collisions. Total twenty-year compliance costs for establishing and maintaining New Quiet Zones comprised of 132 crossings are expected to total \$7.5 million. It would take the avoidance of 3 fatalities in the first few years of the rule valued at about \$9 million, or up to 9 fatalities in the 20th year of the rule valued at \$7.5 million to justify this cost. Given the level of costs compared to the safety levels, communities may decide not to establish quiet zones at crossings

with fewer than 5 daily trains, including communities that have recently expressed interest in establishing quiet zones. This would reduce the number of upgrades by 62 (23 gate additions and 39 lights and gates additions) and the number of relevant collisions to one.

Clearly, communities would establish New Quiet Zones including these crossings only to the extent that the value they place on silencing horns (non-safety benefits) is greater than the costs they would have to incur to establish and maintain New Quiet Zones. Given that most of the persons affected by train horn noise have already implemented mitigation measures, the desire to establish quiet zones along former whistle ban corridors may be limited.

Sensitivity Analysis for New Quiet Zones with CCRI Less Than NSRT

Some communities that would like to establish New Quiet Zones may decide to exclude certain crossings or not establish them at all as a result of the costs of complying with this final rule. This may particularly be the case for communities where train horns routinely sound today because (1) residents and/or communities may have taken steps to mitigate the effects of the noise (2) few persons are severely impacted by the sounding of locomotive horns, and (3) many of those who were affected by the noise have already relocated. Communities with grade crossings that have maximum train operating speeds of 15 mph or less may decide that the relief from the duration and sound level requirements in this rule is sufficient.

For purposes of estimating costs and benefits, this analysis excluded crossings where train horn noise severely affects 20 individuals or fewer and where train traffic averages less than one per day.

FRA developed an alternative cost scenario excluding those crossings that have no nighttime train traffic and an average of less than 10 daytime trains. Given the relatively low level of annoyance likely caused by these low levels of train traffic, communities may not include these crossings in New Quiet Zones. To the extent that these crossings are not included, fewer upgrades to flashing lights and gate would be required. The tables below compare the impacts of this alternate scenario with the one assumed in this analysis.

Distribution of Crossings in QZs with CCRI Less Than NSRT

Warning Device	Original Scenario	Alternate Scenario
Gates & Lights	43	22
Flashing Lights	44	23
Passive	45	12
Total	132	57

Upgrades Required to Establish New Quiet Zones

	Original Scenario	Alternate Scenario
Install Gates	44	23
Install Lights and Gates	45	12
Total	89	35

Total Twenty-Year Upgrade Costs Installation and Maintenance (PV)

	Original Scenario	Alternate Scenario
Install Gates	\$1,348,411	\$ 704,851
Install Lights and Gates	\$6,501,631	\$1,733,768
Total	\$7,850,042	\$2,436,619

Under the alternative scenario considered in this section, persons residing near the crossings that would not be included in New Quiet Zones would continue to be minimally affected by train horn noise and the communities would incur no additional costs. This may seem like a more cost-effective and sensible alternative to many communities. Of the crossings included in the alternative scenario for potential New Quiet Zones with CCRI less than the NSRT, that are not already equipped with both flashing lights and automatic gates, 22 have maximum train operating speeds of 15 mph or less. Residents near these crossings could also benefit from a reduction in noise that results from the sounding of horns for less time on approach. Not including these grade crossings in New Quiet Zones would further reduce costs and should not affect safety levels. Therefore, to the extent that communities exclude some of these crossings in New Quiet Zones, costs and benefits presented in this analysis are overestimated. Under this rule, communities have the discretion to exclude many of these crossings.

7.6.8 Re-affirmation and Updating of the DOT Grade Crossing Inventory

FRA needs to have current information regarding the circumstances that affect the collision risk at crossings in quiet zones for this rule to achieve maximum safety benefits. Periodic update of the DOT Grade Crossing Inventory will ensure that any changes in the factors that affect collision risk are taken into consideration when the accident prediction formulas are used to calculate a quiet zone's CCRI. This will ensure that communities with quiet zones affected by the requirements of this rule, as intended, are not be heavily burdened, and when appropriate reduce their risk levels. Without current information, FRA would possibly have to consider more stringent requirements given the uncertainty of conditions at crossings where locomotive horns are not sounded. Without current information, FRA would not want to put motorists at a greater level of risk than stated by this rule, given that the safety of motorists who drive over crossings is at stake.

Without the requirement to update the inventory periodically, crossings with very high probabilities of having collisions resulting in serious injuries may go untreated and may have collisions that could have been avoided. Communities should also be aware of the current risk levels at their crossings in order to make any improvements they would make in absence of this rule.

Like the periodic updating of the inventory, the periodic affirmation that the supplementary safety measures implemented within the quiet zone continue to conform with the requirements of this rule will ensure that this rulemaking achieves its safety objective.

Changes in the characteristics of the crossings that comprise the quiet zones may require a reevaluation that would not occur in absence of this requirement.

7.6.9 Power-Out Indicators or Remote Health Monitoring

In much the same manner that motorists often rely upon the indications provided by traffic lights as a primary means of determining whether it is safe to traverse a highway intersection, motorists often rely upon the indication provided by highway-rail grade crossing warning devices as the primary means of determining whether it is safe to traverse a highway-rail grade crossing. Safety at crossings equipped with automatic warning devices very much depends upon keeping these devices functioning properly. Automatic warning devices at grade crossings are required to fail in a safe mode. That is, in the case of gated crossings, with gates down, and in the case of other devices with the device signaling a train is approaching. Motorists generally respond by initially heeding the warning. However, once they realize that the system is malfunctioning, they rely on other visual and auditory cues and drive through the grade crossing when they think it is safe to do so. Should a train be approaching at the same time, a collision could occur.

Remote health monitoring devices provide information to a control location. When a problem is reported, a signal maintainer performs the necessary repairs. Depending on the type of problem that is detected, train crews may be notified to protect movements per 49 CFR part 234. Crews may reduce speed and sound the locomotive horn even at whistle-ban crossings.

Power-out light systems provide train crews with a reasonably prompt warning that commercial power is not being provided. The automatic warning device should continue to operate properly as long as the battery back up is charged. Train crews will notify train dispatchers of the situation so that the problem can be addressed before there is an activation failure.

Despite the efforts to maintain the safety and reliability of crossing warning devices, warning device failures do occasionally occur. Such activation failures are very dangerous because motorists who rely on the warning device as the primary indicator of the safety of crossing are given a false sense of security. Activation failures can have potentially fatal consequences when the device provides no warning whatsoever.

FRA recognizes the importance of recording and tracking such failures to analyze their cause and perhaps find ways to prevent or minimize their occurrence. Railroads are required to report all activation failures of highway rail grade crossing automatic warning devices to FRA. The information in these reports indicates there is a trend with implications for this rule.

During the three-year period from 1998 to 2000, FRA compiled 1,786 reports of activation failures involving automatic grade crossing warning devices. During that same three-year time period, 69 grade crossing collisions resulting in 28 injuries and 6 fatalities occurred when automatic warning devices did not issue a warning. The number of collisions attributed to these failures was relatively low.

FRA believes that one reason that so few activation failures result in crossing collisions is that motorists rely on other cues to alert them to the fact that a train is approaching despite the fact that the crossing warning device has not actuated. A logical assumption is that the locomotive horn provides an important auditory cue to alert motorist that a train is approaching when the primary visual cue, the indication provided by the warning device, is false and misleading.

Active warning device activation failures can be very dangerous, particularly without the benefit of a warning from the sound of the locomotive horn. At crossings that are part of a quiet zone, this important auditory cue is not likely to be present, absent a system that notifies the crew of the approaching train that the automatic crossing device is not functioning as intended and is failing in an unsafe manner.

Unfortunately, no device or system has yet been designed that is capable of detecting all automatic warning device malfunctions that are likely to result in a false activation. However, the power-out light device, which has been in use for many years, is capable of detecting the most common cause of automatic grade crossing warning device activation failures and is capable of providing advance warning to the train crew who can then begin slowing the train and sounding the horn before the train arrives at the crossing.

While the loss of electrical power does not account for all activation failures, it is far and away the most common cause of these potentially fatal crossing warning device malfunctions. Between 1998 and 2000, inclusive, 420 activation failures representing or 23.5 percent of the total number of activation failures were caused by loss of electrical power. An additional 154 activation failures were caused by a power surge of lightning that may have also resulted in a loss of electrical power that might have been detected by the presence of a power out indicators. Taken together, as many as one third of all activation failures may have been detected by the presence of power out indicators.

While the information reported to FRA concerning warning device activation failures does not indicate whether the failed devices were equipped with power out indicators, it is very reasonable to assume that a number of the crossings subject to activation failures very likely were equipped with power out indicator which may have played a role in preventing the activation failure from resulting in a collision.

Motorists approaching crossings in New Quiet Zones established under this rule will rely very heavily on the visual cues provided by automatic warning devices (flashing lights and gates) to warn them of approaching trains. In the absence of the auditory cues due to the silenced locomotive horns, it is imperative that these warning devices function properly and safely. An activation failure in a quiet zone crossing could result in a grade crossing collision. Therefore, FRA believes it prudent to require that automatic crossing warning devices located within a quiet zone be equipped with power out indicators or remote health monitoring systems to warn that a power failure has occurred at the crossing so that the problem may be fixed.

7.7 Private Crossings in Quiet Zones

In any given year, approximately 10 percent of the deaths at highway-rail crossings occur at private crossings. Although many private crossings do not present high risk in comparison with active public crossings (e.g., entrances to individual residences; lightly used agricultural crossings), other private crossings may present considerable risk. In some cases, railroads instruct crews to sound the horn at particular private crossings where risk is perceived to be high; in other cases locomotive horns provide effective warning as an accident of geography (i.e., where the private crossing is sandwiched between two nearby public crossings).

Although locomotive horns are not usually sounded at private crossings, the sound from locomotive horns at other crossings may serve as an indication of train activity to motorists approaching private crossings. There may be some safety disbenefits to the extent that quiet zones are created around private crossings and the residual effect of the locomotive horn warning is no longer felt at the private crossings. However, railroads can be presumed to pay some attention to this (to the extent that it is a problem) and railroads may have train crews sound the horn as they approach the private crossings.

7.8 Total Twenty-Year Estimated Safety Benefits

The Regulatory Evaluation prepared for the NPRM presented two safety benefit scenarios; one assumed a constant collision rate and the other a 4% annual decline in collision rate. No comments were received regarding these two collision rates. FRA has reviewed trends in collision rates for whistle-ban crossings going back to 1980 and determined that these two rates probably bound the range that will be experienced over the twenty-years that this analysis covers. FRA developed a regression model that closely fits the rates since 1980. This model was used to develop relevant collision forecasts for the next twenty years. None of the forecasted annual collision rates indicates a decline of greater than 4 percent per year. Appendix C presents these findings in detail.

