

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, NOVEMBER 23, 1999

COMMISSIONERS PRESENT

Donald Hammang, Chair
Barbara Cartmill
Tracy Cook
Mike Miller
Doug Ouderkirk
Howard Steward

STAFF PRESENT

Alice Rouyer,
Planning Director
Paul Roeger
Civil Engineer
Gary Firestone,
City Attorney
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Judith Borden

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 INFORMATION ITEMS -- City Council Minutes

3.1 City Council, NDA, Boards and Commissions Visions Workshop

3.2 October 18, 1999 Worksession

3.3 October 19, 1999, Regular Session

4.0 PLANNING COMMISSION MINUTES -- October 26, and November 9, 1999

Tracy Cook moved to approve the Planning Commission minutes of October 26, 1999, as presented. **Barbara Cartmill** seconded. MOTION CARRIED 5-0 with one abstention. Howard Steward was not at that meeting.

Ayes: Hammang, Cartmill, Cook, Miller, Ouderkirk; Nays: None.

Mike Miller moved to approve the Planning Commission minutes of November 9, 1999, as presented. **Doug Ouderkirk** seconded. MOTION CARRIED 5-0 with one abstention. Tracy Cook was not at that meeting.

Ayes: Hammang, Cartmill, Miller, Ouderkirk, Steward; Nays: None.

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS -- None

7.0 WORKSESSION

7.1 Urban Forestry

Alice Rouyer went over the Urban Forestry schedule with the Commission.

- November 23, 1999 -- Review the remaining policy questions
- November 24-December 22 -- Staff prepare a working draft Policy
- December 23, 1999 -- Metro, Ballot Measure 56, and DLCD notices will be mailed which will include a hearing and open house schedule and a description of the proposed ordinance.
- January, 2000 -- Public Outreach, summary sheets and Pilot articles to NDAs
- January 19, 2000 -- Open House at PSB regarding Urban Forestry
- February 8, 2000 -- First hearing on Urban Forestry Ordinance
- February 22, 2000 -- Backup hearing on Urban Forestry Ordinance
- March 21, 2000 -- City Council hearing on Urban Forestry Ordinance

Alice Rouyer reported that at the November 15th City Council worksession she gave an update on Urban Forestry. Concern was expressed by some Council members about the impact this Ordinance would have on private property owners. A suggestion was made to wait on the Ordinance and work on educational efforts in the coming year. However, it was the consensus of the Council to move ahead with the Ordinance and see how the public responds.

Discussion continued on the remaining issues of the Ordinance.

Tree removal for four or more trees during a calendar year -- The question remaining is whether this should apply to all lots or only those lots with development potential. **Alice Rouyer** presented maps showing three different options and the degree to which these options would affect different properties. The lot descriptions included were:

- Any commercial or industrial lots (blue highlighting)
- Any residential lot conforming to the minimum lot size in a zone (purple highlighting)
- Lots that may be legally subdivided or partitioned (orange highlighting)

There is a total of 1,668 lots that represent 1,401 acres.

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One map showed the results of Option 1, removal of four or more trees sized six inches or larger in diameter in a calendar year. A second map showed the affect of Option 2, removal of four or more trees in a calendar year from a single parcel of land or continuous parcels of land under the same ownership over 10,000 square feet. A third map was presented which included commercial and industrial properties and residential lots greater than 20,000 sq.ft. in size. These maps give a good visual of which lots would be affected by this Ordinance.

Howard Steward stated that this is such a difficult decision because there has been no precedent set to help guide the Commission. There should be a way to include the public in this process to help with these decisions. This is such an emotional issue and people are not going to want government to “mess with their property.”

Barbara Cartmill stated that she is concerned about administration of Option One. Option Two impacts properties in a way that it will probably not be an issue. Option Three takes on more than the Commission would want to handle.

Donald Hammang stated that he likes Option Two. However, it seems to be creating a sliding class of property owners (unless you have a 10,000 sq.ft. lot, this does not apply). He asked if this will this create greater enforcement issues. **Gary Firestone** stated that this is the type of distinction that a City can make. He does not foresee any legal challenges.

Mike Miller stated that he has concerns that some people will be regulated and some will not. His greatest concern is the saving of the trees. The larger lot owners of the City are under this regulation and those with smaller lots are not. This is not treating all homeowners fairly. He would prefer that all lots have the same regulation. He preference is Option Two; he would rather have an Ordinance that covers half the City than no Ordinance at all.

It was the consensus of the Commission that Option Two would be a good starting point for public comments and input. **Donald Hammang** suggested that there be paper mache models of the class of trees to give the public a visual representation of what is being discussed.

Doug Ouderkirk stated that he is satisfied going with Option Two and waiting to see what the public reaction will be. **Howard Steward** stated that he is happy with Option Two and looks forward to hearing what the public has to say.

Alice Rouyer explained that the Commission's decision would be presented to the public as the recommended Ordinance. The Ordinance will go to hearings and the public will have opportunities to have input on this draft. She cautioned the Commissioners that Ballot Measure 56 notice does not allow for a very adequate comment period. It will be up to staff to keep the process going smoothly within the allotted time.

