

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
APRIL 17, 2007**

6513

CALL TO ORDER

Mayor Bernard called the 2004th 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, Operations Director Paul Shirey, Engineering Director Gary Parkin, Community Development/Public Works Director Kenny Asher, Human Resources Director Mary Rowe

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Earth Day Proclamation

Mayor Bernard read a proclamation recognizing April 22, 2007 as Earth Day.

B. Recognize Off-going Board and Commission Members

The Council recognized Catherine Brinkman and Randall Welch for their service to the community by volunteering for appointed advisory boards. Ms. Brinkman was appointed to the Planning Commission in March 2005 and served until her term expired the first of April. Mr. Welch served on the Design and Landmarks Committee from December 2004 to April 2007.

C. Recognize Ed Zumwalt for His Service to Community

The Council thanked Ed Zumwalt for the many hours he spent in coordinating community events including the Riverfest and various neighborhood activities.

Mr. Zumwalt appreciated the many volunteers who had helped with the Riverfest, Centennial Committee, 9/11 fundraiser, and the Scott Park summer concert series.

D. Recognize Bob Hatz for Lifelong Achievement of Volunteerism to the Community

Council recognized lifelong Milwaukie resident Bob Hatz. He was born in Sellwood 88 years ago and was a member of the 1936 Milwaukie High School graduating class. Mr. Hatz was a WWII veteran who fought in the Battle of the Bulge on the German/Belgium border during the winter of 1944 and 1945. He worked for the Charles H. Lilly Co. until his retirement in 1984. He was a lifelong supporter of his community. He, along with Tracy Cook, went through all the hoops to get official Council recognition of the Linwood Neighborhood District Association in 1995. He served as a member of the Land Use Committee and was active with the Association for many years. A number of years ago, he applied for a position on the Riverfront Board. However, when he learned he had not been appointed -- like the true servant leader he is -- Bob said, "I'll take anything!" That was in 1996, and since that time Bob has been a member and is the current chair of the

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Citizens Utility Advisory Board. He and the other members of the Board have thoughtfully guided the City through many decisions about how to fund and maintain the public infrastructure. Most recently the Board made some tough recommendations to Council about a plan to maintain the City's deteriorating street system which would not have been an easy task for most of us. With great admiration the Council recognized Mr. Hatz for his lifelong contributions to his community and looked forward to many more.

E. Milwaukie High School Student of the Month Alicia Tallman

Alicia Tallman was recognized as the April 2007 Student of the Month. Ms. Tallman was a strong athlete with many strong qualities and accomplishments during her four years at Milwaukie High School. She was known as a highly motivated and articulate young woman. She currently ranked 19th in her senior class of 329 with a GPA of 3.88 that included many college placement courses. She was awarded the prestigious Leslie Peake Award last year for being the top female athlete in her class. She was also active and volunteered in numerous school programs including Habitat for Humanity and the National Honor Society. She was active in the Tech Cadre an academic program that designed and supported web pages and technology projects for schools and local businesses. Her most compelling project was her production of a dynamic, interactive display entitled 'Faces of the Fallen' that recognized the names, photographs, and information about every American soldier that paid the ultimate sacrifice in Iraq and Afghanistan. She planned to attend a university and major in environmental studies with a career goal of being a park naturalist in a state or national park.

Shirley Huyett, Milwaukie High School, congratulated Ms. Tallman on her award and was confident she would continue to represent Milwaukie High School well after her graduation in June. She discussed the planned construction for Milwaukie High School based on the recently passed School District bond measure that included improvements to the gym and fine arts building. The athletic field would be updated with a turf field, new lighting, and an 8-lane track.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the consent agenda that consisted of:

- A. City Council Minutes of**
 - 1. February 20, 2007 Work Session;**
 - 2. February 20, 2007 Regular Session;**
 - 3. March 6, 2007 Work Session; and**
 - 4. March 6, 2007 Regular Session**
- B. Resolutions Making Appointments and Reappointments to Various Advisory Boards and Commissions**
 - 1. Resolution 24-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Melissa Arne to the Budget Committee;**
 - 2. Resolution 25-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Jeremy Ferguson to the Budget Committee;**

3. **Resolution 26-2007**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Jeff Klein to the Planning Commission; and
 4. **Resolution 27-2007**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Charmaine Coleman to the Planning Commission
- C. **Resolution 28-2007**: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Construction of 37th Avenue Waterline Replacement (King Road to Harvey Street)

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

PUBLIC HEARING

A. **Denial of Liquor License Application for Eric's Market**

Mayor Bernard called the public hearing on the change of ownership application for Eric's Market located at 8410 SE 32nd Avenue to order at 7:30 p.m.

The purpose of the hearing was to consider written and oral evidence regarding the application followed by a City Council decision based on the criteria set forth in Milwaukie Municipal Code Section 5.40.060. The Council action was not final. The Council was responsible for making a recommendation only to OLCC for the final disposition. If the recommendation were adverse, the Council would adopt findings of fact that would be forwarded to OLCC.

Correspondence: No additional correspondence had been received.

Staff Report: **Police Chief Kanzler** responded to the application for a liquor license requested by Mr. Dennis Kim. As the city manager's designee he was obligated to bring forward facts he felt were pertinent to the Council's decision of whether or not to recommend OLCC approval or if there were conditions Mr. Kim would have to meet in order for him to obtain the Council's recommendation. One of the considerations was the past history of the applicant and the fact this was an ongoing business. This was a change of licensee at this location. During the course of his investigation Chief Kanzler looked at Mr. Kim's history of use and/or management of liquor around youth and how he managed his responsibilities as outlined in municipal code and Oregon Administrative Rules. His testimony was couched around those criteria. He found that Mr. Kim had been convicted of three alcohol-related offenses. On April 30, 2001, Mr. Kim was convicted of driving under the influence of intoxicants. He was convicted on August 6, 2001 of giving liquor to a minor, and on July 5, 2005 he was convicted of driving under the influence of intoxicants. Mr. Kim's application showed he presently held a liquor license for Dennis's Market and has done so for the past six years.

The recommendation was that Council deny the liquor license application of Dennis Kim for Eric's Market. To support his recommendation he submitted an evaluation of Mr. Kim's application compared to the application review process identified in Milwaukie Municipal Code (MMC) Chapter 5.40. The Code stated that the criteria for recommendation that the city manager or designee took into consideration when making an unfavorable or conditional favorable recommendation. It was consistent with the Oregon Administrative Rules (OAR) and listed OLCC license refusal reasons related to the applicant's qualifications. The OLCC will deny a license unless an applicant showed good cause that overcame criteria as identified in subsection 4, alcohol or

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controlled substance history or record of the applicant. The applicant had a record of use of a controlled substance or excessive use of alcohol beverages in that Mr. Kim had been convicted twice in the last six years of driving under the influence of intoxicants and most recently in July 2005. That conviction came with a two-year probation lasting until July 2007. The applicant had a record of violation of criminal law and ordinances connected in time, place, and manner with liquor establishment owner that demonstrated a disregard for the law. Mr. Kim was convicted August 6, 2001 of providing liquor to a minor. His application for the license showed an individual history that included a response that he was convicted of selling beer to a minor six years ago. Mr. Kim was fined for that offense. At a minimum Chief Kanzler believed the conviction demonstrated Mr. Kim's disregard for the law. The public health, safety, and welfare of the Milwaukie community could be at risk if a license were granted to Mr. Kim. The police department, as the city manager's designee, recommended that the Milwaukie City Council deny the liquor license renewal of Mr. Dennis Kim based on the alcohol-related convictions he described.

Chief Kanzler could provide any number of 'what-if' scenarios that would characterize Mr. Kim as a villain if someone were hurt after Mr. Kim either sold or provided liquor to an underage person or was involved in a traffic accident after purchasing alcohol from Mr. Kim. The responsibility to monitor the consumption and distribution of alcohol rested with the Milwaukie Police Department and the OLCC approved licensees. Mr. Kim's track record did not warrant such a risk for the Milwaukie community. Mr. Kim's history and conviction of furnishing alcohol to a minor was particularly disturbing to the police department in that it suggested Mr. Kim's judgment was suspect. Underage drinking was a major contributor to traffic accidents and personal injury to our children. Placing Mr. Kim in a position where he had to assess the legal distribution of alcohol potentially placed the community in jeopardy. Mr. Kim's track record did not support his adherence to following the laws. Subject to the Council's recommendation he would provide alternatives and find that the applicant met the criteria of MMC 5.40.060 and recommend to the OLCC or find that the applicant did not meet the criteria of MMC 5.40.060 but make a favorable recommendation with a letter of warning.

Applicant's Presentation: Neither Mr. Kim nor a representative were present.

Testimony: There was no testimony in support or opposition or any neutral testimony.

Questions from Council to staff: **Councilor Collette** asked Chief Kanzler to describe the relationship between driving intoxicated and selling alcohol at a business.

Chief Kanzler replied it was non-compliance with the law. If he knew what the law was, which he did as a licensee, and he abused alcohol himself, then what would prevent him from selling to someone who was already intoxicated and let them drive away and crash. There was a correlation between the violation of driving under the influence and having a disregard for the liquor laws.

Councilor Stone asked if Chief Kanzler had any reason to believe the Mr. Kim partook of alcohol while he was at work.

Chief Kanzler did not have anything that led him to believe that Mr. Kim drank at the same time he was selling alcohol. He did believe that Mr. Kim had a disregard for laws related to use, consumption, and distribution of alcohol. To allow him to have a license would be allowing that conduct and history of bad behavior into the community where it could influence those in the community.

Councilor Stone asked that because if he was partaking of alcohol at work he would be showing bad judgment and potentially selling alcohol to a minor or maybe to someone who was already intoxicated. That was why she asked that.

Chief Kanzler replied he had shown bad judgment because he furnished alcohol to a minor.

Councilor Stone asked Chief Kanzler if he knew the circumstances. Did the minor have false ID?

Chief Kanzler replied from the history of the record, Mr. Kim was cited for selling alcohol to a minor. He did not know if it was a decoy operation, or it may be someone who was apprehended afterwards that was intoxicated and perhaps got into an accident. That person may have identified that he purchased the alcohol at Mr. Kim's location, and subsequent investigation showed that to be the truth.

Councilor Stone said that was six years ago, and there had been no more recent infractions of selling alcohol to a minor that Chief Kanzler knew of.

Chief Kanzler replied the most recent conviction was in 2005 where Mr. Kim was driving under the influence.

Councilor Stone noted that was not selling alcohol to a minor. She was curious because she understood Chief Kanzler to say that he felt like Mr. Kim knew the law. She was sure that any person looking to get a liquor license did not have the intent to sell to a minor. Some may, but clearly Mr. Kim had this one conviction that was six years ago. It was not like it happened six months ago. As far as his two convictions of driving under the influence went she was leaning with Councilor Collette. She did understand Chief Kanzler's point of view that this was a disregard for the law, but obviously people did do that. It was not a good idea. Irregardless of having a liquor license or not he could still do that – drinking and being intoxicated while driving. She asked if Mr. Kim had any type of plan in place for rehab or was working in some type of program to help him with his alcohol abuse.

Chief Kanzler knew Mr. Kim was under probation as a condition of his post-conviction relief.

Mr. Swanson explained the City Council's function in these licenses was a recommendation, and OLCC would do its own investigation. Whether or not Mr. Kim drank in his place of business was not relevant. He did not know if there was a law that disallowed drinking in one's place of business. The municipal code provided that the city manager or designee may make an unfavorable or conditionally favorable recommendation based on a number of criteria. The first was that the applicant had a record of violations of state alcoholic liquor laws, a record of use of controlled substances or excessive use of alcoholic beverages, and the applicant had a record of violations of criminal law or ordinances connected in time, place, and manner with a liquor establishment or which demonstrated a disregard for law. During his time with the City, Mr. Swanson only recalled an unfavorable recommendation twice. Staff had not used its recommendation authority in any way to be overly cautious. The recommendation was based on a record of violations, excessive use, and a record of violations that demonstrated a disregard for law. If the City made a recommendation to deny, OLCC had the final authority and would in fact follow up based on the presumption that the City had some interest in the area. This was not a determination by the Council that the license would not be issued, but it was recommendation to OLCC where the final determination would be made.

Councilor Barnes noted this was only the second time that Chief Kanzler recommended denial since she had been a member of Council. For him to recommend denial was sufficient for her, plus Mr. Kim was still on probation. She would not wonder why he would not be given a license to sell alcohol if he were on probation. Chief Kanzler's recommendation made sense, and Mr. Kim should not be given the

opportunity to sell any liquor to any minor at any time in the community. She agreed Mr. Kim did not have a good track record.

Chief Kanzler said this was only the second denial recommendation in his eight years as Milwaukie Police Chief.

Councilor Loomis asked how Kimmy's Market had worked out.

Chief Kanzler believed ownership had changed.

Councilor Loomis was conflicted on this matter. He understood Chief Kanzler was saying that this person had a history of making really poor decisions that were life threatening to the community. He was having a hard time because Mr. Kim had a store for six years. His last conviction was in 2001.

Chief Kanzler explained the Council could put some conditions on a favorable recommendation. Those conditions could be that he received no further driving under the influence arrests or have no further violations that would cause him to lose his liquor distribution license. Being specific would let Mr. Kim know what the end result would be. The problem was that there was still a risk. For that violation to occur, there had to be a breach of the criteria. If that breach included the sale or delivery of alcohol to a minor, then the minor might end up in an accident. About 75% of the accidents involving youth were alcohol related. He felt there was enough risk without adding to the burden. If the Council wanted to make a favorable recommendation, it could be done with conditions.

Mayor Bernard understood the code addressed the conditions under which the Council would recommend denial. Mr. Kim was in violation of these conditions, so it seemed straightforward to him. He knew OLCC would approve the license. The code required the Council to do certain things, so he saw no choice but to deny.

Chief Kanzler had a moral and ethical responsibility to point out issues so the Council could take the moral high ground. If something happened, at least the City Council would be on record that it made the right decision and attempted to deny the license that went to a higher licensing authority that granted it. The Milwaukie Council would be on record as trying to do what it could to prevent failure of the system. Chief Kanzler wanted to point out to the Council that there were risks involved.

Mr. Swanson said the next normal step in the process was going to OLCC, so this did not require any extraordinary action on the part of the applicant. OLCC would be happy to point out if it felt the Council was wrong.

Mayor Bernard understood Mr. Kim had been notified of the hearing and had the opportunity to address the issues.

Chief Kanzler confirmed that Mr. Kim had been notified of the hearing.

Councilor Stone asked if Mr. Kim spoke English and if he could come before the City Council.

Chief Kanzler replied that Mr. Kim wrote his application in English and signed it.

Councilor Stone said if Mr. Kim did indeed write it. He signed it but that did not mean he wrote it. She wondered if Mr. Kim was able to testify. She asked counsel what the City's liability would be if the Council applied conditions.

Mr. Monahan believed placing such conditions showed the community's concern and raised OLCC's awareness. The Council could make a recommendation that the individual not have further legal issues such as Chief Kanzler described or suggest that Mr. Kim undergo some kind of training or counseling to make sure he was aware of the concerns. The Council would assist in the liability matter by going on record showing

concern. Ultimately, however, the Milwaukie City Council was not the approval authority, and OLCC would be subject to the exposure.

It was moved Mayor Bernard and seconded by Councilor Barnes to recommend denial of the change of ownership application for Eric's Market located at 9410 SE 32nd Avenue.

Councilor Stone would still like to consider putting on some conditions. Mr. Kim's track record was not good, but selling to a minor happened many, many years ago. He was still under probation for the DUII violation, so she would not recommend a license be granted until that was over and that the license be revoked should any further violations, either a DUII or selling alcohol to a minor occurred. In addition, she would recommend that Mr. Kim receive counseling for his alcohol abuse. She based that on the length of time elapsed since Mr. Kim sold alcohol to a minor, and no one seemed to know the circumstances. She also knew that these little stores in terms of their business thriving made a lot of money on alcohol sales. She was not promoting the sale of alcohol, but she was promoting business. Mr. Kim had a current license at his other store. She did not know the background and if Mr. Kim had further rehab or training. She would make a recommendation with conditions that the liquor license be granted to Mr. Kim.

Councilor Barnes did not think the community needed anyone selling alcohol who had a track record and was still on probation that had sold to a minor. She did not see the benefit of the Council's doing this, and she did not want to be responsible. This man had been convicted for selling to a minor. Why should he have another chance to sell to another minor in the community? She did not want that on her shoulders and did not see a need for it.

Mayor Bernard agreed.

Councilor Stone said it had been six years.

Councilor Barnes did not care how long ago it was. He was convicted of providing alcohol to a minor, so why would the Council want to give him another chance to do that?

Councilor Stone replied that people make mistakes. She was trying to look at this broadly. She was not condoning selling liquor to a minor, but people made mistakes. She wanted to know what kind of game plan Mr. Kim had to make sure it did not happen again.

Councilor Barnes asked if that were the case then why would Mr. Kim not be present.

Councilor Stone did not know the circumstances.

Councilor Collette understood Mr. Kim could resubmit if the recommendation were not favorable. If the conditions that caused such a recommendation were remedied, then how would the City verify the conditions were remedied? Mr. Kim made a mistake, so could he reapply for a liquor license?

Chief Kanzler explained his violation was not significant enough to revoke the current license, but it was significant enough to put him on probation for driving under the influence. His experience was that the OLCC did not review an applicant's history until renewal appeared. If Mr. Kim did not have a renewal at his current location from 2005 until now, then OLCC would not know of his second DUII conviction. It would not be known to OLCC until Mr. Kim reapplied. When he worked in Portland this was an ongoing problem because the violation would not be noted until the owner applied for renewal. OLCC may not be made aware of that until he reapplied for renewal.

Mr. Swanson said the next step was OLCC, so he may not need to reapply. The application was submitted to OLCC on March 12, 2007, and it had 90-days in which to act. The matter would be moot if OLCC approved the application, and Mr. Kim would not have to reapply. If OLCC did not find Mr. Kim's arguments valid, then Mr. Swanson thought according to MMC 5.40.120 the application could be resubmitted in less than six months from the date the Council made its unfavorable recommendation only if the conditions which caused such recommendation had been remedied. There was no evidence from the applicant that those had been remedied. He thought Mr. Kim's most direct remedy was to pursue it with OLCC, which may well grant it. Coming back to Council in that case was a moot question.

Councilor Stone said the last time this issue came before the Council the OLCC allowed it. Would it be in the Council's best interest to make it conditional and state several things she spoke about earlier? Would OLCC be obligated to take those into consideration and incorporate that if it granted the license? Would conditions help the City's case, and would the OLCC adopt the conditions if it granted the license?

Chief Kanzler did not believe OLCC had the obligation.

Mr. Monahan thought if the Council did decide to recommend denial, it was responsible through the code to state the reasons for its major concerns. Those findings could be used by OLCC if it chose to grant the license and tell the applicant the reasons that he needed to do better. OLCC might make some recommendations. He was not sure if OLCC would grant a conditional approval. He felt the Council could make the same statement with more force with a denial than it would with a conditional recommendation.

Mayor Bernard added the burden was on the applicant who had an opportunity to appear at this public hearing to speak on his own behalf. Mr. Kim was sent a notice of this public hearing but did not take advantage of speaking about the staff recommendation. Now the findings would be forwarded to OLCC, and it would be the Commission's burden to ensure Mr. Kim followed the laws, which he had not in the past.

Mr. Swanson said the code required that the City Council make its recommendation and in the case of an adverse recommendation the Council needed to make findings. He suggested that the motion include reference MMC 5.40.060.A, B, and C, which were the reasons for recommending denial.

Mr. Monahan suggested that the response to OLCC include the staff recommendation and a copy of the applicable code sections used in deliberations.

As maker of the motion Mayor Bernard accepted the recommendation by the City Manager and City Attorney as did the seconder Councilor Barnes.

Councilor Loomis commented he was not as tough as Councilor Barnes and was more in Councilor Stone's camp of forgiveness. Mayor Bernard made the point that Mr. Kim had the opportunity to speak before Council but did not appear. For that reason, Councilor Loomis would support the denial.

Motion passed unanimously. [5:0]

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

Mr. Swanson provided the staff report. This was a code amendment that would declare the Kellogg Treatment Plant a nonconforming use and require that it cease operations as of December 31, 2015 and imposed heavy civic penalties. The City was continuing this month-by-month as the stakeholders wended their way toward a

solution. In the past it was the sense of the Council when it became necessary that it would not hesitate to enact this. He recommended continuing the decision.

It was moved by Mayor Bernard and seconded by Councilor Barnes to continue the matter to May 15, 2007. Motion passed unanimously.

Mayor Bernard thought it might be appropriate to consider a Council recommendation that the City look at other providers of sewer services outside Clackamas County Service District #1 and indicate it wished to talk about partnering with Damascus and Happy Valley. He closed the public hearing.

OTHER BUSINESS

A. Local Gas Tax and Street Surface Maintenance Program Start-Up – Ordinance, second reading

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

The City Recorder polled the Council: Mayor Bernard and Councilors Barnes and Collette voting ‘aye’ and Councilor Loomis and Stone voting ‘no.’ Motion passed 3:2.

ORDINANCE 1970:

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

B. Project Management Group Recommendation for Development of the Town Center Site – 10700 SE McLoughlin Boulevard and 10721 SE Main Street -- Resolution

Mr. Asher stated the action requested was that the Council direct the Town Center Project Management Group to enter a 60-day exclusive negotiation period with Main Street Partners on a memorandum of understanding (MOU) for developing the Town Center site. He introduced the members of the advisory committee that worked on this request. He acknowledged the members of the project management group (PMG), Jeanne Garst, consultant Kim Knox, and those present from Main Street Partners.

He would address the concept design and feasibility, and he noted design was 25% of the recommendation weighting. Ms. Knox would discuss qualifications, financing capacity, and the business offer. Committee member Charmaine Coleman was selected by her peers to address Council. Ms. Mangle would address parking, and Mr. Whitmore would speak about the Transit Oriented Development (TOD) Committee that took action on this matter last week. Finally, Mr. Asher would discuss the considerations taken into the MOU negotiation if the Council approved the action.

Mr. Asher reported three proposals were received for this site: Costa Pacific Homes, with The Architects Office PLLC and Saco Construction Corp.; Main Street Partners, with KemperCo, Myhre Group Architects, and R&H Construction; and Winkler Development Corporation with LRS Architects and R&H Construction. He summarized the proposal and noted figures and distinguishing characteristics of the projects. The projects were similar in a number of regards. They were all mixed use projects as requested with residential over retail and/or office with hidden parking. All three were

quality proposals meaning they were presented by firms that had largely done this kind of work before. All were professionally submitted and met the criteria of the request for proposal (RFP). All three were interviewed and invited to the open house.

Costa proposed 71 housing units with 9,500 square feet of retail with 12,500 square feet of office. The retail was on the Main Street side, and office was proposed for the McLoughlin Boulevard side on the ground floor. The Costa proposal included underground parking with 117 spaces with a parking ratio of 1.65:1. The floor area ratio (FAR) was the ratio of the size of the building as compared to the size of the site. This site had a code requirement of 1:1 minimum. This was a 3.1:1 FAR. There was no land payment on this project. Hard costs were about \$13 million, and soft costs were \$8 million. He recommended that Council keep that ratio in mind because it was a high ratio of material and construction costs to engineering and design. The total cost was \$21 million making it about \$257 per square foot. The proposal assumed sales of \$260,000 per unit with an assumed lease rate of \$32 per square foot for the retail space and \$19 per square foot for the office space.

Councilor Stone asked for a table with this information.

Mr. Asher noted the distinguishing characteristics were underground parking with a lot of active uses on ground level since parking was below grade. It had a gateway element on northwest corner that was like a half rotunda announcing the project to those traveling south on McLoughlin Boulevard. It was brick and stucco with some stone veneer. This project proposed expanding the sidewalk on Main Street to 15-feet. The PMG and community liked the materials, underground parking, and consideration of public space at the ground level. The last consideration in this category of design was feasibility, and that was where this project ran into trouble. There were two ways to think about feasibility when evaluating these projects. One was if one believed the project could be built for the kinds of costs that were in the proposal. On the flip side, did one believe it could be sold or leased at the rates being proposed? The equation had to balance to make a project feasible. They believed this project was challenged on both fronts. The costs appeared low for this kind of project particularly with underground parking, and the lease rates seemed high. The PMG scored the project high on design but low on feasibility.

Winkler proposed 63 units with 9,217 square feet of retail and no office. It had 72 parking spaces with a ratio of 1.1:1, and the FAR was 2.5:1. It was an L-shaped, four story project. There was no proposed land payment. The hard costs were \$13.4 million and soft costs were \$2.8 million for a total of \$19 million. The cost per square foot was approximately \$300. The assumed sales per unit was \$330,000 assuming a higher price point although there was a greater range. The developer was aiming some of the units at a lower income, and some of the units were at a much higher price point. Winkler proposed to sell the retail along Main Street rather than lease it. One was seeing that in Portland. The price point there was \$225 per square foot. This design took all of its cues from the City's development code, so everything in the rendering could be built without any variance requests. While he thought the PMG and Advisory Committee appreciated the spirit of that approach, this design got the lowest marks as being the most boring. The design team would say it had not yet given it flair. Some liked it while others felt it should have happened in the presentation. The parking was at the ground level and was screened by a trellis with greenery. The surface parking was separated from the pedestrian environment by a green screen. The positive attributes were sensitivity to the code and a sense of permanence with a stolid look using brick. There was a unit mix for diverse incomes which people felt was favorable. They brought an adaptable approach to design. On the cost side this proposal seemed feasible. Winkler scored medium on design and high on feasibility.

Main Street Partners was the recommended proposal. It was 76 units and had the most housing of the three proposals. It had 15,500 square feet of retail and no office called out. It had commercial space on both Main Street and McLoughlin Boulevard. It had 80 parking spaces which was a parking ratio of 1.1:1 and an FAR of 2.6:1. Land payment in this proposal was \$250,000 and was the only proposal that offered payment to the agencies. The hard costs were \$14.3 million, and the soft costs were \$4 million. The cost per square foot was \$289. This proposal identified condominiums on the McLoughlin Boulevard side and town homes on Main Street. Condos were estimated at \$239,000 and town homes at \$281,000. The assumed lease rates on the commercial space were \$16 per square feet. This was the only proposal that took a bifurcated approach to the site, so there were two buildings or masses. There was a three-story element on Main Street, and on the McLoughlin Boulevard side there was a larger mass with four and potentially five stories. All of that was on top of a podium, which hid the parking and the interior. The commercial presence on McLoughlin Boulevard was a distinguishing characteristic. The PMG appreciated the team's effort in trying to fit the scale of Main Street and attempting to respond to City Hall. There was a lot of discussion about whether or not that was successful in this proposal. In the presentation they heard that the building took a lot of its cues from City Hall. It had a symmetrical façade with an entry in the middle. Whether one bought that or not, the effort was made and was viewed as a positive. This project more than the others created a presence on McLoughlin Boulevard both in terms of the building fronting McLoughlin Boulevard and also having commercial happening on that side. The cost assumptions and lease and sale assumptions appeared feasible. This project scored medium on design and high on feasibility. The basis for the recommendation was how well the project responded to development objectives stated in the RFP; that was 25%. The development team qualification was 35%. The ability to raise the financing was 20%, and the business offer, or what the City would get in addition to a beautiful building, was 20%.

Kim Knox, Shiels, Oblatz, Johnson (SOJ), discussed three criteria that Mr. Asher had discussed briefly. The development team qualifications was weighted at 35% because the developers had been asked to do a lot of work in a short period of time in terms of the development concept. They wanted to make sure the teams had experience in doing this before. In looking at the three teams they had all done good projects and had good reputations in the Portland area. They had all done mixed-use projects. The Kemper team ranked the highest in terms of other comparable buildings. That was not to say they had more experience overall, but they specifically related to what was wanted on this site. They wrestled with similar issues on several projects and had done well. Main Street Partners and Winkler did that in a context of an urban infill situation such as this where there was a lot of sensitivity from the community about design, process, and public involvement. Both teams stood out in that regard. She discussed financing capacity. An independent third party reviewed the confidential financial statements of the three proposers. They looked at it from the perspective of a lender. All proposers were in similar range of financing capacity. There were some nuances in the ways they got their money, but none of them had deep pockets like California PERS nor did they get their money from payday lenders. They were all considered strong in that capacity. The opinion of the third party was that Main Street Partners provided the most complete package of information of the three proposers. All companies had pending projects in 2007 and 2008 that would affect their cash flow. In terms of the capacity Costa Pacific submitted the highest budget with substantial developer management fees. The Winkler team did not break out the developer fee, and Main Street Partners' development fee was considered reasonable and within industry standards. Financing capacity was 20% of the overall. The business offers were what one might expect in the process. Main Street Partners offered a \$250,000 payment for

the land while the others proposed a zero land payment. All three offered a share of the profit at the end in varying amounts, and the details would have to be fleshed out.

Ms. Knox discussed the public open house on March 13 that was the night before the interviews to keep the integrity of the competitive process intact. It allowed the public a peek at the proposals mid-stream and an opportunity to provide comments. Over 100 people attended the open house, and 21 people filled out comment cards. The comments were summarized and given to the Advisory Committee on the day of the interview with a verbal summary. It was a helpful exercise for the development teams, and some of the teams adapted their presentations and how they were thinking about the project. She felt there was a good understanding of the Milwaukie community, and this was an important exercise in the middle of the process.

Mayor Bernard asked how many parking spaces were in the Costa proposal.

Mr. Asher replied there were 117 spaces proposed.