The tables that follow present safety benefits under both scenarios.

**Total Twenty-Year Safety Benefits Monetized (PV, 7%)
Constant Collision Rate (0% annual decline)**

	Nationwide	Chicago	Rest of Nation
<u>Locomotive Horns Sounded</u>			
Maximum Sound Level	-----	Not Quantifiable	-----
Casualties Prevented (Cancellation of W-Bans)	\$8,837,888	\$424,759	\$8,413,129

Pre-Rule Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Nationwide	Chicago	Rest of Nation
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	\$ 8,376,011	\$ 2,465,999	\$ 5,910,012
QZs w/ CCRI > 2 x NSRT; No Collisions	\$19,664,084	\$14,164,517	\$ 5,499,567
QZs w/ CCRI > NSRT; With Collisions	\$44,114,379	\$16,277,752	\$ 27,836,627
Total	\$72,154,474	\$32,908,268	\$ 39,246,206

New Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Total	Non-Existing Quiet Zones	Whistle Bans Est. Post 10/9/96
CCRI greater than NSRT	\$30,675,161	\$25,965,858	\$ 4,709,303
TOTAL	\$111,667,523		

**Total Twenty-Year Collisions and Casualties Prevented⁷
Constant Collision Rate (0% annual decline)**

	Nationwide, Including the Chicago Area		
	Collisions	Injuries	Fatalities
<u>Pre-Rule Quiet Zones:</u>			
Cancellation of W-Bans	57	13	1
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	16	7	2
QZs w/ CCRI > 2 x NSRT; No Collisions	35	17	7
QZs w/ CCRI > NSRT; With Collisions	48	23	8
Pre-Rule Quiet Zone Total	156	60	18
<u>New Quiet Zones:</u>	36	34	8
TOTAL	192	94	26

⁷ These estimates represent the sum of forecasted collisions and resulting casualties. These are rarely whole numbers. The totals in the table are only the integer portion of the actual forecasts.

**Total Twenty-Year Safety Benefits Monetized (PV, 7%)
Declining Collision Rate (4% annual decline)**

	Nationwide	Chicago	Rest of Nation
<u>Locomotive Horns Sounded</u>			
Maximum Sound Level	-----	Not Quantifiable	-----
Casualties Prevented (Cancellation of W-Bans)	\$6,102,371	\$291,582	\$5,810,789

Pre-Rule Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Nationwide	Chicago	Rest of Nation
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	\$ 5,223,028	\$ 1,574,618	\$ 3,648,410
QZs w/ CCRI > 2 x NSRT; No Collisions	\$13,433,811	\$ 9,676,700	\$ 3,757,111
QZs w/ CCRI > NSRT; With Collisions	\$30,137,393	\$11,120,388	\$19,017,005
Total	\$48,794,232	\$22,371,706	\$26,422,526

New Quiet Zones: Value of Injuries and Fatalities Prevented by Implementing Safety Measures

	Total	Non-Existing Quiet Zones	Whistle Bans Est. Post 10/9/96
CCRI greater than NSRT	\$21,976,553	\$18,602,675	\$ 3,373,878
TOTAL	\$76,873,156		

**Total Twenty-Year Collisions and Casualties Prevented
Constant Collision Rate (0% annual decline)**

	Nationwide, Including the Chicago Area		
	Collisions	Injuries	Fatalities
<u>Pre-Rule Quiet Zones:</u>			
Cancellation of W-Bans	37	8	0
QZs w/ NSRT < CCRI < 2xNSRT; No Collisions	9	4	0
1QZs w/ CCRI > 2 x NSRT; No Collisions	22	11	4
QZs w/ CCRI > NSRT; With Collisions	31	15	5
Pre-Rule Quiet Zone Total	99	38	9
<u>New Quiet Zones:</u>			
	24	22	4
TOTAL	123	60	13

7.8.1 Uncaptured (Out-Year) Benefits

This analysis includes some compliance costs that will be incurred well beyond the first few years of the rule. Unlike the benefits associated with costs incurred in the early years of the rule, much of the twenty-year stream of benefits associated with these costs is not captured in this analysis. Safety benefits are understated to the extent that many years of safety benefits resulting from safety measures implemented in out-years are not included.

7.9 Damage to Highway Vehicles, Railroad Equipment, and Track

In addition to the prevention of casualties, FRA estimates that, over the next twenty years, this collision prevention will result in a reduction in highway vehicle, railroad equipment, and track damage. For the period between 1997 and 2001, average highway vehicle damage for those relevant collisions that occurred at whistle-ban crossings with CCRI greater than NSRT was \$4,371⁸. Railroad equipment and track damage is only reported to FRA when it exceeds \$6,700. Eight collisions that occurred at whistle ban crossings with CCRI greater than NSRT occurred between 1997 and 2001. The average damage reported for those eight was \$51,444. This analysis assumes that heavy highway vehicles including trucks, truck-trailers, and buses cause average damages of \$3,350 (an amount equal to half of the reporting threshold). Between 1997 and 2001, 36 relevant collisions involved these types of heavy highway vehicles. The average damage to rail equipment and track for relevant collisions at whistle ban crossings was \$2,095. Applying the average damages to the collisions expected to be prevented by implementing this rule results in a reduction of such damages values at approximately \$400,000 (PV). Exhibit 9 presents annual costs by category.

7.10 Unquantified Benefits

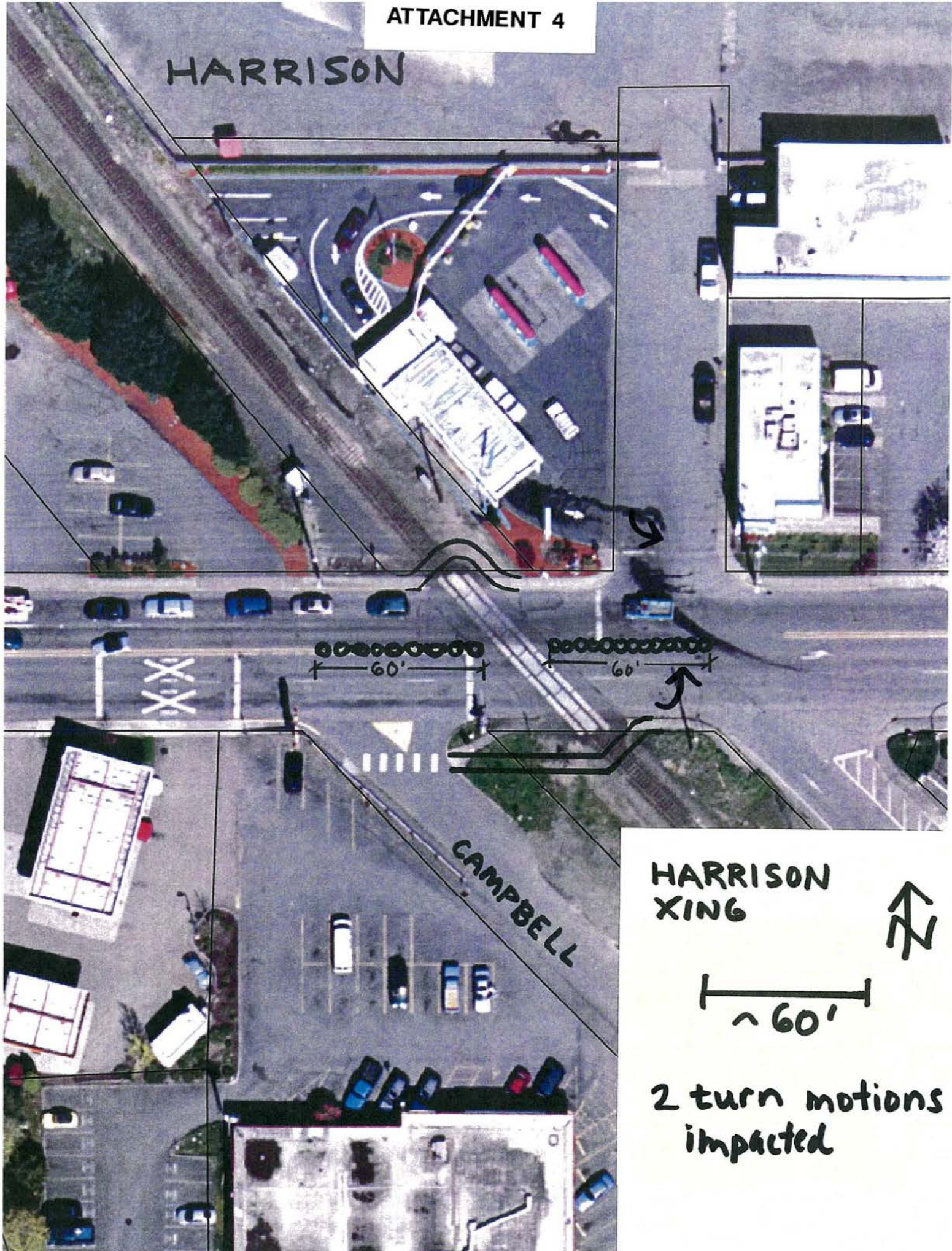
Some of the unquantified benefits of this final rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Because such events are rare, FRA has not attempted to estimate the value of avoiding events in which a highway-rail collision results in a derailment, with harm to persons on the train or release of hazardous materials into the community.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns will no longer have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This exception is intended to avoid unnecessary noise impacts on railroad personnel working on the ground in very close proximity to the locomotive horn in industrial areas where substantial switching occurs at very low speeds with flaggers providing warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost.

⁸ This average does not include collision reports of \$0 highway vehicle damage or those that did not report. FRA believes it is unreasonable to assume that \$0 damage would result to a highway vehicle.

HARRISON



CAMPBELL

HARRISON
XING



~ 60'

2 turn motions
impacted



OAK

ROADWAY
ROADWAY

ROADWAY

OAK
XING



~60'

4-turn motions
impacted

37TH



37TH

60'

60'



RAILROAD

37TH
XING



~60'

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

February 6, 2007

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson, Planning Director Katie Mangle,

Park and Recreation Board Interview

Council interviewed Val Hubbard for a vacant position on the Park and Recreation Board.

Senior Project Video

Marie Johnson showed a video highlighting the importance of art in a community.

Transportation System Plan Update

Ms. Mangle reported this effort was an update to the Transportation System Plan (TSP) adopted in 1997. Staff applied for and received a \$128,000 grant from the Oregon Department of Transportation (ODOT) that allowed the City to hire consultants to help with the technical work and assist with public involvement.