Donald Hammang asked if Commission members could attend these open houses and advocate for the Ordinance? **Gary Firestone** stated that the Commissioners could attend the open houses to stay apprised of the public's opinions. He recommended that no comments be made to the public regarding the issues.

Tracy Cook stated that she felt that Option Two was the clearest of the three options. She feels it will be a good starting point.

Alice Rouyer reviewed with the Commission the decisions on the Urban Forestry Ordinance.

- A permit is required if the applicant proposes removal of four or more trees in a calendar year greater than six inches in diameter.
- Regulation of single trees greater than 18 inches in diameter.
- Removal and major pruning of significant trees. Property owners must agree to "significant" designation.
- Tree removal during development/redevelopment of four or more trees greater than 6 inches in diameter.

Alice Rouyer asked the commission for comments on the proposed review criteria.

Tree removal of four or more trees per calendar year:

Donald Hammang asked what would be the determining factor on the decision on whether the tree is dangerous, diseased, or weakened to the point of removal? **Alice Rouyer** stated that the draft Ordinance only requires an Arborist in the area of "significant trees." All other areas do not require an Arborist report. If there is a determination of "damaged tree" in an application, staff can go out and view the tree and determine if it is damaged in most cases. The decision will be made by the Community Development Director. Other resources may be called in from staff or the community.

Removal of significant trees or groves of trees:

Mike Miller voiced concern over how “nuisance” will be determined. **Alice Rouyer** stated that the Ordinance allows for a two-part test. First that there is a nuisance and secondly that extraordinary maintenance is required to prevent damage to such improvements or property.

Major pruning of significant trees or groves of trees:

Donald Hammang asked if these rules would apply to public agencies as well as citizens? **Alice Rouyer** stated that these rules would apply to public parks, etc. The Ordinance is more restrictive for public properties because removal of one tree of any size on public property would require a permit.

Tree removal during development/redevelopment:

No comments or corrections.

Another process and review criteria option:

Alice Rouyer explained that staff has developed an option to merge the review process and criteria for “Tree Removal of Four or More Trees per Calendar Year”, and “Tree Removal During Development/Redevelopment.” Applicants would be judged against the same criteria for both processes rather than having separate criteria. She handed out a revised outline of this option.

Criterion (d) has been changed to include, “The applicant shall also demonstrate that sufficient existing trees are preserved if applicable along all drainageways and water areas to preserve riparian habitats and minimize erosion; and along all property lines to serve as buffers to adjacent property and in sufficiently large areas and in dense stands to insure against wind throw.”

Donald Hammang asked if the Subdivision Ordinance allows for a density transfer to mitigate a grove of trees? **Gary Firestone** stated that this tool could be added if the Commission wanted it included. **Alice Rouyer** stated that there is an exception in the variance area. People can always ask for a variance. In the Natural Resources code there is a density transfer provision. It can be added to the Tree Ordinance.

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It was the consensus of the Commission that all the criteria were adequate. The Commission would like to have the density transfer provision added to the Tree Ordinance. Alice Rouyer was complimented on a job well done in presenting the background for the Tree Ordinance.

8.0 DISCUSSION ITEMS

9.0 OLD BUSINESS

Howard Steward asked staff to provide an update on the Thomason Ford office-use vacation application.

Alice Rouyer reported that the City Attorney is drafting language to shorten the quasi-judicial scripts that are read by the Commission Chair. The new scripts should be ready for the December 14th meeting.

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

10.1a Right-of-way Vacation Requests

Paul Roeger reported that the request for vacation of SE 24th Avenue from SE Ochoco Street to SE Stubb Street has been withdrawn because it was found that it was not a public right-of-way.

A request was received from the Oregon Department of Transportation (ODOT) to vacate 25th Avenue from SE Beta Street to SE Stubb Street. ODOT owns all the property from McLoughlin Blvd. to the railroad tracks between these two streets. ODOT would like to vacate this portion of street to connect their maintenance yard and maintenance building. It was noted that Main Street goes through Oregon Public Transportation property. Easements for water sewer, gas, power, telephone, cable, and public transit will be retained. A public hearing is requested for December 7, 1999, by City Council. Staff is asking the Planning Commission for a recommendation of approval of this vacation.

Mike Miller asked if anyone other than ODOT uses this portion of the street? **Paul Roeger** stated that the transit warehousing staff park their trucks there sometimes. A hammerhead turn-around will be reserved at the east end of SE Stubb Street and 25th Avenue.

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Doug Ouderkirk asked if there were any emergency vehicle issues for the turn-around? **Paul Roeger** stated there is a lot of pavement in this area and that responses have been received from the Fire Department that the space is adequate.

Barbara Cartmill moved to recommend to City Council approval to vacate SE 25th Avenue from SE Beta Street to SE Stubb Street. **Mike Miller** seconded. MOTION CARRIED 6-0.

Ayes: Hammang, Cartmill, Cook, Miller, Ouderkirk, Steward; Nays: None.