Charmaine Coleman, Advisory Committee, commented on the elements the group felt were unique to the Main Street Partners' proposal of the two options that ended up being deemed feasible by the PMG. The Committee felt that Main Street Partners and the architect that represented the design at the open house had a clear vision of what they wanted to build, and that was seen as a unique feature. They were flexible but confident and firm in their beliefs that they designed a building that would suit the needs of the area in multiple ways. She believed that confidence bred confidence and having the belief this could be a project that was appreciated and used. It was good to have people who believed in what they were doing. The Myhre architects walked the Committee through its design choices. It was interesting that the architect's name was McLaughlin. She noted their reasoning behind many things that were design elements, and she was impressed by that. Unique features included a non-L-shaped building to evoke a sense of shelter and community. The other two proposals had L-shaped buildings with two sides facing the water. Initially, people saw those as being more appealing because of the riverfront views. This design evoked a sense of shelter and sense of community. The feeling was that if one were exposed to the south and west, one would feel just that -- open and exposed with a lot of west wind coming in. In this instance there was a garden space for an interior view as well as riverfront view on the McLoughlin Boulevard side. Initially, the Committee was concerned about retail on the riverside with a lot of cars going past and no parking on McLoughlin Boulevard. The traffic going through downtown Milwaukie was slow, and it was not going by at 50 mph. Looking at retail was more interesting than looking at screened parking or some other alternatives. The Committee noted later with retail on the riverside people could enjoy sitting outside in the late afternoon sun. It also drew people into town. She particularly appreciated a non-domineering design on the northwest corner of the building. His efforts were to create a building that said welcome to Milwaukie rather than looking like a fancy building. Her opinion was somewhat different from other members of the group. To her the sense of a massive building in small town made her nervous. She liked the fact that the Main Street Partner design was broken up a little. There was a three-story maximum height on Main Street in order not to dwarf City Hall, and Main Street Partners were adamant about that. They did not want to tower over City Hall on the other side of the street and wanted to respect other nearby buildings.

The Myrhe and KemperCo were good salesmen, which she thought that was a good thing. The community was a notoriously hard sell and slow to come to consensus on many issues. She thought it was good to have a group that believed in what it did and could evoke that sense of confidence in others. They did a good job at the open house. The team had worked in Milwaukie before, so they had an idea of what they were getting into. The Kemper proposal offered nothing she had envisioned but almost

everything that she was actually looking for. She found she had to refocus her attention from the picture she had drawn in her mind of the future building to what she wanted to accomplish with the building. She wanted a pleasant and accessible Main Street side with a pedestrian-friendly design. People talked about what it would look like for residents, but most people would not be buying units but would walk by it every day or visit the businesses on the ground floor. That was her primary line of questioning. Parking in this design was embedded in the middle with ingress on one side and egress on the other. This was the most efficient use of space for parking. The design had people talking. The PMG and the Advisory Committee ranked it medium in design because they knew it was edgy. People around here liked brick and things of permanence. Change made us nervous. She thought it was important to remember love it or hate it the community had more to say about the Kemper proposal than the other two proposals combined. There were more questions, more discussion, and more disagreements. Basically, there was more excitement about this design. She thought it was the shot in the arm that Milwaukie needed. This design was the biggest community hotbed and did not look like anything else in town. The architectural style was a departure from anything in the downtown area and much more so than either of the other two proposals. It was met with more polar opinion. At first she feared polarization but then saw it as a strength. She made an analogy to *The Pirates of the Caribbean* movie where Captain Jack Sparrow was told he was the worst pirate he had ever heard of, to which Jack replied, "Ah, but you have heard of me." In the end she would rather have someone talking about her building either for good or ill, rather than saying they don't mind it because it blended with what we already had. The City needed buzz. One of the main goals of the RFP was to create a cornerstone development, and one that would inspire future development in Milwaukie. The unique features of the Kemper development were in her mind critical features. One of the largest community concerns and one that she strongly shared was the potential fifth story. One rendering showed a fifth story, and she would encourage it. When she first looked at the project, she did not notice there was a fifth story. She saw potential for residents to put trees and plants on the terrace, and suddenly there was greenery on the top floor which she found appealing. The top floor would go for a lot of money and would give the architect and contractor more license to put that money back into the building. She was initially opposed to the fifth story, but the proposer respected the three stories on the Main Street side. She was no longer afraid of the McLoughlin Boulevard side and thought it would be appealing.

Mr. Asher said there was clear consensus on this proposal. It did not mean there were not minority opinions on certain elements. One Committee member felt just the opposite about the mass on McLoughlin Boulevard, and he found it intimidating and overbearing. It was not unanimous, but there was certainly consensus on this proposal. The Advisory Committee talked a lot about parking and the fifth story issue and prepared a statement: The Advisory Committee realized that parking was a key community issue in the downtown area and was not something that could be solved by a single development such as the Town Center project. The Committee noted that downtown Milwaukie's transitioning to support more activities and reasons to be downtown and that the ongoing Transportation System Plan (TSP) parking strategy should ensure this issue was addressed. He wanted to make sure the City Council and community heard that loud and clear. Parking needed to be defined and managed.

Ms. Mangle provided an update on the TSP parking chapter. Working groups were addressing the modes and issues, and one of those was downtown parking. Last week the first of two specific workshops were held on downtown parking. There were only about 15 attendees, which surprised her because of the amount of concern that was expressed. There were Historic Milwaukie residents as well as downtown residents along with several business owners and representatives including Wind Horse Coffee,

Advantis Credit Union, Dark Horse, Reliable Credit, Bernard's Garage, and the Ledding Library. The first workshop focused on existing conditions, and the group was briefed on the parking plan and the guiding principles for parking management already in use. There was an open discussion about short-term changes that would better manage parking now. The group talked about prioritizing on-street parking for the street level uses and specifically for retail and restaurants. The City needed to improve its marketing and communication with the downtown employees to get them to use the permit system and expand opportunities now by making 2-hour spaces into 4-hour spaces. The discussion about short-term changes provided her with direction. The next day she received follow-up calls from the business owners indicating their appreciation and offering more ideas. The next workshop was at the end of May and would focus on the City's role in providing parking, what would be done to replace parking as surface lots were developed, and if that would be something in which the City needed to invest or was it something to require of the developers. There were certain things not addressed in the 2003 Downtown Parking Plan such as residential parking and planning for parking over time. The 2003 Plan would be updated and adopted as the downtown parking chapter of the TSP. This would be an ongoing parking management plan that included utilization studies and actively managing change. The goal was to have a clearer strategy.

Mayor Bernard liked the Costa proposal and the underground parking element. He figured that number of parking spots would cost \$3.5 million, which was a huge cost to the project. The parking consultant said it was not really feasible in downtown Milwaukie at this stage. That was his biggest problem with the Costa proposal.

Mr. Asher thought the PMG and Advisory Committee had come to the same conclusion. Despite the fact there was a lot of discussion about parking, no one thought it was better to have surface parking on that block instead of transitioning to one of these developments. People were excited about something on that lot that was brighter and better even if it meant having to figure out something else for parking.

Phil Whitmore, Metro, said this did not fall out of the sky; it was because the City marshaled its resources to help change the community in a big way. All three of the RFP responses were wonderful, and all three were signature projects that would create a gateway. Three good proposals spoke well of the Milwaukie City Council as well as the site itself. Three developers thought it was a good idea albeit there were two public agencies. The Council can present itself well in the community, make decisions in a timely manner, be aware of what was possible and ask for it, and recognize what it cannot get. The City's professional staff was an important factor. The Metro Council had a Steering Committee comprised of representatives from the Governor's Office, five state agencies, Portland Development Commission (PDC), Metro, and TriMet. If one Metro Council member did not like the recommendation, then it would be brought before the Council. Neither Metro Councilors Newman nor Liberty would ask for a full Council review. Mr. Aschenbrenner and Ms. Coleman both spoke before the Steering Committee, and the members were impressed with the process and how well the two Citizen Advisory Committee (CAC) members represented the community. The Steering Committee heard reports from Ms. Knox and the CAC and looked at the PMG recommendation. They voted unanimously to enter into negotiations with Main Street Partners. Councilor Liberty thought this was a model process and should be used more often. It was called the Milwaukie model that included public site control, an enlightened council, a professional staff, and an outstanding citizens advisory committee that helped champion the projects.

Mr. Asher sought authorization to begin negotiating with Main Street Partners on an MOU over a period of about 60 days then coming back to Council. An MOU was a legally non-binding agreement that stated the developer's intent and would proceed

toward a Disposition and Development Agreement (DDA) which was a legally binding document. The conditions would include sidewalk area design, building height on McLoughlin Boulevard, exterior materials, second level connection to the street, semi-public spaces, architectural style, green building, McLoughlin commercial, parking, and the schedule. The developer said in the interview that the team was willing to work with the PMG on design development, and he intended to ask the developer to evaluate the architectural elements that were being shown including the roof lines, the articulation of the individual units on Main Street, materials against market conditions, community concerns, and the site context. Mr. Asher discussed the issue of a green building. The developer said in the interview that the project could be built in an environmentally friendly way with or without LEED certification, and the MOU would help clarify that. They also wanted to ensure the McLoughlin Commercial was built. Main Street Partners would be asked to take an active role in advising on new parking policies that would take shape during the TSP process. Finally, the MOU would firm up the schedule commitment for Main Street Partners which was to acquire the site in September 2007, file for permits in one year from now, and begin construction July 2008. It would open August 2009. The resolution also followed the CAC and PMG recommendation to begin immediate MOU negotiations with the Winkler Corporation in the event negotiations broke down with Main Street Partners during the 60-day period.

Councilor Stone noted in the presentation it was stated that Main Street Partners offered a land payment of \$250,000, and no other developer offered that. Was that typical and was that expected?

Mr. Asher replied it was more typical to get an offer of \$0. On a project like this there was recognition that the cost of the building because of the mixed uses and untested market there were risks and costs that would stretch the developer. A large land payment would result in stripping other things out and perhaps not getting a project at all. In his experience, they were thrilled to get any offer for the land. He was not convinced at the end of the road that the \$250,000 might not have to be poured back into the project for something the community wanted such as public space. Metro and the City were glad to have it, and the other proposals that offered \$0 were more typical.

Councilor Collette appreciated the CAC's work. One point she would like to see added related to a potential bus stop on McLoughlin Boulevard which may make the McLoughlin Boulevard storefronts more attractive and help solve some transportation problems.

Councilor Loomis stated one of his biggest gripes while being on Council was that he did not know what was going on. It was having constituents or neighbors calling him with questions he could not answer. That was embarrassing and tough. This process was disappointing to him because the Council was not more involved. He was glad Mr. Asher introduced the Committee, but the Council had never met them personally in a work session where they discussed and Council heard how they came to their decision. The Council never met with them. That part was disappointing. Ms. Coleman had a lot of good input, but he would have liked to hear that from the other members. When he went to the open house, this was his least favorite proposal. He heard that from other people. It would have been helpful to him to hear directly from the other members of the Committee. He was disappointed that he read it in the newspaper and had not been notified as a Councilor.

Mr. Asher was disappointed when he read the headline too because it was erroneous. He wanted the Council to be as informed as it needed or wanted to be. The Committee was given a charge that clearly said it was to provide input to the PMG on a recommendation to be presented to the City Council. It had not occurred to him that

there should be some intermediate step to make sure the Council was abreast of the progress. That would be an improvement to make the next time.

Mr. Swanson added that it had not occurred to him because of the way the process was set up. The open house was one night, and the Committee met the next. The open house was first time that the public or any of the Committee members had seen any of the proposals. He would be the first to apologize if in fact something else was expected. Things were constructed in a way that followed the process and what had been anticipated. He had not read the newspaper and was not sure what the headline was.

Mr. Asher thought Ms. Knox would add that they tried to keep the City Council from this process so it could hear the full recommendation that had the backing of the PMG and the CAC and to have taken that process from open house to this meeting in a compressed timeframe so the developers were not waiting.

Councilor Loomis felt the decision needed discussion and input and thought there should be more than just a presentation. Ms. Coleman said she had been against a five-story, and it took some time and discussion for her to come to her conclusion. The Council was being asked to make a decision at this meeting, and he was not prepared to do that.

Councilor Barnes did not wish to slow the process, but she was looking at a PowerPoint presentation. She deliberately did not attend any of the open houses because the Committee was selected to make the recommendation. The Council was ultimately responsible, but its not a clear picture for her. When the Council got the press release she was taken aback. She was uncomfortable that the decision had been made and the City Council was not part of the picture until tonight. She understood the process and why staff did what it did. She did not know how the line of communication broke down to where the public information officer sent it to the newspapers before this meeting.

Mr. Swanson explained the TOD Steering Committee and the PMG received a recommendation from the CAC to forward to Council. The Milwaukie City Council's decision had not been made. An MOU was a document that said let's go to the next step and see if we can work out an acceptable issue after issue with the developer. The Council would still have to approve the MOU. The Council decision had to do with taking the next step and talking with the designated developer and deciding if the outstanding issues were the correct ones. He apologized if someone jumped the gun and sent out a press release. This decision did not finalize for all time a plan; it was just to move to the next step to determine if an acceptable plan could be developed to move forward with one of the three proposers.

Councilor Barnes noted there were still a lot of open spaces in North Main. She asked Ms. Coleman if the group had discussed marketing space in the second building when the first one was not fully occupied. She was concerned about the occupancy rate. What sense did the Committee have about those issues?

Ms. Coleman felt the CAC understood the first building was where the growing pains were felt. She was the demographic that people were seeking to draw in, and she and her husband moved to Milwaukie from Sellwood because they saw the opportunities here. As density occurred Milwaukie was the next logical step as long as it was attractive. It was a balance of residents supporting businesses and businesses that attracted residents. The first group needed to come in. The Committee agreed it was not filling up as quickly as everyone in their dreams would like, but once the density happened due to the urban growth boundary she felt it would take off.

Mr. Asher said Mr. Kemper was present and could respond to questions. He was completely comfortable with any action the Council took including an additional step to deliberate more with whomever. The PMG and CAC had arrived at a recommendation, and now Council could indicate its position.

Mayor Bernard was excited about something someone said today. When looking at the downtown he saw something very inviting. North Main pulled in other elements like the Masonic Lodge, the credit union, and the McLoughlin Boulevard project. The next project would offer other opportunities and draw people in. It was Kemper who was taking the chance, and he was an experienced developer. People knew they would have to give away a lot on the first project and less on the second. On the third project people would beg to develop in Milwaukie. That kind of mentality drew people in. People liked driving down McLoughlin Boulevard and seeing the changes and were curious. The Masonic Lodge looked great next to North Main Village, and now it was being rented out. He commented on the Milwaukie Community Center on 42nd Avenue. One could feel it happen. Downtown Milwaukie will be unique, and it would never be a Hawthorne or NW 23rd. He suggested putting something in the MOU that asked for help with transitioning the Farmers' Market and putting in some art. He was disappointed when he read the article in the newspaper. Council had taken the time to appoint people committed to finding something unique that the citizens of Milwaukie could support. He was comfortable supporting the Committee's decision to negotiate with Main Street Partners on an MOU.

Councilor Stone thanked Councilor Barnes for addressing a question she had about the North Main businesses that were not filled in. She wanted to believe it was the trend that North Main was the first project that would take a little longer and the second one would take off. She had some huge reservations about the parking situation. If we were planning to put more and more people in the downtown it would take more than just managing the current spaces. She thought the cart was in front of the horse, and it needed to be turned around. She tended to think along the lines of Councilor Loomis. She was not sure she was ready to make the decision tonight. She would not mind sitting down and having a dialogue with people to discuss concerns. She was also concerned about going higher than four stories, and that had been raised before. She was not wild about the look of the building, but she imagined that was something that could always be altered. The other big thing that stuck out for her was interest by all the developers in pursuing the vertical housing tax abatement. She thought that needed to be part of the MOU as well. She had a hard time with taxing citizens – the Council just put another tax on them and did it in about 30 seconds or less -- and let a developer go for 10 years with tax abatements. Somehow that did not seem to be fair. She wanted more discussion of that. She was not sure she could confidently make a decision about this tonight without further discussion.

Councilor Collette had a similar reaction when she got the e-mail about the decision's being made. She appreciated what Council was trying to do at this meeting. It seemed as if the Council was saying it wanted to have the next set of conversations with Kemper and possibly with Winkler as a backup to address all of the issues raised at this meeting including parking and a fifth story. She hoped tax abatement would be addressed in the MOU. The Council was not deciding to build this but rather to have a conversation. She had complete trust that the Committee did a fine job of asking questions, having the conversation, and bringing the Council a recommendation. These things were done in stages, and tonight's stage was not breaking ground. It was about beginning to negotiate the MOU, and the issues were identified. She did not see any reason given the Committee's recommendation to go a step back. It was clear the City could move forward with this developer and have the issues brought forward.

Councilor Stone asked Councilor Collette if Winkler would be the backup.

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Mr. Swanson replied Winkler would be the backup if things did not work out with Main Street Partners. He expressed his deepest apology if someone jumped the gun as it was not the intention. Mr. Swanson would accept whatever happened, but he advocated for going to the next step. Councilor Collette was right. This was not putting a shovel to dirt. It was designating one of the three developers to enter into negotiations and come up with some clarity on a number of issues. He was always asked why North Main was not full. Mr. Kemper did not build it so it would be empty. He and two other proposers saw an emerging market in this City even though there were vacancies at North Main. He knew Mr. Kemper was working on some real possibilities at this time. He watched the Committee process and he was quite impressed. A number of the Committee members felt as Councilor Loomis did after the public open house. It was important to them to make something happen. He was concerned about losing momentum. If the City Council did say to go ahead with an MOU at this point, he and Mr. Asher would come to the Council often during that 60-day period to talk about what was going on. The Council would not finalize a 'deal' with anyone. The Council would be resolving issues with the person the CAC felt most comfortable with, and it was important to start the process as soon as possible. The processes were multi-year, and this was the beginning of a fairly long journey. It was not his intention not to inform the Council and apologized for that. He felt there were issues that needed to be discussed and resolved so someday a shovel would be put to dirt, but that was not the outcome of the decision before Council at this time.

Mr. Asher understood a courtesy call was missed, and he apologized. Having Metro as a partner put the City into a different process than if it were doing the project on its own. He regretted the news of the CAC and PMG recommendation came as a surprise and was stated in a way that sounded like the decision had already been made. He did not wish to confuse that with bad process, and he felt compelled to say something about the process. He would do the process the same way but would make sure that Council got that courtesy call. In setting up the PMG, the CAC, and the process, Mr. Asher believed staff was directed to make a recommendation. That was what was done. To have pulled the Council into the process of getting to that recommendation would have confused the roles as he had seen happen in Milwaukie in the past. He acknowledged Councilor Loomis's concern about being uncomfortable when he did not have information to give the public. He suggested solving that another way. He would want to discuss how Council got information without being central to an advisory committee process and while discharging some responsibility. For him keeping those lines clear and keeping the decision-making role clear was critically important to the success of the project. Reflecting on what could have been done differently, there should have been a courtesy call before the press release went out. He did not think a different sort of involvement on the Council's part up to this point would have made a lot of sense.

Mr. Swanson thought Mr. Asher was right. He did not want to confuse the apologies with the substantive decision that had to be made. The Committee put the City in a position where it was ready to do some good work. One piece was missed, and staff would learn from that. He thought the important thing was to move to that next step.

Mayor Bernard noted the Council rarely knows about Planning Commission decisions unless they were appealed. In a sense it was the same with this Committee.

Councilor Barnes understood what Councilor Collette and Mayor Bernard were saying. She believed in the Committee and its recommendation, but she did not feel she had enough of the meat to make a decision. She understood the next step of the process, and she was not second-guessing it. For her personally, she was voting on negotiating the MOU and not saying Mr. Kemper had the project. That decision for her had to be made based on an educational process. She had not done any research because that

was not her job. She did have some trepidation in saying 'let's move forward' when all she had was a staff report and a PowerPoint.

Councilor Stone understood this was an exclusive MOU with Main Street Partners, so essentially the developer was chosen.

Mr. Asher replied the Council would be directing staff to begin an exclusive negotiation with Main Street Partners for 60 days and move toward the MOU that would come back to the City Council for approval.

Councilor Stone asked if that necessarily meant Main Street Partners would be the developer who got the project.

Mr. Asher said the MOU was a milestone, and even at that point there was a DDA that took much longer and was binding. Only after the property was sold would this deal end. He hastened to add that these projects were difficult, and typically one would not go into exclusive negotiation without every intention of favoring that team and wanting to see its success.

Councilor Stone said based on what Councilor Barnes said the way it came across was that Main Street Partners may not be the developer. She interpreted an MOU to mean that that was the group being most seriously considered.

Mr. Asher said it was a selection to move forward with that team and not the two other teams. Milwaukie and Metro still owned the property, so it was reversible if Council did not wish to proceed beyond that point.

Councilor Stone noted the staff report said if the Council rejected or delayed the recommendation that it would have serious repercussions for Metro. She asked what the repercussions would be. What would that entail for Metro if the decision were delayed?

Mr. Whitmore recommended that the City Council be as deliberative as it wished. Staff never tells Council how to make a decision. Staff wished it would make the decision to move forward into a MOU so that this part of the process could be done. Staff hoped to resolve all the issues and get into the DDA.

Councilor Stone read from the staff report that, "Council can also reject the recommendation altogether, though this would have serious repercussions for Metro."

Mr. Whitmore noted when going into the partnership there was not that much discussion of what would happen if the two councils disagreed. He thought about it a couple of times but had not come to a conclusion. There was strong consensus in the PMG and CAC so it was thought Metro and the City would reach agreement on selecting the same developer. There was no process in the IGA for what would happen if there were disagreement. Obviously if there were an impasse, then the partnership would be dissolved and each would do something with their property. Those were the serious ramifications he could think of and were not meant to be a threat or to put the City Council in a difficult position of making the decision at this meeting. He hoped Council would make the decision tonight, but that was Council's prerogative.

Mayor Bernard recalled two years ago Council was ready to give an exclusive negotiation with another developer who came in without going through the public process. He attended the open house and listened to comments, and he was excited about what he had heard. He personally had not chosen Main Street Partners because he liked the other building better. He thought the underground parking was impossible and would cost about \$3.5 million. It was not feasible, so that threw the Costa project out.

Mr. Whitmore added the PMG and CAC thought it was between Winkler and Kemper for that reason. In the interview the developer said he had a \$4 million gap, and it might be more than that.

Councilor Stone asked if it were delayed could it be discussed with staff and the CAC at the next work session.

Mr. Asher did not know what questions had not been answered. He heard process questions, and Councilor Barnes said the Council had not gotten enough of the raw material. It would help him to know what would be discussed. The Committee and PMG worked hard at getting all the issues into a report. Attached to the staff report was a 24-page PMG recommendation report that included every comment from the open house. It was as exhaustive as possible in giving the issues as they were understood. The whole team was present to answer questions.

Councilor Loomis did not have a problem being removed from the Committee's and PMG's decision making. His issue was that when the decision was made the Council should have met in a work session with the Committee and PMG to interact and understand how the decision was made. They studied it and talked about it. The Council needed a better picture. This was a huge project for the City. This was a gateway location, and he did not think any of them were good enough. He wanted to hear from some of the Committee members. Ms. Coleman said the same thing, but after having a discussion she saw it. That was where he wanted to be because he was making the decision. People will ask why that one was picked, and he would have to respond the PMG and Committee said it was great. People would say, "why do you think that, Joe?" He would have to say he did not like that one. Then they would ask him why, and he would have to say because he agreed to a process. It sounded like there was great discussion and consensus on the Committee. The comments were in the staff report, and he had read most of them. The comments did not seem to reflect that they liked this one.

Mr. Asher agreed Council deserved that discussion. The way the process was laid out, they were prepared to have that discussion tonight. That was what he believed tonight's deliberation was about. That was why the staff report was given out a week ago. The whole team was present. He believed that was what the Council item was about. If there were another step and a work session would have been a better place to do that, then he had not realized that.

Mr. Whitmore thought one of the things the Council could not see in reading the report was that the Committee and PMG had a big change after the interviews. In the interviews, they saw clearly that this team had the expertise and knowledge and thought along with the feasibility. He thought there was a huge swing from the public open house to that conclusion made by the Committee and eventually the PMG. He was not sure how to recreate that. He saw a transition in attitudes following those interviews, and there was a substantial transition on the Committee.

Ms. Coleman noted the various types of people in the group. They all tried to be open minded, but people had their favorites coming in. She thought she, like a lot of City residents living in the downtown area, was looking for things that reminded her of the old buildings with brick, etc. She was able to look past what she saw as a blah rendering from the Winkler Corporation and knew there could be articulations with brick and ingress and egress. It would be much more attractive than the basic rendering. Throughout the process people wished there had been a video because there would always be complaints about the decision. They would have liked for people to have watched the process. Playing it safe, she was one of the few who liked the Winkler proposal. She was one who could not stand the Costa proposal. Main Street Partners' proposal was different and kind of scary. She liked it but did not know how it would fit

into the City. Throughout the process and all the things that needed to be taken into consideration they wished everyone else could see the process because there was no way to recreate it and adequately share how the group arrived at a very clear decision. Clearly this was the first selection. It was through the process that the Committee arrived at consensus. People had various opinions. There were so many elements going into it. Many appreciated the design, but in watching the teams everyone felt Main Street Partners were excited about Milwaukie and would get the project done. The other groups showed some timidity and uncertainty. It was not that they would be poor second or third choices, but confidence bred confidence. She would not sink an extra \$18 million into a second project if she did not think she would do a good job. It was through a lot of different things that the decisions were made.

Councilor Loomis heard there was no vote, but he heard Ms. Coleman refer to a vote.

Ms. Coleman replied at the end people talked about their first, second, third choices. This project had the most 'ones'. Costa had a lot of threes because of the feasibility issue. Winkler had some ones, and people were comfortable with Winkler as second alternative. Either would work out, but they were more excited about Main Street Partners.

Councilor Loomis asked if the group was really excited about the proposal. Was it a project that would make people say, "we're in Milwaukie." This was something really different.

Ms. Coleman replied Councilor Loomis would have to ask individual members. She personally found it to be the most exciting proposal. For one thing there was momentum, and it would be lost if the City did not act confidently. If the City were not confident then why would anyone else? The success of North Main relied upon the next development. She was excited about this and thought it would be an attractive building. The way it was used on the block was appealing. There were a lot of great minds involved with this, and she felt it would work out.

Mayor Bernard requested comments from the other Committee members in the audience after a five-minute break.

Mary King said initially this development was her last choice. After looking at it and hearing the presentation, she felt the Main Street Partners team was right on. They knew where they were going and how to get it done. She particularly liked the height of the building and how it could with the right façade blend in with downtown Milwaukie. She felt when the team got done people would like it better. It costs a lot of money for the City to issue RFPs and for the developers to complete the RFP. The Committee felt very lucky to have three proposals. They were all very high quality, and the Committee was delighted. She sensed the biggest problem was that the Council felt out of the loop, and she understood and felt sorry about that. Either party could get out of this non-binding part of the process. She suggested that the Council put checkpoints into the MOU. She felt the Council needed a full presentation so it knew what was going on and what the Committee had asked for because they were pretty specific. She thought perhaps there could be a Council representative on the final committee because there needed to be more communication. The Committee worked very hard, and she was pleased with the recommendation.

Councilor Barnes said for her this was the hardest decision she has had to make while on Council. She trusted those appointed to the panel. If the Committee said this was the right thing, then she assumed they did the hard work for the Council. She was used to having to do her own research. She would ask Mr. Kemper a few questions. This was a hard decision for her because normally she would have studied something for a long time. Tonight she was taking this recommendation on blind faith and was

struggling with that. She did not know why it was so hard for her to say yes or no, but she believed everyone on the Committee. If they were willing to say to her as a group that they were willing to stand behind this because they believed in it enough, then she would go ahead with the MOU with conditions.

Ms. King agreed. This was the point at which the City Council got back in charge. Where the Committee charge ended, the Council's began.

Gary Klein was the person who had the problem with the fifth floor because he would be able to see it from his house. At first glance this was also his last choice. His first was the Costa development, but after looking at it more closely it was not feasible. He liked the L-shape because from his perspective there would be a better view of the river. Two architects came up with the same idea. At final vote of the eight members, only two did not vote for Kemper. That happened in groups. For him Kemper was at the bottom to start with and moved up to second. His first choice was Winkler. He liked it because it did not have any zoning problems; however he was not happy with the way it looked on Main Street. It did fit all the height requirements both on McLoughlin Boulevard and Main Street. There were no issues going into it, but there were on the other two. He thought it would have more vistas of the river because with the two sides more people would be able to see the water. After looking at it more closely, Costa dropped to the bottom. The biggest issues he had were mentioned including parking. None of the three proposals would solve that problem. The only way it would be resolved for some people in Milwaukie was to turn the site into a five-story parking structure, but he did not think anyone would really want to do that. He liked the idea of building something on the site that would be helpful and good for the City. Kemper ended being his second choice. The other issue he had was the size on McLoughlin Boulevard, but it was said that McLoughlin Boulevard was a larger street so it would not look as large. That was why he moved his third choice up to second.

Ray Bryant also chose Winkler as his first choice. The issues noted in the MOU were the same ones he personally had, so there was a chance to work on them. During the interview process the Kemper team did very well, and he saw people's opinions and minds change. He had concerns about the fifth story, the tax abatement, and parking. It was a good thing the building had retail space on McLoughlin Boulevard, but that also added more parking demand. He was not convinced people would want to live right on McLoughlin Boulevard.

Alice Rouyer was honored to be a citizen of Milwaukie and even more honored when she was appointed to this Committee. She felt inspired by the process. The Committee was a broad cross section of the community, and the Council chose the members well. Everyone had different views, and everyone was thoughtful. In going through the process, she saw minds change. She and Mr. Kemper had worked together before, and she grilled him at the open house. She made it clear to him that she did not like the design and wanted to know if it was adaptable to address some of the concerns and issues. Within 24-hours his team came back with an outstanding presentation. The designer gave an outstanding presentation and convinced her it was a good design. She admitted she was not a big fan of modern architecture. After she heard the explanation, Ms. Rouyer was convinced this was the most respectful presentation on Main Street of the three proposals. Can it be modified? Can it be made better? Absolutely. The two things that mattered most to her about this team was the confidence it exuded. She felt confident that Main Street Partners could get it done. Secondly she felt they would be adaptable. Winkler was number 2 for her. Winkler was thoughtful, and she sensed they would be adaptable. She was not confident at all that there was chemistry on the design team, and that was a problem for her. She sensed dissention between the two architects present and the project manager. It just did not feel right. She sensed a lot of confidence in the Kemper team and thought it would

deliver. The Council had a big process ahead of it, and all the questions could and should be tested.