The TSP was not only a transportation plan for the City that identified policies and priorities, but was also A guide for determining which projects got built in Milwaukie. For example, when the King Road Safeway plan went to the Planning Commission, it was understood that a signal would be needed at 43rd Avenue. Safeway paid for that signal because it was in the 1997 TSP. A number of projects in the Plan had been completed. Others had not, so it was time to determine if they were still a priority and if development in Clackamas County and the City affected them.

This project started in November with four community briefings. The 40 attendees gave their initial feedback on the types of things the City should study and began signing up for committees, and over 100 people signed up for the interested persons list. The consultants were currently mapping and inventorying existing conditions and collecting traffic data that included 24-hour speed counts at selected locations. The advisory committee included citizens, businesses, and agency representatives to oversee the project.

Right now the four working groups -- street design solutions, traffic and street networks solutions, transit solutions, and freight access solution – were starting up. Each working group would meet about four times. The street design working group would set policies and direction for the City on such options as green streets on Logus Road and more context-sensitive street design. The current TSP did not address that type of design. There would be two types of workshops including bike and pedestrian access, and others would focus on downtown parking tailored for business and also reaching out the neighborhood. Ms. Mangle provided handouts showing all the public involvement opportunities over the next six months. She encouraged people to attend the February 24, 2007

kick-off to learn more about the project and to sign up for the working groups. There will be a spring open house where the recommendations would be presented to the community.

Councilor Stone asked if an outcome of the TSP would be a prioritization of needed street and sidewalk work.

Ms. Mangle responded it was being taken from two angles. One was the physical inventory of the streets and sidewalks. The other was a look at the larger transportation system that would make Milwaukie a greater place to live and work. There were goals already in the Comprehensive Plan that identified fundamental City objectives. People will have a chance to comment all the way through the process. The old TSP had a very lengthy list of projects that was beyond the City's funding capabilities even with grants. The new TSP would be more closely tied to a realistic funding forecast.

Mayor Bernard understood this was about the future and not maintenance. He asked how the City planned for the impacts related to the Sunrise Corridor, Hwy 224, and Harmony Road.

Ms. Mangle replied the Sunrise Corridor was not in the City's study area which included the Urban Growth Management Area (UGMA) to I-205. The Sunrise Corridor was further east in Clackamas County. Both projects used the Metro traffic forecast model, and that forecast did include the Sunrise Corridor and reflected growth. Milwaukie was coordinating with Metro and the County on that and other projects. The City needed this process to help plan for changes related to Harmony Road and Hwy 224. Not having an updated plan put the City at a disadvantage when trying to understand those impacts. The Harmony Road project was already listed in the 1997 TSP, so it would be addressed. The forecast would provide a better understanding of the development and changes related to Hwy 224.

Mayor Bernard understood the Clackamas County study said there would be no impact on Hwy 224 Milwaukie with the Sunrise Corridor which he thought was malarkey.

Mr. Asher added that Mr. Parkin had taken the lead on both projects and was briefed by the County. Mr. Parkin was directed to invite County staff to a work session in March to discuss specifically the Harmony Project and the Sunnybrook extension.

Councilor Collette shared the concern because at the meetings she attended on the Hwy 224 and Sunrise Corridor projects it was stated that the impacts would dissipate by Lake Road. It seemed to be the "beam me up, Scottie" approach to traffic planning. There would be 60,000 new people coming over the hill toward Milwaukie, and the County said there would be no impact.

Ms. Mangle talked with the Metro traffic section because of the many concerns she was hearing. She did confirm that the regional people were looking at not only that study area east of I-205, but also west to the river. Metro was concerned about those regional impacts as well because it was difficult for a town the size of Milwaukie to be on all the project committees.

Mayor Bernard understood Milwaukie was asked to participate on the Sunrise project, but the City had to decline because it was short staffed. Now they were looking at creating a policy committee to deal with the Sunrise Corridor because of the project cost. He did not wish to be a member of that committee and hoped others would consider participating. He asked how one could develop a TSP

when there were so many potential impacts. He understood this was a forecast through 2035, and within a few years Sunrise, Sunnybrook, and Hwy 224 will have a huge impact.

Councilor Stone understood the current TSP was ten years old and asked how old was the Regional Transportation Plan (RTP) was.

Mr. Asher said there was a minor update about four years ago, and it was currently undergoing a major update now.

Ms. Mangle added it was desirable to review the TSP every four to five years to consider some of the figures. There was a lot of work to do on the current plan because it was so old. The RTP was being updated now, so it would be advantageous for Milwaukie to be closely coordinated.

Councilor Stone asked if the TSP revision was a mandate.

Ms. Mangle believed Milwaukie was the only city doing a full update, so there was some flexibility in how cities look at their TSPs. There were statewide planning rules with which the cities needed to comply. The more outdated the TSP became the less likely it would be for the City to get funding. The TSP was an active document used for the capital improvement plan and was a tool for money and implementation.

Councilor Collette commented it was also about integrating the needs by taking a broad look.

Councilor Stone understood DKS was doing traffic and speed counts in 34 locations. She asked what types of streets they were targeting.

Ms. Mangle replied it was a little bit of everything. There were a number of points along Hwy 224 and 99E, and there were traffic counts on local streets where there were complaints about cut through traffic. The model covered the whole City and these were the points at which more data would be gathered. She provided information on the Milwaukie Transportation System Plan Working Group and Workshop Kickoff on February 24.

Councilor Stone asked how the Working Groups would be staffed.

Ms. Mangle replied the project included planning, community development, engineering, and community services. Mr. Asher would work with the transit solutions group, Ms. Shanks with street design, Mr. Parkin with the traffic and street network, Mr. Campbell with freight access, Mr. Marquardt and Mr. Kolver with the pedestrian and bike access, and Ms. Mangle the downtown parking. There would be consultant support and mediators if necessary. The meeting dates would be set once people signed up.

Councilor Loomis thought the freight people needed to step up and participate in a group setting so better ideas came out.

Ms. Mangle added there would be a side project that would focus on 99E/Ochoco and other tricky intersections in the North Industrial area. There would be group meetings, and staff wanted to make an extra effort to reach out to businesses. She thought most of the working groups would meet in the evening with the possible exceptions of downtown and North Industrial meetings.

Councilor Barnes suggested making a video of the Kickoff Meeting to broadcast on cable.

Mayor Bernard suggested clarifying the meaning of freight access.

Ms. Mangle added staff would use the City's website extensively for this project and would post all the working group agendas, meeting materials, and notes. People can still know what's going on without attending a lot of meetings. There would also be an online survey.

Councilor Barnes suggested a blog where people could add their comments.

Councilor Stone suggested making staff liaison e-mail addresses available.

City Manager Matters

Mr. Swanson discussed John Lang's request for someone to be on the Site Selection Committee coming out of the Citizens Advisory Council (CAC) process. Helpful to look at the first statement, "Both Clearwater and the CAC process provided reasonable answers to the questions each was addressing." The problem was they were not addressing the same question. Clearwater was looking at the best regional approach to wastewater treatment. The expansion to Tri-City and diversion to that facility was a reasonable answer to that question. When the Board of County Commissioners (BOC) delegated to the CAC the issue of coming up with a strategic plan for Clackamas County Service District #1 (CCSD1) they were not asked to come up with a regional solution. The CAC first looked at what it wanted to accomplish, and the most deeply held goals were likely ownership and control. The CAC answered its question as well as Clearwater answered the regional question, but that led to some interesting issues.

The chart he distributed outlined the four legs of the approach. The first was the question of the Kellogg Treatment Plant. The BOC at one point made the decision that Kellogg should be decommissioned. There would need to be some kind of alteration in order to increase flows until a new plant was brought on line and would require a land use action before the Planning Commission and possibly before the City Council. The second leg had to do with interim capacity. Water Environment Services (WES) had undertaken the master planning process that looked at growth within the tri-cities. They were also looking at diversion from CCSD1. Those studies were underway. One of the questions was if capacity were increased at Tri-City to provide for interim diversion for CCSD1 was if the capacity was something CCSD1 would own. Would they pay for the infrastructure and then sell it back to Tri-City? Or would CCSD1 be in a contract situation with Tri-City? Given the CAC view that would not be the optimal solution because they wanted ownership and control. They saw that as a possible way to make Clearwater a reality by moving on the diversion and contracting with Tri-City. That was in reality a de facto Clearwater solution. The third leg was the new plant within the District which was a CAC recommendation. That would satisfy the CAC's desire for ownership and control. It would be sized sufficiently to meet future needs. Right now that was one of the issues on the front burner because the County hired Mr. Lang to run the process of the site selection committee. Mr. Lang had been the director of the Portland Bureau of Environmental Services (BES) and was experienced in site selection processes. The CAC was very concerned about the composition of the membership, and the BOC would get back with its decision. Mr. Swanson thought the site selection committee composition would likely remain as it was proposed. The final leg was the regional committee that had not yet been formed, and Milwaukie would be asked to provide a member or members. The purpose of that committee was to take a long-term regional look.

The conflict was in the views of the CAC and Clearwater and regional versus ownership and control. The BOC and CAC had been discussing the CAC's role.

CITY COUNCIL WORK SESSION – FEBRUARY 6, 2007

DRAFT MINUTS

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When it was established a year ago in January, the CAC was charged with coming up with a wastewater strategic plan for CCSD1. The enacting Board order said the CAC would be ongoing as the advisory body to CCSD1. There was a staff memo on its view of the CAC's role, and the CAC hired an attorney to define its role. Within each of those was the role of the director. The City of Happy Valley delivered a letter to the BOC requesting that it be informed of the process for de-annexation from CCSD1 and the possibility of annexation to Tri-City. In addition, Damascus has certain desires. That was important in that a lot of the value and future connections would be generated in the area east of I-205. The construction of the new plant which would be extremely expensive would be accomplished through revenue bond financing which was dependent upon connections. On one hand a site may be identified, but if this happened then there might not be the financing. Secondly if connections were eliminated, they may back into Kellogg Treatment Plant as being a viable facility that could handle the resulting load. If Happy Valley and Damascus de-annex, then there was nothing that would prevent Milwaukie from annexing to Tri-City. Happy Valley had been very upset with the CAC for sometime because of the way it operated. He understood the CAC did not view the loss of Happy Valley with any great concern. The loss would represent the loss of a large financial base and would not be in the best interest of CCSD1 if it wanted to build a new plant. Kellogg Treatment Plant could serve the CCSD1 load. The land use issue will be on the Council's agenda on February 20, and he would suggest continuing the hearing.