10.1b Wetland Enforcement Letter to the Division of State Lands

Alice Rouyer stated that subsequent to her drafting the Commission's requested letter to the Division of State Lands (DSL), she received a call from Tami Hubert the DSL Resource Coordinator, with updates about the two subject properties.

There were no violations found on Linwood Avenue and issues are still being researched on the property at 11511 SE 37th Avenue. Staff will keep the Commission updated as information becomes available.

10.1c Sign Code Amendment Request from Private Citizen

Alice Rouyer reported that a request had been made from Siri Bernard to address the issue of real estate signs in the right-of-way. Currently signs are not allowed in the public right-of-way and are removed when found.

Mike Miller voiced concern on how this Ordinance affects Garage Sale signs. City staff go out on Fridays and tear down all signs in the public right-of-way. He would like to see some language for an exception that citizens who have garage sales are responsible for taking down the garage sale signs. He suggested a penalty be imposed on those who do not take down their signs.

Howard Steward suggested that the City take down the signs on Mondays rather than Fridays. When signs are left up, a fine could be imposed on the signs that are left. **Gary Firestone** stated that an Ordinance that specifically refers to garage sale signs would be a content-based regulation. It would not survive a constitutional challenge. The date of the pick-up could be changed, but the language must apply to all signs.

It was decided that there would be no changes to the language of the Ordinance. The Commission recommended a change in enforcement procedures. The

Commission suggested removing signs at the beginning of the week. **Alice Rouyer** stated that she would pass on the Commissions opinion to the City Manager.

10.1.d Title 1/Title 6 -- Deadline Extension Request to Metro

Alice Rouyer reported that there is a deadline of December 31, 1999, for Title 1 and March 31, 2000, for Title 6. Staff will be asking for an extension to July 31, 2000. Title 1 deals with main streets and Title 6 addresses cul-de-sac lengths and requirements. Staff will get back to the Commission with more information on these projects in early 2000.

10.2 Historic Resources Commission Report

Donald Hammang reported that new members were introduced at this meeting. A hearing will be held on the design issues of the Milwaukie High School expansion on November 29, 1999. The Planning Commission will be reviewing this Community Service Overlay and Transportation Planning Review applications on December 14, 1999.

10.3 Meeting Schedule for December

Alice Rouyer asked if the Council wanted to meet on December 28, 1999. It was the consensus of the Commission that there would be no December 28, 1999, meeting. The next meeting will be December 14, 1999, and the following meeting will be January 11, 2000.

11.0 NEXT MEETING -- December 14, 1999

11.1 CSO-99-05; HR-99-05; TPR-99-06 -- NCSD #12, Milwaukie High School

11.2 CSO-99-06; TPR-99-09 -- Clackamas ESD

Mike Miller moved to adjourn the meeting of November 23, 1999. **Barbara Cartmill** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 8:19 p.m.


Donald Hammang, Chair


Shirley Richardson, Hearings Reporter

**AGENDA
MILWAUKIE PLANNING COMMISSION
WORK SESSION
Milwaukie City Hall
10722 SE Main Street
Tuesday, November 23, 1999
6:30 pm**

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Questions	
3.0	Information Items - City Council Minutes (upon approval by Council)	Information Only
3.1	City Council, NDA, Boards and Commissions Visions Workshop	
3.2	October 18, 1999 Worksession	
3.3	October 19, 1999 Regular Session	
4.0	Planning Commission Minutes:	Motion Needed
4.1	October 26, 1999	
4.2	November 9, 1999	
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings – None	
7.0	Worksession	
7.1	Urban Forestry – Continuation of the October 26, 1999 work session	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates	Information Only Review and Comment
10.1	Matters from the Planning Director:	
10.1.a	Right-of-Way vacation requests (PW): SE 24 th Avenue and SE 25 th Avenue	
10.1.b	Wetland Enforcement Letter to the Division of State Lands	
10.1.c	Sign Code Amendment Request from private citizen – signs in ROW	
10.1.d	Title 1/Title 6 – Deadline Extension Request to Metro	
10.2	Historic Resources Commission Report (Donald Hammang)	
11.0	Next Meeting: December 14, 1999	
11.1	CSO-99-05; HR-99-05; TPR-99-06 – NCSD #12 – Milwaukie High School	
11.2	CSO-99-06; TPR-99-09 – Clackamas ESD	
	The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

The Milwaukie Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please.