Tom Kemper thanked the Council for the opportunity to speak, as it was hard to sit in an audience and be talked about. KemperCo and Main Street Partners poured their hearts and souls into the work and have done some amazing projects. He believed North Main Village was an amazing project. They took on a deal that was broken and created something really great for the City of Milwaukie. While there were concerns about the design architecture concept that was put on the table, the team believed it was absolutely the right concept. First of all, the Main Street scale was very important. They did not want a building that overpowered City Hall or Main Street. They thought a lot about what Main Street was about and what it should be. Milwaukie would change dramatically in the next 5 – 10 years, and the issue was what it should look like. Main Street Partners did not want a giant building overpowering Main Street. The concept was to do town homes over retail and keep the scale down and keep it to a three-story building. The density was loaded on the McLoughlin Boulevard side where there was a great opportunity to take advantage of the views. That was the reason for coming up with the concept of putting a large building on that street. There were many opinions about architecture. He believed what the Myhre group had done was great architecture and would be a great addition to the City of Milwaukie. They spent a great deal of time arguing about what it should look like and getting the concept that was actually put on the table. Main Street Partners was committed to being flexible in term of moving forward on how it might eventually look. A lot of people felt adverse to modern architecture like Ms. Rouyer. He had an argument with her because he thought she was wrong. They were grilled on this point in the interview. He said then and would say now that Main Street Partners was flexible but urged the Council to remember it was hard to get group consensus on architecture. He pledged that Main Street Partners would try to reach a consensus on what the architecture ought to be and go forward with that plan. His personal view was what they put on the table was great architecture, and it was a great concept. It was the best concept of the three proposals for the particular problems that existed in respect to that block and how it was used and how it related to the river and to the downtown.

He discussed North Main Village. Over 90% of the rental units were leased, and there were nine units for sale. Five units were sold in the last month despite a slump in the housing market. Things were picking up, and things were coming back. He was confident the residential would be sold in the next few months. He addressed Councilor Barnes's questions about the retail. There was a signed LOI for a 2,000 square foot space for a restaurant, and he expected the lease to be signed in the next week or two. He was negotiating with a second restaurant for another 2,000 square feet. In his mind he was at 45% leased. Once you get that critical mass, it should be finished fairly quickly. He anticipated a slow rental because he built Class A retail space in a town and on a street that did not really have it at this point. He recalled when the Pearl District started, all the units were sold but all the storefronts were empty. Now it was a vibrant retail place. There would be a lag; this was a new area. They were pioneering, so this was reality. The retail would go slower than the Council wanted, but he was confident he could pull it off. He would not be sitting here and committing his financial resources and his balance sheet with lenders to pull off a second transaction if he did not think he could do it. The team felt it was the right concept and notwithstanding some of the comments it was also the right architecture. He addressed the issue of the fifth story on McLoughlin Boulevard. He went back to North Main Village. In order to do that a special zoning district had to be created. This new project would require a code amendment. He did not believe in this context that it was a major deal given the fact it was carefully designed so it did not look like a five-story building except from far away. There were four penthouse units on the fifth story that were pulled back and would

create some tremendous terrace opportunities. He hoped a high price point would create something in terms of image for the City of Milwaukie. Image right now was very important when talking about redevelopment. He was not afraid of going through some zone changes. It was clear in the proposal that the fifth story was not an absolute requirement, but Main Street Partners would strongly prefer it. The same team would come together that worked on North Main Village. They took a deal that was broken and put something together that was amazing for the City of Milwaukie. He felt that way, and he hoped the City Council did too. Main Street Partners was resolved and committed to do it again on this block. They frankly believed it would be much better than North Main Village.

Councilor Stone asked if this project could be built without pursuing vertical tax abatements.

Mr. Kemper replied the simple answer was 'yes' and asked if he could lower the land purchase price. He was trying to get value. From the developer's standpoint it was very difficult to build a project like this because there was not much of an established market. It would be a very expensive building to build. To the extent he could find financial ways of getting more money on the sales side, which was what he was trying to do by getting a vertical housing exemption, he would try to do that. If the Council told him it did not want him to do that, then he would ask for flexibility on other things. He and Mr. Asher would duke it out over what the building would look like, and most of the issues would have to do with the exterior materials as one went through the process. He thought with what was being proposed was more of the design and articulation of the building structure itself than the materials that would make it an award-winning building. He expected this would be an award-winning building. He could live with it, but he wanted to make the point that there were consequences. Main Street Partners felt this was the right concept, and it was a great team. They were anxious to get started.

Councilor Loomis said it was a pleasure to work the Mr. Kemper on North Main Village. He was glad he was holding out for a high retail square footage at North Main to bring in some quality stuff. He had a lot of faith in Milwaukie and that it would take off as soon as one person moved in. That property was valuable, and Mr. Kemper would make a lot of money and help Milwaukie grow. His concern was the modern architecture did not appeal to him. That was his biggest concern. As people came up, they said it was their least favorite, so that would take time and discussion throughout the process. That was the difficult part for him. People talked about keeping the momentum going. He reflected on the last Council session where TriMet threw out options for the bus layover. They came up with a better option finally when the Council said "no, that's not good enough." TriMet went back and figured out a great idea. He was hoping that was what would come out of this. To him this was not good enough, and through discussions hoped they would come up with what was.

Mr. Kemper said one of the most interesting architectural experiences was the development of the 34th & Hawthorne building. People had strong reactions one way or another. They really like it, or they really hated it. Most people liked it. When he took it to the neighborhood association, they went nuts. They did not think it fit into the Hawthorne district. It was too modern and did not fit into the architecture. He photographed every block to show the diversity. There was no consistent architecture on Hawthorne. The 34th & Hawthorne building was an awesome building, and it was awarded the 2004 Eagle Award for the best building in the City of Portland that year. It was a great building, and most people like it. They negotiated significantly and added brick and a green roof. The neighborhood came back and asked KemperCo if it would be interested in doing another building on Hawthorne. That was 180 degrees from the

first meeting where there was an intense outcry. His company was good at working through the process, and he was confident they could pull it off here.

Councilor Barnes thought for her the process was ready to go. She heard the Committee members talk to her, and she heard Mr. Kemper's passion. In Milwaukie there were a lot of conditions that would have to be attached to that passion in order to work in this community. There were high expectations. Right now the architecture was not her main concern. Her main concern was making sure there was a place where those high-end restaurants could go. She understood Councilor Stone's concern about the long-term tax abatement. She wanted to make sure people would come if they were built. She would go along with this because there would be tough discussions as it went forward which Mr. Kemper understood. People were passionate, and she trusted Ms. Rouyer's assessment of the matter.

Mr. Kemper replied he had been through it before. North Main Village was likely more difficult than this proposal. Main Street Partners was very confident that it could pull it off.

Mayor Bernard discussed artwork that was brought to the downtown area when he was the Milwaukie Downtown Development Association president, and that really got people talking. The artwork initiated conversation, and people started noticing that Milwaukie had a riverfront and downtown. To what was this being compared? The Chopsticks block? People loved the corner buildings at North Main Village. He thought the Council needed more information on the vertical housing issues. He met someone who had worked with Mr. Kemper and said she would never work with anyone else because he could get it done. He inspired people and got things done. He looked forward to negotiating the MOU.

Councilor Collette commented if there were 10 pictures of buildings, there would be 10 different opinions about the Milwaukie look. She would like to see something creative with a solid, sensible use of space and materials rather than seeing someone trying to imitate an old-fashioned town. She did not want Disney-style Milwaukie. She wanted a building that had strength and permanence and long-term character. Her first reaction was that there were parts she liked and did not like. She did not know that much about tax abatement. This decision was about continuing the process, and she had confidence in members appointed to the Committee. She felt they had been thorough. Mr. Kemper had gone through one process with the City and was pleased he was back at the table.

Councilor Stone was not a fan of modern architecture and wanted to put that on the table right now. She would like to see a design that spoke of the past while going into the future. It had to incorporate some elements that made it inviting and warm. Her big issues were parking, and she did not know that this development or the other two with possibly the exception of the one that had the underground parking had allocated enough in terms of a ratio for parking. That was a big concern. She had heard that businesses were hesitant to locate in the North Main Village project because they did not see a lot of parking available. It was her experience she cannot even park in the Spring Creek parking lot because it was full. She ended up parking in front of North Main Village. She did not have a problem walking. That was a concern and a reality that all needed to look at. The other big thing for her was the tax abatement issue. It was hard for her to sit back and tax citizens knowing that developers were getting tax abatement. She would like the MOU to address that and how it could be realistically done or not done or what the options were. She would like to know how much it would cost in terms of tax revenues to have a 10-year tax abatement.

Mr. Kemper replied the City would get more tax revenue than the City currently had.

Councilor Stone said it would really help her to understand that by spelling it out and showing her the map, so she would know it was a good thing to support. She asked if there would be periodic executive sessions during the 60-day MOU negotiating period. She asked how often that would be.

Mr. Asher recommended meeting in two weeks for a full discussion and report on the issues. He explained the vertical tax abatement was a benefit to future homeowners and not the developer. The Committee was asked to do some hard work on the Council's behalf to get to this point. Hopefully, the Council had heard enough and seen enough now to be able to make a decision about this stage. Council was integral on how this was to proceed, and there would be a discussion of how and when it wanted information. For the record, Donald Hammang, David Aschenbrenner, and Brad Olson had not been able to attend the meeting and would have liked to address the Council. All three of them were pretty strong supporters of this proposal.

Mr. Swanson added the process that was followed was the process that was first formulated and presented to the Council, and he thought understood. He did not want to leave with anyone thinking that the staff and Mr. Asher in particular took a lot of abuse. He understood and was sensitive to creating a process that was deliberative and involved citizens. He followed it though. He wanted to make sure that was said and if it was not understood he would take responsibility. As he followed the process and wove in and out of it, it was exactly what he understood it was going to be. Mr. Asher was the gatekeeper to make sure the process did not fall short on any of the various steps that were to be taken. The purpose was to get as much input as possible. He would watch in the future if he thought there was any point at which where process did not adequately inform the Council. This was the right process, and it was followed religiously. He would not send Mr. Asher into negotiating an MOU with anything but an understanding that what was done up to this point was absolutely correct. If it fell short, Mr. Swanson took responsibility.

It was moved by Councilor Collette and seconded by Mayor Bernard to approve the resolution directing the Town Center Project Management Group to enter exclusive negotiations with Main Street Partners on a memorandum of understanding for development of the Town Center Site at 10700 SE McLoughlin Boulevard and 10721 SE Main Street.

Councilor Collette wanted to add the potential for a bus stop at that site, a discussion of tax abatement, and ensuring the Council has regular updates.

Councilor Stone suggested adding that the existing trees would be saved.

Mr. Asher said the tree matter would be discussed.

Mayor Bernard understood the process and was satisfied, but he suggested the drawings might have been more powerful than the PowerPoint.

Councilor Barnes wanted to clarify that she understood the process as well.

Councilor Loomis commented the process was fine, and the Committee was fine. In the future he wanted a work session on a project of this magnitude and an explanation of why the decision was made.

Motion passed unanimously. [5:0]

RESOLUTION 29-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING THE TOWN CENTER PROJECT MANAGEMENT GROUP TO ENTER EXCLUSIVE NEGOTIATIONS

WITH MAIN STREET PARTNERS ON A MEMORANDUM OF UNDERSTANDING FOR DEVELOPMENT OF THE TOWN CENTER SITE (10700 SE MCLOUGHLIN BOULEVARD AND 10721 SE MAIN STREET)

D. Labor Contract Negotiations

Ms. Rowe said the City had been bargaining with both unions and requested that Council move to authorize the Mayor and City Manager to enter into three-year agreements with AFSCME and MPEA as discussed in executive session.

It was moved by Councilor Barnes and seconded by Councilor Collette to authorize the Mayor and City Manager to enter into 3-year agreements with AFSCME and MPEA. Motion passed unanimously. [5:0]

D. Intergovernmental Agreement Authorization for the South Corridor Phase 2 (Portland-Milwaukie) Light Rail Refinement Study and Supplemental Draft Environmental Impact Statement – Resolution

Mr. Asher reported the action requested was to authorize the City Manager to execute an intergovernmental agreement (IGA) with Metro for the purposes of completing a refinement study and supplemental draft environmental impact statement (SDEIS) on the South Corridor Phase 2 light rail project. The IGA committed the City to contributing \$200,000 toward a \$1.9 million pool of local match money enabling Metro to secure and expend approximately \$2 million of Federal Transit Administration (FTA) funds on the studies. This had been budgeted in the general fund. He provided information on the SDEIS timeline and discussed the downtown amendment.

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the resolution authorizing the City Manager to execute an IGA with Metro for the purpose of completing a refinement study and supplemental draft environmental impact statement on the South Corridor Phase 2 Light Rail Project.

Councilor Stone understood the local share for both County and City were the same and asked why the County's was not larger.

Mr. Asher replied the County's share was \$200,000 greater than it was about four months ago.

Mr. Swanson replied the people at Metro and TriMet both asked if County would weigh in with any contribution to this phase of the project. He called Mantay and asked as a personal favor if the County would pony up an equivalent amount, so that was what was budgeted. He did not believe this alignment went through any unincorporated area and was \$200,000 more than the County planned to contribute to this phase of the project.

Mr. Asher observed the County identified strongly with Phase 1 and had no problems in coming up with funds to serve the area near the Clackamas Town Center. It seemed as if the City had to work hard to remind Clackamas County that County residents would be using light rail and that Milwaukie was in the County as well. The County has been coming around lately, so the City was pleased to have them as a partner.

Councilor Stone asked if there was anything in the IGA that Mr. Asher had to cover.

Mr. Asher referred to page 2 of the staff report that said Metro would provide overall project management on behalf of the City along with schedule and budget management, consultant and work product management, FTA relationship, committee staffing, technical assistance, public involvement lead, and decision-making management. The City agreed to attend project meetings, participated in related project events, be a contact person for Metro's project manager, monitor and coordinate the

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APPROVED MINUTES

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work of the consultant team, and review and approve deliverables produced and submitted by the consultant team. He provided the staffing that kept the Council connected to the project and to provide briefing so Council could make its decisions at the appropriate time. Milwaukie was one of many partners.

Mayor Bernard added he was on the South Corridor Committee and a member of the Joint Policy Advisory Committee on Transportation (JPACT)

Mr. Asher added that Mr. Swanson was a member of the Project Management Group (PMG), so there were three layers where Milwaukie had representation. There was also the Citizens Advisory Committee (CAC) that was part of the process and would be formed later in the month.

Councilor Barnes was concerned about the workload and availability of staff resources for anything else until summer 2008.

Mr. Asher replied the City could still respond to a public works situation. Between this and the Town Center project his time was gone. Ms. Mangle was doing long-range planning on the Transportation System Plan (TSP), and the engineering department was working on a variety of projects. There was no more staff capacity, so it would not take on any projects of its own choosing for some time. The City would not have any problems with emergency situations.

Councilor Loomis said regional transportation was Metro's job, and he thought Milwaukie was being generous. There was a pot of money from taxes that came in for regional transportation, so that was who should be doing it. He appreciated staff was keeping an eye on it. Metro should be thankful the City was putting in \$200,000.

Mr. Asher said Metro was appreciative. This kind of project needed the resources Metro could put behind it.

Motion passed [4:1] with the following vote: Mayor Bernard and Councilors Barnes, Collette, and Loomis voting 'aye' and Councilor Stone voting 'no.'

RESOLUTION 30-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH METRO, FOR THE PURPOSE OF COMPLETING A REFINEMENT STUDY AND SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT (SDEIS) ON THE SOUTH CORRIDOR PHASE II PROJECT.

Councilor Stone was opposed because the \$200,000 was coming out of the general fund. This was a project that had never been referred to a vote of the people. The April 1 *Oregonian* article said the project was not funded, but officials did not expect to seek a tax increase. She had always believed this was something all taxpayers should vote on and not just people in Milwaukie but also in the region. It was all of our money. At this meeting the Council passed the gas tax in 30 seconds or less that was supposed to raise \$125,000 to \$200,000 to help repair the roads. Here was \$200,000 coming straight out of the general fund that could have been used for that. The Council put three taxes on its citizens in just the past couple of months. It did not sit well with her. She thought this needed to be referred to the voters. This process was beginning, and this vote just started it. It was very difficult to stop a moving train, and she felt this was backwards and needed to go to a vote of the people.

Mr. Swanson heard it stated that the Council passed a gas tax in 30 seconds tonight, and he did not wish to leave that impression. The process took 30-seconds, but it was preceded by eight months of staff work in a considerable number of hearings and work sessions with the Council. Tonight the Council made a motion, seconded, and voted that might have taken 30 seconds but it was preceded by hours and months of work when the matter was originally considered. He did not believe the Council enacted taxes on a whim, and it sounded like it was so easy to do it.

Councilor Stone understood how Mr. Swanson might have gotten that impression, but that was certainly not what she implied. The Council did deliberate the last time it was before the group. In fact it would have been nice to have some discussion about this so people knew why this was going down. Again that was what was missing. It was like the work session piece being missed from the MOU discussion. This piece was just missing. She thought the Council should have discussed the gas tax. Council should have let people know why it was voted on that way. They were waiting for the state legislature to introduce a statewide gas tax because the local one seemed to be unfair because it only impacted the five or six stations in Milwaukie. She still believed that, and she still believed that it would effect their businesses. There should have been some discussion about it. She objected to the swiftness of the decision.

Councilor Barnes observed there was another station in Milwaukie now at the Safeway.

Mr. Swanson asked for a motion pursuant to MMC 2.04.180.B, known as the Marshall Amendment, that when a meeting agenda includes one or more public hearings, meetings may be adjourned no later than eleven p.m. If there are no public hearings scheduled, meetings may be adjourned no later than ten p.m. However, the adjournment time may be extended by majority vote.

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

It was moved by and seconded by

E. Council Reports

Councilor Loomis announced the grand opening of the North Clackamas Park Ballfields on April 21.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 11:17 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL APRIL 17, 2007

MILWAUKIE CITY HALL
10722 SE Main Street

2004th MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, & AWARDS**
 - A. Earth Day Proclamation
 - B. Recognize Offgoing Board and Commission Members
 1. Catherine Brinkman, Planning Commission
 2. Randall Welch, Design and Landmarks Committee
 - C. Recognize Ed Zumwalt for Organizing Riverfest and Other Significant Community Events
 - D. Recognize Bob Hatz for Lifelong Achievement of Volunteerism to the Community
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**
 1. February 20, 2007 Work Session
 2. February 20, 2007 Regular Session
 3. March 6, 2007 Work Session
 4. March 6, 2007 Regular Session
 - B. **Resolutions Making Appointments and Reappointments to Various Advisory Boards and Commissions**
 1. Melissa Arne, Budget Committee
 2. Jeremy Ferguson, Budget Committee
 3. Jeff Klein, Planning Commission
 4. Charmaine Coleman, Planning Commission
 - C. **37th Avenue Waterline Replacement -- Resolution**
4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious,*

personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Denial of Liquor License Application for Eric’s Market (Chief Larry Kanzler)**
 - B. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 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.)*
 - A. **Local Gas Tax & Street Surface Maintenance Program Startup – Ordinance, second reading (Alex Campbell)**
 - B. **Project Management Group Recommendation for Development of the Town Center Site --10700 SE McLoughlin Boulevard and 10721 SE Main Street (Kenny Asher)**
 - C. **Intergovernmental Agreement Authorization for the South Corridor Phase 2 (Portland-Milwaukie) Light Rail Refinement Study and Supplemental Draft Environmental Impact Statement – Resolution (Kenny Asher)**
 - D. **Labor Contract Negotiations (Mary Rowe)**
 - E. **Council Reports**

7. **INFORMATION**

Milwaukie Center/Community Advisory Board Minutes, February 9, 2007

8. **ADJOURNMENT**

Public Information

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

PROCLAMATION

THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, HEREBY RECOGNIZES APRIL 22, 2007 AS “EARTH DAY”.

WHEREAS, a sound natural environment is the foundation of a healthy society and a robust economy; and

WHEREAS, human activities around the world are causing severe environmental damage that threatens human health and our planet’s ability to sustain a diverse community of life; and

WHEREAS, the knowledge of ways to live in harmony with our environment and methods and technologies to accomplish this end already exist; and

WHEREAS, local communities can do much to reverse environmental degradation and contribute to building a healthy society by addressing issues such as energy use, transportation, waste prevention and sprawl; and

WHEREAS, there are sound economic, environmental, and social reasons for local governments to initiate energy efficiency and renewable energy practices; and

WHEREAS, the environmental realities of our time require humans to make a dramatic shift in our relationship to the earth, and

NOW, THEREFORE, IT IS PROCLAIMED that the City of Milwaukie recognizes April 22, 2007 as “Earth Day” and commits itself to undertaking programs and projects that enhance our community’s natural environment; and

FURTHERMORE, let it be known that the City of Milwaukie hereby encourages its residents, businesses and institutions to use EARTH DAY to celebrate the Earth and commit to building a sustainable society; and

FURTHERMORE, let it be known that the City of Milwaukie commits to the support of programs that further the efficient use of clean, renewable energy within its borders.

Signed this 17th day of April 2007.

James Bernard, Mayor

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

February 20, 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, Finance Director Stewart Taylor, and Transportation Liaison Gavin Hales.

Mayor Bernard announced the Council would meet in executive session pursuant to ORS 192.660(2)(h) for consultation with counsel concerning legal rights and duties regarding current litigation likely to be filed.

Audit Report

Tom Glogau, Grove, Mueller & Swank, P.C., discussed the general fund ending fund balance which provided an indication of the City's financial stability. At the end of the year the general fund had approximately \$3 million or approximately four months of cash. Property taxes represented about two-thirds of the property tax revenues which came in starting about November 15. The general fund needed enough money at the end of the year to make it through until the property tax revenues came in. One-third was a comfortable figure, so based on that, he considered that the general fund was in good shape.

Further, he looked at the net change in fund balance for the general fund. The cost of providing general fund services exceeded the amount of money coming in by \$320,000. In other words taxpayers in previous years contributed that amount toward the cost of providing services this year. He did not see a problem based on the normal operations of the general fund. A note of interest was that the \$3 million ending fund balance was about twice what it was at the end of 2003. This spoke well of the fiscal controls being exercised.

If one looked at the total, overall \$500,000 more went out than came in. It struck him that during 2005/2006 about \$1.5 million was spent on infrastructure and capital outlay. One of the reasons the City existed was to do things for the citizenry it could not do on its own. He saw that as the City's fulfilling its obligations. Most of that capital outlay came from designated funds, so he did not see that as being any kind of red flag.

Mr. Glogau referred to page 59. There were two functions of the City. One was governmental and was subsidized by the general fund and other funds. The other was the quasi-business function where the City provided services to customers. He referred to the operating statements for water, wastewater, and stormwater funds and related reserve funds. Last year the operating funds had fairly low ending fund balances. Wastewater had \$28,000 with annual expenses of \$2.5 million. The offsetting consideration was \$1.1 million in the system develop charge (SDC) fund and \$2.7 million in the reserve fund. The same thing in concept was true in the water and stormwater funds. He noted the cost of maintaining infrastructure was irregular and came in big dollar amounts. Revenue over expenses was in the \$200,000 to \$300,000 range. Some uninformed ratepayer might accuse the City of charging too much, but at some

CITY COUNCIL WORK SESSION – FEBRUARY 20, 2007

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point that money would be needed for infrastructure projects. It was Council's responsibility to strike a balance to where customers were charged a consistent amount and to set aside enough to have the money there when needed. It seemed as if the rate structure was doing an adequate job in setting aside funds. It appeared the City was in good shape although there were some uncertainties with the capital outlays in the enterprise funds, but it looked like the City was doing a good job of addressing that situation.

Mayor Bernard would like to see a comparison of the City's revenues over the past few years. In 2001 it was stated that Milwaukie needed \$60 million in reinvestment to pay the expenses. Did the City get that investment?

Mr. Glogau referred to page 86 where it showed program revenues from direct charges and general revenues in net assets. From 2003 through 2006 the revenues were fairly constant, and in 2006 they dropped because of the annexation to Clackamas Fire District #1. The program service revenues also dropped in 2006 because of the exit of a portion of the City's activities. The information was somewhat fragmented but provided a feel for what occurred.

Mr. Taylor noted the other operational change was bringing the Library into the general fund.

Councilor Barnes referred to page 88 and asked for an explanation in the jump in expenditures from 2005/2006 from \$843,000 to \$2.3 million in general government.

Mr. Glogau pointed out police went from \$3.1 to \$5.9 million. For some reason there was a change in the way things were classified, and he did not have a good explanation.

Mr. Swanson explained there were three budgets: administration, field services, and support. He noted field services was close to the \$3.1 million and suspected the other two budgets were not included.

Mr. Glogau would prepare a response to that question. In general this was a very good report, and many cities would love to have those kinds of numbers.

Six-Month Report on Public Perspectives Regarding Transportation

Mr. Hales reported as transportation liaison he met with about 100 people over the past six months to hear their thoughts and concerns about Milwaukie's transportation network. Over that period he spent most of his 19-hour workweeks arranging and having conversations with interested persons. The meetings were arranged using a City database of interested persons, staff contacts, church and parent-teacher organizations, Farmers' Market contacts, and word of mouth requests. Prior to his being hired by the City last August, the City had not employed a transportation liaison. Residents with concerns had little recourse other than perhaps the comment booth to air their issues. In many of his meetings and interactions with residents he frequently heard it expressed that the City did not listen to residents or that the City did not want to hear from residents. When he mentioned what he did for the City, people frequently thanked him and the City for listening. Throughout the conversations he actively maintained his neutrality. While he frequently asked follow-up questions to clarify an opinion, he did not comment on those opinions but rather served as a repository for them.

Many transportation projects were starting or were already underway including the Transportation System Plan (TSP) update, South Corridor Phase 2, and the

Harmony Road Project. The Lake Road and Logus Road projects, the implementation of the street surface maintenance program, the Kellogg Creek Bridge Replacement Project, the 99E preservation project, and potentially the quiet zone project would come before the City Council in the next few years. Part of what he would bring to Council was occasional reporting on these and other issues and the general community views on transportation topics.

Mr. Hales provided a sense of his conversations to date. He began his efforts by talking to all the Neighborhood District Association (NDA) chairs and encouraging them to inform their membership to contact him. He also made an effort to contact all the parent-teacher associations in Milwaukie and in the Urban Growth Management Area (UGMA). He also made an effort to include churches within the same area, and he succeeded with most. He sent information at their request to the Elks Lodge, American Legion, and the Milwaukie Masonic Lodge. He spoke with a number of interested residents whose names he got from the community booth, Farmers' Market relocation meeting, Texaco site redevelopment meeting, and resident and staff referrals.

He used the same script for each interview and encouraged interviewees to talk about those areas in which they were most interested or had the most concerns. Examples of questions he asked were, "What do you think about Milwaukie light rail: What do you think about bus service? Are there congestion problems in your neighborhood or on your way to work?" Council may have some ideas about other questions or different questions it might want addressed in the next report. At the conclusion of this presentation he was open to direction. Throughout these conversations he wanted to emphasize that he recorded responses impartially. A summary of the responses was included as attachment 2 of the staff report.

The greatest number of responses was on light rail. Most of the people he talked to expressed an opinion on light rail, and most of those were in favor. Some of the remainder were neutral, and some were opposed. The key benefits that people saw in light rail coming to Milwaukie were ease of access to downtown Portland and the benefits to downtown Milwaukie. The key concerns were with crime and neighborhood impacts.

Most of the people he talked to expressed an opinion on bus service. The general recommendations were that the City coordinate with TriMet to increase frequency on existing lines and coordinate the schedules of existing lines with work and school schedules throughout Milwaukie. People would also like stronger bus connections to the Milwaukie Center and the Clackamas Town Center. The key concerns were bus shelters and bad behavior on board vehicles. Those responding would like to see more and better shelters and an effort to discourage bad behavior on buses.

Some of those with whom he spoke expressed an opinion about traffic. The most common concerns were cut-through traffic and speeding. Lake Road, Monroe Street, Harrison Street, and Rusk Road received the most mention. Safety at the intersections of Hwy 224 and Oak Street and 99E and River Road were areas of concerns. Those with whom he spoke would like to see additional traffic calming installed to keep traffic out of the neighborhoods and on main streets.

Those who spoke about bicycles wanted to see key connections on 17th Avenue and bike lanes on Railroad Avenue. The theme that came up during these conversations was that people would like to see bike travel separated from auto

traffic by creating a network of bike trails and quieter neighborhood streets where there was less auto conflict.

Some of those with whom he spoke expressed an opinion on sidewalks. The most common theme was the need to increase connectivity and continuity of the system. Another common theme was the desire to see safe routes to schools and senior destinations. On both the bike and sidewalk topics a number of people expressed a desire to see a network-wide walking and bike map produced for the City and distributed to residents. The key streets needing sidewalk improvements were Railroad Avenue, Lake Road, and Home Avenue.

There was a lot of support for the quiet zone, and he would report to the Council next month on that matter.

In closing he addressed the three major themes that emerged in his interviews. Many people when asked if there was anything the City should do on these various topics expressed a project that concerned them. The responses also revealed a number of areas of concern that were mentioned by a number of interviewees, and he tried to summarize some of those in his report. Most of those were identified already, but few others deserved mention. Some interviewees expressed gratitude for the downtown improvements and particularly the sidewalk improvements. Many expressed strong support for the Milwaukie Farmers' Market identifying it as a key reason or the key reason they visited downtown. Secondly, in general the responses to his questions were positive and constructive. While individuals would often express a concern over a particular roadway or intersection, most believed the City was generally headed in the right direction. Some believed the City was moving in the wrong directions with most of them expressing the desire for Milwaukie to maintain its character and/or improve its accessibility to the automobile. Some people also expressed a desire for Milwaukie to move more quickly toward alternative transportation with most of these expressing environmental, energy, and traffic concerns as key reasons. Thirdly, with the exception of the quiet zone that was receiving a lot of attention right now, the topic most responded to in his conversations was light rail. In general those responses were very supportive. He wanted to emphasize he was not out there with a light rail agenda. He asked everyone to comment on any and all of the questions. Most of the people he talked to wanted to see light rail come to Milwaukie. It simply appeared to be a very popular idea. For those wishing to be further involved in discussions around transit, he encouraged people to attend the TSP kickoff meeting on February 24. The transit solutions working group would be a great place for that discussion.