Councilor Barnes recommended bringing the regional parties to the table before forming the site selection committee.

Mr. Swanson thought a lot of pressure was being put on the BOC, and the CAC was pushing for the site selection committee. If the site selection committee did not come up with a location, then it would move toward a Clearwater-type situation. He thought someone from Milwaukie should participate and at least be on board if things begin to move.

Councilor Barnes agreed but with the caveat that Milwaukie thought it was more important to bring people to the table. The CAC seemed to be speaking and running the show, and all the regional partners were questioning going along with the group. She did not think it was right any more. The CAC had its shot, and now it was time for everyone in the region to come to the table.

Mr. Swanson was not advocating one way or another for the summit. He guessed the CAC would say the County was running the show, and the BOC would say they had not made a decision one way or another.

Councilor Barnes suggested that the Milwaukie City Council prepare a formal letter to the BOC that there be a regional summit to get the process started.

Councilor Collette thought the purpose of the site selection committee was to legitimize the CAC report

Councilor Stone seemed like the process was dragging on way too long. July 2008 was not quick in her opinion. There were a lot of people affected, and Happy Valley certainly had some concerns, as did Milwaukie. She thought it would behoove the group to have everyone sit down and talk.

Mr. Swanson would draft a letter and asked that the Council designate someone.

Councilor Stone was interested in attending the meetings but should also have Mr. Swanson there.

Mayor Bernard recommended Mr. Swanson attend special meetings.

Mr. Asher would look at who was available from staff.

Councilor Barnes suggested Lisa Batey represent the City of Milwaukie.

Mayor Bernard recommended Councilor Stone if the County wanted an elected official.

Ms. Batey understood invitations would be sent out by the end of the month in addition to the site selection committee. She did not believe the BOC wanted to raise the issue of governance again, so she felt someone else might be a better representative. She found the Happy Valley de-annexation as very interesting and that it might not be a calculation in seeing the site selection falling apart and reverting to Clearwater.

Councilor Collette thought it was an important role for Ms. Batey as the Island Station Neighborhood Chair.

Councilor Loomis noted everyone agrees there was a capacity issue, and Happy Valley and Damascus had the capacity issue and were doing this in their own best interest.

Mr. Swanson reminded Council of the teambuilding session with Dr. Bill Grace.

Mayor Bernard adjourned the work session at 6:46 p.m.

Pat DuVal, City Recorder



To: Mayor and City Council

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

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

Subject: Approval of an Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for the Lake Road Multimodal Project.

Date: March 2, 2007 for the March 20th meeting

Action Requested

Authorize the City Manager to sign an IGA with ODOT for the Lake Road Multimodal Street and Sidewalk Improvement Project (the Project) (attachment 1).

Background

In 2005, the City sought federal funding for the Lake Road Multimodal Project, which incorporated the Lake Road Multimodal Plan adopted by CC in May of 1997 (Ord. 1819). A \$3.99 million appropriation was secured for the Project in 2006. The Project will be part one of three. Currently, \$3.99 million will fund about one third of the entire Lake Road Multimodal Project. The grant application has stated that the City will do street improvements on the south end of Lake Road and sidewalk infill where no sidewalks currently exist, on the east side of Lake Road. The entire project length will have a continuous bike lane striped.

The Project is a high priority SAFETEA-LU funded project. The grant money is distributed over five years, with the City getting 20% each year beginning in 2004 and ending in fall of 2008. This amounts to about \$800,000 each year. Each year the City will typically get 85% of the federally allocated money, or 85% of \$800,000, which is \$684,400. The Federal Highway Administration (FHWA) determines the percentage annually. With this deduction, the actual total of grant money is \$3.4 million with a \$400,000 City match, or 10.27% as required by the grant conditions.

With the City match, the total amount available for this project is \$3.8 million (see attachment 2 for breakdown).

The Project will reconstruct the existing pavement, infill gaps in the sidewalk, re-stripe, upgrade the signal, and add left turn pockets and bike lanes on Lake Road from 21st Avenue to Kuehn Road (the location of the Project is shown on the sketch map, marked attachment 3). Currently there are discontinuous sidewalks, poor street surface and substandard ADA ramps and sidewalks.

The current project schedule is as follows:

<u>Project Phase</u>	<u>Beginning Date (month, yr.)</u>	<u>Ending Date (month, yr.)</u>
Project Prospectus	March 2006	March 2007
Public Involvement & Engineering	April 2007	Dec. 2007
Right of Way Acquisition	Oct. 2007	July 2008
Construction	July 2008	Dec 2008

City staff has been working with ODOT this past year on many of the required elements and federal submittal requirements of the Project. The City hired David Evans and Associates (DEA) to prepare a Project Prospectus. The Prospectus spells out the main elements of the project and addresses other concerns such as Environmental Impacts, Archeological and Historical impacts, and Endangered Species Impacts, and Hazardous Materials Impacts.

Staff has worked with ODOT to craft the attached IGA. In conjunction with this, ODOT has worked together with staff through the process of selecting a design engineer for the Project. There is an extensive federal process to follow for PE selection and ODOT has been our liaison – working closely with the City of Milwaukie to fulfill the federal requirements and hurdles.

Staff met with the Lake Road NDA in September of 2006 to discuss the Project. The conversation centered on the basic elements of the Project and the Project schedule. A few residents were concerned about the impact of the Project on their property, especially on the north side of Lake Road due to a steep slope in some areas. The majority of the residents were in support of the project.

Concurrence

The City Attorney's Office has reviewed and approved the proposed Intergovernmental Agreement. The Operations Department has reviewed and supports the project.

This project is listed in the approved Capital Improvement Plan (CIP) and in the System Development Charge (SDC) list. This project is also in the 2006/07 approved budget.

The Lake Road NDA supports this project.

Fiscal Impact

The City must deposit funds with ODOT prior to each stage of the Project. The deposit is for the 10.27% local match. The City must deposit \$40,000 prior to the Public Involvement and Engineering phase, deposit \$20,000 prior to the Right of Way phase, and then deposit \$340,000 prior to the construction phase in summer of 2008. \$60,000 is in the draft 2007/2008 budget and the remaining \$340,000 will need to be budgeted for fiscal year 2008/2009.

The estimated project cost is \$3.8 million.

Total grant revenue is \$3.4 million.

The City match is \$400,000 mostly from the Street Fund (Gas Tax). About 1 million dollars will need to be deposited with ODOT prior to construction (July 2008).

Work Load Impacts

This project is part of the Engineering work plan. Project Management will require about 160 hours from the Engineering Department, 60 hours from the Operations Department, and 10 hours from the Finance Department.

Alternatives

None.

Attachments

- Attachment 1: IGA with ODOT
- Attachment 2: Funding Allocation
- Attachment 3: Project map
- Attachment 4: Resoultion

LOCAL AGENCY AGREEMENT
HIGH PRIORITY PROJECT
SURFACE TRANSPORTATION PROGRAM – URBAN
SE Lake Road: SE 21st Ave – SE Kuehn Road (Milwaukie)

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State", and the CITY OF MILWAUKIE, acting by and through its elected officials, hereinafter referred to as "Agency", collectively referred to as the "Parties".

RECITALS

1. SE Lake Road is a part of the city street system under the jurisdiction and control of the Agency.
2. By the authority granted in ORS 190.110, 366.572, and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; State is required to set aside federal funds over the five (5) years of SAFETEA-LU for projects to address High Priority and Transportation Improvement project activities.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree that Agency will reconstruct the existing pavement, infill gaps in the sidewalk, and re-stripe and add left turn pockets and bike lanes on Lake Road from 21st Ave to Kuehn Road, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Project shall be conducted as a part of the High Priority Projects Program (HPP) under section 117, Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$3,819,000, which is subject to change. The federal pro-rata for the project is 89.73 percent; with the High Priority Project Funds awarded for project number 2326 in an amount estimated not to exceed \$4,000,000. The Agency shall provide the match for federal funds, any nonparticipating costs and all costs beyond the Project estimate. Federal funds will be subject to annual obligation limitations and possible rescissions. Agency understands that this HPP federal funding is allocated over a five-year period. If Agency wishes to construct the Project prior to the fifth year, which is Federal Fiscal Year 2009, Agency shall deposit sufficient funds with State to cover all Project costs in excess of currently available HPP federal funds. As federal funds become available, Agency will be reimbursed that portion of the advance deposit.

3. The Federal Bill Number and Project Description are as shown in the table below:

High Priority Project Number	Project Description
Sec. 1702 HPP No. 2326	Lake Road Reconstruction and Safety Improvements, Milwaukie

4. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205.

5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.

6. This Agreement may be terminated by mutual written consent of the Parties.

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

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
8. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 9. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
 10. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for its breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon such breach of any such conditions that require the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
 11. Agency shall enter into and execute this Agreement during a duly authorized session of its City Officials.

12. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Page 37, Key #14064) that was approved by the Oregon Transportation Commission on August 17, 2005.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; Deputy Director, Central Services and the Chief of Staff, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

CITY OF MILWAUKIE, by and through its elected officials

STATE OF OREGON, by and through its Department of Transportation

By _____
City Manager

By _____
Deputy Director, Highways

By _____
Recorder

Date _____

Date _____

APPROVAL RECOMMENDED

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Technical Services Manager/Chief Engineer

By _____
Agency Attorney

Date _____

Date _____

By _____
Region 1 Manager

Date _____

Agency Contact Address:

Gary Parkin, Engr. Dir.
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

**ATTACHMENT NO. 1 TO AGREEMENT # 23,209
SPECIAL PROVISIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates (PS&E); purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Agency and/or its consultant shall submit to State an approved engineering quality control plan for PS&E review. Said document shall be on file with State's Local Agency Program Liaison prior to the obligation of federal PE funding."
2. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Office of Procurement Manager or designee (Salem). Said contract must be reviewed and approved by the Office of Procurement Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
3. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
6. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
7. Maintenance and power responsibilities shall survive any termination of this Agreement.