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** EACH HEARING STARTS WITH A BRIEF REVIEW OF THE STAFF REPORT BY STAFF. THE REPORT LISTS THE CRITERIA FOR THE LAND USE ACTION BEING CONSIDERED, AS WELL AS A RECOMMENDED DECISION WITH REASONS FOR THAT RECOMMENDATION.
2. **CORRESPONDENCE.** THE STAFF REPORT IS FOLLOWED BY ANY VERBAL OR WRITTEN CORRESPONDENCE WHICH HAS BEEN RECEIVED SINCE THE COMMISSION WAS PRESENTED WITH ITS PACKETS.
3. **APPLICANT'S PRESENTATION.** WE WILL THEN HAVE THE APPLICANT MAKE A PRESENTATION, FOLLOWED BY:
4. **PUBLIC TESTIMONY IN SUPPORT.** TESTIMONY FROM THOSE IN FAVOR OF THE APPLICATION.
5. **COMMENTS OR QUESTIONS.** COMMENTS OR QUESTIONS FROM INTERESTED PERSONS WHO ARE NEITHER IN FAVOR NOR OPPOSED TO THE APPLICATION.
6. **PUBLIC TESTIMONY IN OPPOSITION.** WE WILL THEN TAKE TESTIMONY FROM THOSE IN OPPOSITION TO THE APPLICATION.
7. **QUESTIONS FROM COMMISSIONERS.** WHEN YOU TESTIFY, WE WILL ASK YOU TO COME TO THE FRONT PODIUM AND GIVE YOUR NAME AND ADDRESS FOR THE RECORDED MINUTES. PLEASE REMAIN AT THE PODIUM UNTIL THE CHAIR PERSON HAS ASKED IF THERE ARE ANY QUESTIONS FOR YOU FROM THE COMMISSIONERS.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** AFTER ALL TESTIMONY, WE WILL TAKE REBUTTAL TESTIMONY FROM THE APPLICANT.
9. **CLOSING OF PUBLIC HEARING.** THE CHAIR PERSON WILL CLOSE THE PUBLIC PORTION OF THE HEARING. WE WILL THEN ENTER INTO DELIBERATION AMONG THE PLANNING COMMISSIONERS. FROM THIS POINT IN THE HEARING WE WILL NOT RECEIVE ANY ADDITIONAL TESTIMONY FROM THE AUDIENCE, BUT WE MAY ASK QUESTIONS OF ANYONE WHO HAS TESTIFIED.
10. **COMMISSION DISCUSSION/ACTION.** IT IS OUR INTENTION TO MAKE A DECISION THIS EVENING ON EACH ISSUE BEFORE US. DECISIONS OF THE PLANNING COMMISSION MAY BE APPEALED TO THE CITY COUNCIL. IF YOU DESIRE TO APPEAL A DECISION, PLEASE CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT DURING NORMAL OFFICE HOURS FOR INFORMATION ON THE PROCEDURES AND FEES INVOLVED.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Judith Borden, Vice Chair
Barbara Cartmill
Tracy Cook
Mike Miller
Doug Ouderkirk
Howard Steward

Community Development Department Staff:

Martha Bennett, Community Development Director
Alice Rouyer, Planning Director
John Gessner, Associate Planner
Doug Strickler, Associate Planner
Jeanne Garst, Office Assistant
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission

From: Alice Rouyer, Planning Director *ACP*

Subject: Urban Forestry Program Work Session

Meeting Date: November 23, 1999

Date: November 16, 1999

ACTION REQUESTED

Continuation of the October 26, 1999 work session. The Commission needs to:

- Complete consideration of the remaining policy questions.
- Authorize staff to finish drafting the Urban Forestry Ordinance and begin the public outreach phase of the project.

BACKGROUND

The Commission met in work session on September 28 and October 26, 1999 to discuss several policy questions relating to the draft Urban Forestry Ordinance. A summary of those questions and the general consensus at the meeting is attached (see Attachment "A"). The questions that the Commission needs to consider on November 23 are listed below.

REMAINING POLICY QUESTIONS

1. Degree of regulation on private property

The Commission discussed this issue at length on October 26 and directed staff to come back to the Commission with options relating to this portion of the private property regulations:

a. Tree Removal of Four or More Trees Per Calendar Year (see Municipal Code Section xx.xx.090)

The draft Urban Forestry Ordinance proposes to regulated removal of four or more trees sized greater than six inches in diameter in a calendar year. The term "undeveloped and underdeveloped" (as was originally used in the 1996 draft

ordinance) will not be used because the objective is to protect tree removal of four or more trees in a calendar year on all properties.

At the October 26 work session, some Commission members expressed concern about the impact such a regulation would have on the typical, single-lot property owner. Here are some options intended to address this concern, for Commission discussion and consideration:

Option 1:

A permit is required if the applicant proposes removal of four or more trees sized six inches or larger in diameter in a calendar year. This applies to all private property, but is not subject to:

- a. *The removal or major pruning of trees on residential property by an owner or resident if the property is used for residential purposes at the time of removal or major pruning. "Property" as used in this section means a single lot with an occupied residential structure and does not include:*
 - i. *Any lot conforming to the applicable minimum lot size and dimensions on which there is no residence, even if it is contiguous with and under the same ownership as a lot currently occupied for residential purposes.*
 - ii. *Lots that may be legally subdivided or partitioned without a variance.*

This option would not regulate the single lot owner, but would regulate vacant residential properties (conforming to the minimum lot size in the zone) and residential lots (vacant or not) which can be legally subdivided without a variance.

Option 2:

A permit is required if the applicant proposes removal of four or more trees in a calendar year from a single parcel of land or contiguous parcels of land under the same ownership over 10,000 square feet.