Councilor Collette heard from three neighbors who had talked with Mr. Hales about issues, and they were very impressed that the City was listening and responding. She was impressed he was doing this while only working 19 hours per week. When people said they wanted more bus shelters did they also want more stops?

Mr. Hales replied that issue was related to existing stops where there were no shelters. Given the northwest weather bus riders would like shelters at existing stops. People would like to see more or bigger shelters at the busy bus stops.

Councilor Stone had a question about Mr. Hales' question content. She asked if he would follow up with another round of interviews.

Mr. Hales said he would report back as he talked to more people.

Councilor Stone was not a total supporter of light rail for reasons she thought were valid in terms of cost and that people should vote on it. The idea of train

travel was wonderful. Everyone had an opinion, and she wanted to know on what information people were basing their opinions. There was a lot of contradictory information both pro and con for light rail. She wondered if there was any way to educate people about the light rail issue at the same time and give them some unbiased information. Say what it would cost and ask if people should be voting on it. She thought it was a fair question.

Councilor Barnes understood the concern but thought staff should just be getting a response based on what the individual already knew and not giving opinions or information. She saw Mr. Hales as getting information but not giving it. She did not wish to put him in a position where he was questioned. He was like a reporter who had no opinions. Otherwise someone would step up and say he sided with one group or another.

Councilor Stone understood that, but she thought it was important that on any issue that people were fully informed and getting unbiased information.

Mr. Hales replied when people said they were for or against an issue he generally asked them to elaborate. Sometimes they cited an information source, and he recorded that response.

Councilor Stone was interested in knowing how the City prioritized the spending of street maintenance money. This fee was being put on people, and it would be nice to know the opinions out there in terms of how the City should prioritize the streets that really needed the maintenance first and what people were interested in seeing the City do.

Mayor Bernard recalled there was a pavement management study that indicated which streets should be repaired before they ended up costing more money. He imagined that would take ten years. King Road was number one on the list.

Councilor Stone said it would be nice to know how people were perceiving the program.

Mr. Swanson explained there was a ten-year plan. The real challenge was specifically doing what the City said it would during the public information process. The challenge would be to follow through on the commitment. The real danger would be in not being able to follow through.

Councilor Collette said there was a specific list of street maintenance projects, and the residents were asked to comment on the list. It was largely based on the return on the investment. These were the most important and most used streets that were in poor condition but could be saved now through maintenance rather than future reconstruction.

Councilor Stone noted there was a range of numbers of people who commented on the various issues. Some had few comments and others had many. Were they being asked the same questions or was it a matter not wanting to respond to certain questions? Was that the reason for the discrepancy?

Mr. Hales asked everyone on the same broad questions and asked the follow up questions based on whether or not they had interest in that form of transportation. Some people, for example, did not bike in Milwaukie and had no opinion.

Mayor Bernard asked Chief Kanzler to comment on bike laws. Did they have the same laws as motor vehicles? He appreciated people who rode bikes but was concerned that they needed to obey the same laws.

Chief Kanzler replied they were the same. The department issues a lot of citations, and some of them were written for bicyclists.

City Manager Matters

Mr. Swanson reported at the last work session he brought the matter of the site selection committee for wastewater before the Council. At that time, Lisa Batey was asked to be the representative; however, she since decided she might not be the appropriate appointee. He reviewed the draft letter that reiterated the bullet points in the October letter and made the point that the Council recommended that the regional process occur before the site selection work. He received an e-mail from Water Environment Services (WES) Director Mike Kuenzi saying that he would try to get a letter out at the end of this month requesting the names of possible members for the regional group. Mr. Swanson had been considering convening a smaller group that included Happy Valley and Damascus because there was some leaning toward Tri-City. It seemed like there were about a dozen parties all doing different things at the same time. He felt the Board of County Commissioners (BOC) said both the Citizen Advisory Committee (CAC) and Clearwater options should proceed. This was still an uncertain phase. He thought it was important to submit the site selection committee name and state it was important to start the regional process.

The Council endorsed Councilor Stone for membership on the site selection committee.

The second issue had to do with the P&W Railroad and the Island Station Neighborhood. The City received a lot of well-founded complaints about the trains stopping and leaving the engines idling while waiting for clearance. The engineers locked up the engines, and were picked up and taken to the yard until they got clearance. In some cases it took 24 hours. Last month staff actually ticketed the railroad for a noise ordinance violation. City Prosecutor Larry Blake found the railroads' noise problems were in the province of the federal government. The City will ask the Federal Railroad Administration (FRA) to make a measurement to ensure the engines were operating properly and not throwing off more sound than allowed. The City sent a request that the railroad consider alternate locations to idle the trains. This was not a simple matter of citing the railroad and bringing them into court, so staff will look at forcing a measurement. He understood if noise standards were exceeded the railroad could seek a waiver from the FRA. He would prepare a separate letter for Senators Wyden and Smith as well as Rep. Blumenauer. He understood this was a very uncomfortable situation for the Island Station residents. It was all the more difficult because the standards as written were hardly understandable.

Mayor Bernard adjourned the work session at 6:35 p.m.

Pat DuVal, City Recorder

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

CALL TO ORDER

Mayor Bernard called the 2000th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Stone and Councilors Deborah Barnes and Carlotta Collette

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, and Assistant Planner Ryan Marquardt

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mayor Bernard announced this was the 2000th meeting of the Milwaukie City Council. The 1000th Council meeting was held in 1964, and at the time his father Joe Bernard, Jr. was the Mayor of Milwaukie. Mr. Bernard reminisced about Milwaukie politics and shared photographs and newspaper articles he saved during his term in office over 40 years ago.

Milwaukie High School Student of the Month

Councilor Barnes introduced **Danielle Cervantes** as the Milwaukie High School Student of the month for February 2007. She was a vibrant and productive member of the senior class. She was a two-year member of the National Honor Society and was on the honor roll all four years. She showed her commitment to community service through volunteerism and keeping organizations strong by giving of her own time. She assisted in the band classroom and the music library. Ms. Cervantes plans to major in pre-med or biology to become either a family practitioner or a surgeon. She was a great example of excellence at Milwaukie High School.

Milwaukie High School Principal **Kelly Carlisle** thanked the Milwaukie police department for its responsiveness during a recent incident at the School. He just learned at among the schools in the Portland area that had students participating in the advanced placement classes, Milwaukie High School was one of the most active in terms of student participation in the tests. Participation in advanced placement courses was a good indicator of success in college, so students were encouraged to take one or more courses during their four years at Milwaukie High School. Mr. Carlisle was breathing rarified air along with Central Catholic, Jesuit, St. Mary's, Wilson, and Westview.

The Milwaukie City Council took a moment during the meeting to reflect on the legacy Janet Witter left her community. Ms. Witter passed away on February 2, 2007 at the age of 91. She had been actively engaged with the Milwaukie Center for 23 years and acted as the Center/Community Advisory Chair for over a decade. She was

instrumental in the development of the Sara Hite Memorial Rose Garden in North Clackamas Park.

CONSENT AGENDA

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

- A. **Resolution No. 9-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Val Hubbard to the Milwaukie Park and Recreation Board**
- B. **Resolution No. 10-2007: A Resolution of the City Council of the City of Milwaukie, Oregon Authorizing the City Manager to Sign a Purchase Order and Contract to Acquire a New Building Security System for Multiple City Buildings**
- C. **Resolution 11-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Declaring Remaining Property Acquired as Part of the McLoughlin Boulevard Improvement Project to be Surplus and Directing the City Manager or Designee to Negotiate the Transfer of the Property**

Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

- **Brendan Eiswerth, Resident**

Mr. Eiswerth discussed the bus layover matter. The Historic Milwaukie Neighborhood Association had been talking with TriMet, Kenny Asher, and Mike Swanson. He wrote a letter to the Council about what he felt as a member of the Neighborhood, the Portland Waldorf School (PWS), and a citizen that had done quite a bit to improve downtown area with the Farmers' Market and clean-up efforts. During the week he worked with student volunteers to clean up the Portland Waldorf School side of 21st Avenue, and he had some ideas about what could be done with the buses. He offered to spend some time walking the transit center with Council members and staff to share his ideas. Everyone wanted to improve the face of downtown, and he had some ideas to share.

Councilor Stone asked him what his perspective was now in terms of how he saw this issue and how the community and the neighborhood saw this issue.

Mr. Eiswerth said Mr. Selinger presented four options for the bus layover as he had to City Council. The Neighborhood voted 40-1 in favor of moving the layover to Southgate because it would not encroach on the neighborhood and high school while moving it from its current location. Mr. Selinger was concerned about losing 40 parking spaces at the Southgate park-and-ride, but Mr. Eiswerth said the move would free up 518 feet of parking space which would be nice for the businesses and condos. He mostly worked with 4th graders, and when they cleaned along the inside of the fence they found a ridiculous number of broken bottles, alcohol, and cigarette butts. There were always kids hanging out on the benches, and they were not there to catch a bus. He recommended consolidating it to Jackson Street with buses coming in one way and out the other with the layover somewhere else. It did not spread out the benches which encouraged loitering. He would e-mail Council his notes expressing his views.

Mr. Swanson confirmed that he, Mr. Selinger, and Mr. Asher met with the Neighborhood Association to discuss the concepts Council saw in January. On Thursday they met with representatives from the North Industrial Area. The Neighborhood clearly supported staging the bus layover at Southgate that would eliminate 40 parking spaces. In presenting the concept to the North Industrial business group, they indicated they would get back to Mr. Asher. The way the park-and-ride was

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currently configured, the flow of the buses would enter at the south end of the property. When the buses exited they would travel south, so there would be no additional northbound buses. That seemed to make the North Industrial businesses more comfortable with the Southgate location. Staff would prepare a recommendation based on what it heard from the Neighborhood and business people, and they appeared to be on the same page. Mr. Selinger said Southgate was the most expensive option from an operational perspective but would do everything he could to comply with whatever option was chosen. He did not anticipate a split opinion between the two interests.

Councilor Collette understood locating the bus layover at Southgate would double the number of buses in and out of downtown because they had to loop in and out. She asked if that was still the case and how many buses there would be.

Mr. Swanson did not believe that was mentioned at the Neighborhood meeting.

Councilor Stone recalled the number was 240 buses per day. She understood they would go to Southgate and then go back south to pick up passengers.

Mr. Eiswerth measured the distance from Jackson Street to Southgate to what would have been the Kellogg Lake Transit Center, and it was actually about 2.2 miles further. That put the Kellogg Lake Transit Center into perspective.

- **Kirin Das Bala, Resident**

Ms. Bala was concerned that although they were divorced her husband did not let her breathe. She moved to Milwaukie because her daughter lived here but after 2-12 years her daughter was pulling away. She found herself in another abusive situation, and she had to carry her personal items with her everywhere. She asked for help in finding her husband.

Councilor Barnes provided the phone number and address for the Indian Consulate.

PUBLIC HEARING

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

Mr. Swanson reported this was the fourth time since June 20, 2006 that he had asked for a continuation. This began at the June 20, 2006 meeting when the City Council considered recommendations from the Planning Commission to amend both the Milwaukie Municipal Code (MMC) and sections of the Comprehensive Plan. The nature of the code amendments that were adopted had to do with what was then the community service overlay. The other dealt with an amendment that would effectively decommission the Kellogg Treatment Plant at the end of December 2015. It established a civil penalty in the event that the plant was not brought off by that date. The City Council also approved the Comprehensive Plan amendments forwarded from the Planning Commission having to do with major utility functions and specifically the Kellogg Treatment Plant and the need to have its eventual removal from the riverfront.

At the time, Ms. Mangle made a full presentation on the Planning Commission's action, and Mr. Swanson recommended the Council consider adopting everything but the amendments to code Sections 19.321.7 and 19.321.3 which were specifically aimed at the Kellogg Treatment Plant by declaring it to be a non-conforming use and requiring its decommissioning by the end of December 2015. He recommended continuance because it was during the middle of the Citizens Advisory Council (CAC) process. At that time he thought that merely having the threat of the action hanging over everyone would spur people to move forward. The matter was continued a couple of times, as were the actions before the Land Use Board of Appeals (LUBA).

The last time this was considered the matter was continued, and Mr. Swanson recommended continuing the matter again to the regular meeting on July 17, 2007. The lawyers had already continued the LUBA appeal to August 15, 2007. He had received several e-mails from the public asking that the Council adopt the code amendments and had anticipated Ms. Macken-Hambright and Ms. Batey would testify in support of adopting the amendments. They were not present. As confusing as the wastewater treatment process was, he still thought to actually adopt at this time would set Milwaukie up as a partner that was not interested in cooperating. The City did not lose the ability to adopt the amendments by setting them forward. He was not asking that consideration be eliminated but rather delayed with the understanding that the City would in fact take action some time in the future if it was in its interest to do so. The Planning Commission recommended this action, so the first step in adopting the code amendments had been taken. All that was left was Council adoption to amend the municipal code. He asked for the set over because he did not want the City to be seen as anything but a partner willing to engage in the process. If the process did not move forward, then he would be the first person to recommend adoption of the amendments. It was his hope the issue of wastewater treatment would be solved once and for all. Right now he was concerned because people seemed to be running off in about five different directions, but they were still talking. The site selection committee would be formed, and he understood the County was beginning to work on gathering a regional group. As long as there was some hope of progress, he did not believe the City needed to take the final action of adopting the code amendments. If that did not continue, then he would recommend confirming what the Planning Commission had done and to be clear that the Kellogg Treatment Plant was a nonconforming use that would be decommissioned no later than December 31, 2015. Right now he recommended by motion to continue further consideration of the municipal code Sections 19.321.7 and 19.321.3 to the August 15, 2007 meeting.

It was moved by Councilor Barnes and seconded by Councilor Collette to continue consideration of the Planning Commission recommendation to amend MMC Sections 19.321.7 and 19.321.3 to August 15, 2007.

Mayor Bernard asked who appealed to LUBA.

Mr. Swanson replied the LUBA appeal on the Comprehensive Plan amendment action included Happy Valley, Gladstone, and Clackamas County Service District #1 (CCSD).

Mayor Bernard understood Happy Valley was no longer interested in being a partner.

Mr. Swanson said the appeal would move forward because CCSD1 was a party to it. It was also important to continue because it was important to the City that the Plant be decommissioned. He believed the City could seriously endanger its role in making that happen by appearing that its only interest was in removing the Plant. In securing efficient and effective wastewater treatment, Milwaukie was not a one-issue party. Getting rid of the Plant and reclaiming the riverfront was an important issue. Equally important was wastewater treatment in the next 40 to 50 years. Milwaukie was on a month-to-month contract with CCSD1, and it could be cancelled with 180-days' notice. He did not believe DEQ would allow that to happen, but the possibility did exist. He wanted people to understand that if the sword had to fall it would, but at the same time it was not just about removing the Plant. It was also about finally getting a sensible, long-term solution that served the City on wastewater treatment. The City did not have that right now. The plant in the wrong place, and there was no solution to wastewater treatment.

Councilor Collette asked if the Council would have to wait until August 15 if something were to happen.

Mr. Monahan said by continuing the matter to a date certain no additional notice was necessary. The City would have to go through the notice process if the matter were considered sooner.

Mr. Swanson said August 15 was the date at which the next step in the LUBA appeal was set. The Council could bring this back monthly if it wished. He did not recommend going beyond the August 15 date.

Councilor Collette asked if Councilor Barnes would accept a friendly amendment to continue to the March 20, 2007 meeting, and Councilor Barnes accepted.

Councilor Stone said Happy Valley had made its intentions clear that it intended to pull away from CCSD1 in order to continue with their plans to develop. She did not look at Happy Valley as not wanting to partner. She saw them as taking care of what they needed to for their City. In some ways she thought Milwaukie might also have to do that. She did not want to come across as not being willing to talk about a regional solution because Milwaukie always had been. To adopt something like this at this time might put a framework around the boundaries of how far Milwaukie was willing to go. Milwaukie wanted to work for a regional solution, but this was what the Council needed to do for the City to ensure there were guidelines and boundaries. When Mr. Swanson first introduced this a while back, she was thinking along the same lines that this might not be the time to introduce this. The process has drug on and on with the CAC. She was more inclined to put some shape into the plan with some ordinances in place that clearly gave the regional partners some criteria and guidelines and thoughts about where the City was heading.

Mr. Swanson thought the month-to-month consideration was the best of both worlds. Happy Valley has asked to de-annex from CCSD1, but they cannot unilaterally do that. De-annexation from the District would ultimately require the County's approve. Under annexation law he believed it was the final arbiter. Milwaukie had unfettered discretion to pass this at any time. One of the outcomes was an appeal, and that fight would become the discussion rather than the solution. He suggested following up with a letter to the County Administrator letting him know the City was getting serious. He thought the City could accomplish something by letting the County know the City was close to adopting these amendments because there was no movement.

Councilor Barnes, the maker of the motion, and Councilor Collette, the seconder accepted the amendment to set the date certain to March 20, 2007.

Councilor Barnes thought the Council should put the idea of a regional meeting back into motion and actually prepare an invitation. She recommended that Milwaukie step up since no one else seemed to be moving.

Mr. Swanson would include that in the letter to Mr. Mantay.

Motion passed unanimously among the members present. [4:0]

Mr. Swanson introduced City Attorney Bill Monahan.

B. Approval of Measure 37 Request for Waiver of Flag Lot Standards – Land File # M37-06-01

Mayor Bernard called the hearing to order at 7:56 p.m.

The purpose of the hearing was to establish if Mr. Ballard had a legitimate Measure 37 claim regarding his property and if so whether the City should provide compensation or waive the flag lot pole width standard.

Mr. Monahan reviewed the procedure which was similar to a quasi-judicial land use hearing. The applicant had the burden of proving that the application complied with the

CITY COUNCIL REGULAR SESSION – FEBRUARY 20, 2007

DRAFT MINUTES

Page 5 of 8

intent of Measure 37. The City had the responsibility of making the decision on whether or not to approve the claim and had the option of either waiving the regulation or paying compensation to the applicant for the reduction in property value. He suggested the Council take testimony to consider the options and to make a decision based on that substantive evidence.

No members of the Council declared an ex parte contact. Mayor Bernard and Councilor Barnes had driven by the site. No conflicts of interest were declared. There were no challenges from any members of the audience.

Staff Report

Mr. Marquardt recommended that Council approve the Measure 37 claim and grant a waiver for the flag lot pole standards. He indicated the location of the property on a map. It was south of Hwy 224 within the City limits in the Lake Road Neighborhood Association. The property fronted on SE 37th Avenue and was just south of the Clackamas ESD driveway on 37th Avenue. It was surrounded by residentially zoned property, and most of the uses surrounding the site were residential with the exception the Clackamas ESD property which included a park.

The application was submitted on November 3, 2006, and the City had until April 2, 2007 to make its decision. The main issue was the existing dwelling on Mr. Ballard's property in that it prevented a flag lot partition if a pole width were greater than 15-feet. The applicant sought a waiver from the 25-foot flag pole regulation which was the one currently in effect or compensation in the amount of \$115,000.

Mr. Marquardt provided a brief background on Measure 37 enacted by voters in 2004, and MMC 1.20 that implemented the section of the Oregon Revised Statutes (ORS) brought in by Measure 37. The main point of Measure 37 was that it required government to pay compensation or waive the land use regulation when that regulation reduced the real market value of that property. He described the flag lot where the lot was deep and had frontage on the street. It was a type of minor land partition by which two separate lots were created from the one lot. The flag lot was the second lot and accessed the street by means of the pole. The regulation at issue in this hearing was the pole width standard. That regulation had changed over time. On November 17, 1998 that changed from 15-feet to 20-feet, and on August 20, 2002 that standard changed to 25-feet.

The applicant's house had a 26-foot setback from the northern property line, and the City had sideyard setback standards that the parent house would have to meet. If the 25-foot flag pole width were applied, then only a 1-foot setback would remain. That was why the City could not approve a minor land partition under the current regulations on Mr. Ballard's property. Mr. Ballard did receive approval for a minor land partition in 1998 when the pole width was 15-feet wide; however, it was not recorded with the County. The approval for that minor land partition lapsed, so he was not able to report it under the original approval, and in the meantime the standard changed.

With the Measure 37 claim, Mr. Ballard hoped to achieve a flag lot on the back half of his property. The applicant sought a waiver from the 25-foot flag lot pole or compensation in the amount of \$115,000. Staff recommended that the City Council grant a waiver to the standard and apply a 15-foot width standard that was in place when Mr. Ballard first acquired the property. There were basically two main approval standards. The first was that the applicant had to show ownership of the property before the regulation was enacted, and Mr. Ballard provided documents showing he signed the contract to purchase the property on August 27, 1998. He also had approval from the City for a flag lot. The applicant also had to show there was a reduction in

property value as a result of that regulation. Mr. Ballard submitted an appraiser's report that showed the inability to do a minor land partition had decreased his property value. The report said the house alone on the large lot was \$305,000. If Mr. Ballard were able to partition the lot, then it would be valued at \$420,000. That was enough to establish the reduction in the property value and satisfy the Measure 37 criteria.

This hearing would decide on the validity of the claim and whether to pay compensation or grant a waiver of regulations. Staff recommended that Council grant a waiver. If that were the case, then the applicant would have to do a minor land partition application at which time the 15-foot access pole width standard would be applied to his land partition application. The other regulations currently in place for flag lot standards would be applied to that minor land partition. The recommendation was that the City Council approve the Measure 37 claim by waiving the 25-foot access pole width and apply a 15-foot access pole width. There were minimal workload and fiscal impacts resulting from the recommendation. One fiscal impact was that the City would have to reimburse the \$1,500 deposit paid by the applicant for the Measure 37 process. The Lake Road Land Use Committee reviewed the application and stated it was not opposed to the flag lot and the Measure 37 claim. Notice was sent to properties within 250-feet of the subject property, and no objections were received.

Mayor Bernard asked if the City had adopted an ordinance related to decreased value of a neighbor's property and the ability to file a lawsuit.

Mr. Marquardt referred to MMC 1.20.095 – cause of action by other property owners. If a claim resulted in a waiver of enforcement regulation and the development allowed by the waiver resulted in the reduction in the value of other property located in the vicinity of the claimant then those property owners would have the right to take action against the claimant in state circuit court to recover the amount of the reduction.

Mayor Bernard asked the fee for a minor land partition.

Mr. Marquardt replied the fee was \$1,500.

Applicant's Presentation

Mr. Ballard felt staff had made the matter very clear and appreciated the time Ms. Mangle and Mr. Marquardt put into the matter. He believed the City of Milwaukie had the esteemed honor of having the highest Measure 37 filing fee in the state.

Public Testimony

Forris Frick, Lake Road Neighborhood Association Land Use Chair, asked what the fire marshal had to say about the 15-foot pole because he believed that was why the width increased through the years so there could be two-way traffic.

Mr. Swanson thought that issue would be addressed in the minor land partition process. The fire department would not enter into the Measure 37 claim but would comment on the minor land partition application.

Mayor Bernard recalled the increased width had nothing to do with the fire department but rather to reduce the number of flag lots being developed.

Councilor Stone commented that Mr. Frick had a good question about the safety concern for emergency vehicles. She noted in the claim that the applicant said 17 feet could remain rather than 20- or 25-feet as stated in the regulations. That might be something to consider in terms of emergency vehicles getting in and safely.

Mr. Ballard concurred there would be 17-feet and a total of 22-feet.

Mayor Bernard closed the public testimony portion of the hearing at 8:14 p.m.

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the Measure 37 claim submitted by Richard L. Ballard for property located at 11964 SE 37th Avenue by waiving the flag lot pole width standard. Motion passed unanimously among the members present. [4:0]

OTHER BUSINESS

Council Reports

Mayor Bernard attended a kickoff event for a new program regarding teens and alcohol. He talked with the new head of OLCC regarding liquor license applications, and there may be legislation related to the sale of alcohol to minors.

Councilor Stone attended the Riverfront Board meeting as Council liaison and reported the project was coming along nicely.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluation of public officers and employees.

ADJOURNMENT

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

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

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

March 6, 2007

Council President Stone called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, and Loomis.

Staff Present: City Manager Mike Swanson

Board and Commission Interviews

The Council interviewed Alicia Hamilton and Robert Biswas-Diener for two vacant positions on the Library Board; Bob Cooper and Kate MacCready for reappointment to the Park and Recreation Board; and Ed Miller for reappointment to the Citizens Utility Advisory Board.

City Manager Matters

Mr. Swanson discussed the City's role in the proposed Regional Wastewater Treatment Forum. The Clackamas County Board of Commissioners (BOC) requested names for potential member(s) for the regional stakeholder group. Council President Stone was named to site selection committee by the City several weeks ago. He asked for suggested names for him to forward to Water Environment Services (WES). Councilors Barnes, Collette, and Loomis requested that their names be submitted.

Council President Stone adjourned the work session at 5:55 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 6, 2007**

CALL TO ORDER

Council President Stone called the 2001st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Councilors Deborah Barnes, Carlotta Collette, and Joe Loomis

Staff present: City Manager Mike Swanson

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Council President Stone announced Mayor Bernard was in Washington, D.C. as a Joint Policy Advisory Committee on Transportation (JPACT) member and was excused from this meeting.

Mr. Swanson announced the City Attorney was excused from the meeting pursuant to Resolution No. 9-2003.

Milwaukie Elks Lodge 50th Anniversary Proclamation

Councilor Barnes read the proclamation recognizing the Milwaukie Elks Lodge and its members for their 50th Anniversary of serving the local community.

CONSENT AGENDA

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

A. City Council Minutes

1. January 2, 2007 Work Session
2. January 2, 2007 Regular Session
3. January 30, 2007 Regular Session

B. OLCC Application for Harrison Mart, 4140 SE Harrison Street, Change in Ownership

C. OLCC Application for Safeway, 4370 SE King Road, New Outlet

Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

- **David Aschenbrenner, Milwaukie**

Mr. Aschenbrenner announced the grand opening of the King Road Safeway on March 8, 2007 and expressed appreciation to the Dieringer family for its work on this community revitalization project.

PUBLIC HEARING – None Scheduled

OTHER BUSINESS

A. Ordinance Repealing Milwaukie Municipal Code Chapter 2.48 – Fire Marshal

Mr. Swanson reported this section of the code was adopted in 1993 and created the office of fire marshal. With the annexation of the City into Clackamas Fire District #1 (District), it provided the services. Therefore, Chapter 2.48 was inoperative because the City no longer had that office. The proposed ordinance repealed that Section of the code and did away with that requirement.

It was moved by Councilor Collette and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance repealing Milwaukie Municipal Code Chapter 2.48 – Fire Marshal. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Council President Stone and Councilors Barnes, Collette, and Loomis voting ‘aye’ [4:0]

ORDINANCE NO. 1969:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE, OREGON REPEALING MILWAUKIE MUNICIPAL CODE
CHAPTER 2.48 – FIRE MARSHAL.**

B. Council Reports

Councilor Loomis announced the March for Meals fundraiser for the Meals on Wheels program.

Councilor Barnes was proud to have been a former Milwaukie Elks member and commented on its scholarship program. She wished her spouse and Councilor Collette a happy birthday.

Councilor Collette along with the other Councilors attended the light rail open house and provided contact information for those who wished additional information. She and Chief Kanzler would go to Salem to testify in support of photo radar and photo red light.

Councilor Stone read several announcements: she urged people to take the Transportation System Plan (TSP) online survey; the Council was seeking applicants for the Design and Landmarks Committee and the Planning Commission; three developer teams had submitted proposals for the Milwaukie Town Center Project; Safeway ribbon cutting; and the start of daylight savings time.

Councilor Collette announced that Bill Fetsch, known by many in the City as Dr. Jazz, had passed away after losing his battle with cancer. He and his band played some of the best music the community ever had the pleasure of listening to, and he would be deeply missed.

Advisory Board Appointments

It was moved by Councilor Barnes and seconded by Councilor Collette to appoint Alicia Hamilton and Robert Biswas-Diener to the Library Board; reappoint Bob Cooper and Kate MacCready to the Park and Recreation Board; and reappoint Ed Miller to the Citizens Utility Advisory Board. Motion passed unanimously among the members present. [4:0]

ADJOURNMENT

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

Council President Stone adjourned the regular session at 7:20 p.m.

Pat DuVal, Recorder

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING MELISSA ARNE TO THE MILWAUKIE BUDGET COMMITTEE.**

WHEREAS, a vacancy exists on the Milwaukie Budget Committee; and

WHEREAS, Milwaukie Municipal Code Section 2.14.020 states, the board shall consist of the members of the governing body and an equal number of members appointed from the electors of the municipal corporation.

WHEREAS, Melissa Arne possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

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

SECTION 1: That Melissa Arne is appointed to the Milwaukie Budget Committee.

SECTION 2: That her term of appointment shall commence on April 3, 2007 and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 17, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING JEREMY FERGUSON TO THE MILWAUKIE BUDGET COMMITTEE.**

WHEREAS, a vacancy exists on the Milwaukie Budget Committee; and

WHEREAS, Milwaukie Municipal Code Section 2.14.020 states, the board shall consist of the members of the governing body and an equal number of members appointed from the electors of the municipal corporation.

WHEREAS, Jeremy Ferguson possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

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

SECTION 1: That Jeremy Ferguson is appointed to the Milwaukie Budget Committee.

SECTION 2: That his term of appointment shall commence on April 3, 2007 and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 17, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING JEFF KLEIN TO THE MILWAUKIE PLANNING COMMISSION.**

WHEREAS, a vacancy exists on the Milwaukie Planning Commission; and

WHEREAS, Milwaukie Municipal Code Section 2.16.020(A) provides for appointment of members of the Milwaukie Planning Commission “by the council;” and

WHEREAS, Jeff Klein possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

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

SECTION 1: That Jeff Klein is appointed to the Milwaukie Planning Commission.