SAFETEA-LU SECTION 1702 AND SECTION 1934 FUNDING ALLOCATIONS

LAKE ROAD - MILWAUKIE
KEY NO 14064

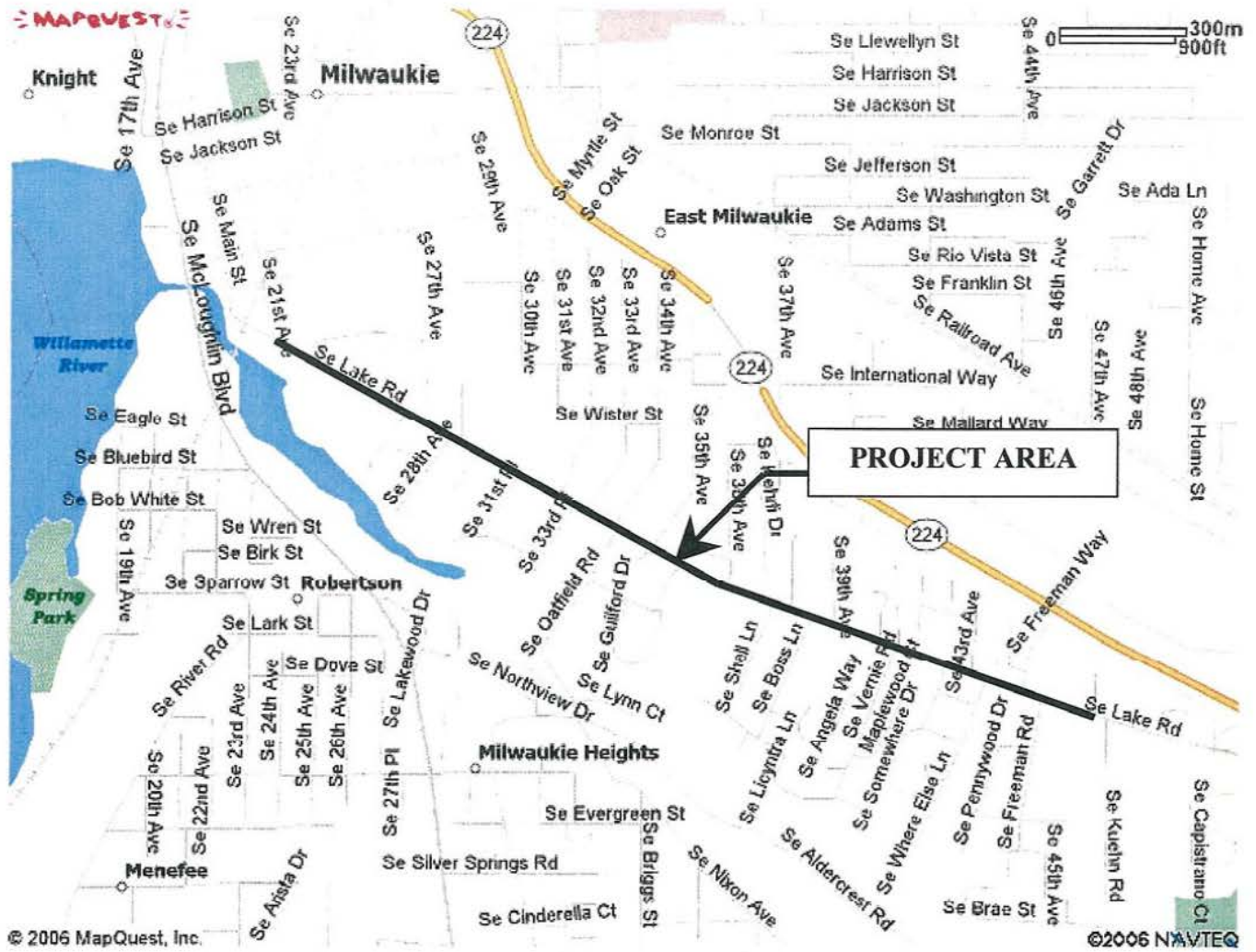
\$4,000,000 (FEDERAL) SECTION 1702 HIGH PRIORITY FUNDING CODE HY10/LY10 OVER 5 YEARS

#2326

YEAR	ALLOCATION % PER YEAR	FED \$ ALLOCATED PER YEAR	CUMULATIVE FED \$	LIMITATION FOR THE YEAR	FED \$ PER YR AFTER LIMITATION	CUMULATIVE FED \$ AFTER LIMITATION	LOCAL MATCH 10.27%	TOTAL \$ ALLOCATED PER YEAR	ACTUAL / ESTIMATED LIMITATION
2005	20%	300,000	800,000	85.5472%	684,378	684,378	78,330	762,708	ACTUAL HY10
2006	20%	792,000	1,592,000	87.0480%	689,421	1,373,799	78,907	768,328	ACTUAL LY10(Incl 1% recission)
2007	20%	300,000	2,392,000	85.5472%	684,378	2,058,177	78,330	762,708	ESTIMATE LY10
2008	20%	300,000	3,192,000	85.5472%	684,378	2,742,555	78,330	762,708	ESTIMATE LY10
2009	20%	300,000	3,992,000	85.5472%	684,378	3,426,933	78,330	762,708	ESTIMATE LY10
TOTALS		3,992,000			3,426,933		392,227	3,819,160	\$ -

* Estimated annual limitation for future years based on congressional allocation. Non Shaded areas indicate actual/confirmed limitation for the year.

Attachment 2
Funding Allocation



SE 21st Avenue – SE Kuehn Road (Milwaukie)
SE Lake Road

Vicinity Map

Attachment 4

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE LAKE ROAD MULTIMODAL IMPROVEMENTS

WHEREAS, Lake Road consists of a discontinuous sidewalk network, poor street condition, and limited street scaping; and

WHEREAS, the City of Milwaukie has applied for and received a Federal Highway Administration (FHWA) grant for 3.4 million dollars; and

WHEREAS, ODOT is the grant administrator for the FHWA grant and an IGA is a required document to receive the grant money; and

WHEREAS, ORS 190.110, 366.572, and 366.576, allow the City to enter into cooperative agreements with the State for the performance of work on certain types of improvement projects with the allocation of costs, terms and conditions mutually agreeable to the contracting parties; and

WHEREAS, the City of Milwaukie will contribute a 10.27% grant match in the amount of \$400,000; and

WHEREAS, sufficient funds exist in the Street Department 2007/08 budget to pay for the City match and \$340,000 will need to be budgeted in the 2008/2009 budget; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie:

The City Manager may sign an IGA with ODOT for the Lake Road Multimodal Improvement Project.

Introduced and adopted by the City Council on March 20, 2007. This resolution is effective upon passage.

Mike Swanson, City Manager

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Logus Road Sidewalks Project: IGA & Budget Authority

Date: March 7, 2007 for March 20, 2007

Action Requested

Approve a Resolution directing the City Manager to sign an IGA with ODOT and creating budget authority to expend up to \$45,456 towards the project, to be appropriated from the "fee in lieu of construction" contingency account.

Background

Council has directed staff to commit City funds to provide local matching funds for an ODOT Bike/Ped grant and a Community Development Block Grant. Council direction and support were provided at the November 15, 2005 work session and via Resolution # 33-2006. The Logus Road sidewalk project was originally identified as part of the Safe Trip to School program in the mid-1990s, it was one of the top three pedestrian project priorities in the 1997 Transportation System Plan, and it has been listed in the City CIP since at least 2001.

The City has received an award of \$445,000 from the ODOT Bike/Ped program for the project. Half of the funds will be made available at the start of FY 2007 and the other half upon project completion. Acceptance of the grant requires approval of an Intergovernmental Agreement (IGA).

The initial project concept will provide pedestrian connections between S.E. 49th Ave. and Stanley Ave. along Logus Road. The project will incorporate a "green street" approach, preserving a tree canopy and providing on-site storm runoff capture and treatment. Because the right-of-way is limited, the project will likely

include some meandering of the roadway and sidewalk. This will allow the preservation of significant trees, calm traffic and preserve other existing features.

In order to complete construction in 2008, it is important to begin work now, beginning with survey work. Preliminary bids for survey work have ranged from \$10,000 to \$30,000. Staff will also seek consultant support from an engineering or landscape architecture firm to assist with preliminary project design and illustrative renderings. Staff will be working with the Lewelling neighborhood, Seth Lewelling Elementary School, and TSP working groups to generate public input on design.

The preliminary project schedule is as follows:

<u>Project Phase</u>	<u>Start</u>	<u>End</u>
Preliminary & Concept Development/ Community Outreach	April 2007	August 2007
PE/Final Design	September 2007	January 2008
Construction	May 2008	September 2008

City matching funds will come from two sources: Gas tax revenues and “fee in lieu of construction” payments collected in the Logus Road vicinity. “Fee in lieu of construction” or FILOC refers to funds collected by the City at the time of development or redevelopment in cases where the standard “right-of-way” improvements had limited value, e.g., the creation of sidewalks for one frontage in the middle of a long block with no sidewalks. The FILOC program was created to allow the City greater flexibility in allocating funds made available by development-triggered improvement requirements. In this case, \$45,465 in FILOC has been collected within the neighborhood. This project clearly provides a transportation benefit to the entire neighborhood by making improvements to a key pedestrian route, which serves the neighborhood school and includes several bus stops.

Concurrence

The project has been budgeted and properly accounted for in the CIP by Engineering. Finance was consulted on the appropriate form for the appropriation resolution. The Lewelling NDA leadership has been consulted on public outreach approaches. Pre-planning contacts have been made with TriMet and North Clackamas School District.

Fiscal Impact

Total project cost is estimated at approximately \$760,000. ODOT participation is capped at \$445,400. The City is responsible for matching, at a minimum, 10% of

the ODOT grant funds with City funds, and for the cost of the project above the grant. Clackamas County Community Development Division will make available \$216,000 to the project. Total city participation for the project will be approximately \$100,000. Funds expended in current fiscal year will count towards match for the ODOT Bike/Ped grant and allow a reduced budget request for FY 2007-08. FILOC monies can only be held for ten years.

Work Load Impacts

Engineering staff will be developing a preliminary concept. Community Development staff will oversee the project prior to construction. Engineering will oversee construction. Community Services' assistance will be sought with public outreach. All activities can be accomplished within regular responsibilities.

Alternatives

Delaying signature of IGA and expenditure of funds will delay project schedule and would endanger other grant sources.