This option would not regulate the typical single family property owner (typical lots are approximately 7,000 square feet in size), but would regulate the larger properties with some potential for redevelopment. The Commission could adjust this number. This example came from the City of West Linn. Albany regulates trees on properties greater than 20,000 square feet, while Vancouver, Washington regulates properties greater than 1 acre in size. This option is a bit more straightforward to the typical person who may not be familiar with City regulation.

2. Review Criteria and Process

Staff seeks the Commission's review and consideration of criteria used to determine if a tree permit will be granted or denied. The Commission should evaluate these criteria and determine if the language is sufficient:

Tree Removal of Four or More Trees per Calendar Year

The Community Development Director shall issue permits to property owners to remove trees only if one or more of the following conditions are met:

- a. *Sufficient trees are preserved:*

 - i. *Along all natural drainageways and water areas to preserve riparian habitats and to minimize erosion;*
 - ii. *Along property lines to serve as buffers to adjacent properties; and*
 - iii. *In sufficiently large areas and in dense stands to ensure against wind throw.*

- b. *The trees to be removed pose a safety hazard to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings.*
- c. *The trees to be removed are dangerous trees or are diseased or weakened by age, storm, fire, or other injury to an extent that preservation is inadvisable.*
- d. *The removal is necessary to allow reasonable development or redevelopment of the property for which no land use approval requiring a building permit is required. The applicant must demonstrate that the applicant has explored alternative designs that would have required less tree removal.*

Removal of Significant Trees or Groves of Trees

An application for removal of a significant tree, for reasons other than the health of the tree, shall be approved if the request satisfies one or more of the following criteria:

- a. *That the tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.*
- b. *That the tree has lost its significance, in terms of its original designation on the list, due to damage from natural or accidental causes, or for some other reason it can be established that it is no longer of significance.*

- c. *That the tree has been determined by a certified arborist to be unsafe to the occupants of the property, or adjacent property, or the general public.*
- d. *That the tree needs to be removed to allow development of the property for permitted or conditionally permitted use. The applicant must demonstrate that the applicant has attempted to develop alternative designs that would preserve the significant tree or grove of trees and that alternative designs are impossible or impracticable.*

Major Pruning of Significant Trees or Groves of Trees

An application for major pruning shall be approved if the major pruning shall be accomplished according to ISA standards and the request satisfies one or more of the following criteria:

- a. *It is determined by the arborist that the tree is diseased and major pruning, according to current ISA standards, is necessary to save the tree.*
- b. *The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and major pruning is required to prevent damage to such improvements or property.*
- c. *That the tree has been determined by a certified arborist to be unsafe to the occupants of the property, adjacent property, or the general public, and major pruning is necessary to resolve the problem.*

Tree Removal during Development/Redevelopment

Removal or major pruning of any tree 18 inches in diameter or greater and 4 or more trees 6 inches in diameter or greater shall be permitted only if the applicant demonstrates that the removal or major pruning is necessary because of one or more of the following:

- 1. *The trees are dangerous trees.*
- 2. *Trees must be removed or pruned because they pose a safety hazard to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings.*
- 3. *Trees are diseased or irreversibly weakened by age, storm, fire or other injury.*
- 4. *Removal or major pruning is necessary to provide adequate access immediately around the proposed structure for construction equipment.*
- 5. *Tree removal or major pruning is necessary to accomplish a public purpose, such as the installation of public facilities and utilities, or construction of a public street.*

6. *Removal or major pruning is necessary to provide adequate access, as required by City standards.*
7. *Removal or major pruning is necessary to accommodate essential grade changes needed to develop the property.*
8. *Trees must be removed to accommodate on-site surface water drainage and utility installation.*
9. *Trees must be removed or pruned to accommodate driveways, buildings or other permanent improvements.*
10. *Compliance with other ordinances or codes.*
11. *Trees must be removed to allow efficient use of solar energy equipment.*
12. *For criteria 3 through 10 above, the applicant shall show evidence of exploring alternative designs which would reduce the amount of removal or major pruning required. However, the applicant shall not be required to select or accept an alternative design that is significantly more costly or does not provide for the otherwise permissible development desired by the applicant.*

Another Process & Review Criteria Option

As illustrated above, the draft ordinance requires specific permits against separate review criteria for the following groups:

- Tree Removal of Four or More Trees per Calendar Year
- Removal of Significant Trees or Groves of Trees
- Major Pruning of Significant Trees or Groves of Trees
- Tree Removal during Development/Redevelopment

Staff has developed an option to merge the review process and criteria for "Tree Removal of Four or More Trees per Calendar Year" and "Tree Removal During Development/Redevelopment". Therefore, applicants would be judged against the same criteria for both processes rather than having separate criteria. The proposed criteria is:

The Community Development Director shall issue permits to property owners to remove trees only if one or more of the following conditions are met:

- a. *Sufficient trees are preserved:*
 - i. *Along all natural drainageways and water areas to preserve riparian habitats and to minimize erosion;*