SECTION 2: That his term of appointment shall commence on April 3, 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 April 17, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING CHARMAINE COLEMAN TO THE MILWAUKIE PLANNING
COMMISSION.**

WHEREAS, a vacancy exists on the Milwaukie Planning Commission; and

WHEREAS, Milwaukie Municipal Code Section 2.16.020(A) provides for appointment of members of the Milwaukie Planning Commission "by the council;" and

WHEREAS, Charmaine Coleman possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

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

SECTION 1: That Charmaine Coleman is appointed to the Milwaukie Planning Commission.

SECTION 2: That her term of appointment shall commence on April 3, 2007 and shall expire on March 31, 2009.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on April 17, 2007.

James Bernard, Mayor

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
Kenny Asher, Community Development/Public Works Director

From: Jason Rice, Associate Engineer

Subject: 37th Ave. Waterline Replacement

Date: March 27, 2007 for April 17th Regular Session

Action Requested

Authorize the City Manager to sign a contract for the construction of 37th Ave. Waterline Replacement (between King Road and Harvey Street) with Paul Lambson Contracting, in the amount of \$150,030. This amount includes a 20% project contingency.

Background

The current 2007-2011 Capital Improvement Plan identifies the 37th Ave. Waterline Replacement as a project to be completed in the 2006/07 fiscal year. Approximately 1225 lineal feet of existing 4" water main on 37th Avenue (between King Road and Harvey Street) will be replaced with 8" ductile iron water line. This project also replaces 1 fire hydrant, 24 water services, adds another hydrant, and 2 water-sampling stations.

The existing 4" water line at this location does not supply adequate fire flow at this time, especially when some homes on this street are over 500 feet from the nearest fire hydrant. Increasing the line size and adding a new hydrant to this street improves the safety of this neighborhood.

This project went through a competitive bidding process per Chapter 30 of the City's Public Contracting Rules. 7 bids were received by the City before the April 5th, 2007 2:00 PM bid opening. The following table is a summary of all bid amounts as well as the engineer's estimate.

	<u>Contractor</u>	<u>Bid Amount (less 10% Contingency)</u>
1.	Paul Lambson Contracting	\$125,025
2.	DM Excavating Company Inc.	\$132,320
3.	Werbin West Contracting	\$135,600
4.	CivilWorks NW Inc.	\$138,226
5.	NW Kodiak Construction	\$140,516.91
6.	Cipriano and Son	\$171,100
7.	Coffey Grounds Inc.	\$182,390.25
***	Engineers Estimate	\$183,135

Concurrence

Engineering staff coordinated with Operations on both concept and design phases of the project.

Staff has had an email conversation with Cheryl Ausmann-Moreno the Chair of the Ardenwald-Johnson Creek Neighborhood Association, which discussed the purpose and extent of the project. Staff will also and will meet at the NDA's next monthly meeting on April 10th to discuss the project further and document any concerns that the neighborhood may have.

Fiscal Impact

This project is a part of the 2006-07 CIP. The approved Water Fund budget includes \$150,000 for construction, including contingency. The recommended bid for total construction cost for this project is \$150,000 including contingency. \$84,000 of the Water Capital and Reserve Fund along with \$66,000 from the Water SDC Reimbursement Fund will fund this project.

Work Load Impacts

Engineering staff will provide "in-house" inspections on this project. This will reduce the cost of the project and slightly increase the workload of the Engineering Staff.

Alternatives

- 1) Do not award project (defer indefinitely)
 - If council wishes not to award project and remove it from the CIP list.
- 2) Re-bid project without amending
 - If council approves of the project design but thinks the project should be re-bid for any reason.
- 3) Direct Staff to modify project and re-bid
 - If council does not approve of the project was design and/or thinks that re-bidding could reduce cost.

Attachments

1. Resolution
2. Project Vicinity Map

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF 37TH AVE WATERLINE REPLACEMENT (KING RD. TO HARVEY ST).

WHEREAS, the waterline on 37th Ave. between King Road and Harvey Street is deficient in water quality and structure; and

WHEREAS, the project was approved for funding in the 2006/2007 budget; and

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

WHEREAS, Paul Lambson Contracting is the lowest responsive and responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the construction of 37th Ave. Waterline Replacement (between King Road and Harvey Street) with Paul Lambson Contracting, in the amount of \$150,000.

Introduced and adopted by the City Council on April 17, 2007.

This resolution is effective on April 17th, 2007.

James Bernard, Mayor

ATTEST:

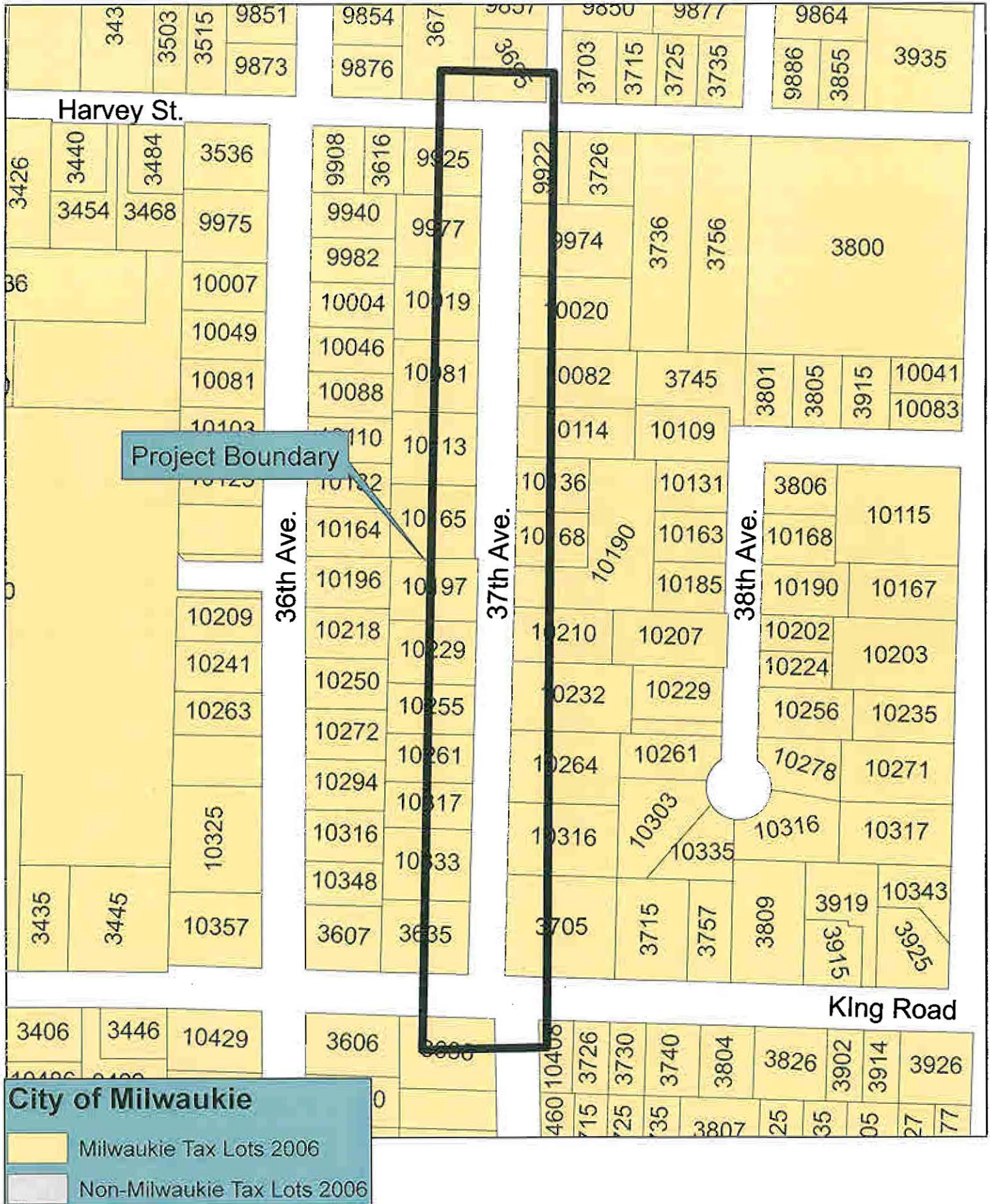
APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney

Attachment 1

37th Ave. Waterline Replacement





MEMORANDUM

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler, Chief of Police

Date: April 17, 2007

Subject: O.L.C.C. Application – Recommendation for Denial
Re: Eric's Market
9410 SE 32nd Avenue
Milwaukie, OR 97222

Applicant: Dennis Kim
7908 SW Red Sunset Ln.
Beaverton, OR 97007

Action Requested

Conduct a public hearing in accordance with Milwaukie Municipal Code (MMC) 5.40.100 to allow the applicant and the City Manager to present oral evidence relating to the application of Dennis Kim to obtain a liquor license from OLCC for Eric's Market. After consideration of all relevant evidence, the Council should make its recommendation along with findings of fact and forward it to OLCC.

Background

Mr. Dennis Kim has acquired ownership of Eric's Market, a business that has a valid license to sell liquor. In order for the premises to continue to have a liquor license, Mr. Kim must apply for a liquor license. A liquor license by law is purely the personal privilege of the applicant, ORS 471.292. Mr. Kim has applied for a license and the application has been referred to the City for a recommendation.

Based upon my review of state records, I have found that Mr. Kim has been convicted of three alcohol related offenses:

- Convicted July 5, 2005 – Driving under the influence of intoxicants
- Convicted August 6, 2001 – Giving liquor to a minor
- Convicted April 30, 2001 – Driving under the influence of intoxicants

Mr. Kim’s application shows that he presently holds a liquor license for Dennis Market, for the past six years.

Recommendation

Recommend to the Oregon Liquor Control Commission denial of the liquor license application of Dennis Kim, for Eric’s Market. To support my recommendation, I submit the following evaluation of Mr. Kim’s application compared to the applicable review procedures of Chapter 5.40 of the MMC:

Section 5.40.060 of the Milwaukie Municipal Code states the criteria for recommendation that the City Manager or designee is to take into consideration when making an unfavorable or conditionally favorable recommendation to the Council on a liquor license application. The Code is consistent with OAR 845-005-0325 that lists OLCC’s License Refusal Reasons related to the applicant’s qualifications. OLCC will deny a license unless the applicant shows good cause that overcomes criterion including (4), alcohol or controlled substance history or record of the applicant.

As the Manager’s designee, I have evaluated the application and raise the following concerns:

5.40.060 B. The applicant has a record of use of controlled substances or excessive use of alcoholic beverages;

Comment: Mr. Kim has been convicted twice in the last six years of driving under the influence of intoxicants; the most recent conviction was on July 5, 2005. His 2005 driving under the influence of intoxicants conviction came with a two-year probation lasting until July 2007.

5.40.060 C. The applicant has a record of violations of criminal law or ordinances connected in time, place and manner with a liquor establishment or which demonstrate a disregard for law;

Comment: Mr. Kim was convicted on August 6, 2001 of providing liquor to a minor. His application for the license includes an Individual History that includes a response to question #9 that he was convicted of selling beer to a minor six years ago. He was fined for this offense.

At a minimum, I believe that this conviction demonstrated Mr. Kim’s disregard for the law. The public health, safety and welfare of the Milwaukie community could be at risk if a license is granted to Mr. Kim.

The Police Department, as designee of the City Manager, is recommending that the Milwaukie City Council deny the liquor license renewal of Mr. Dennis Kim based on the alcohol related convictions described above.

As mentioned above, Mr. Kim has three previous alcohol abuse related convictions. The pattern of alcohol abuse displayed by Mr. Kim supports the presumption that he should not be put into a position of evaluating the sale of alcohol to patrons or minors. If he is in this position, the public’s health, safety and welfare could be placed at risk.

There is any number of “what if” scenarios that I could provide that I would characterize Mr. Kim the villain if someone were hurt after Mr. Kim either sold/furnished alcohol to an underage person, or was involved in a traffic accident after purchasing alcohol from Mr. Kim. The responsibility to monitor the consumption and distribution of alcohol rests with the Milwaukie Police Department and the OLCC approved licensees. Mr. Kim’s track record does not warrant such a risk for the Milwaukie community.

In summary, Mr. Kim’s history and conviction of furnishing alcohol to a minor is particularly concerning to the Police Department in that it suggests Mr. Kim’s judgment is suspect. Under age drinking is a major contributor to traffic accidents and personal injury to our children. Placing Mr. Kim in a position where he must assess the legal distribution of alcohol potentially places our community at jeopardy. Mr. Kim’s track record does not support his adherence to following laws.

Concurrence

Milwaukie Police Department

Fiscal Impact

None

Work Load Impacts

None that are measurable

Alternatives

1. Find that the applicant meets the criteria of Section 5.40.060 and recommend to OLCC that a license be approved.
2. Find that the applicant does not meet the criteria of Section 5.40.060 but make a favorable recommendation with a letter of warning.

Attachments:

Liquor License Application of Dennis Kim, dated February 13, 2007
Chapter 5.40 of the MMC
Notice of public hearing sent to Dennis Kim



April 2, 2007

Dennis Kim
7908 SE Red Sunset Lane
Beaverton, OR 97007

Subject: Notice of Hearing – Liquor License Application for Change of
Ownership
Eric's Market
9410 SE 32nd Avenue
Milwaukie, OR 97222

Hearing Date: April 17, 2007
Hearing Time: 7:00 p.m.
Hearing Location: Milwaukie City Hall
10722 SE Main Street
Milwaukie, OR 97222

Dear Mr. Kim:

As the City Manager's designee under Section 5.40.060 of the Milwaukie Municipal Code, I have reviewed your application for a liquor license for Eric's Market. Please be advised that I reviewed your application against the criteria of Section 5.40.060 and am opposed to the City granting you a liquor license based on your previous alcohol-related convictions.

Section 5.40.070 of the Code provides that a public hearing be held by the City Council when an unfavorable recommendation is made. The Council will consider whether to recommend to OLCC denial of your application.

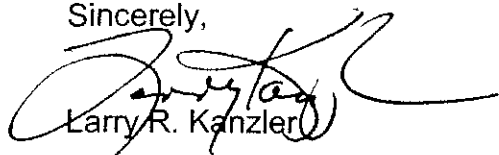
The hearing will be held on Tuesday, April 17, 2007 at 7:00 p.m. in the City Council Chambers. The hearing is designed to provide you with an opportunity to present testimony to support your application for a liquor license. You may present written and oral evidence and you will have the right to rebut opposing evidence.

A copy of my recommendation to the city Council is enclosed with this letter along with any supporting reports or documents.

PUBLIC SAFETY BUILDING
3200 SE HARRISON
MILWAUKIE, OREGON 97222
PHONE: (503) 786-7400 • FAX: (503) 786-7426

Information about procedures and rights of parties may be obtained from the office of the City Manager.

Sincerely,



Larry R. Kanzler
Chief of Police

c: Pat DuVal, City Recorder

Attachments:

1. Staff recommendation
2. Copy of MMC Chapter 5.40

Notice of Public Hearing

Liquor License Application for a Change of Ownership – Recommendation for Denial

The Milwaukie City Council will conduct a public hearing in accordance with Milwaukie Municipal Code 5.40.100 to allow the applicant and the City Manager or his designee to present oral evidence relating to the application of Dennis Kim to obtain a liquor license from OLCC for Eric's Market located at 9410 SE 32nd Avenue, Milwaukie, Oregon 97222. The hearing will be held in the City Council Chambers of City Hall, 10722 SE Main Street, Milwaukie on April 17, 2007 at 7:00 p.m. Public testimony may be given for or against the application.

A copy of the staff recommendation will be available for public review after 4:00 p.m. on Tuesday April 10, 2007 at Milwaukie City Hall, 10722 SE Main Street, and the Milwaukie Ledding Library, 10660 SE 21st Avenue. It will also be available on the City's website

<http://www.ci.milwaukie.or.us/council/councilagendas2007.html>

Pat DuVal
City Recorder
503.786.7502
duvalp@ci.milwaukie.or.us



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



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 as 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 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

ORDINANCE NO. 1962
MILWAUKIE, OREGON

AN ORDINANCE AMENDING PROVISIONS OF THE MILWAUKIE COMPREHENSIVE PLAN RELATING TO WATER RESOURCES, LAND USES, AND PUBLIC FACILITIES AND AMENDING SECTION 19.321 OF THE MUNICIPAL CODE RELATING TO COMMUNITY SERVICE USES

WHEREAS, Chapter 19.321 of the Municipal Code relating to community services has provided a means for allowing uses that benefit the community to be sited throughout the City;

WHEREAS, problems have arisen in applying Chapter 19.321 that demonstrate that revisions to the Chapter are needed to provide clarity for decision makers, City staff, applicants and the public regarding community service uses;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant, owned and operated by Clackamas County Service District No. 1 (CCSD1), has operated for years on Milwaukie's riverfront;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant has provided an essential public service to both citizens of Milwaukie and those within CCSD1, but at the same time has burdened the City with a wastewater treatment plant adjacent to Riverfront Park, the City's downtown, and Island Station neighborhood;

WHEREAS, the goal of Chapter 19.321 has been to allow community service uses when appropriately located, designed, and operated with minimum adverse impacts on neighborhoods;

WHEREAS, major utility facilities, under most circumstances, have adverse impacts far greater than those of community service uses expressly allowed by Chapter 19.321;

WHEREAS, under some circumstances, it may be possible to locate, design, and operate major utility facilities using modern technologies and designs to reduce their impacts so their impacts do not exceed the impacts of typical community service uses;

WHEREAS, the City's Comprehensive Plan has long called for the relocation of the Kellogg Creek Wastewater Treatment Plant to a different location with less impact on the City, while assuring continued treatment of the City's sewage;

WHEREAS, these Comprehensive Plan provisions have not been effective in removing the wastewater treatment plant;

WHEREAS, the City and CCSD1 agreed to a plan for a regionalized wastewater system that would provide improved sewer service, environmental benefits, cost savings, and the removal of the Kellogg Creek Wastewater Treatment Plant, but which was terminated by the Clackamas

ORDINANCE NO. 1962

Page 1

County Board of Commissioners;

WHEREAS, the regionalized plan previously agreed to provides a more effective and efficient approach to sewage treatment than the continued operation of the Kellogg Creek Sewage Treatment Plant;

WHEREAS, it is in the public interest to pursue a plan for sewage treatment that is better for the environment and results in long term savings;

WHEREAS, the City will cooperate with CCSD1 and others in either reinstating the proposal for regionalized wastewater treatment or developing a proposal that would have similar benefits;

WHEREAS, having the Kellogg Creek Treatment Plant remain in service indefinitely is expected to adversely impact the environment and the rates for sewage treatment as compared to alternatives that have already been considered by the City and CCSD1, and will have continued adverse impacts on Milwaukie's Riverfront Park, downtown, and the Island Station neighborhood, unless such impacts are expressly mitigated through plant redesign.

WHEREAS, the City Planning Commission has, after a duly noticed public hearing, recommended that the City Council amend Comprehensive Plan provisions relating to the Kellogg Creek Sewage Treatment Plant and has recommended that the Council amend Chapter 19.321 relating to Community Service uses, both to address various identified problems with the Chapter and to address major utility facilities;

WHEREAS, the City Council has held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities, and has decided to alter some of the language and add additional language for clarity and consistency; now therefore

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Comprehensive Plan is amended as shown in Exhibit 1, attached hereto and incorporated by this reference.

Section 2: Municipal Code Section 19.321 and cross-references to that section are amended as shown in Exhibit 2, attached hereto and incorporated by this reference.

Section 3: The Findings in Support of Approval included as Attachment 1 to the Staff Report to the Council are adopted as findings in support of this decision. Pages 1 through 7 of the Staff Report to the Council are adopted as additional findings.

Section 4: This ordinance shall take effect 30 days after adoption.

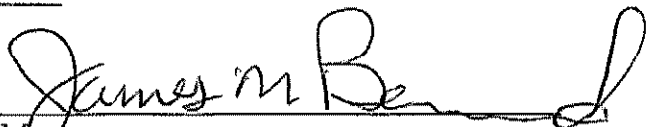
ORDINANCE NO. 1962

Page 2

Read the first time on 6/20/06, and moved to second reading by 5-0 vote of the City Council.


Read the second time and adopted by the Council on 6/20/06.

Signed by the Mayor on 6/20/06.



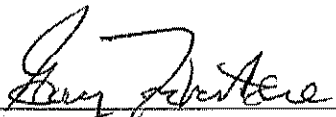
Mayor

ATTEST:



Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN, LLP



City Attorney

Amendments to Milwaukie Comprehensive Plan

Underlined text is to be inserted

Strikeout ~~text~~ is to be deleted

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (~~CCSD1~~) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

~~The City will cooperate with Clackamas Sewer District #1 to encourage the continued public use of portions of the Kellogg Sewage Treatment Plant site. The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant this site in the future. The City will 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. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site.~~ Riverfront access recreation will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

~~The City will participate in examining feasible alternatives for decommissioning the Kellogg Creek Treatment Plant. The City will pursue a regional approach, working in partnership with special districts in the North Clackamas County area, to assure adequate sewer service to accommodate projected growth in Milwaukie.~~

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

**Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance**

**Underlined text is to be inserted
Strikeout text is to be deleted**

SECTION 19.321 COMMUNITY SERVICE OVERLAY USE:

19.321 Community Service Overlay Zone ~~Use~~ CSOU:

19.321.1 Purpose. This section ~~provides for the~~allows development of certain ~~special-uses~~ which, because of their public convenience, necessity, and unusual character, may be appropriately located in most zoning districts, but which may be permitted only if appropriate for the specific location for which they are proposed in one district but not another. This section ~~also provides~~ standards and procedures for review and approval of applications for such community uses, including utility and recreational facilities. Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. ~~The community service overlay will function as an overlay designation for public and private institutions in most zones and districts.~~ Approval of a CSU does not change the zoning of the property.

19.321.2 Applicability. Any community service use shall be subject to the provisions of this section, ~~unless otherwise directed in primary zones.~~ Application must be submitted to establish or modify a community service use. Community service uses include certain private and public utilities, institutions, and recreational facilities as listed below:

A. Institutions-Public/Private and Other Public Facilities.

1. Schools, public or private, and their accompanying sports facilities, daycare centers, private kindergartens;
2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station ~~correctional facilities~~, or other similar buildings;
3. Hospital;
4. Cemetery;
5. Nursing or convalescent home;
6. ~~Churches~~Religious institutions;
7. Community meeting building;

8. Temporary or transitional facility;
9. Other similar uses as determined by the planning commission.

B. Utilities.

1. Sewage pumping stations;
2. Water wells, pump stations, reservoirs, and related any other facilities used for production, treatment, and distribution of the municipal water supply;
3. Electrical power substations;
4. Repealed by Ord. 1910;
5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
6. Repealed by Ord. 1910;
7. Repealed by Ord. 1910;
8. Public transit facilities;
9. Passenger terminal;
10. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, ~~fraternal organization lodge, grange;~~
2. Public and/or privately owned parks ~~including~~ and golf courses;
3. Pedestrian and bicycle trails~~The 40-Mile Loop;~~
4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;
45. Other similar uses as determined by the planning commission.

D. Communication Facilities.

1. Telephone switching station;
2. Telephone, microwave facilities;
3. Radio and television transmission facilities, including studios;
4. Wireless communication facilities.

19.321.3. (Reserved for Future Use)

19.321.34 Notice Requirements. Except as provided in Section 19.321.45C and 19.321.4214 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection ~~1404.319.1011.3~~ Minor Quasi-Judicial Review, Community Service Overlay Use.

19.321.45 ~~Standards for Authority to Grant or Deny a Community Service Uses.~~

A. An application for a community service use may be allowed if the following criteria are met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in of the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;

2. Specific standards for the proposed uses as found in subsections 19.321.710-19.321.4014 are met; and

3. The hours and levels of operation of the proposed use arecan be adjusted to be reasonably compatible with surrounding uses;

4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and

5. The location is appropriate for the type of use proposed.

19.321.6 Procedures for Reviewing a Community Service Use

A. The planning commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the commission finds that the approval standards in 19.321.5 are met, the commission shall approve the designation of the site for community service use. If the commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the planning commission may attach.

B. In permitting a community service use or the modification of an existing one, the ~~Cityplanning commission, or the community development director in the case of a minor change,~~ may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;

2. Establishing a special yard, setback, lot area, or other lot dimension;

3. Limiting the height, size, or location of a building or other structure;

4. Designating the size, number, location, and design of vehicle access points;
5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;
6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or
7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

C. ~~The community development planning director may approve minor modifications to an approved community service use changes in any development permit pursuant to a type I procedure, provided that such change modification:~~

1. ~~Does not increase the intensity of any use, or the density of residential use;~~
2. ~~Meets all requirements of the underlying zone relating to building size and location and off-street parking and the specific standards of Title 19;~~
3. ~~Does not result in significantly affect adjacent property or uses, will not cause any deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties nor significantly affect any public facility; and~~
4. ~~Does not affect alter or contravene any conditions specifically placed on the development by the planning commission or city council; and~~
5. ~~Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.~~

~~D. The planning commission will hold a public hearing on the establishment of the proposed community service use. If the commission finds that the establishment of the community service use is in the general public interest and that the benefits to the public outweigh the possible adverse impacts of the use, then the commission may approve the designation of the site for community service use. If the commission finds otherwise, the application may be denied. This approval will result in the application of the community service overlay designation to a particular piece of land, subject to any conditions the planning commission may attach.~~

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.58**
- **19.321.69**
- **19.321.710**
- **19.321.811**

~~19.321.9 Specific Standards for Churches, Convents and Related Facilities.~~

~~A. A church spire may exceed the maximum height limitation.~~

~~B. The lot is of sufficient size to allow all required yards to be equal to at least two-thirds (2/3) of the height of the principal structure.~~

~~C. (Repealed by Ord. 1893)~~

~~D. Fifteen percent (15%) of the total site is to be landscaped.~~

~~E. Off-street parking as per Chapter 19.500.~~

19.321.4012 Specific Standards for Institutions—Public, Private, Religious, and Other Facilities not Covered by Other Standards.

A. Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.

D. The height limitation of a zone may be exceeded to a maximum height of fifty (50) feet provided subsection C above is met.

E. Noise-generating equipment shall be sound-buffered when adjacent to residential areas.

F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.

G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.

H. A spire on a religious institution may exceed the maximum height limitation. For purposes of this section, “spire” means a small portion of a structure that extends above the rest of the roofline, or a separate structure that is substantially smaller than the main structure and extends above the roofline of the main structure. “Spire” includes but is not limited to ornamental spires, bell towers, other towers, minarets, and other similar structures or projections. The number of spires on a religious institution property is not limited, so long as the spires remain only a small portion of the area of the structures.

I. The minimum landscaping required for religious institutions is the lesser of 15% of the total site area and the percentage required by the underlying zone.

Renumber subsequent subsections as follows:

- **19.321.4113**
- **19.321.4214**, including self-references and Table within this subsection

Update all references to “CSO” or “community service overlay” to “CSU” or “community service use” as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**

Amendments to Milwaukie Comprehensive Plan

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (CCSD1) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant site. The City will 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. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other

sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

**Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance**

SECTION 19.321 COMMUNITY SERVICE USE:

19.321 Community Service Use CSU:

19.321.1 Purpose. This section allows development of certain uses which, because of their public convenience, necessity, and unusual character, may be appropriately located in most zoning districts, but which may be permitted only if appropriate for the specific location for which they are proposed. This section provides standards and procedures for review of applications for such community uses. Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. Approval of a CSU does not change the zoning of the property.

19.321.2 Applicability. Any community service use shall be subject to the provisions of this section. Application must be submitted to establish or modify a community service use. Community service uses include certain private and public utilities, institutions, and recreational facilities as listed below:

A. Institutions-Public/Private and Other Public Facilities.

1. Schools, public or private, and their accompanying sports facilities, daycare centers, private kindergartens;
2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station, or other similar buildings;
3. Hospital;
4. Cemetery;
5. Nursing or convalescent home;
6. Religious institutions;
7. Community meeting building;
8. Temporary or transitional facility;
9. Other similar uses as determined by the planning commission.

B. Utilities.

1. Sewage pumping stations;
2. Water wells, pump stations, reservoirs, and any other facilities used for production, treatment, and distribution of the municipal water supply;
3. Electrical power substations;

4. Repealed by Ord. 1910;
5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
6. Repealed by Ord. 1910;
7. Repealed by Ord. 1910;
8. Public transit facilities;
9. Passenger terminal;
10. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, lodge, grange;
2. Public and/or privately owned parks and golf courses;
3. Pedestrian and bicycle trails;
4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;
5. Other similar uses as determined by the planning commission.

D. Communication Facilities.

1. Telephone switching station;
2. Telephone, microwave facilities;
3. Radio and television transmission facilities, including studios;
4. Wireless communication facilities.

19.321.3. (Reserved for Future Use)

19.321.4 Notice Requirements. Except as provided in Section 19.321.5C and 19.321.14 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection 19.1011.3-Minor Quasi-Judicial Review, Community Service Use.

19.321.5 Standards for Community Service Uses.

A. An application for a community service use may be allowed if the following criteria are met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying

zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;

2. Specific standards for the proposed uses as found in subsections 19.321.10-19.321.14 are met;
3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses;
4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and
5. The location is appropriate for the type of use proposed.

19.321.6 Procedures for Reviewing a Community Service Use

A. The planning commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the commission finds that the approval standards in 19.321.5 are met, the commission shall approve the designation of the site for community service use. If the commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the planning commission may attach.