Attachments

- | | |
|---------------|---------------------------|
| Attachment 1: | Resolution |
| Attachment 2: | IGA |
| Attachment 3: | Preliminary cross-section |

Attachment 1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
OREGON TRANSFERRING APPROPRIATION AUTHORITY AND
AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL
AGREEMENT WITH ODOT TO IMPROVE SIDEWALKS ON LOGUS ROAD.**

WHEREAS, the City of Milwaukie has identified the need to improve the pedestrian infrastructure on Logus Road in the School Trip Safety Program and the Capital Improvement Plan; and

WHEREAS, the City Council committed to contribute towards the total cost of the Logus Road/Seth Lewelling Sidewalk project by Resolution No. 33-2006; and

WHEREAS, the Oregon Department of Transportation has notified the City of a grant award of \$445,400 to support the project; and

WHEREAS, \$45,465 have been collected through “fee in lieu of construction” payments within the neighborhood with none of those payments dedicated solely to projects on the property frontage; and

WHEREAS, the Logus Road/Seth Lewelling Sidewalk project will benefit the neighborhood as a whole by improving pedestrian safety in the vicinity of Seth Lewelling Elementary and along a TriMet bus route; and

WHEREAS, Oregon Local Budget Law allows a governing body to transfer appropriation authority by passing a resolution or ordinance (ORS 294.450(1)&(3));

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie authorize the City Manager to sign an Intergovernmental Agreement with ODOT to participate in a grant-funded project to improve sidewalks and streetscaping on Logus Road between SE Stanley Ave and SE 49th Ave.; and

BE IT FURTHER RESOLVED that the transfer of appropriation in the Street/State Gas Tax fund is hereby approved as follows:

From:	To:
Contingency	Capital Outlay
\$45,465.00	\$45,465.00

Introduced and adopted by the City Council on _____.

Attachment 1

This resolution is effective on _____.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

WALKWAY/BIKEWAY PROJECT AGREEMENT
2008-2009 Pedestrian and Bicycle Program Grant
Sidewalks and Streetscaping

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and CITY OF MILWAUKIE, acting by and through its elected officials, hereinafter referred to as "Agency."

RECITALS

1. SE Logus Rd, is a part of the city street system under the jurisdiction and control of the city.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to design and construct sidewalks and streetscaping at SE Logus Rd, between SE Stanley Ave and SE 49th Ave, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. Agency has determined that the total cost of the Project is estimated to be \$758,700. State shall fund the Project in an amount not to exceed \$445,400. Agency's portion of the Project cost is \$313,300. Agency shall be responsible for any portion of the Project which is not covered by State funding.
3. The work is to begin upon execution of this Agreement by all parties and be completed no later than October 31, 2009. This Agreement shall terminate upon completion of construction and final payment, or five calendar years from date of final

signature, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. Agency shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
3. Agency shall, upon completion of Project, submit to State Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
4. Agency represents that this Agreement is signed by personnel duly authorized to do so by the Agency Council.
5. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
6. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining State's prior written approval.
7. Agency shall require its contractor to indemnify State and name State as a third party beneficiary of the resulting contract and shall carry at a minimum personal injury and property damage insurance with a single limit of \$1,000,000 for all claims arising out of a single accident or occurrence. Agency shall also ensure that the contractor provides an additional \$1,000,000 excess insurance coverage over the basic \$1,000,000 coverage. Each annual aggregate limit shall not be less than \$2,000,000 when applicable. The contractor shall include Agency and State as named insured on policies issued for this Project, or shall furnish an additional insured endorsement naming the same as additional insured to the contractor's existing public liability and property damage insurance. The certificate of insurance

shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees as additional insured. Agency shall provide a copy of the certificate to State prior to construction of the Project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days' prior written notice.

8. Agency shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of Agency or its officers, employees, subcontractors, or agents under this Agreement.
9. Notwithstanding the foregoing defense obligations under paragraph 8 above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.
10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$445,400.
11. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including without limitation, retirement system contributions, workers' compensation, unemployment taxes, and state and federal withholdings.
12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
13. Agency shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.

STATE OBLIGATIONS

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by Agency.
2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall provide to Agency an advance deposit in the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the advance deposit, the final deposit will equal the State's share of the originally estimated cost of \$758,700. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$445,400. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the advance deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.
3. State certifies at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.

GENERAL PROVISIONS

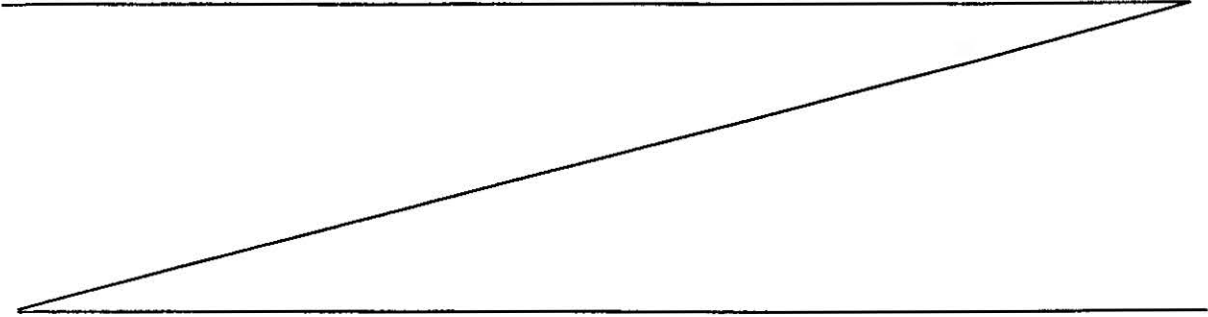
1. This Agreement may be terminated by mutual written consent of the parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.

- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.
 4. State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
 5. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
 6. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

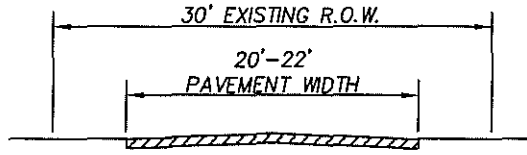
IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003 approved Delegation Order No. 3, Paragraph 12, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC-approved local grant program agreements for bicycle and pedestrian projects.

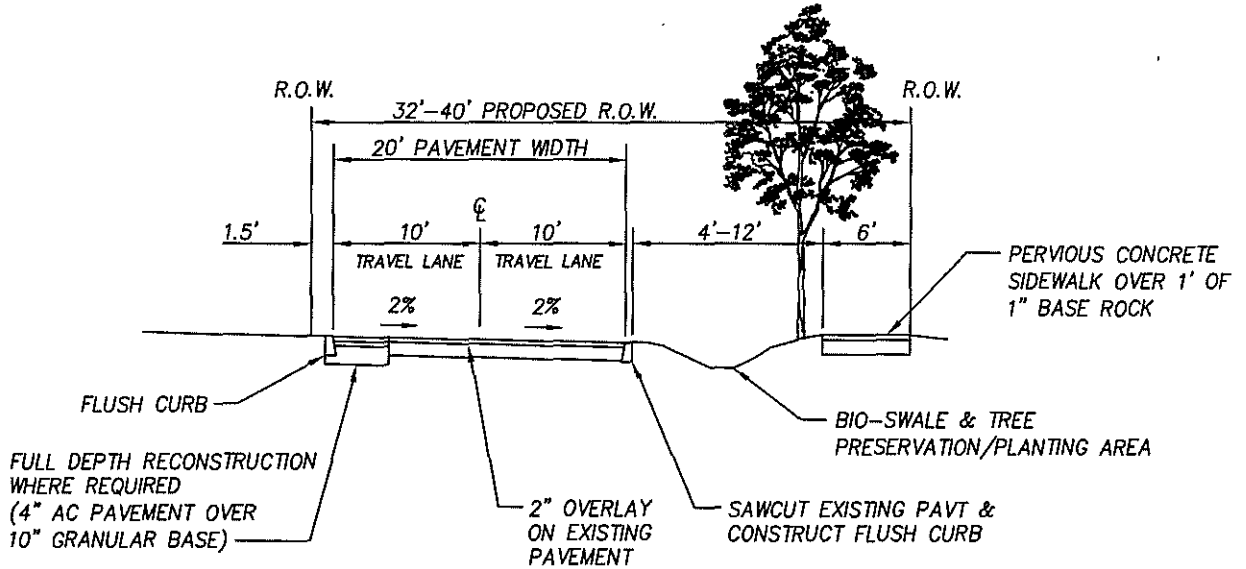
On July 7, 2005 the Director and Deputy Director, Highways approved Subdelegation Order No. 4, Paragraph 10, in which the Director and Deputy Director, Highways, delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to OTC-approved local grant program agreements for bicycle and pedestrian projects.



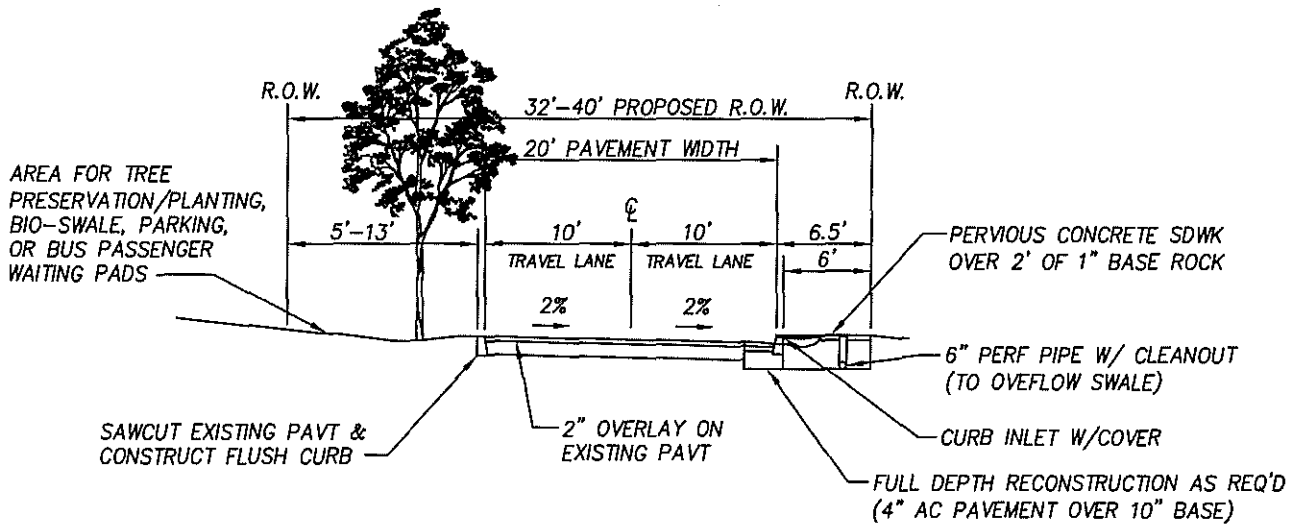
Signature Page to Follow



S.E. LOGUS ROAD EXISTING PAVEMENT SECTION
N.T.S.



S.E. LOGUS ROAD PROPOSED SECTION
SEPARATED SIDEWALK W/ BIO-SWALE INFILTRATION
N.T.S.



S.E. LOGUS ROAD PROPOSED SECTION
CURB-TIGHT SIDEWALK W/CURB INLET INFILTRATION
N.T.S.



CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.

LOGUS ROAD PROPOSED SIDEWALK & DRAINAGE

DRAWING NO.