- ii. Along property lines to serve as buffers to adjacent properties; and*
- iii. In sufficiently large areas and in dense stands to ensure against wind throw.*
- b. The trees to be removed pose a safety hazard to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings.*
- c. The trees to be removed are dangerous trees or are diseased or weakened by age, storm, fire, or other injury to an extent that preservation is inadvisable.*
- d. The removal is necessary to allow reasonable development or redevelopment of the property. The applicant must demonstrate that the applicant has explored alternative designs that would have required less tree removal.*

Staff is a proponent of this option because it merges the two processes and is likely to be more comprehensible to the average applicant. One set of standards and criteria will apply to removal of four or more trees whether it occurs concurrent with a development permit or as a separate request. The Planning Commission should evaluate criteria "a" and "d" above to be sure that this captures the intent of tree permit review in coordination with a building permit. During the Planning Commission discussion on October 26, several members were speaking about this process providing a "checkpoint" for exploring tree removal options rather than a strong regulatory tool. Please be ready to provide staff with input about this option.

ATTACHMENTS

Attachment A: Summary of Planning Commission Urban Forestry Work Sessions: September 28, 1999 and October 26, 1999

Attachment "A"

**SUMMARY OF PLANNING COMMISSION URBAN FORESTRY WORK SESSIONS:
SEPTEMBER 28, 1999 and OCTOBER 26, 1999**

The Commission reviewed and responded to the following policy questions on September 28 and October 26, 1999:

1. *Advisory Board Structure to support the Urban Forestry Program*

Planning Commission supports the idea of splitting Commission support for the Urban Forestry program with the Parks & Recreation Board. The Parks & Recreation Board also supported this idea at their meeting on September 27, 1999. Planning Commission members requested that one member of the Planning Commission be invited to attend and participate in Parks & Recreation Board discussions about Urban Forestry. The Planning Commissioner selected for this responsibility must be interested in trees and have a professional or personal background in landscape architecture or design, arboriculture, ornamental horticulture or a related field.

2. *Program budget and overall fiscal impact*

The Commission briefly discussed how the \$40,000 program budget must be considered when making decisions about regulations. Since a number of urban forestry program goals were already identified by the Tree Committee, Planning Commission and City Council in 1996, staff does not intend to ask the Commission to revisit those goals against the fiscal impacts they will create. Instead, when considering regulations on private property, the Planning Commission and City Council should weigh the cost of regulation and enforcement. The \$40,000 budgeted annually toward urban forestry is unlikely to cover all staff time needed to review and enforce the regulations on private property, the cost of maintaining trees in the right-of-way and the cost of educational program components. Therefore, the new regulations will create an additional work item for existing staff. This should be a consideration when making decisions about the degree of regulation on private property.

3. *Regulating Trees in "Public Places"*

The 1996 draft regulates removal and major pruning of street trees in the public right-of-way and "other public places" The Planning Commission clarified the term "other public places" to mean city-owned property and public park land. Therefore, tree removal and pruning on city-owned property and park land would be regulated in the same way that street trees are currently regulated.

4. Degree of regulation on private property

The Commission is proceeding thoughtfully on this topic due to the degree of public debate expected:

Planning Commission has been discussing the following parameters for private property regulation:

a. Tree Removal of Four or More Trees Per Calendar Year (see Municipal Code Section xx.xx.090)

Propose to regulate removal of four or more trees sized greater than 6 inches in diameter in a calendar year. The term "undeveloped and underdeveloped" (as was originally used in the 1996 draft ordinance) will not be used because the objective is to protect tree removal of four or more trees in a calendar year on all properties.

The Commission directed staff to develop a few more options for consideration on November 23, 1999. On October 26, some Commission members expressed concern about the impact such a regulation would have on the typical, single-lot property owner. Staff has developed other options for consideration by the Commission to address this concern, such as applying this regulation to larger properties with potential for redevelopment (see discussion below under "Remaining Policy Questions").

b. Removal and Major Pruning of Significant Trees or Groves of Trees (see Municipal Code Section xx.xx.100)

Propose to regulate removal and major pruning of trees designated as Significant Trees. City staff, with support from the Parks & Recreation Board, will conduct a Significant Tree Inventory to determine which trees might be eligible for designation. City Council, Planning Commission, Park & Recreation Board, a property owner, or any other person may recommend that a tree be designated a Significant Tree. However, the owner must agree to the designation before Planning Commission can consider applying the designation on the property.

c. Removal and Major Pruning of Large Trees (new code section—not currently included in the 1996 draft)

Propose to regulate removal and major pruning of all trees larger than 18 inches in diameter.

d. Tree Removal During Development or Redevelopment (see Zoning Ordinance Section xx.05.1 "Tree Protection")

Propose to require submission of a tree plan concurrent with planning review applications and structural permit applications (i.e. building permit application, but could include permits for decks and other structures too). The tree plan must show all trees on the property larger than 6 inches in diameter. If the proposal includes removal of four or more trees larger than 6 inches in diameter, then the

plan shall preserve the trees unless the applicant is able to demonstrate that the design meets certain criteria and that alternative design options were considered to increase tree protection.