B. In permitting a community service use or the modification of an existing one, the City may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;
2. Establishing a special yard, setback, lot area, or other lot dimension;
3. Limiting the height, size, or location of a building or other structure;
4. Designating the size, number, location, and design of vehicle access points;
5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;
6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or
7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

C. The planning director may approve minor modifications to an approved community service use pursuant to a type I procedure, provided that such modification:

1. Does not increase the intensity of any use;
2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19;
3. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties;
4. Does not alter or contravene any conditions specifically placed on the development by the planning commission or city council; and
5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.5 becomes 19.321.8**
- **19.321.6 becomes 19.321.9**
- **19.321.7 becomes 19.321.10**
- **19.321.8 becomes 19.321.11**

19.321.12 Specific Standards for Institutions—Public, Private, Religious, and Other Facilities not Covered by Other Standards.

A. Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.

D. The height limitation of a zone may be exceeded to a maximum height of fifty (50) feet provided subsection C above is met.

E. Noise-generating equipment shall be sound-buffered when adjacent to residential areas.

F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.

G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.

H. A spire on a religious institution may exceed the maximum height limitation. For purposes of this section, "spire" means a small portion of a structure that extends above the rest of the roofline, or a separate structure that is substantially smaller than the main structure and extends above the roofline of the main structure. "Spire" includes but is not limited to ornamental spires, bell towers, other towers, minarets, and other similar structures or projections. The number of spires on a religious institution property is not limited, so long as the spires remain only a small portion of the area of the structures.

I. The minimum landscaping required for religious institutions is the lesser of 15% of the total site area and the percentage required by the underlying zone.

Renumber subsequent subsections as follows:

- **19.321.11 becomes 19.321.13**
- **19.321.12 becomes 19.321.14, including self-references and Table within this subsection**

Update all references to "CSO" or "community service overlay" to "CSU" or "community service use" as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**



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: Local Gas Tax & Street Surface Maintenance Program Startup

Date: April 3 for April 17, 2007 Regular Session

Action Requested

Adopt an ordinance establishing a \$0.02 per gallon motor vehicle fuel tax assessed to motor fuel pumping station businesses located in the City of Milwaukie. All revenues would be devoted to the Street Surface Maintenance Program established under City Ordinance 1966. The purpose of the program is maintaining, repaving and rebuilding major City Streets.

Background

On January 2, 2007 Council established the Street Surface Maintenance Program (SSMP), including two new funding mechanisms: a street maintenance fee (Ordinance 1966) and a PGE Privilege Tax (Ordinance 1967). Council, at that time, chose to continue a second reading of the third ordinance and revenue element, a local gas tax, to April 2007.

The total revenue target for the program is \$1.2 million per year. The street maintenance fee would provide approximately \$700,000; the PGE Privilege Tax about \$300,000; and the local gas tax is estimated to provide between \$100,000 and \$200,000.

The purpose of continuing the discussion was to allow the Oregon legislative session to begin, enabling City Council to evaluate the prospects of State action to increase statewide gas tax revenues. An increase in the state gas tax would be preferable to a local gas tax because it would generate the needed revenues without placing Milwaukie gasoline stations at a competitive disadvantage. Stations immediately to the north of

Milwaukie, in Multnomah County, pay an additional \$.03 per gallon to the County. Gas stations in unincorporated Clackamas do not and would not pay any local tax on motor vehicle fuel. A list of Oregon jurisdictions with local motor vehicle taxes is attached.

Oregon State Representatives Mitch Greenlick (Portland) and E. Terry Breyer (Springfield) have introduced House Bill 2653, which would increase the State motor vehicle fuel tax by \$.05 per gallon (from \$.24 to \$.29) and create an automatic increase of \$.05 per gallon every five years. Under HB 2653, City gas tax revenues would increase approximately \$200,000, eliminating the need to establish a local gas tax. HB 2653 has been referred to the Transportation Committee and the sponsors have requested a hearing, but no hearing has as yet been scheduled. City staff has had informal discussions with several individuals who follow these matters closely. None were optimistic that this or similar legislation would pass this session.

Staff contacted Oregon Petroleum Association representative Paul Romain in March. Mr. Romain concurred with the assessment that action on the State gas tax was unlikely. He reiterated that OPA would oppose a local gas tax in Milwaukie up to and including working to refer the question to a public vote.

Update on Street Surface Maintenance Program Start-Up

Finance and Community Development developed a very conservative revenue estimate to be used for initial budgets: \$600,000 in year 1 and \$900,000 in future years. The lower number for the initial year reflects that the first fiscal year will only include one-half of a year of Privilege Tax payment from PGE and is also additionally conservative to reflect the possibility of delays at start-up.

On the program side, a list of projects for year 1 has been developed and included in the budget request. The projects slated for the upcoming fiscal year are Oak Street (from Hwy. 224 to Monroe), 37th Ave. (from Lake Road to Wister), Washington Street (99E to Oak Street), and 42nd Avenue (from Harvey to Johnson Creek Boulevard). Likely projects for summer 2007 include 37th and 42nd. (The remainder would be addressed next spring.) The reconstruction of King Road (from 43rd to City limit) will be the primary project for FY 2008/2009.

A notice of the new street maintenance fee is being included in all of the April and May City utility bills, informing residential customers of their expected bill. PGE will be providing notice of the Privilege Tax in April. Staff will be mailing letters to commercial customers in town with their initial street maintenance fee calculations in April. Commercial customers must request a review of their initial calculation by June 1 if they wish to have that review completed prior to the start of billing. (A customer may request a review of their calculation at any point, but the City is not obligated to refund prior payments.)

The initial calculation is being developed based on the data collected by the County in 2002/2003. That information is being updated with information from Building and the County Assessor's office to match the current City utility database.

Concurrence

A local gas tax was an integral element of the SSMP presented to Council in December 2006 and as such was jointly developed by Engineering, Streets, Community Services, and Finance, with input from the CUAB, Planning Commission, Budget Committee Chair, and the NDAs. ODOT Fuels Tax Group was consulted on motor vehicle fuel tax ordinance language and requirements. Streets and Engineering have jointly refined the SSMP project list. Finance and Community Services have provided input on public notification.

Fiscal Impact

All new revenues, minus a small administrative charge from ODOT, would be devoted to the SSMP/dedicated fund.

Work Load Impacts

Implementation of the new motor vehicle fuel tax will require an IGA with ODOT. This will require some the support of Community Development staff and the City Attorney.

Alternatives

Inclusion of the local gas tax was an integral part of the staff recommendation for funding the SSMP. Further delay in implementation will result in project delays. In either case, staff will provide a report on status of proceeds and expenses as part of annual reporting on the program in spring 2008.

Attachments

1. Ordinance
2. Oregon Motor Vehicle Fuel Taxes

Attachment 1

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

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

Attachment 1

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Chapter 3.40 MOTOR VEHICLE FUEL TAX ORDINANCE

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

3.40.010 Short Title

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

3.40.020 Definitions

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

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

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

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

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

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

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

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

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

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

3.40.030 Tax Imposed

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

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

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

3.40.040 Amount and Payment

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

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

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

3.40.050 Permit Requirements

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

3.40.060 Permit Applications and Issuance

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

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

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

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

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

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

3.40.070 Failure to Secure Permit

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

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

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

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

3.40.080 Revocation of Permit

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

3.40.090 Cancellation of Permit

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

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

3.40.100 Remedies Cumulative

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

3.40.110 Payment of Tax and Delinquency

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

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

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

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

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

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

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

3.40.120 Monthly Statement of Dealer and Fuel-Handler

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

3.40.130 Failure to File Monthly Statement

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

3.40.140 Billing Purchasers

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

3.40.150 Failure to Provide Invoice or Delivery Tag

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

3.40.160 Transporting Motor Vehicle Fuel in Bulk

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

3.40.170 Exemption of Export Fuel

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

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

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

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

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

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

3.40.180 Sales to Armed Forces Exempted

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

3.40.190 Fuel in Vehicles Coming Into City Not Taxed

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

3.40.200 Refunds

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

3.40.210 Examination and Investigations

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

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

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

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

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

3.40.230 Examining Books and Accounts of Carrier Motor Vehicle Fuel

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

3.40.240 Records to be Kept by Dealers and Fuel Handlers

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

3.40.250 Records to be Kept Three Years

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

3.40.260 Use of Tax Revenues

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

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

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

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

3.40.270 Administration

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

3.40.280 Severability

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



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenny Asher, Community Development and Public Works Director

Subject: Project Management Group Recommendation for Development of the Town Center site (10700 SE McLoughlin and 10721 SE Main St.)

Date: April 6, 2007 for the April 17 Regular Session

Action Requested

Direct the Town Center Project Management Group (PMG), with city representation by the City Manager and Community Development Director, to enter a 60-day exclusive negotiation period with Main Street Partners on a Memorandum of Understanding (MOU) for developing the Town Center site.

Background

On December 6, 2006, the City of Milwaukie and Metro invited development proposals from qualified firms interested in site control and development rights for the Milwaukie Town Center Project in downtown Milwaukie. Through an RFP, the agencies described a shared vision for a high quality, mixed-use development project that would include active ground floor retail uses along Main Street with residential and possibly other uses in the remainder of the building above.

The site is 42,200 square feet in size and sits at a gateway location fronting McLoughlin Boulevard and Main Street. Site ownership is divided equally between the City, who owns the eastern half of the site, and Metro, who owns the western half of the site. The agencies have agreed to cooperate on the development of the site and are committed to attracting a development project that meets shared goals.

The City and Metro cooperatively solicited development proposals based on a set of development goals that match their combined interests. These development goals were identified through a series of meetings involving the Milwaukie community, the Advisory Committee, Metro's TOD Steering Committee and City Council. The goals include:

- Enhance Milwaukie's historic downtown by providing a continuous and attractive pedestrian environment, interesting shops, restaurants and other active ground floor uses and connecting new and existing retail north of Harrison to the downtown.
- Recognize and support the architectural context of the site including Milwaukie's historic City Hall to the east.
- Support the downtown as a place that feels and functions like an inviting, family-friendly destination by providing new community-gathering places such as coffee shops, cafes, interesting shops and other small public spaces.
- Creating a distinctive landmark on McLoughlin Boulevard, announcing to the thousands of people traveling by each day that "something is going on in Milwaukie" -- that Milwaukie has a thriving, inviting, and walkable downtown that is attracting new, high quality investment.
- Optimize Willamette River views, the sales/leasing of which should enhance Milwaukie's residential market by signaling that downtown Milwaukie is a choice place to live. Home ownership is preferable to the greatest extent possible.
- If feasible, office may also be located above the first floor, although it is anticipated that the uppermost floors will be developed as housing.
- Development of the Town Center site should be consistent with the public objectives included in adopted City policies and should reinforce the vision for downtown as a whole.

Project oversight for the Milwaukie Town Center Project is being conducted through a 4-member Project Management Group (PMG), which is made up of the Metro TOD and Centers Program Manager and Project Manager, the Milwaukie City Manager and the Milwaukie Community Development Director. The consulting firm of Shiels Oblatz Johnsen coordinates the PMG's work.

To provide community perspective and observations, the Milwaukie City Council and Metro appointed individuals to a 9-member Advisory Committee, which provided comments on the Request for Proposals. In addition, a public open house was held on Tuesday, March 13th to allow the public an opportunity to meet the team members and gain an understanding of the development concepts that were being considered. Over 100 individuals attended, held conversations with each of the developer teams and then provided the PMG with written comments. Committee was assigned the task of reviewing the three developer submittals, attending the public open house, interviewing the development teams, and providing the PMG with its observations. The PMG has considered the Advisory Committee's observations and is now recommending selection of a development team to the Metro Transit Oriented Development (TOD) Steering Committee and the Milwaukie City Council for final consideration. The Metro TOD Steering Committee was scheduled to hear the recommendation on April 11th.

Submittals

The Request for Proposals was advertised in local papers and the Oregonian. In addition, notice of the RFP's availability was distributed to over 60 individuals and businesses that had either expressed prior development interest in the project or had developed comparable projects in the Portland region. Three development teams responded to the RFP including:

- Costa Pacific Homes (developer) with The Architects Office PLLC (architect) and Saco Construction Corporation (contractor)
- Main Street Partners—KemperCo (developer) with Myhre Group Architects (architect) and R&H Construction (contractor)
- Winkler Development Corp (developer) with LRS Architects (architect) and R&H Construction (contractor)

The distinguishing characteristics of the Main Street Partners proposal were its two-part form sitting on a single story podium with three stories on Main Street including ground floor retail and two-story townhomes above and ground-floor retail/commercial on McLoughlin and four stories of condominiums with an optional stepped-back fifth floor. This proposal identifies the need for a variance for the anticipated building envelope materials and a possible variance should the fifth floor on McLoughlin be pursued.

The Winkler Development proposal's distinguishing characteristics were its L-shape massing on the upper floors, its direction to stay within the four-floor height limit identified in the City code, the eco-roof and the screened parking within the first floor of the building.

In the Costa Pacific proposal, the distinguishing characteristics were the underground parking garage, active ground floor uses on all block faces, L-shape massing on the upper floors, eco-roof, the gateway element on the northwest corner of the site, the use of brick and stucco in the building envelope and an expanded Main Street pedestrian zone created by stepping back the building.

Evaluation and Recommendation

(The full PMG Recommendation Report is attached as Attachment 2. Staff has excerpted parts of the Report for this staff report, but would direct Council to that attachment for the details. Appended to the Report is a complete set of comments received at the March 13 Open House).

The Request for Proposals (RFP) described four weighted criteria that would be used as the basis of the proposals evaluation by the PMG:

1. *Development Team Qualifications.* Proven ability of the proposer to successfully develop and manage high quality mixed-use projects in an urban setting. Ability to work with public agencies, neighborhoods and business organizations to achieve a building that has broad public support. Weight 35%.
2. *Development Objectives.* Ability to meet the stated development goals and project criteria described in section of the RFP in an economically feasible approach. Weight 25%
3. *Financing Capacity.* Demonstrated ability to provide necessary project equity and secure construction and permanent financing within the projected schedule. Weight 20%
4. *Business Offer.* The preliminary amount (and preliminary conditions) offered to the City and Metro for the development rights, and the minimum rate of return acceptable to the developer. Weight 20%.

In formulating its recommendation, the PMG considered input from both the Advisory Committee and the comments received at the Open House. The Open House comments were focused on just the Development Objectives (25%), and the Advisory Committee comments were focused on the Development Objectives (25%) and the Development Team Qualifications (35%). The PMG's overall consideration considered all four categories.

The PMG determined that all proposals met the basic minimum requirements of the RFP, but that Main Street Partners demonstrated the strongest performance across the categories. The PMG is recommending authority to proceed with Main Street Partners. Should negotiations not proceed with Main Street Partners, the Winkler team would be considered an acceptable alternate for exclusive negotiations.

	Qualifications 35%	Concept Design/Feasibility 25%	Financing Capacity 20%	Business Offer 20%
Costa Pacific	L	H/L	L	M
Main St Partners	H	M/H	H	H
Winkler	M	M/H	M	M

L,M,H = Low, Medium, High

The PMG is also recommending that the 60-day negotiation period be used to address several outstanding issues raised by the Advisory Committee, PMG or community members, which were not fully embraced or understood in the Main Street Partners proposal. These include:

1. Sidewalk area design.

2. Building height on McLoughlin.
3. Exterior materials.
4. Second level connection to the street.
5. Semi-public spaces.
6. Building architectural style.
7. Green building.
8. McLoughlin Commercial.
9. Parking.
10. Schedule.

Concurrence

Metro, the City's partner in land ownership and on PMG concurs with this action. The Advisory Committee, also concurs. The Advisory Committee provided substantial comment, observation and guidance to the PMG throughout the process. Even in support of the PMG's recommendation, the Advisory Committee expressed several themes that pertained to all of the proposals:

- The Advisory Committee realizes that parking is a key community issue in the downtown area and that it is not something that can be solved by a single development such as the Town Center Project. The Committee noted that downtown Milwaukie is transitioning to support more activities and reasons to be downtown and that the ongoing Transportation System Plan parking strategy should ensure that this issue is addressed.
- None of the second level open spaces shown in the schemes would be accessible to the public.
- All developers expressed an interest in pursuing vertical housing tax abatement, which requires property owners to pay taxes on the value of the property and the first floor, while abating the additional value of the upper floors for a period of ten years.
- The sidewalk environment is seen as an important public element of the project. The Committee felt that it would be appropriate to study this in greater detail in the next round of discussions with the selected developer.

The committee was pleased that the recommendation identified the "open issues" that the PMG would seek to resolve, or make progress on, in the MOU negotiations

Fiscal Impact

There is no fiscal impact associated with this recommendation. Successful negotiations in the MOU phase will cause the PMG to return to City Council with an update and a request to proceed to negotiations on a Disposition and Development Agreement (DDA). The DDA will contain financial agreements that will have a fiscal impact on the City.

Work Load Impacts

Workload impacts are accounted for. The Community Development Department will absorb most of the work associated with the MOU negotiations, although this workload is considerably lightened by the ongoing services of Shiels, Obletz, Johnson, which is managing the overall process.

Alternatives

Council can direct staff to seek to modify the recommendation, according to some clearly stated criteria or desire. Council can also reject the recommendation altogether, though this would have serious repercussions for Metro. Should Council elect to reject the recommendation, staff would request an executive session to understand the points of contention and to review alternatives associated with this real estate action.

Attachments

Attachment 1: Resolution

Attachment 2: PMG Recommendation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON DIRECTING THE TOWN CENTER PROJECT MANAGEMENT GROUP TO ENTER EXCLUSIVE NEGOTIATIONS WITH MAIN STREET PARTNERS ON A MEMORANDUM OF UNDERSTANDING FOR DEVELOPMENT OF THE TOWN CENTER SITE (10700 SE MCLOUGHLIN AND 10721 SE MAIN STREET)

WHEREAS, the City of Milwaukie, through Resolution 39-2005, did enter an Intergovernmental Agreement with Metro for the purpose of jointly offering for development the property known as the Town Center site at 10700 SE McLoughlin and 10721 SE Main Street; and

WHEREAS, a Request for Proposals (RFP) was prepared and released in December 2006 by the Project Management Group (PMG), composed of the City's Community Development Director and City Manager, and Metro's Transit Oriented Development Director and Program Manager; and

WHEREAS, three proposals were received in February 2007 and evaluated by the PMG and an Advisory Committee, formed by Council in 2006, as well as by approximately 100 citizens who attended an Open House to view the proposals on March 13, 2007; and

WHEREAS, all three proposals were of high quality and considerable merit; and

WHEREAS, proposal evaluations by the Advisory Committee and PMG resulted in consensus that Main Street Partners, LLC was most likely to achieve the development objectives stated in the RFP; and

WHEREAS, the proposal submitted by the Winkler Development Corporation was also viewed as economically feasible and capable of meeting numerous development objectives; and

WHEREAS, both proposals are generally consistent with Milwaukie's adopted plans, policies and guidelines for the downtown site, and both have been submitted by reputable development teams capable of completing the projects substantially as proposed; and

WHEREAS, successful completion of this project requires close coordination and agreement between the City of Milwaukie and Metro's Centers program, and this recommendation evidences such coordination and agreement; and

WHEREAS, City Council has reviewed the PMG Recommendation Report and supports the methodologies and determinations described therein;

NOW, THEREFORE, BE IT RESOLVED that the PMG is directed to enter exclusive negotiations with Main Street Partners, LLC for 60 days on a Memorandum of Understanding (MOU) for development of the Town Center site; and

BE IT FURTHER RESOLVED that the “Items for Further Consideration” identified in the PMG Recommendation Report be included in the MOU deliberations, the outcomes of which to be reported to the Council at the conclusion of the MOU negotiation period; and

BE IT FURTHER RESOLVED that if for any reason the MOU negotiations between the PMG and Main Street Partners, LLC come to an impasse, the PMG is authorized to begin negotiations with Winkler Development Corporation on an MOU for development of the Town Center site;

Introduced and adopted by the City Council on April 17, 2007.

This resolution is effective on April 17, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

**MILWAUKIE TOWN CENTER PROJECT
PROJECT MANAGEMENT GROUP
DEVELOPER SELECTION RECOMMENDATION
27 March, 2007**

Introduction

The City and Metro cooperatively solicited development proposals based upon a set of public objectives that match their combined interests. The agencies' intent is to convey the property to a developer whose proposal best meets a set of development objectives and program as described in the attached Development Objectives document.

A set of Development Goals was identified through a series of meetings involving the community, the Advisory Committee, Metro's TOD Steering Committee and City Council. These Development Objectives are detailed in the attached document.

Process Background

Project oversight for the Milwaukie Town Center Project is conducted through a 4-member Project Management Group (PMG), which is made up of the Metro TOD and Centers Program Manager and Project Manager, the Milwaukie City Manager and the Milwaukie Community Development Director. The consulting firm of Shiels Oblatz Johnsen coordinates the PMG's work.

To provide community perspective and observations, the Milwaukie City Council and Metro appointed individuals to a 9-member Advisory Committee, which provided comments on the Request for Proposals. This Committee was assigned the task of reviewing the three developer submittals, attending the public open house, interviewing the development teams, and providing the PMG with its observations. The PMG will consider the Advisory Committee's observations and will recommend selection of a development team to the Metro TOD Steering Committee, the Milwaukie City Council and the Metro Council for final consideration.

The Request for Proposals was advertised in local papers and the Oregonian. In addition, notice of the RFP's availability was distributed to over 60 individuals and businesses that had either expressed prior development interest in the project or had developed comparable projects in the Portland region. Three development teams responded to the RFP including:

- Costa Pacific Homes (developer) with The Architects Office PLLC (architect) and Saco Construction Corporation (contractor)
- Main Street Partners—KemperCo (developer) with Myhre Group Architects (architect) and R&H Construction (contractor)
- Winkler Development Corp (developer) with LRS Architects (architect) and R&H Construction (contractor)

The Project Management Group and Advisory Committee reviewed each of the proposals and then met to discuss the proposals, determine which teams were to be interviewed and identify interview questions for each of the developer teams.

Public Open House

A public open house was held on Tuesday, March 13th to allow the public an opportunity to meet the team members and gain an understanding of the development concepts that were being considered by the Advisory Committee. Over 100 individuals attended, held conversations with each of the developer teams and then provided their written comments. A complete list of the public's written comments is attached to this document.

The "recurring themes" from the public's comments were summarized (below) and presented to the Advisory Committee prior to the developer interviews. A complete list of the open house comments is attached to this report.

Costa Pacific Communities. The most common positive attributes cited for this team was the underground parking, number of parking spaces, building design and orientation/ design of the roof deck. The most frequent negative comment was that the building was too tall, although there were a few people who stated that the 5 stories worked in this scheme. For those individuals that ranked the schemes, this building received the greatest number of individuals listing it as their preferred building concept.

Main Street Partners. This proposal's design elicited the most comments with people split fairly equally in terms of whether they liked the architectural style or did not--many comments focused on the roof design. The most frequent positive comment was related to the 3 and 4 story building height. Seven comments were received expressing a preference for keeping the McLoughlin side of the building at 4 stories rather than going to 5 stories while two stated a preference for the fifth floor. Multiple comments suggested that the building be set back from the sidewalk on Main Street to give it more room and opportunities for sidewalk activities. In addition to the design, the most frequent negative comment was that people didn't feel the scheme provided enough parking.

Winkler Development. This concept had no clearly dominant likes or dislikes. There were several comments stating that people liked the design, while many others felt it was too monolithic or not very interesting. A few people commented that the presentation was not as clear and made it hard to visualize the building. There were a few negative comments regarding the parking treatment along McLoughlin.

Close to 70 pages of written comments were submitted at the Open House by 25 different people with the following individuals choosing to sign their comments:

Richard Schultz
Mike Miller
Stephens
Susanna Pai
Stephan and Lisa Lashbrook

Patty Wisner
Jo Ann Weaver
Paula and Ray Harris
Perry Chambers

Greg Seagler
Julie Wisner
Ed Parecki
Ronald Rasch

Advisory Committee Observations

The City and Metro-appointed Advisory Committee¹ participated in two public meetings and a building tour of potentially comparable buildings around the region. The Committee then received copies of the proposals and discussed their observations with the PMG in a closed work session. Questions and comments from this work session became the basis of the questions asked during the developer interviews. Immediately following the interviews, the Committee provided their observations about each of the proposals. These observations are included in this section.

Members of the Advisory Committee include:

David Aschenbrenner	Ray Bryan	Charmaine Coleman
Donald Hammang	Mary King	Gary Klein
Brad Olson	Michelle Reeves	Alice Rouyer

A general comment related to all schemes included:

- The Advisory Committee realizes that parking is a key community issue in the downtown area and that it is not something that can be solved by a single development such as the Town Center Project. The Committee noted that downtown Milwaukie is transitioning to support more activities and reasons to be downtown and that the ongoing Transportation System Plan parking strategy should ensure that this issue is addressed.
- None of the second level open spaces shown in the schemes would be accessible to the public.
- All developers expressed an interest in pursuing vertical housing tax abatement, which requires property owners to pay taxes on the value of the property and the first floor, while abating the additional value of the upper floors for a period of ten years.
- The sidewalk environment is seen as an important public element of the project. The Committee felt that it would be appropriate to study this in greater detail in the next round of discussions with a selected developer.

Main Street Partners. The Committee's consensus was to initiate work with this team as the preferred developer. This team communicated an in-depth understanding of the Milwaukie development environment and has a successful track record in building projects that are consistent with their original commitments. The development concept was seen as being the most thought-through and the best balance between diverse community aspirations and financial reality.

The Committee's key observations related to the team's **qualifications** included:

- The developer has a demonstrated track record in constructing multiple successful projects involving public/private partnerships and active community participation.
- The developer has gained valuable understanding and insights into the Milwaukie housing and retail market through his experience in selling and leasing the North Main Village project.

¹ After the list of proposing developers was known, Advisory Committee member Michelle Reeves alerted the PMG to the fact that the company she works for, Windermere, had been approached to represent two of the proposers on other projects. While there was no direct conflict with the Town Center Project, Ms. Reeves withdrew from the Advisory Committee to avoid potential perception of conflict of interest.

- The team has a demonstrated track record in working with communities to adapt building designs to meet public goals.
- The team (developer/architect/contractor) has worked on several projects together in the past.

The Committee's key observations related to the team's **development concept** included:

- The overall building massing was seen as the most appropriate response to the community's concerns regarding the building's impact on surrounding buildings and Main Street in particular. The Main Street facade is broken up by limiting the height at three stories (one floor less than allowed) and providing a "gap" in the upper floors of the building.
- The concept illustrates five floors on the McLoughlin half of the block and describes it as "optional". The Committee was of mixed opinion regarding the trade-off of a 5th floor on McLoughlin to preserve the lower building height along Main Street and the visual impact of the five stories. It was noted that this would require public approval through the Planning Commission. Some on the committee expressed concern that this element ran counter to public sentiment.
- The architectural style of the building elicited the greatest number of responses and range of opinions at both the Open House and within the Committee.
- This building concept assumes cementitious planks/panels on the upper floors while the other proposals included brick. The planks/panels were seen by some as less desirable/less permanent material than brick, however the Committee recognized that the details of how these materials are installed and their ultimate maintenance by the homeowners association will play the greatest role in how the building is perceived.
- Greatest number of units and ground floor retail fronting on both Main and McLoughlin was seen as a plus.
- The open spaces at the second floor level help to break up the building mass.
- Although this proposal does not specify intent to pursue LEED certification, the developer has indicated a willingness to hire a "green building consultant" to review options and costs associated with incorporating environmentally sensitive building features into the project.

Winkler Development Inc. The Committee consensus ranked this team as a strong alternate to the North Main Partners team. Although this team's stated flexibility to adapt the building design to additional input was seen as a strength, the Committee felt that this proposal had not gone far enough to demonstrate as thorough an understanding of the Milwaukie development environment as shown in the Main Street Partners proposal.

The Committee's key observations related to the team's **qualifications** included:

- Developer has a great depth of understanding and ability to solve the complicated issues associated with urban infill.
- Confidence that this developer can deliver a successful building.
- The developer and design team were seen as responsive and willing to adapt the building's design to accommodate new information from the community.
- The team (developer/architect/contractor) has worked on several projects together in the past.

The Committee's key observations related to the team's **development concept** included:

- Provision of the greatest number of at-grade parking spaces, however the trade-off was an absence of any McLoughlin-oriented retail which may be either a missed opportunity or a negative influence on that most visible frontage.
- This building's connection/orientation to the river at the ground level and McLoughlin Boulevard did not appear to be as well developed as the other proposals.
- General acceptance of this building concept's L-shape strategy to minimize the number of units in close proximity to McLoughlin while maximizing the number of units with river views.
- While the Committee appreciated that the proposed building concept fit within the existing building height and materials elements allowed by the City's development code, a majority of the Committee felt that the design concept did not go far enough to show how that type of a building would be articulated sufficiently to "fit" into the scale and character of Main Street.
- The use of brick along with other materials was seen as an attribute of this proposal.
- The green roof and rain features were seen as strong environmental elements that also add aesthetic value to the building's image.
- The developer is clearly qualified and prepared to lead the project through a rigorous process with active community involvement.

Costa Pacific Communities. The Committee ranked this team as a potential third option. However, if the City/Metro were to pursue an agreement with this team for this concept, considerably more work would need to be done to identify a reasonable financial approach to resolving the \$4 million feasibility gap identified by the developer in the interview. Although the Committee felt the exterior design of the building and provision of underground parking were very strong attributes of the project (also recognized by the community at the Open House), the amount of the stated financial gap and the perceived cost of the concept put the developer's ability to actually construct those building elements into question.

The Committee's key observations related to the team's **qualifications** included:

- Very knowledgeable Costa Pacific staff with extensive experience with public/private partnerships.
- Although the team provided a project example in Boise that reflects the construction type and general program of their Town Center proposal, there were questions as to how much of that project (design and cost assumptions) was appropriately transferable to constructing the same building in Milwaukie.
- Of the three teams proposing on the project, the Costa Pacific team (developer/architect/contractor) had the least amount of experience working together on previous projects, and the architect and contractor are from outside of Oregon

The Committee's key observations related to the team's **development concept** included:

- The provision of underground parking was seen as a major attribute of this proposal. This was reflected in the community's comments at the Open House. However, given the stated financial gap, the developer did not demonstrate to the Committee's satisfaction that this parking could actually be built without significantly compromising/modifying the rest of the building concept.
- Some Committee members preferred the architectural style while others did not.