LGS-0001

APPROVED	NO.	REVISIONS	DATE	BY
CITY ENGINEER				
DATE				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING ALICIA HAMILTON TO THE MILWAUKIE LEDDING LIBRARY BOARD.

WHEREAS, a vacancy exists on the Milwaukie Ledding Library Board;
and

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

WHEREAS, Alicia Hamilton possesses the necessary qualifications to serve on the Milwaukie Ledding Library Board.

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

SECTION 1: That Alicia Hamilton is appointed to the Milwaukie Ledding Library Board.

SECTION 2: That her term of appointment shall commence on April 1, 2007 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 20, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Resolution No. _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING ROBERT BISWAS-DIENER TO THE MILWAUKIE LEDDING LIBRARY BOARD.

WHEREAS, a vacancy exists on the Milwaukie Leding Library Board;
and

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

WHEREAS, Robert Biswas-Diener possesses the necessary qualifications to serve on the Milwaukie Leding Library Board.

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

SECTION 1: That Robert Biswas-Diener is appointed to the Milwaukie Leding Library Board.

SECTION 2: That his term of appointment shall commence on April 1, 2007 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 20, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Resolution No. _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING ED MILLER TO THE MILWAUKIE CITIZENS UTILITY ADVISORY BOARD.

WHEREAS, a vacancy exists on the Milwaukie Citizens Utility Advisory Board; and

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

WHEREAS, Ed Miller possesses the necessary qualifications to serve on the Milwaukie Citizens Utility Advisory Board.

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

SECTION 1: That Ed Miller is reappointed to the Milwaukie Citizens Utility Advisory Board.

SECTION 2: That his term of appointment shall commence on April 1, 2007 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 20, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Resolution No. _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING KATE MACCREADY TO THE MILWAUKIE PARK AND RECREATION BOARD.

WHEREAS, a vacancy exists on the Milwaukie Park and Recreation Board; and

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

WHEREAS, Kate MacCready possesses the necessary qualifications to serve on the Milwaukie Park and Recreation Board.

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

SECTION 1: That Kate MacCready is reappointed to the Milwaukie Park and Recreation Board.

SECTION 2: That her term of appointment shall commence on April 1, 2007 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on March 20, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Resolution No. _____



To: Mayor and City Council

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

From: Katie Mangle, Planning Director

Subject: Amendments to the Milwaukie Municipal Code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)

Date: June 13, 2006 for June 20, 2006 Hearing

Actions Requested

1. **Approval to amend the *Milwaukie Municipal Code Section 19.321 – Community Service Overlay*.** Amendments would change the name to “Community Service Use,” clarify the procedures and standards for approving such a use and modernize the language in the code.
2. **Approval to amend the *Comprehensive Plan Chapter 4 - Recreational Needs Element; Chapter 5 - Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element; and Milwaukie Municipal Code subsections 19.321.7 and 19.321.3.*** These amendments would clearly state the City’s policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek wastewater treatment plant, make the plant a Nonconforming Use, and set a deadline for removing Nonconforming Community Service Uses.

On May 23, 2006, the Planning Commission held a public hearing on the amendments and unanimously recommended that City Council approve the amendments with revisions as required to ensure flexibility to meet state and federal mandates. The amendments meet the approval criteria set forth in the Milwaukie Municipal Code and Comprehensive Plan. This includes consistency with unamended portions of the Comprehensive Plan, Oregon statewide planning goals, and regional policies (see Attachment 6, Summary of Policy Compliance.

Background on Action 1 – Housekeeping amendments to Community Service Overlay

The Community Service Overlay (CSO) is a land use tool that allows the City to manage the development of uses that provide public benefit. Certain uses, including public and religious institutions, schools, and parks, are allowed in most zoning districts when they meet the

standards for a CSO. CSO approvals are site specific and subject to the development standards of the underlying zone.

The proposed amendments to Milwaukie Municipal Ordinance section 19.321 (see Attachment 2) modify the title, text and structure of the section to improve comprehensibility and clarify standards and procedures for approving Community Service Uses. Most of these revisions fall under the category of “code maintenance,” and are not intended to change the policy nor intent of the code. The proposed amendments to Milwaukie Municipal Code Section 19.321 include many revisions to the text. Key changes are intended to accomplish the following:

- Clarify the meaning of the CSO by deleting “Zone” from the section title, and stating that approval of a CSO does not change the underlying zoning of the property.
- Neutralize gender and religious references by substituting “religious institutions” for “Churches”, and deleting “fraternal organizations” from the provision allowing a “private club, fraternal organization, lodge, grange.”
- Clarify the standards and procedures for reviewing a Community Service Use.
- Clarify the definition of a “minor modification” to an approved Community Service Use, as well as the criteria for approval.
- Apply the same development standards to public, private, and religious institutions, with two exceptions. Religious institutions will still have the ability to include a spire that exceeds height limitations, and will continue to be held to a lower landscaping standard. Applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000.

Background on Action 2 – Amendments to Address the Kellogg Creek Treatment Plant

The City of Milwaukie has long envisioned improvements to the Willamette riverfront that maximize the use and benefits of this city resource. This vision is reflected in the goals of the *Downtown and Riverfront Land Use Framework Plan*, the *Comprehensive Plan*, and was also referenced in the City’s August 2005 Intergovernmental Agreement with the Clackamas County Service District #1 to implement the Clearwater Plan.

The Kellogg Creek wastewater treatment plant is located on the riverfront, and the City’s long-term goals, as expressed in the *Comprehensive Plan* (Chapter 5, Objective 5, Policy 5), have been to decommission the plant. The *Downtown Land Use Framework Plan* envisions redevelopment of the Kellogg site with uses that are more supportive of downtown and nearby neighborhoods. Thus far, the City’s *Comprehensive Plan* policies have not been effective in achieving the goal of eliminating the social, economic and environmental impacts of the plant.

The proposed amendments are intended to strengthen the City’s policy to actively seek alternatives to continued use of the Kellogg Creek plant, limit expansion of the plant, and eliminate the plant’s social, economic and environmental impacts.

Comprehensive Plan Amendments

The proposed *Comprehensive Plan* amendments (see attachment 4) would strengthen the City’s policy to “make reasonable efforts to bring about” the decommissioning of the Kellogg Creek Wastewater Treatment Plant. The *Comprehensive Plan* amendments clearly state the policy to pursue decommissioning of the Kellogg Creek plant while responsibly providing

wastewater treatment service for Milwaukie residents and businesses and continuing to cooperate with the County and other agencies in examining feasible alternatives. In summary, the amendments achieve the following:

- The policy relating to the Kellogg Creek plant site will be revised to state that the City's policy is to "*make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location.*"
- The policy relating to contracting with CCSD1 will be revised to refer to "the Kellogg Creek Treatment Plant *or other plant or plants.*"
- The policy relating to examination of alternatives for decommissioning the Kellogg Creek plant will be revised to state that the City will "*use best efforts to decommission*" the plant while cooperating with other affected agencies. It requires future City planning efforts to consider a "*regional sewage system and facility other than the Kellogg Creek plant.*"

Zoning Code Amendments

The proposed zoning amendments related to major utility facilities (see Attachment 2) implement the policies set forth in the Comprehensive Plan. They are intended to achieve the following:

- Specify that major utility facilities, including sewage treatment plants, are generally not a permitted Community Service Use unless all impacts of such a facility are reduced to that of an allowed CSU (such as a pump station).
- Address Nonconforming Community Service Uses in a new section. This section will allow nonconforming uses to remain in use through 2015. It prohibits expansion, upgrades, or remodeling of the use, except as required to abate nuisances declared by the City or comply with federal or state statutes, regulations or permits.
- Establish a nonconforming major utility fee for nonconforming major utilities that remain in use after December 31, 2015.
- Address the community's desire and the City's goal to decommission the Kellogg Creek plant, cooperate with regional partners, plan for proper sewage treatment service, and maintain public access to the riverfront.

Response to Comments in Opposition

At the May 23, 2006, Planning Commission hearing on the proposed amendments, testimony was submitted for and against the proposal. Mr. Tom Sponsler submitted comments against the amendments on behalf of Clackamas County Sewer District No. 1 (CCSD1) and the cities of Happy Valley and Gladstone. In summary, the comments raised the following points:

Comment: *The amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments.*

Response: The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater

Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.

Comment : *CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan.*

Response: The City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6.

Comment: *The City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City.*

Response: The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that the wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment, and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.

Comment: *Deletion of the provision regarding public use of the CCSD1 site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan.*

Response: The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.

Comment: *The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg.*

Response: The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility.

Comment: *Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment.*

Response: The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. Such a plan was adopted and then rescinded by CCSD1 in 2005. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment, and the City has participated in these analyses.

Comment: *The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system."*

Response: To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant *or other plant or plants*. The Comprehensive Plan provisions continue to require compliance with federal

and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.

Comment: *The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7.*

Response: The following sets out the City's analysis of each of these criteria:

- *Conformance with the Comprehensive Plan, its goals, policies and spirit.*
The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.
- *Public need for the change.*
The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 require a treatment plant that does not need substantial changes every few years due to old design and old components.
- *Public need is best satisfied by this particular change.*
The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescission of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.
- *The change will not adversely affect the health, safety and welfare of the community.*
The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.
- *The change is in conformance with applicable Statewide Planning Goals.*
The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.
- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning

Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

An additional regional policy with which the City must comply is the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

Comment: *The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment.*

Response: The City knows of no such violation, and these have not been specified by the opponents of the amendments.

Comment: *The proposed amendments would result in a violation of Federal law.*

Response: The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.

Comment: *The proposed amendment is inconsistent with the adopted City public facilities plan.*

Response: The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent

Comment: *The City does not have authority to control plant operations.*

Response: The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.

Comment: *The city has no authority to impose a civil penalty on CCSD1.*

Response: If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.

Comment: *The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax.*

Response: The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.

Comment: *The proposed nonconforming use fee would take effect immediately, rather than in 2016.*

Response: The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.

Recommendation

Amending the Zoning Ordinance and the Comprehensive Plan is a legislative action, which requires the City Council to conduct a hearing and make a decision. Staff recommends that the Council approve the amendments and adopt the findings as outlined in Attachment 1.

Concurrence

The Planning Commission unanimously recommended that the Council approve the amendments. The amendments have been reviewed and approved by the City Manager, City Attorney, Community Development and Public Works Director, and Engineering Director.