2. *Tree Care License*

Staff expressed concern on October 26 that administration of a tree care licensing program, finding that is could be onerous and difficult to enforce. The Commission agreed to remove the Tree Care Licensing requirement, provided that all tree care professionals obtain business licenses (already required by the Municipal Code) and follow safety standards when removing or pruning trees in the right-of-way. Staff will amend the draft ordinance to include safety standards applying to tree permit applications in the right-of-way, city-owned property or public parks. Staff has also been advised to check on State Landscaping/Tree Maintenance Licensing requirements.



To: City Council

Through: Dan Bartlett, City Manager
Martha Bennett, Assistant City Manager

From: Alice Rouyer, Planning Director

Subject: Urban Forestry project update

Date: November 5, 1999

Meeting Date: November 15, 1999

Action Requested

City Council review and approval of the Urban Forestry public outreach plan and schedule.

Background

Staff provided a project schedule to Council on August 30, 1999. Since that time, the Planning Commission met in work sessions on September 28 and October 26, 1999 to discuss policy questions and issues relating to the original 1996 draft Urban Forestry Ordinance. A summary of these policy questions and a brief narrative of the Commission's work to date are attached. Planning Commission will conclude its consideration of policy questions in a work session on November 23, 1999. Staff will take this direction and finish revising the ordinance in late November and early December.

Upon Council's approval of the project schedule and public outreach plan, the project will move into the public outreach and public comment phase in December and January. This is an important step in the process because both the staff and the Planning Commission expect the Urban Forestry ordinance to stimulate public discussion and debate on the following issues:

- *Degree of regulation on private property. This portion of the ordinance will draw the most comment from citizens.*
- *Public outreach, education, enforcement and citizen involvement in tree planting programs. In response to comments about private property regulation, many citizens and neighborhood groups will be interested in how the City will educate*

citizens about the new regulations, enforce the regulations and help citizens enhance the urban forest in Milwaukie.

Public Outreach Plan and Schedule

November 1999

- *November 17, 6:00 p.m.; Johnson Creek Bldg.*
NDA Land Use Committee Chair Meeting to provide project update and discuss the policy issues under consideration by the Planning Commission regarding regulation of private property. Several members of this committee expressed concern about private property regulation at the September meeting. Staff will forward a summary of the comments received at this meeting to the Planning Commission and City Council for their consideration.
- *November 23, 6:30 p.m.; City Hall Council Chambers*
Planning Commission Work Session to consider final policy questions prior to completing ordinance draft.

December 1999

- *November 24 – December 7*
Final staff and City Attorney's office editing of the ordinance based on Planning Commission review.
- Article to appear in the December edition of *The Pilot*, providing a brief description of the proposed urban forestry program, ordinance, project schedule and staff contact information.
- *December 8, 6:30 p.m.; City Hall Conference Room*
Staff presentation of proposed ordinance and program at the Quarterly Neighborhood Officer's Meeting.
- *December 23*
Send required 45 day notice to Department of Land Conservation & Development and Metro with attached ordinance.

January 2000

- Distribution of an Urban Forestry Program Question & Answer sheet at the January 2000 NDA meetings. City staff NDA liaisons will distribute the sheet containing summary information about the ordinance, staff contact information, open house and public hearing schedule.

- *January 7*
Mail state-mandated Ballot Measure 56 notice to all affected property owners with information about the ordinance, open house date, and the Planning Commission hearing date, if needed.
- *January 19; 6:30 p.m.; Public Safety Building Community Meeting Room*
Open House to discuss proposed ordinance. In particular, staff will prepare presentation materials to explain the proposed regulation on private property and different components of the larger urban forestry program. Public comments sheets and public hearing schedule will also be available.

February 2000

- *February 8, 6:30 p.m.; City Council Chambers*
Planning Commission public hearing to consider ordinance.
- *February 22, 6:30 p.m.; City Council Chambers*
Planning Commission continuation of hearing, if needed.

March 2000

- *March 7; 6:00 p.m.; City Council Chambers*
City Council Public hearing to consider ordinance.
- Staff to finish drafting applications and public information brochures regarding ordinance requirements, etc.

April 2000

- *April 8*
Ordinance becomes effective.

Project Schedule for Urban Forestry Program Development

December 1999

- Submit Community Forestry Assistance grant application to Oregon Department of Forestry to request funding/assistance in drafting an Urban Forestry Master Plan.

January 2000

- *January 25, 6:30 p.m.; City Hall Conference Room*
Parks & Recreation Board Meeting to provide project update, discuss the schedule for development of the Urban Forestry Master Plan and begin planning for Arbor Week.

February 2000

- Develop public information brochures to support Urban Forestry ordinance.
- Plan Arbor Week Celebration

April 2000

- *April 24 – 28*
Arbor Week Celebration

Summer 2000

- Develop Urban Forestry Master Plan; including street tree guidelines, policies for planting/maintenance of trees in public spaces, and tree education programs.