- Several Committee members appreciated the provision of brick in the building's envelope.
- The building addresses McLoughlin with the inclusion of a "Gateway element" at Harrison and office uses at the ground floor along McLoughlin.
- The roof garden was designed to be accessible to the building residents, which was seen as a positive attribute.
- Support for the design sensitivity in stepping the building back to accommodate a wider sidewalk on Main Street.

Project Management Group Technical Review

The Request for Proposals (RFP) includes four weighted criteria that have been used as the basis of the proposals evaluation by the PMG:

1. **Development Team Qualifications.** Proven ability of the proposer to successfully develop and manage high quality mixed-use projects in an urban setting. Ability to work with public agencies, neighborhoods and business organizations to achieve a building that has broad public support. **Weight 35%.**
2. **Development Objectives.** Ability to meet the stated development goals and project criteria described in section of the RFP in an economically feasible approach. **Weight 25%**
3. **Financing Capacity.** Demonstrated ability to provide necessary project equity and secure construction and permanent financing within the projected schedule. **Weight 20%**
4. **Business Offer.** The preliminary amount (and preliminary conditions) offered to the City and Metro for the development rights, and the minimum rate of return acceptable to the developer. **Weight 20%.**

One-page summaries of the development teams' qualifications and building concepts are attached to this document. These summarizes were also distributed at the public open house.

Development Team Qualifications

All three teams have significant experience in public/private development partnerships. All three have experience in financing, designing and constructing innovative mixed use buildings. All teams have built projects larger than the one proposed for the Town Center site.

The **Kemper and Winkler** teams have provided examples of projects with the greatest amount of experience with highly visible urban projects within established neighborhoods.

Each of the **Kemper and Winkler** teams have significant overlapping project experience among the developer/architect/contractor which is considered to be a strength. The Kemper team has completed the greatest number of comparable mixed-use residential buildings.

Of the three proposals, the **Costa Pacific** team has the least experience of the three teams with designing, financing and constructing urban mixed use buildings in Oregon.

Based upon the project examples provided in the proposal, the contractor and architect do not appear to have experience working in the Portland area.

Development Objectives

This selection criteria contains two important components: 1) the building concept and how it relates to the development goals and criteria identified in the RFP, and 2) a demonstration that the building concept is economically feasible.

Development Goals and Criteria. Each proposal was evaluated for how well the building concept met the development goals and criteria.

The distinguishing characteristics of the **Main Street Partners** proposal were its two-part form sitting on a single story podium with three stories on Main Street including ground floor retail and two-story townhomes above and ground-floor retail/commercial on McLoughlin and four stories of condominiums with an optional stepped-back fifth floor. This proposal identifies the need for a variance for the anticipated building envelope materials and a possible variance should the fifth floor on McLoughlin be pursued.

The PMG identified the positive attributes of this proposal in terms of the scale of the building on Main Street, the gap in the upper floors to respond to the form of City Hall across the street, the amount of ground-floor active space on both Main Street and McLoughlin and the strong presence of the building fronting directly onto McLoughlin. The PMG did not uniformly agree that the exterior materials conveyed the highest degree of permanence as stated in the RFP.

The PMG saw the **Winkler Development** proposal's distinguishing characteristics as its L-shape massing on the upper floors, its direction to stay within the four-floor height limit identified in the City code, the eco-roof and the parking screened within the first floor of the building.

The PMG identified the positive attributes of this proposal as its sensitivity to Milwaukie's development code, the building's sense of permanence created by the scale of the building and the proposed materials, the eco-roof and a unit mix oriented to appealing to individuals from diverse income categories. While this scheme appeared to be the least developed and somewhat "monolithic" from a design perspective, the team indicated a willingness to adapt the design based upon public comments. This scheme also had the least amount of active ground-floor uses with the majority of the first floor taken up by screened parking areas.

In the **Costa Pacific** proposal, the PMG identified the scheme's distinguishing characteristics as the underground parking garage, active ground floor uses on all block faces, L-shape massing on the upper floors, eco-roof, the gateway element on the northwest corner of the site, the use of brick and stucco in the building envelope and an expanded Main Street pedestrian zone created by stepping back the building.

Key attributes were seen as being the use of brick and stucco, the underground parking allowing for more ground-floor active uses, the architectural statement at the corner of Harrison and McLoughlin and a more thoughtful consideration of the potential for public spaces at the street level. The PMG noted that the proposed building was substantially similar to another building the team is pursuing in Boise, Idaho and questioned how much consideration the developer had put into evaluating the unique context of the Milwaukie site.

Economic Feasibility. The PMG has reviewed each project's financial assumptions to assess the likelihood of delivering the project described in the preliminary concepts. Although very preliminary in nature, economic feasibility is an important evaluation tool when comparing the three proposals.

Economic feasibility is a function of both what a developer expects to pay to construct a building and what they can expect to sell it for two years from now. Project costs are typically described in terms of their "hard costs" or those costs associated with constructing the physical building, while "soft costs" include other associated project costs such as design, permits and fees, legal, marketing, developer fee, insurance and interest payments on the construction loan.

Key construction "hard cost" variables among the proposals come from: the provision of below-grade versus at-grade parking, exterior building materials and retail/commercial or residential costs expressed on a per square foot basis. All three concepts assume a wood, as opposed to steel or concrete, structural systems--another key component of the "hard cost" estimate. At this early stage in the project, "soft costs" are typically estimated to be approximately 1/3 of the building's construction cost.

The construction costs and projected sales and lease rates information provided by the **Kemper and Winkler** teams seems generally consistent with their proposals and appear to be appropriate for this early stage in the design process. Prior to the open house and interviews, the PMG questioned **Costa Pacific** regarding the project cost assumptions shown in the proposal. During the interview, this developer stated that there is an assumed \$4 million financial gap in the project. The magnitude of this gap coupled with a project pro-forma indicating below-market cost assumptions and a much higher proportion of soft costs to hard costs causes the PMG to question the financial viability of this concept as shown.

Financing Capacity

Mixed-use urban development is a unique market niche, which makes it a riskier investment; therefore lenders can have a major influence on the final building concept as they have fewer comparable examples from which to establish their terms. Understanding the financial sources and the developer's relationship with those sources is one test of how likely it is that the concept that is shown in the proposals will actually be built without additional public funds.

Financial information was submitted by each of the developers on a confidential basis (requested in Form B of the RFP). An independent third party reviewed this information from the perspective of a prospective lender. This information has been coupled with the PMG's comments into the following observations:

- All three proposals reflected the need for equity investor(s)
- **Main Street Partners** provided the most complete package from a lender perspective with what appeared to be the most accurate budget with adequate funds for all costs and contingencies.
- All of the developers' ongoing and pending projects in 2007 and 2008 may affect the schedule and cash flow available to the project.
- **Costa Pacific** submitted the highest budget with substantial developer management fees; **Winkler Development** did not break out the developer fee and the **Main Street Partners** developer fee was considered reasonable and within industry standards.

Business Offer

Each developer has proposed differing forms of revenue sharing with the public agencies at the end of the project as part of their business offers. It is not clear whether it is possible for the public agencies to participate in this type of transaction. The PMG will work with the selected developer to see if there is a way to structure the financing to provide a future revenue stream to the public agencies.

All developers are proposing a land write-down with **Kemper** offering a \$250,000 payment for the land and **Costa Pacific and Winkler** proposing a \$0 land payment. **Winkler** has stated that the land write down will help offset the costs of providing some units with lower sales values and **Costa Pacific** has stated that the land write down will offset the costs of incorporating sustainable building elements and securing a LEED Certification for the project.

In comparing the three business offers, the PMG felt that the Main Street Partners proposal would provide the City and Metro with the public benefits identified by the other two proposals (sustainable building elements and housing for diverse incomes) while providing the greatest financial return to the public agencies.

Technical Review Summary

The PMG evaluated each of the proposals based upon the RFP responses, the comments gathered at the public open house, the developer team interviews and the observations of the Advisory Committee collected following the developer interviews. The PMG determined that all proposals met the basic minimum requirements of the RFP.

	Qualifications 35%	Concept Design/Feasibility 25%	Financing Capacity 20%	Business Offer 20%
Costa Pacific	L	H/L	L	M
Main St Partners	H	M/H	H	H
Winkler	M	M/H	M	M

PMG Recommendation

Based upon this evaluation, the PMG is recommending the following actions:

- Request approval from Milwaukie City Council and Metro to enter into 60-day exclusive negotiations with Main Street Partners on a Memorandum of Understanding Agreement (MOU)
- During the 60-day period, discuss the “items to address” below and include the resolutions or processes for reaching resolution on each of these items in the (MOU).
- Report back to City Council and TOD Steering Committee after the MOU is complete
- Should negotiations not proceed with Main Street Partners, the Winkler team would be considered an acceptable alternate for exclusive negotiations.

Items for further consideration as part of the Memorandum of Understanding preparation:

1. **Sidewalk area design.** Conduct more detailed design work to ensure the sidewalk width is appropriate to the types of desired activities along each of the building facades and identify appropriate streetscape amenities to reinforce that activity. Should this study conclude that the building should be set back for all or a portion of the frontage along Main Street, pursue an adjustment to the City’s Main Street setback requirement that allows this to occur while respecting the intent of the setback requirements contained in the code.
2. **Building height on McLoughlin.** The fifth floor illustrated on McLoughlin was described as “an option” in the proposal. The PMG should work with the developer to evaluate what trade-offs may be possible with and without the fifth story in the proposal, as was requested in the RFP. The results of this evaluation should determine whether the fifth story option should be pursued.
3. **Exterior materials.** PMG to work with the developer to evaluate alternative exterior materials to better convey a “sense of permanence” and quality.
4. **Second level connection to the street.** In cooperation with the PMG, conduct more detailed design studies to determine the feasibility of stepping the private second level plaza space down to the Harrison and/or Jackson Street sidewalks.
5. **Semi-public spaces.** PMG and developer to work to identify opportunities for public art and enhanced small spaces visible to the public at the sidewalk level on Main, Harrison and Jackson.
6. **Building architectural style.** The developer has indicated a willingness to work with the PMG to look at design options for the upper floors of the Main Street façade to ensure the roof line, building elements and materials contribute to a desired emerging image for downtown Milwaukie. The PMG recognizes that the architectural style of the building must be consistent with what the developer sees as the appropriate market for the building. The PMG will request that the developer evaluate Main Street building elements, provide design options to address the community’s design concerns and convey how these refined building concepts respond to their Milwaukie context.
7. **Green building.** PMG is to confirm/clarify the developer’s scope and intent for pursuing environmentally sensitive building elements and practices in the project.

8. **McLoughlin Commercial.** Willingness to provide commercial space along McLoughlin was viewed as a strong component in the proposal, and one that separated Main Street Partners from the others. The PMG is interested in the developer's commitment that this commercial space will be built substantially as proposed.
9. **Parking.** The PMG will work with the developer in developing the City's downtown parking policies as part of the Transportation System Plan Update currently underway to explore strategies to ensure that downtown parking demand is accommodated and/or mitigated. In addition, the City should evaluate options for increasing the amount of on street parking along Jackson Street.
10. **Schedule.** The developer will provide PMG with a summary of ongoing and pending projects in order to 1) assure that the project schedule included in the RFP can be reasonably accomplished and communicated to the public, and 2) that potential cash flow issues are flagged and understood.

Milwaukie Town Center Project – Public Open House

Summary

Costa Pacific Top Three. Most common positive attributes cited were: underground parking, number of parking spaces, building design and orientation/design of the roof deck. Predominate negative comment was that it was too tall, although there were a few people who stated that the 5 stories worked in this scheme.

Kemper Top Three. The design elicited the most comments with people split fairly equally in terms of whether they liked the building style or did not--many comments focused on the roof design. The predominant positive comment was related to the 3 and 4 story height. Preferences were expressed for keeping the McLoughlin side at 4 stories rather than going to 5. Multiple comments suggesting that the building be set back from the sidewalk to give it more room and opportunities for sidewalk activities. Predominate negative comment was that people didn't feel the scheme provided enough parking.

Winkler Top Three. This concept had the most mixed reaction of all three proposals—no dominant likes or dislikes. Several comments stating that people liked the design, but no specifics while many others felt it was too monolithic or not very interesting design. A few folks commented that the presentation was not as clear and made it hard to visualize the building. A few negative comments were made regarding the parking treatment along McLoughlin.

Comments received from (those that chose to sign their comments):

Richard Schultz
Mike Miller
Stephens
Susanna Pai
Stephan and Lisa Lashbrook

Patty Wisner
Jo Ann Weaver
Paula and Ray Harris
Perry Chambers

Greg Seagler
Julie Wisner
Ed Parecki
Ronald Rasch

Individual Comments

General Comments

Thanks for considering our comments and good look with this project. It holds great potential for our community. First, we'd like to thank you for opening up this process. Any of the three alternatives would bring much-needed vitality to the downtown area.

Step down building height toward the river!!!

- Make Milwaukie inviting.
- Why are we not celebrating our river?
- I am opposed to changing height codes!

Is there any chance to get a court house across city hall in exchange for angled parking versus parallel parking?

None of these designs reflect Milwaukie's sense of place. All the architects have missed Milwaukie's historic heritage. New buildings can be diverse but some would be better if they respectfully echoed some classic shapes and façade details which paid respect to the past.

- Please redesign the roofs to be more like the Gramore Development in Lake Oswego. That's the kind of look we want in Milwaukie.
- We need to design our buildings to link Milwaukie to its past with gabled rooflines and paned windows that recapture our past like buildings that are not ultra modern and peaked roofs!!
- Nothing higher than 4 floors on Main St—taller buildings can be built towards the east in back beyond Main Street so they stairstep down toward the river in height so the view from the east is not obstructed by tall buildings on Main St.
- Remember Milwaukie's vision statement—stay away from modern generic, introduce a sense of place different from Gresham, Oregon City, Beaverton, Hillsboro—make us look true to Milwaukie.

All three proposals are only copies of what these developers have done elsewhere. They all want a free pass ie nothing different or directly oriented to our community. These are ALL Anytown USA. We deserve better than this!!! Main Street Partners is somewhat worse than Costa. Winkler's is simply the worst of three lousy proposals.

- You cut down some of the most beautiful full-grown urban trees to be found for miles and then build future tenements in their place.
- I'm presuming that the mix of businesses we'll find on the ground level are the same we'd find in Anytown as well. Nothing here that would induce me to spend any time in downtown Milwaukie. I can find all the same stuff even the same facades in Downtown Portland. But I can also find small, local businesses in unique older buildings. I'll go there instead.

COSTA PACIFIC

Our favorite is the Costa Pacific submittal, for the following reasons:

- Although tall, the **design steps the upper floors back from the street**. The visual impact will be positive, while still creating a solid "entry to Milwaukie" statement.
- The mix of uses and **number of parking spaces** seem about right. There need to be some off-street parking spaces, but not too many.

- The idea of restaurant **seating on the sidewalk** away from McLaughlin is a real plus. It will bring some life into downtown on those nice summer evenings.
- The **eco-roof** design is great, but there is no reason why this building should not be **going for LEED gold**. The slight increase in initial cost will be paid back in energy savings within a few years. Besides, Milwaukie needs a LEED gold building as part of the whole revitalization effort. It's a statement!

Like **10' setback**.

- **5 stories** too much
- Would like green space available to the public
- **Best parking** option.

Excellent plan.

- **Remove top floor**
- Soften corners of Buildings
- Make green space accessible to public?
- Address the traffic congestion on Harrison.

I LOVE the **underground parking**. What an excellent use of space if it's any way feasible. We have to explore the possibility no matter which developer we choose.

- I really like the **rotunda** on the corner of McLoughlin and Harrison.
- We must orient the public spaces toward the river—this concept has best orientation toward river.
- I love the **eco-roof** and that it doubles as a courtyard/social space (as compared to Winkler's)
- I do not like the aesthetic design of the elevations. The building is more **monolithic** than the other designs and the windows are too small.
- 62 feet is **too tall!!!** This building is significantly taller than the other two (according to the reps of each, this is 62 feet and the other two are under 50 feet)
- I so also like the **inside parking**.

Lacking a human scale.

- Not using good architectural design skills
- Not breaking down the mass
- Not well studied.
- The same project they built in Boise? This, like the others is how you build Anytown, Oregon. Or Anytown, USA.

Best for parking.

- Best for the **environment—green**
- **Blends with City Hall**
- Less impact on the neighborhood
- **Set back** good for the public.
- Over **height** limit=negative.
- Colors not good—gold on top.

Beautiful building but too tall.

- Good feature is enclosed park.

Too tall (high), too big especially the round shape facing McLoughlin. Somehow it does not fit into our downtown—it stands out too much.

- I like the **underground parking** for sure. It'll help the retail and office to succeed.
- I question about your SF cost for bigger units. Please check 630SF for \$250,000 are you sure 1240SF = \$270,000?

- I definitely **oppose the code change**. Keep 55' maximum for Milwaukie.
- Step down on height on McLoughlin so it won't look like Godzilla sitting in front of Milwaukie. Have you heard of feng shui?
- Are energy-efficient appliances included?

First choice—like the best.

- If the plan is too expensive (underground parking) would like alternate for comparison.
- "Future" market values are much more important and feel that highest quality style, design & materials should be chosen for ultimate and long-lasting value for decades to come.
- If you go with cheapest choice, Milwaukie will have many years to regret the choice once the buildings are no longer new.
- Would suggest some softer lines—curves ie cutouts in concrete can be semicircles instead of squares.

What about moving the green space so that it faces City Hall?

- The **wide sidewalks** are helpful and would probably make a big subjective difference for people on the street. It's something that is lacking on the other designs.
- The **parking** in this design is the best of the three designs. Parking is going to be crucial with increased density and activity.
- Couldn't this complex be limited to **4 stories instead of 5**? It might make it fit with the surrounding downtown area better. I appreciate the need for density but this seems pretty imposing for its surroundings.

Looks like a fortress with the brick wall all the way around the perimeter.

- **Five stories** are too many—too imposing a structure.
- **Building setback** is a plus.
- Lasting architecture (the essence of Belluschi's Portland art museum). This will be beautiful today and tomorrow (25 years). The others less so.
- **Subterranean parking** is a huge benefit over all others. This allows for the large enough retail space to appeal to anchor tenants that will draw retail for the rest of downtown.
- If the upper park space was outside dining for the restaurant in the boutique hotel facing the fabulous river view. The hotel would benefit from all the waterfront activities (canoe, kayak, paddle boats, water taxis, etc).
- Downtown would benefit from hotel guest activities.
- The Harrison & Main sides of the upper floors could be condo or office space.

First choice.

- I like this building's looks.
- The exterior has lots of interest architecturally.
- I think it is **too tall**—sacrifice the 5th floor to make the flat roof peaked and interesting.
- I really like the **underground parking** area!
- The **rotunda** in front has an "imposing" entrance enhancement to those people driving into Milwaukie—it makes a positive statement.
- This development has **great parking** ideas.

Concept works to create a sense of place for Milwaukie with complementary details (brick, stucco)

- Minimum impact (**underground parking**)
- Good background projects shown make for confidence in developer and architect.

First choice.

- The last 60 years have brought one architectural disaster after another in Milwaukie. Each new building must pushy to be a fitting new addition to transform Milwaukie into a beautiful town. Of the three proposals, Costa pacific has some elements which are far more visually unique than the other two proposals.
- I still would recommend **lowering it to 4 stories** and make the roofline far more interesting & beautiful by **eliminating the flat roof**—add visual details to the “active corner entrance roof areas” create a “visual climax”.
- The fifth story of this building should be sacrificed to make a far more architecturally interesting design with is not flat. It could be Mansard or ti could be gabled—there are many architectural styles which could be discussed. Always keep aging and longevity of the building style in mind. New buildings should not be “designs of the moment” which will be quickly passé and citizens will easily grow tired of looking at them. New buildings must have beauty, balance and visual interest in their window shape and size, surface detail, etc.

Way **too tall!**

- Like the **underground parking** idea. It’s doable.
- Keep any development in scale with the footprint; in scale with the overall city.

The river view is everyone’s!

Offers some environmental features

- No solar—why?
- **Architecturally pleasing.**

Don’t like this building—doesn’t look like it belongs in Milwaukie.

- Don’t like the roofs or the building siding.
- Individual unit prices don’t offer much latitude--range

Better step back design to building so it isn’t just a solid block (as Winkler is).

- **Too tall** and imposing overall.
- Like the **underground parking.**
- Green space is nice.

Impressed with retail on the quiet street and not on McLoughlin

- **More parking** available 117 spaces.
- **Like brick and stucco** exterior.

Best parking provided.

This is my favorite one—it has the best eye appeal.

Like the **design of building** the best.

- Like the diversity of unit sizes mixed in with each other.
- Really like the green roof/park.
- **Like the building height**—makes a statement.
- The fact that the proposal offers the **most parking spaces** should be attractive to suburban buyers.
- My #1 pick overall.
- The **building façade** makes a statement.

Love the project!

- We need mostly **units of a size** that will encourage owner/occupants; we don't need more rentals in Milwaukie.

I like the look of the building and think it would go well with the older buildings left in Milwaukie.

- I like the placement of the **corner entrance** welcoming people traveling south on McLoughlin into Milwaukie.
- My choice #1.

Love the **parking**

- Love the "green" building LEED—YES!!!
- 630SF **units are too small**.
- Love the **set back** on Main Street
- **5th Floor OK**
- Design restaurant and I'll be happy!
- Love the "stadium" park-like
- You can turn this any way and it would be great!
- This is my #1 choice.

Design = F

Looks like it's been done in Boise—how is it working for them?

Aren't the 80's over?

Looks like any street in Irvine, CA

No thanks.

A very **pretty building**

- The park area facing the river is very nice
- The underground parking, making more use of floors 1-5 is advantageous.
- Five stories is **too high**.
- Excellent track record on other projects.

KEMPER

The Kemper Project proposal has attractive architecture, but should include the optional penthouse floor, below grade parking, an eco-roof, and LEED gold rating.

3rd Pick

- **Do not like the style**
- **Over height**
- Does not consider parking for citizens
- Not enough retail
- Does not fit with City Hall

Like this one very much

- The condos were separated and consequently more light!
- **Love the roof slab**
- 4 stories are fine, **no fifth floor**.
- This is the **best design** & appreciate the architect pays attention to our city's detail.
- The color & design blend in best with other buildings downtown.
- **Not enough parking**. Suggest adding partial underground parking to help out retail/offices.

- Please check the calculation on per square foot cost. If 727 SF = \$170,000 are you sure 1800 SF = \$325,000? If that's correct, reserve one for me.
- I **don't mind the 5th stories if only limited to 3-4 penthouses** (as shown on the plan).
- I like the energy efficient appliances indicated.
- What about the eco roof & on-site water quality containment.

3rd choice

- Like the **style the least**—not fond of 60's or 70's like style.
- Does not harmonize with traditional design elements of city hall or Waldorf School.
- Nice people (representatives) but don't like the look of building.
- Did like the umbrella table and chairs—nice cozy element!
- If **roof lines** were traditional steps (gables) I could change my mind as long as they got rid of horizontal railings on balconies.

What about **setting it back** from Main Street a little so it's a little more open?

- What about **keeping it at 4 floors**?
- It seems that **parking might be a problem** with increased density and activity parking will be very difficult if not impossible for Milwaukie residents coming downtown for the library or City Hall.
- Having **3 floors on Main Street is a good** idea—it will be less imposing for City Hall.
- Although I think it's nice for the people living there to have the green space between the buildings, I would like to see a little of that on the City Hall side (Main Street).
- For Milwaukie residents using City Hall & the library, there needs to be a little openness & green to break up the hardness of these tall fortress-like complexes.
- There should be a way to **make them more agreeable with the existing architecture**.

Need **more set back** from street, especially on Main Street. This, I believe, was one of many design flaws with the North main Project. Straight, tall walls with narrow sidewalks will make Main Street much more imposing and unfriendly.

- **3 stories on Main Street is a very good** idea.

Second pick.

- This development is **pretty, but looks too much like North Main**—it's almost a repeat.
- I like the **tables on the sidewalk** look
- There is too much cement look on this building's exterior.
- The design looks nice but doesn't "say" Milwaukie with its unique character.
- Get some "peaks" & "gables" in the **roof design**—I would actually like this design if the roof design was more peaked like North Main.
- I would object to these two developments relating architecturally to each other—just get some more attractive roof lines please!!
- This design is too urban and needs to be softened a bit.
- I **like the 3 to 4 stories** idea.

Design seems **too modern** and does not incorporate elements from Milwaukie's past.

- Would like to see a design that reflects our Mission Statement "a sense of place".
- Would love to see a design that housed a real grocery store on the street level. We need a food store in downtown Milwaukie.
- **Keep the height of the building low** so as not to obstruct views and sunlight for buildings to the east of the project.

2nd pick.

- This team delivered on their promises & plans for North Main, however I'm disappointed that this new **design is a rehash of North Main** and a Pearl District style building.
- It looks like a twin of North main and Milwaukie streetscape needs more design diversity than this.
- **Flat roof** styled buildings are too prevalent in Milwaukie and the City should take every opportunity to discourage buildings with flat roofs.
- The top of a building should have visual, architectural interest.
- As a committee you need to keep in mind that Milwaukie is a historic Oregon town with a long history—a river history. Some of our architecture should reflect our heritage and culture to tell the Metro area and State we understand our roots & history—the right architect can blend that heritage into a new building. I've seen new buildings with traditional architectural elements in Tualatin, Lake Oswego, Silverton to name just a few. It makes these towns look great—culturally aware and proud of where they came from. These types of designs age well over decades—you all need to keep “aging” in mind when you select architectural designs. The “design of the moment” is passé in 10-15 years and becomes an eyesore.
- Change roofs to be non-flat and I might love it.

Too bad!

- Too little retail
- No draw into town like Cost corner on McLoughlin
- **Surface parking is a waste.**

Since North Main Village opened in 2006 the surrounding businesses have received many compliments on the building appearance.

- The idea of continuing the condition of apartment communities in the area for the better is a great asset to the Milwaukie locals.
- The quality that North Main village has to offer as well as appearance shows that Milwaukie will have a positive outcome if this process continues.

As the management agent for North Main Apartments I have received an overwhelming amount of positive feedback from people in the community. The comments have included recognition of the quality of the construction, design and enhancement of the downtown area. The demand for the apartments and condominiums has been extremely strong. The addition of similar housing units would clearly be well-received. Main Street Partners obviously take pride in producing quality housing and retail. I strongly support additional development by Main Street Partners.

The elevation fronting **McLoughlin offers a view so uninteresting** it's difficult to imagine anyone finding a reason to stop and visit and explore Milwaukie.

- **Zero public space**—no reason to walk near here.
- Absolute maximum return to developer (ROI) and minimum benefit to community.
- This must be rejected!

Would like to see **bigger street setback** to possibly save some mature trees.

- Would like to see some **open space on street level** that is accessible to the public—perhaps outside store but inviting to all citizens.

Project has a strong plan

- Good scale of building
- Appropriate massing
- Architectural details could use some help but very “good bones”

I think this option is by far the best.

- **Open spaces**—better use of river.
- More living space options to choose from.
- I think the one main building the other plans propose are too closed.

This is by far my **favorite from an aesthetic** standpoint—really great looking. Very interesting and imaginative.

- Great use of textures and depths.
- Like the **large windows**.
- Better use of **stepback** concept than anyone else, however I think shorter side of the building should face the river.
- There need to be cares and **outdoor seating** on the river side.
- **I like the parking idea on the inside of the structure** only. This is what we need to do with parking in Milwaukie—all inside and/or underground. **HIDDEN!**
- I love the **roof garden** through the center of the building on 2nd floor.
- I think this group comes across as having more imagination than the others.
- **Love the modern** style, but would like to find a way to incorporate a **nod toward more historical** architecture also.

Judging from the project surrounding the library this building is so out of context with the buildings it dwarfed.

- Required the cutting of mature trees to replace parking for the library indicating a snubbing of environmental issues.
- **Buildings up to the sidewalk**—no trees.
- **No environmental features** that are now very important.
- **Architecturally dull.**
- Building's right up to the sidewalk—no boulevard feeling.

This is my 2nd favorite building.

- The front entrance looks like something you'd expect to see in a big corporate law office—not peoples homes and small businesses.
- **4 stories is enough!** No fifth story.

I like the difference in the heights of the buildings.

- More of a village feel
- Insure **wide sidewalk** for retail use
- Imperative that the **parking be hidden.**
- **Green space** is nice.

Like concept of 10,000SF retail on Main Street.

- Don't know if on-street parking is enough.
- Option 5th floor (needs variance)
- **Prefer brick exterior.**

Parking a problem.

Let the **courtyard be open to the public** ala North Main and Pearl District courtyards.

- Lots of light.

Like the unit prices—most affordable.

- **Like the density**
- **Don't like the architecture** particularly
- My #2 pick overall.

Does **not fit character** to meld in with rest of downtown.

- No creativity.

I love this **design the best**.

- The square footage would encourage **owner/occupancy** and the prices are reasonable.
- Love the 2nd floor garden area.

Building **design is too modern** to go with older existing structures in Milwaukie

- No parking for retail.
- **Don't like solid building and height along McLoughlin**
- My choice #3

Not enough parking—we need public parking access from City Hall

- **Love the “park” effect**—water features
- Need to be able to have restaurant on McLoughlin side—perhaps 5th floor?
- **5th floor UNLIKELY!**
- **Size of units good**
- **Visual aesthetics excellent**
- Is the park effect “wasted” space?
- This would be my 3rd choice.

It looks as though it “preferred developer” was well-fed with information to help win the proposal.

- My main concern was the complete lack of quality or constancy demonstrated in the North Main Project.
- Fool me once, shame on you, fool me twice, shame on Milwaukie.

The central courtyard is nice, but does not give the public a view of the river.

- **Nice design**
- No optional **fifth floor—should be avoided**. If there's to be an upper floor, it should be on the side away from 99E.
- **Not enough parking.**

WINKLER

The Winkler proposal just seems too small. The proposed sustainability features are all positive, but it should have one more story above grade and a parking level below -- rather than part of the main floor.