Fiscal Impact

None resulting from the proposed amendments. Indirect fiscal impacts may result from the long-term closure or maintenance of the treatment plant. Such impacts include changes to the contracted rates charged for CCSD1 service; fees collected due to nuisances or continued nonconformance of the Kellogg Creek plant past 2015; increases to the value of properties surrounding the plant site. A 2002 study estimated that closure of the plant would nearly double the value of projected new investment in downtown Milwaukie (\$103 million with the closure, versus up to \$53 million without).¹

Work Load Impacts

The amendments will reduce workload slightly, as they clarify several procedural and land use issues in the Code. For example, the City currently applies different development standards to religious and non-religious institutions. This often creates confusion on the part of the applicant, and requires more staff time to explain and defend. The amendments will apply the same standards to all non-educational institutions. In addition, applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

Alternatives

1. Do not approve the amendments. If the Council does not approve the amendments, the MMC section 19.321 will continue to function as it has in the past; the Kellogg Treatment Plant will not be explicitly addressed in the Code; the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.

¹ Johnson Gardner, LLC. Memorandum Regarding Decommissioning of Kellogg Treatment Facility. January 22, 2002.

2. Approve only one of the two actions - Action 1, the housekeeping amendments to MMC section 19.321. Only approving Action 1 will make the Community Service Use code more effective, but the Kellogg Treatment Plant will not be explicitly addressed in the Code and the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.
3. Approve only one of the two actions - Action 2, zoning code and Comprehensive Plan amendments that address the Kellogg Creek Wastewater Treatment Plant. Only approving Action 2 would leave the title and remaining sections of the code language unchanged

Attachments

1. Findings in Support of Approval
2. Strikeout version of revisions to zoning ordinance 19.321 Community Service Overlay.
3. Clean version of revisions to zoning ordinance 19.321 Community Service Overlay.
4. Strikeout version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
5. Clean version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
6. Summary of Policy Compliance
7. Minutes from the Planning Commission hearing on May 23, 2006



TO: MAYOR AND CITY COUNCIL
FROM: MIKE SWANSON, CITY MANAGER
DATE: FEBRUARY 7, 2007
**RE: COUNCIL APPROVAL OF MOTION CONTINUING
CONSIDERATION OF AMENDMENT TO MILWAUKIE
MUNICIPAL CODE (MMC) SECTIONS 19.321.7 AND 19.321.3**

ACTION REQUESTED

The action requested is Council approval of a motion to continue consideration of a Planning Commission recommendation to amend MMC Sections 19.321.7 and 19.321.3 to July 17, 2007.

BACKGROUND

At your June 20, 2006 meeting you considered recommendations from the Planning Commission to amend MMC Sections 19.321, Milwaukie Comprehensive Plan Chapter 4—Recreational Needs Element and Chapter 5—Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element, and MMC Sections 19.321.7 and 19.321.3. (See attached staff memo to Council from Katie Mangle, Planning Director) The first of the proposed Code amendments changed the name of the Community Service Overlay to Community Service Use and clarified the approval procedures and standards. The Comprehensive Plan amendments clearly stated the City's policy that reasonable efforts be made to decommission the Kellogg Wastewater Treatment Plant (Plant). The second of the proposed Code amendments made the Plant a nonconforming use and established a deadline for its removal. All of the amendments had been recommended by the Planning Commission at its May 23, 2006 meeting.

At your June 20, 2006 meeting I recommended that you adopt the Code amendments regarding the Community Service Overlay as well as the Comprehensive Plan amendments. I further recommended that you continue consideration of the amendments to MMC Sections 19.321.7 and 19.321.3 to a date certain in order to facilitate the continued process of the Clackamas Service District No. 1 (CCSD!) Citizen Advisory Council (CAC). The CAC was appointed by the Clackamas County Board of County Commissioners to develop a wastewater strategic plan for CCSD1. The Council took the action I

recommended with the adoption of Ordinance No. 1962 (copy attached), and a motion was made and adopted to continue consideration of the two Code sections until August 15, 2006. On August 15, 2006 I recommended that the matter be continued to October 17, 2006 in light of the fact that the CAC was still working on a recommendation. On that date I once again recommended a continuance to February 20, 2006. The CAC has made its recommendation to the Board of County Commissioners, and the Board has given direction the continues the process of developing a long-range strategic plan. Thus, I again am recommending a continuance of consideration of the Code amendments. The continuance should be to July 17, 2007.

CCSD1 did appeal the City's decision on the Comprehensive Plan amendments in order to preserve its rights to argue goal compliance. The LUBA appeal will be put on hold for a similar time.

The Council may follow the process used in the past and use a motion to continue the recommendation of the Planning Commission to amend MMC sections 19.321.7 and 19.321.3 to its regular meeting on July 17, 2007.

Attachments:

1. Memo dated June 13, 2006 for the June 20, 2006 Hearing from Katie Mangle re Amendments to the Milwaukie Municipal code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)
2. Ordinance 1962 adopted by Council on June 20, 2006

North Clackamas Parks and Recreation District
MILWAUKIE CENTER/COMMUNITY ADVISORY BOARD
Minutes of January 12, 2007

MEMBERS PRESENT: Molly Hanthorn, Ben Tabler, Carolyn Mills, Katie Rudfelt, Ben Horner-Johnson, Joy Estes, Kim Buchholz, Joan Staley, Chuck Petersen, Kathi Schroeder, Eleanor Johnson

MEMBERS ABSENT: Jane Hanno, Jim McCready, Sharon Phillips

STAFF PRESENT: Joan Young, Cheryl Nally, Don Wiley, Marty Hanley

GUESTS: None

CALL TO ORDER: Joan Staley called the meeting to order at 9:30 am. Ben Tabler moved and Molly Hanthorn seconded approval of prior meeting minutes. The motion was passed unanimously.

CORRESPONDENCE: None

DISCUSSION ITEM: Don Wiley discussed the Nutrition Program and described the number of people served annually, cost of providing the service and the duties of the staff. He also described the work of the volunteers and the challenges that this program is addressing. The March for Meals march will be held March 10 and on March 21 several Mayors and officials will be driving Meals on Wheels. Don also gave the board a handout that describes the Nutrition Program facts in detail.

Marty Hanley presented facts and figures concerning the Transportation Program for the first 6 months of 2006-2007. There are currently 3 signs on all the buses and the hope is for advertising to bring in \$21,000. The candy sale also will be a fund-raiser for this program. Marty spends 25% of his time on transportation and 75% on social services.

BOARD/COMMITTEE REPORTS

N CPRD Board: Molly reported that the board met on January 11. The advisory board voted to forward an amended plan for the Mount Talbert parking area to the County Commission for approval. Dan Zinzer presented a list of capital projects for the next five years. No final decisions have been made. The Overland Park area has asked for development of a neighborhood park.

NCPark Stewardship Committee: Discussion was held concerning decibel level of noise in the park and dogs in the area.

Nutrition/Transportation: The AAA is attempting to bring all the MOW programs together with the focus on fund-raising and awareness of MOW in Clackamas County. Forms from a MOW evaluation indicated that there is a high level of satisfaction with the program.

Program and Services: Cheryl reported that the Senior Companions had a meeting. Hillside Park and the Center have given flu shots. Attendance is up in the offered classes. There will be a healthy baked goods class on February 27 presented by Bob's Red Mill. The Quilt Show will be March 23-24 and the theme is "Quilting For a Cause." The planned trips are filling up with the Out To Lunch trips full. Joan Young reported on the budget. There is a MOW route operating in Happy Valley.

Building Review: Ben Horner-Johnson reported that the budget was discussed. There are several projects that were discussed including earthquake upgrades, a generator, a commercial mixer guard, replacement of carpeting and counter tops in the restrooms and new upholstery on furniture.

OTHER REPORTS

Friends of the Milwaukie Center: Eleanor reported that the Rotary Club will be co-sponsoring the Spaghetti Dinner/Texas Hold 'em Tournament on March 3. The card game will begin at 3pm. A Mystery Dinner fund-raiser is being planned for May.

Governor's Commission: Joan Staley reported that the commission continues to meet. Brochures describing the work of the commission this year is available.

Center Report: Cheryl reported that figures are being put together for the six-month budget.

Information/Announcements: John Mullen and Pat Carlson have retired.

Agenda for February 9, 2007: Roy Wall will report on the Park District budget.

The meeting was adjourned at 10:55am.

Carolyn Mills: Secretary

North Clackamas Parks and Recreation District
MILWAUKIE CENTER DIVISION
Monthly Report for January, 2007

Programs and Services:

The Tax Aide Program offered 40 hours of intensive training to 28 volunteer tax preparers from our community at the Center. These volunteers will file thousands of tax forms through out several programs in the community with over 2,000 forms expected to be filed from the Milwaukie Center this tax season. The Center is currently taking tax appointments for Mondays and Fridays starting February 2.

The Transportation Program received a \$5,900 grant from the Henry Lea Hillman, Jr. Foundation to cover the Milwaukie Center's 10% match requirement towards the purchase of a new 2007 Ford 18 passenger lift bus. Ninety percent of the cost is provided through a state grant, and with the Hillman grant, the entire expense is covered. The bus will arrive soon!

The weather was a bit frightful January 16, 17 & 18 therefore Milwaukie Center operations switched to provision of essential services only. Staff was on hand to answer phones and deal with client emergencies and Meals on Wheels were delivered each day. A request for drivers was announced to the media with over four dozen folks responding. Two dozen brave new volunteers joined seasoned regularly drivers to help get 200 meals out each day. We thank those who came to our rescue in another marvelous show of community support.

Every class at the Milwaukie Center that is offered this winter term is operating. Some of the art classes have waiting lists. New "Printmaking" and Beginning Drawing classes are going to be offered in the spring. The dance and tai-chi classes continue to gain popularity at the Center and the writing, computer and Spanish classes continue to enrich the people who register and participate in these offerings.

Fund-raising:

See's Valentine Candy is for sale at the Milwaukie Center, Aquatic Park, Clackamas Community Federal Credit Union, Milwaukie branch, through February 14. Buy something for your sweetheart and support the Milwaukie Center Transportation Program.

Coming up:

The Friends of the Milwaukie Center are gearing up for a busy spring with the Spaghetti Dinner and Texas Hold 'Em Poker Tournament March 3, Wine & Roses Mystery Dinner May 5 and Housing Fair May 18.

The North Clackamas Arts Guild will be presenting an "Explore the Arts" workshop on Sat. Feb. 24 from 9:30am-4pm in "Using Acrylics".

The cooking class "Baking at it's Best" with Lori Sobelson of Bob's Red Mill on Tuesday February 27 1-2:30pm still has a couple of spots left. Hurry though, this one goes quickly.

Mark your calendar for the 13th Annual "Airing of the Quilts" on March 23 & 24. This year's theme is "Quilting for a Cause" will bring to light all the wonderful work and loving care that quilting groups and individuals do to help the community.