December 2000

- Apply for Tree City USA Designation

Recommendation

Staff recommends that the Council approve the Urban Forestry Public Outreach Plan and Project Schedule.

EXHIBIT

**Exhibit A: Summary of Planning Commission Urban Forestry Work Sessions
September 28, 1999 and October 26, 1999**

URBAN FORESTRY SCHEDULE

As of November 29, 1999

Ordinance Development

1. November 23: Planning Commission work session to finish review of final policy questions (Alice & Gary Firestone).
2. December 7: City Attorneys to deliver final review draft of ordinance (Gary Firestone & Jim Coleman)
3. December 8 – 23: Internal Review of Draft Ordinance. Project Management Team meeting needed? (Alice, Marcia, Planning Staff, Martha et al)
5. December 23: Finalize ordinance (Alice & Marcia)
Send 45 day notice to Metro and DLCDC (Alice & Jeanne)

Public Outreach

1. December 8: Quarterly Neighborhood Officer's Meeting. Quick presentation of ordinance and provide "heads up" about Ballot Measure 56 notice (Alice).
2. December 15: 2 Pilot Articles due. One covering Ballot Measure 56 basics Another providing Urban Forestry update (Alice & Grady)
3. December 15 – 22: Press Release to Oregonian and Clackamas Review (Alice & Michelle).
4. December 22 – 31: Draft One Page Summary Sheet for Neighborhoods (Alice) Review the draft (Grady and/or Michelle).
5. December 31: Distribute the One Page Summary Sheet to NDA Liaisons with instructions for distribution at January NDA meetings (Alice).

Ballot Measure 56

1. Nov. 29 – Dec. 3: Call possible print vendors to review needs, schedule and costs. Select vendor (Jeanne & Alice)
2. December 7 – 23: Draft the Ballot Measure 56 Notice (Alice).
Design the brochure (Marcia & Alice)

City Attorneys to review and approve text (Gary Firestone or Jim Coleman).
Review final draft (Martha & Alice)

3. December 21 – 24: Deliver current address list from Assessor's data. Access file? (Craig Holman)
Sort through the list to avoid multiple mailings to property owners and eliminate all City-owned property. (Craig Holman and/or RIM staff)
4. Dec. 28 – Jan. 6: Print Vendor to prepare notices for mailing (Print Vendor).
5. January 7: Mail the notices (Print Vendor).

Post Ballot Measure 56 Public Outreach

1. Nov. 29 - Dec 31: Arrange telephone line and voice mail message system for Ballot Measure 56 inquiries. At a minimum, the message system should provide mail box options to request a copy of the One Page Summary, Full Ordinance Text packet and/or call back from staff (Alice, Michelle & Laura).
2. January 3 – 7: Pre-print several One Page Summary Sheets for distribution to the public (Jeanne or Print Vendor)
3. January 3 –6: Pre-print several packets with One Page Summary Sheet and full Ordinance text for distribution to the public (Jeanne or Print Vendor).
4. January 6-7: Leave several copies of the One Page Summary Sheet and full Ordinance text packets at City Hall, the Library, and JCB front Counter. Provide instructions to reception staff at all locations (Jeanne and Alice).
5. Jan. 7 – March: Staff to be prepared to answer telephone message inquiries, walk-ins, and distribute information packets, as requested (Jeanne and other RIM staff).
6. Jan. 7 – March: Telephone messages to be retrieved every 2-4 hours with call-backs returned within 24 hours. (Doug, Alice and Jeanne).

Open House

1. January 3: Open House Planning Meeting. Discuss plan for display boards, models, comment cards and presentation (Alice, Doug, Michelle, Grady)
2. January 4 – 7: Design the Display Boards and other graphics or models (Alice, Michelle, Doug, Grady)
3. January 7 – 18: Prepare Display Boards, Presentation and other graphics (Alice, Michelle, Doug, Grady)
4. January 7 – 18: Pre-Print several comment cards (Jeanne or Print Vendor)
4. January 19: Dress-Rehearsal (Alice, Doug, Michelle, Grady et al)
5. January 19: Set-Up for Open House (Alice, Doug, Jeanne et al)
6. January 19: Staff the Open House (Alice, Doug, Michelle, Grady, Jeanne et al)

Planning Commission Public Hearing Preparation

1. January 20 – 21: Compile all public comment to include in staff report as Attachment (Jeanne and Alice)
2. January 25 – 31: Prepare memorandum (Alice and Doug).

City Attorney review of memo as needed (Gary Firestone or Jim Coleman)
3. February 8: Public Hearing (Alice, Doug, Jeanne)
4. February 22: Back-Up date for Planning Commission, if needed.

City Council Public Hearing Preparation

To be determined as schedule progresses. One question we should consider:

1. Is it realistic to assume a March 7 City Council public hearing if the Planning Commission were to use the Feb. 22 back-up date? This would leave us with three days to prepare the City Council memo. It might be wise to adjust the schedule now to assume a March 21 City Council public hearing. These dates really should be nailed down now, since they need to be printed in the Ballot Measure 56 notice.