Didn't like.

2nd pick:

- **Not enough style**
- No **parking**
- Do not like colors
- Meets code on height
- Does not blend with City Hall

Looks like your calculation is more accurate than the other 2 proposals (good job!)

- The design is the weakest though because the side on McLoughlin is completely flat.
- Suggestion = the pyramid shape or u-shape would look much better and actually would help cut your cost (more units) and more units with views.
- Any ideas on feng shui?
- Partial underground parking is suggested to reduce congestion on traffic.
- Are energy-efficient appliances included?
- I like the site's water quality containment.

Very interesting.

- Basically had a good feel
- Like the **brick** that would go well with City Hall
- Liked the cap trim at edge of roof—some needed definition to top of building.
- Think you could work with them to get good design.

Couldn't this complex be **set back** from Main Street a little?

- It looks like **parking would be a problem** with this design. Visitors and people visiting the retail space would need more parking than is available on the street.
- This design was the least clear of the 3 displayed. I **couldn't visualize it as well**. It's kind of difficult to comment on it.

Vague design drawings—difficult to visualize overall plan. No details.

Milwaukie is a city of too many flat rooflines. In order to achieve architectural interest we need roofs that are peaked and gabled. The best example of this is the new Gramore development in Lake Oswego. That is a GREAT DESIGN!! We want it to look like that!!

- I like the first floor retail idea but **get rid of the flat roof** look please.
- I liked this design least of all because of the boxy look with **boring exterior** and the flat roof.
- I'm for sacrificing the height of the building for density in favor of a good roof design!

Not so good!

- **Too much space given to the car** instead of retail.
- What does this do for the rest of the community?
- **Ho hum!!!**

Don't like **parking on McLoughlin**. It's distracting and does not do anything to highlight the building's architecture.

- Keep the building height low—the views are for all.

An **unimaginative** presentation.

I **prefer 3-4 stories** max.

- The **green roof** over parking is a nice idea.
- The **building design is boring** and highly uncreative.
- The design is too boring and has no street appeal.
- If they had shown a design resembling the "peaked roof" sample on their portfolio board I'd be more impressed.
- This present design for the Texaco Site is "blah"—has little or no street appeal.
- Every new building project in Milwaukie is a critical opportunity to make a major design statement. Each new building should show visual interest, beauty, balance, harmony and fit with the surrounding environment. Hopefully the architects would also keep Milwaukie's unique heritage in mind, not just give us generic, cookie-cutter solutions.

Pleasing architecturally—welcoming, opening to the north

- Like the **green roof**
- No solar!
- **Nice setbacks** from sidewalk

This is actually my favorite building.

- It is **very attractive** and seems to me to blend well with existing structures.
- Looks like it belongs at the corner of McLoughlin & Harrison.
- I also like the **sustainability, cost of finished units and parking plans**.

This is my least favorite because:

- Too much of a large vertical building—just a **big block—ugly**
- Hallways not inviting
- A lot of **wasted real estate set aside for parking!**
- Good idea about the **eco roof** but put it on top of the living units.

Like this development the best.

- Appreciate the **greenspace and environmental** friendly.
- **Eco roof** is great
- **Brick with tile is attractive**.

Parking a problem.

It is well-intentioned for **affordable** price points

- Building **design is just OK, nothing outstanding**
- My overall #3 pick.

Too **modern; stark** yuk.

I'm not a fan of this **building design** on the exterior

- 612 SF would not encourage the owner occupant.

I **like the height** of the building—the style would fit with existing structures.

- **No parking for retail.**
- My choice #2

Not enough parking on site for being across from City Hall

- Like the **size and number of units**
- Not sure I like the L-shape
- **View from McLoughlin still ugly** and not conducive to getting people into Milwaukie
- This would be my 2nd choice.

I very much like the effort to avoid overpowering McLoughlin Blvd, avoiding a tunnel effect.

- I also **like that the plan is no more than four stories**.
- The building proposed has substantially less space for use, which makes the plan less advantageous economically.
- The **design isn't very attractive**; too much like North Main Village.

Not a creative use of scale.

- **Lacking character.**

I do not like having the **parking facing McLoughlin** (or any street...the other two are inside or underground).

- The McLoughlin face of this building **MUST** be oriented more toward public use.
- Any setbacks for café seating, etc. should be on McLoughlin first, facing the river.
- The river is Milwaukie's crown jewel.
- Driving in to Milwaukie should be inviting—not a parking lot. Should have **cafes on McLoughlin**.
- Surface of building not textural enough (step in and out with window wells etc).
- Very **monolithic**. Yuck!
- **I don't find this concept very interesting, aesthetically pleasing or imaginative.**
- Structure does not speak to me or seem inviting.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenny Asher, Community Development and Public Works Director

Subject: Intergovernmental Agreement Authorization for the South Corridor Phase 2 (Portland-Milwaukie) Light Rail Refinement Study and Supplemental Draft Environmental Impact Statement

Date: April 4, 2007 for April 17, 2007 Meeting

Action Requested

Authorize the City Manager to execute an Intergovernmental Agreement (IGA) with Metro for the purposes of completing a Refinement Study and Supplemental Draft Environmental Impact Statement (SDEIS) on the South Corridor Phase 2 light rail project. The IGA commits the City to contributing \$200,000 toward a \$1.9 million pool of local match money, enabling Metro to secure and expend approximately \$2,000,000 of Federal Transit Administration funds on the studies.

Background

The South Corridor Phase 2 (Portland – Milwaukie) Light Rail Project Refinement Study and SDEIS will advance Phase II of the Locally Preferred Alternative (LPA) with possible design options for the South Corridor Light Rail Project. Metro is the local lead agency for the project. Other participating agencies include the Cities of Portland and Milwaukie, Multnomah County, Clackamas County, FTA, TriMet, and the Oregon Department of Transportation (“ODOT”).

A high-capacity transit connection between Portland and Milwaukie has been a focus of interest and study for more than twenty years. Three environmental impact statement documents have bearing on the South Corridor Phase II Portland-Milwaukie SDEIS project. The *South/North Light Rail Project Draft Environmental Impact Statement* (February 1998) included a Milwaukie alignment to Clackamas Town Center, the Portland Mall segment and Caruthers Bridge Willamette River crossing. Although the document expired in 2001, it provided the starting point for subsequent work. The *South*

Corridor Supplemental Draft Environmental Impact Statement (December 2003) examined a combined I-205, Portland Mall, Milwaukie light rail alignment.

The *Downtown Amendment to the South Corridor SDEIS* (October 2004) adopted a two-phase strategy. The first phase includes the Clackamas Town Center to Gateway and Portland Mall segments that are currently underway; the second phase would be Milwaukie Town Center to Portland Mall segment. At the time the amendment was adopted several outstanding issues remained concerning the Milwaukie segment. These issues included alignment, terminus and park-and-ride locations. The amendment established the Milwaukie Working Group to address these outstanding issues. The Working Group recommended a change in alignment, a new terminus location, and developed a list of proposed park-and-ride locations.

One purpose of this scope of work is Refinement Work that will develop and analyze the Working Group recommendations. The result of this Refinement Work will be a Refinement Report that will provide sufficient information to support a decision on whether alternatives in addition to the Locally Preferred Alternative (LPA) will be carried into the SDEIS in addition to the LPA. It is anticipated that a design option building on the recommendations from the Working Group will be carried into the SDEIS.

Changes in the Willamette River crossing area, including the introduction of the Portland Streetcar and the South Waterfront-OHSU Tram, as well as significant land use changes in the South Waterfront area suggest a re-examination of the design, costs and benefits of the river crossing location.

Additionally, the Federal Transit Administration has developed a cost effectiveness threshold, the Transportation System User Benefit (TSUB) that must be met for a project to gain federal funding. Information related to all of these issues related to both ends of the alignment will effect the TSUB evaluation.

The term of the IGA is from October 1, 2006 to September 30, 2011. The project partners providing match for project include:

\$500,000 TriMet
\$100,000 TriMet (in kind)
\$600,000 City of Portland Office of Transportation (PDOT)
\$200,000 City of Milwaukie
\$300,000 Oregon Department of Transportation
\$200,000 Clackamas County

Under the terms of the IGA, Metro will provide the following services on behalf of the City and the other project partners:

- Overall Project Management
- Schedule and budget management
- Consultant and work product management
- FTA grantee and liaison

- Committee staffing
- Technical assistance in areas of conceptual engineering, transportation analysis, financial analysis and environmental analysis.
- Public involvement coordination
- Management of the decision-making process (including documentation and support for the Metro Council, Project Steering Committee, Transportation Policy Alternatives Committee, and Joint Policy Advisory Transportation Committee)

The IGA requires City staff to:

- Attend project meetings
- Participate in related project events
- Maintain a principal contact person for Metro's Project Manager and the selected consultant team
- Monitor and coordinate the work of the consultant team
- Review and approve deliverables produced and submitted by the consultant team

A complete scope of work is attached to this report as Attachment 2.

Concurrence

Under two previous Budget Committee actions (adoption of the FY 2005-06 Budget and adoption of the 2006-07 Budget), the Budget Committee (which includes the Council) and the City Manager expressed concurrence with the action. The City Attorney has reviewed the IGA and concurs with the action.

Fiscal Impact

The city's general fund budget included the \$200,000 contribution in fiscal year 2005-06, though the funds were not expended in that fiscal year because the project had not gotten underway. The Budget Committee reauthorized the contribution in fiscal year 2006-07. The action will cause the city to expend \$200,000 from its general fund account. This is a budgeted expenditure and will not result in any unanticipated fiscal impacts.

Work Load Impacts

The action commits the City to considerable workload, as the project requires ongoing city staffing and support. This work falls principally to the Community Development and Community Services Departments, although the Planning Department and Engineering Department will likely be called on to contribute time and expertise. This workload has been considered by the affected department heads, and each are prepared to absorb the work. Council should be aware, however, that the project will consume substantial

staff resources and will limit the amount of other work that these departments will be able to execute during the study period (anticipated to end late summer 2008).

Alternatives

Council may direct staff to renegotiate terms of the IGA with Metro, should Council identify specific and clear objections or concerns with the attached agreement. Based on prior commitments, project needs, the leveraging of federal funds and the status of the work, staff believes Metro would not be open to a renegotiation of Milwaukie's stated dollar match amount.

Attachments

1. Resolution
2. IGA

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH METRO, FOR THE PURPOSE OF COMPLETING A REFINEMENT STUDY AND SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT (SDEIS) ON THE SOUTH CORRIDOR PHASE 1 LIGHT RAIL PROJECT.

WHEREAS, the South Corridor Phase 2 (Portland – Milwaukie) Light Rail Project Refinement Study and SDEIS will advance Phase II of the Locally Preferred Alternative (LPA) with possible design options for the South Corridor Light Rail Project; and

WHEREAS, the IGA commits the City to contributing \$200,000 toward a \$1.9 million pool of local match money, enabling Metro to secure and expend approximately \$2,000,000 of Federal Transit Administration funds on the studies; and

WHEREAS, project partners include TriMet, City of Portland Office of Transportation, Oregon Department of Transportation and Clackamas county; and

WHEREAS, Metro will be responsible to handle the overall Project Management; and

WHEREAS, a high-capacity transit connection between Portland and Milwaukie has been a focus of interest and study for more than twenty years; and

WHEREAS, City of Milwaukie city councils have previously endorsed light rail transit alignments and investments in the South Corridor, through resolutions 12-2003 and 31-2004; and

WHEREAS, there are several outstanding issues from prior studies requiring review and resolution, including alignment location, southern terminus location, and park-and-ride locations; and

WHEREAS, one purpose of this scope of work is Refinement Work that will develop and analyze these issues for possible inclusion in the SDEIS study; and

WHEREAS, two previous Budget Committee actions (adoption of the FY 2005-06 Budget and adoption of the 2006-07 Budget) have endorsed the City’s participation in the study and budgeted \$200,000 in funds for contribution to the local match pool; and

WHEREAS, City Council has reviewed the IGA and agrees that the terms of the agreement benefit both the City and Metro; and

WHEREAS, the City Attorney has reviewed the IGA and concurs with the action.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute an Intergovernmental Agreement (IGA) with Metro that is substantially in conformance with the IGA reviewed by Council on April 17, 2007, and any other necessary

documents to make the IGA binding, for the purpose of completing a Refinement Study and Supplemental Draft Environmental Impact Statement (SDEIS) on the South Corridor Phase I Light Rail Project.

Introduced and adopted by the City Council on April 17, 2007.

This resolution is effective on April 17, 2007.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

**INTERGOVERNMENTAL AGREEMENT FOR THE
SOUTH CORRIDOR – PHASE II: PORTLAND – MILWAUKIE LIGHT RAIL
REFINEMENT STUDY AND
SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT**

This Intergovernmental Agreement (this “Agreement”) is entered into between Metro, an Oregon metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, hereinafter referred to as “Metro,” and the City of Milwaukie, hereinafter referred to as the “City of Milwaukie.”

RECITALS:

1. As the Portland region’s Metropolitan Planning Organization (“MPO”), the parties anticipate that Metro will be the recipient, contingent upon federal and state appropriation and delivery, of approximately \$2,000,000 in Federal Transit Administration (“FTA”) Congestion Mitigation and Air Quality (CMAQ) funds for the South Corridor Phase II: Portland - Milwaukie Light Rail Project Refinement Study and Supplemental Draft Environmental Impact Statement (SDEIS), hereinafter referred to as the “Project.”
2. The Project will advance Phase II of the Locally Preferred Alternative (LPA) with possible design options for the South Corridor Light Rail Project. Metro is the local lead agency for the Project. Other agencies that are anticipated to participate in the Project by providing matching funds or otherwise include the Cities of Portland and Milwaukie, Multnomah County, Clackamas County, FTA, TriMet, and the Oregon Department of Transportation (“ODOT”).
3. The Project objective, as set forth more fully in Exhibit A attached hereto and incorporated herein, is to complete the Supplemental Draft Environmental Impact Statement for the Portland-Milwaukie Light Rail Project. The Project updates the 1998 South/North Draft Environmental Impact Statement (DEIS), the 2003 South Corridor Project SDEIS, including the 2003 Downtown Amendment, and recommendations made by the Milwaukie Working Group established by the Downtown Amendment.
4. It is anticipated that the following governmental entities will provide matching funds for the Project, pursuant to and contingent upon future agreements being entered into with the following entities in the following anticipated amounts:
 - \$500,000 TriMet
 - \$100,000 TriMet (in kind)
 - \$600,000 City of Portland Office of Transportation (PDOT)
 - \$200,000 City of Milwaukie
 - \$300,000 Oregon Department of Transportation
 - \$200,000 Clackamas County
5. By authority granted in ORS Chapter 190.110, units of local government may enter into agreements to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
6. The City of Milwaukie intends to expend its own unrestricted funds on this Project to perform the work set forth herein, and the City of Milwaukie has agreed to provide Metro with matching funds for this Project as set forth herein.

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

A. TERM OF AGREEMENT, PROJECT DESCRIPTION, BUDGET, AND SCHEDULE

1. This Agreement is effective upon the last date of execution as set forth below. The termination date of this Agreement is September 30, 2011, unless terminated earlier under the provisions of this Agreement, or extended by an amendment to this Agreement.
2. The Project is described in the attached Exhibit A Scope of Work, Exhibit B Budget, and Exhibit C Schedule, which are incorporated herein by this reference.

B. METRO AGREEMENTS

1. Metro will assign a Project Manager for this Agreement who will be Metro's principal contact person regarding administration of this Agreement.
2. Metro will be responsible for management of the Project and will make reasonable efforts to ensure that the schedule and budget are met. Metro staff will serve as the Project and task managers for the Project. Metro will manage all consultants hired by Metro and is responsible for making reasonable efforts to ensure that all products are produced in a timely manner, receive adequate technical review, and are of high quality.
3. Metro will serve as the FTA grantee for the Project and as such will be the chief liaison with the FTA in matters relating to the Project. When issues with FTA arise, Metro will respond directly to the FTA or will coordinate a response with regional partners.
4. Metro will staff formal and informal study committees including the Steering Committee, Project Management Group and Technical Advisory Committee, the Project Advisory Committee and other meetings as appropriate. This support includes technical analysis, public involvement activities and drafting staff recommendations. Metro will request support from partner jurisdictions when required.
5. Metro Task Managers will oversee the consultants hired by Metro in the areas of conceptual engineering, public involvement, transportation analysis, financial and technical assistance and environmental analysis. Metro will also manage the flow of data to the Technical Advisory Committee, Project Management Group, Steering Committee and other groups and develop the product review schedule for the FTA.
6. Metro will manage the public involvement process for the Project. Metro staff will lead the Public Involvement Team that will include representatives of local jurisdictions and agencies. Metro will provide overall coordination and oversight and will notify City of Milwaukie staff prior to conducting, or directing consultants to conduct, public involvement activities in the City of Milwaukie.
7. Metro will manage the decision-making process for the Project, including the selection of the Locally Preferred Alternative (LPA) and Land Use Final Order (LUFO). In addition, Metro will facilitate the narrowing of alternatives and also prepare decision documents in support of these milestones. The Metro Council, as well as the Transportation Policy Alternatives Committee (TPAC) and the Joint Policy Advisory Committee on Transportation (JPACT), will be supported by Metro staff (with assistance from agency and jurisdiction staff) through the decision process.

8. Metro shall invoice City of Milwaukie for the Matching Funds outlined in this Agreement as required by the funding Agreement between Metro and FTA.

C. CITY OF MILWAUKIE AGREEMENTS

1. Metro has executed an agreement with TriMet for the in-kind portion of the matching funds and is in the process of developing agreements with its jurisdictional partners for the remaining amounts set forth in Recital #4 of this Agreement. City of Milwaukie shall provide \$200,000 as matching funds for the Project. Within thirty (30) days of receipt of an invoice from Metro, City of Milwaukie shall pay Metro such matching funds.
2. City of Milwaukie shall perform the work ("Work") and provide the deliverables and services ("Work Product") described in Exhibit A for which City of Milwaukie is identified as being responsible.
3. The City of Milwaukie represents and warrants that it shall perform the Work described in this Agreement using unrestricted, non-federal funds, and will not be a recipient of funds appropriated pursuant to this Project. To the extent that the City of Milwaukie is ever held to be a recipient of funds for this Project, the City of Milwaukie shall be liable for its breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon breach of any such condition that requires Metro to return funds to any funding source, or otherwise damages Metro in any way, defend, indemnify and hold harmless Metro for such damage, up to the legal limits of such indemnification.
4. City of Milwaukie shall perform the Work as an independent contractor. City of Milwaukie shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the Work under this Agreement. City of Milwaukie shall be responsible for providing employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.
5. City of Milwaukie shall be responsible for all costs associated with performance of the Work and to fulfill its obligations under this Agreement.
6. City of Milwaukie agrees to cooperate with Metro, and at the request of Metro, agrees to:
 - a. Meet with the Metro's Project Manager; and
 - b. Participate in Project related events.
7. City of Milwaukie shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement .
8. City of Milwaukie shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City of Milwaukie shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City of Milwaukie's performance. City of Milwaukie acknowledges and agrees that Metro, FTA, U.S. Secretary of Transportation, Comptroller of the United States or their authorized representative shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. City of Milwaukie also acknowledges and agrees that it shall retain such documents for a period of six

years, or such longer period as may be required by applicable law, after termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Copies of applicable records shall be made available upon request.

9. City of Milwaukie shall not enter into any subcontracts to accomplish the Work unless written approval is first obtained from Metro.
10. If City of Milwaukie engages a personal services contractor(s) to accomplish any Work under this Agreement, City of Milwaukie shall:
 - a. Provide Metro's Project Manager with the opportunity to participate in the personal services contractor(s) selection;
 - b. Select personal services contractor(s) in accordance with applicable law;
 - c. Provide a project manager to:
 - i. Be City of Milwaukie's principal contact person for Metro's Project Manager and the personal services contractor(s) for the Work;
 - ii. Monitor and coordinate the work of the personal services contractor(s); and
 - iii. Review and approve deliverables produced and submitted by the personal services contractor(s).
11. All Work Product of City of Milwaukie that results from this Agreement will be considered the joint Work Product of both City of Milwaukie and Metro; and the City of Milwaukie and Metro shall both be deemed the author of such work product. City of Milwaukie hereby irrevocably assigns to Metro all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City of Milwaukie shall execute such further documents and instruments as Metro may reasonably request in order to fully vest such rights in Metro.
11. As applicable, City of Milwaukie shall submit two hard copies and one electronic copy, either by e-mail or on a Compact Disc in MS Word or Excel, of all final Work Product produced in accordance with this Agreement to Metro's Project Manager.
12. Without limiting the generality of the foregoing, City of Milwaukie expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections V and 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.
13. All employers, including City of Milwaukie, 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. City of Milwaukie shall ensure that each of its subcontractors complies with these requirements.

14. City of Milwaukie represents and warrants to Metro that:

- a. City of Milwaukie is duly formed and operating under applicable State of Oregon law;
- b. City of Milwaukie has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder, and to undertake and complete the Work;
- c. This Agreement has been authorized pursuant to City of Milwaukie official action that has been adopted and authorized in accordance with applicable state law;
- d. This Agreement is duly authorized and executed and delivered by an authorized officer(s) of City of Milwaukie and constitutes its legal, valid and binding obligations enforceable in accordance with its terms;
- e. The authorization, execution and delivery of this Agreement by City of Milwaukie, the observation and performance of its duties, covenants, obligations and Agreements hereunder, and the undertaking and completion of the Work do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or assets.

D. GENERAL PROVISIONS

1. This Agreement, and funding for the Project, is expressly contingent upon Metro successfully entering into an Agreement between Metro and the FTA, and the other governmental partners who are anticipated to provide matching funds. This Agreement and funding for the Project is also expressly contingent upon Metro's the appropriation and Metro's receipt of CMAQ Funds in the amounts and at the times anticipated herein. If such Agreements with the FTA and the matching partners, or such appropriation and receipt of funding does not occur, then this Agreement shall terminate and all terms and conditions herein shall be null and void.
2. Budget modifications and material adjustments in the Work described in Exhibit A must be made by written amendments to this Agreement.
3. This Agreement may be terminated by mutual written consent of both parties. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
4. Metro may unilaterally terminate this Agreement effective upon delivery of written notice to City of Milwaukie in accordance with the following conditions:
 - a. Should City of Milwaukie fail to complete the Work within the time specified in this Agreement, including any extensions thereof, or fail to perform any of the provisions of this Agreement, and not correct any such failure within ten (10) days of receipt of written notice;
 - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the Work to be performed under this Agreement is prohibited.
 - c. If Metro fails to receive appropriations or other expenditure authority sufficient to allow Metro, in the exercise of its reasonable administrative discretion, to continue the Project.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

4. If the Project is terminated, any unexpended matching funds will be distributed pro-rata among the Project partners that provided matching funds for the Project, proportionate both to the amounts initially contributed by the partners and the amounts spent.
5. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given regarding this Agreement shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the City of Milwaukie or Metro representative at the address or number set forth in Paragraph 6 below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice correctly addressed and sent by mail shall be effective five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed given when the transmitting machine generates proof of receipt of the transmission. Such facsimile transmissions must be confirmed by telephone notice to the Project Manager set forth in Paragraph 6, below. Any communication or notice by personal delivery shall be deemed given when actually delivered.
6. All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Metro – Bridget Wiegart
 600 N.E. Grand Avenue
 Portland, OR 97232-2736
 Phone: (503) 797-1775

City of Milwaukie – Ken Asher
 6101 SE Johnson Creek Boulevard
 Milwaukie, OR 97206
 Phone: (503) 786-7654

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the City of Milwaukie and Metro that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by either party of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.
8. This Agreement and the 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 all 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 either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

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

City of Milwaukie

Metro

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Legal Sufficiency:

City of Milwaukie Legal Department

EXHIBITS:

A: Project Scope of Work

B: Project Budget

C: Project Schedule

Exhibit A—Scope of Work
 Metro – City of Milwaukie
 South Corridor Phase II - Portland-Milwaukie Light Rail
 Refinement Work / Refinement Report
 Supplemental Draft Environmental Impact Statement

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1.0 Background

A high-capacity transit connection between Portland and Milwaukie has been a focus of interest and study for more than twenty years. Three environmental impact statement documents have bearing on the South Corridor Phase II Portland-Milwaukie SDEIS project. The *South/North Light Rail Project Draft Environmental Impact Statement* (February 1998) included a Milwaukie alignment to Clackamas Town Center, the Portland Mall segment and Caruthers Bridge Willamette River crossing. Although the document expired in 2001, it provided the starting point for subsequent work. The *South Corridor Supplemental Draft Environmental Impact Statement* (December 2003) examined a combined I-205, Portland Mall, Milwaukie light rail alignment.

The *Downtown Amendment to the South Corridor SDEIS* (October 2004) adopted a two-phase strategy. The first phase includes the Clackamas Town Center to Gateway and Portland Mall segments that are currently underway; the second phase would be Milwaukie Town Center to Portland Mall segment. At the time the amendment was adopted several outstanding issues remained concerning the Milwaukie segment. These issues included alignment, terminus and park-and-ride locations. The amendment established the Milwaukie Working Group to address these outstanding issues. The Working Group recommended a change in alignment, a new terminus location, and developed a list of proposed park-and-ride locations.

One purpose of this scope of work is Refinement Work that will develop and analyze the Working Group recommendations. The result of this Refinement Work will be a Refinement Report that will provide sufficient information to support a decision on whether alternatives in addition to the Locally Preferred Alternative (LPA) will be carried into the SDEIS. In addition to the LPA, it is anticipated that a design option building on the recommendations from the Working Group will be carried into the SDEIS.

Changes in the Willamette River crossing area, including the introduction of the Portland Streetcar and the South Waterfront-OHSU Tram and significant land use changes in the South Waterfront area suggest a re-examination of the design and costs and benefits would be prudent. Also, the Federal Transit Administration has developed a cost effectiveness threshold, the Transportation System User Benefit (TSUB) that must be met for a project to proceed. Information related to all of these issues could have an effect of the TSUB.

This scope of work describes how the work should proceed to address and resolve these issues, as well as the process and scope of work to produce the SDEIS. Several jurisdictions and agencies are participating as partners in this project. Metro is the lead agency for this phase of the project.

2.0 Components of the Scope of Work

There are two components of this scope of work for the Portland-Milwaukie Light Rail project. The first component, identified as "Refinement Work," is refinement and conceptual design work and a Refinement Report that will identify alternatives that will be further developed and analyzed in the SDEIS. The second component is development of the alternatives, analysis, documentation, and production of the SDEIS. The City of Milwaukie has roles and responsibilities as defined herein for the refinement work and the SDEIS. The roles and responsibilities of the City of Milwaukie fall into three main categories: 1.) technical support and review, 2.) policy support and review, and 3.) public involvement.

This scope of work document is organized as follows. Metro's role is described in Section 3. The tasks and associated responsibilities for the Refinement Work and Refinement Report

are described in Section 4. The tasks and associated responsibilities for the SDEIS are described in Section 5.

3.0 Metro's Responsibilities

Metro is responsible for managing the project through the publication of the Final Environmental Impact Statement, which includes Refinement Work and the Draft Environmental Impact Statement. The Refinement Work will complete cost evaluations and develop final recommendations on the design options carried into the SDEIS.

3.1. Project Management

Metro will be responsible for management of the study and will make reasonable efforts to ensure that the schedule and budget are met. Metro staff serve as the project manager and task managers for the SDEIS. Metro also manages all consultants and is responsible for making reasonable efforts to ensure that all products are produced in a timely manner, receive adequate technical review and are of high quality.

3.2. FTA Coordination

Metro will serve as the FTA grantee for the study and as such will be the chief liaison with the FTA in matters relating to the South Corridor Study. When issues with FTA arise, Metro is charged with responding directly or coordinating a response with regional partners.

3.3. Committee Support

Metro staffs formal and informal study committees including the Steering Committee, Project Management Group and Technical Advisory Committee, the Project Advisory Committee and the Corridor-wide Assemblies. This support includes technical analysis, public involvement activities and drafting staff recommendations. Metro will request support from partner jurisdictions when required.

3.4. Technical Work and Consultant Management

Metro Task Managers will oversee the consultants in the areas of conceptual engineering, public involvement, transportation analysis, financial and technical assistance and environmental analysis. Metro also manages the flow of data to the Technical Advisory Committee, Project Management Group, Steering Committee and other groups and develops the product review schedule for the FTA.

3.5. Public Involvement

Metro will manage the public involvement process for the SDEIS. Metro staff will lead the Public Involvement Team that will include representatives of local jurisdictions and agencies. Metro provides overall coordination and oversight.

3.6. Decision Process

Metro will manage the decision-making process for the study, including the selection of the Locally Preferred Alternative (LPA) and Land Use Final Order (LUFO). In addition, Metro will facilitate the narrowing of alternatives and also prepare decision documents in support of these important milestones. The Metro Council, as well as the Transportation Policy Alternatives Committee (TPAC) and the Joint Policy Advisory Committee on Transportation (JPACT), will be supported by Metro staff (with assistance from agency and jurisdiction staff) through the decision process.

4.0 Refinement Work and Refinement Report

This effort will examine whether an additional design concept should be carried into the SDEIS scoping process, and if so, what the details of that concept will be. The project tasks

are described first, and followed with how Milwaukie will contribute to completion of the project task.

4.1. Technical Support and Review Task

Task Objective: The purpose of this task is to review and analyze the data and analysis developed by Metro and TriMet that will be used to identify and assess conceptual alternatives. This task will include analysis of the current Locally Preferred Alternative (LPA) as well identifying other locations for transit stations, park-and-ride lots and alignment and southern terminus for light rail between Portland and Milwaukie.

4.1.1 Review cost effectiveness evaluation

Task Objective: To determine whether the LPA has the potential to achieve a satisfactory cost-effective rating in the New Starts process, and to identify those elements of the project that could be modified to improve the project's TSUB rating and federal competitiveness. TriMet and Metro will conduct a sensitivity analysis to evaluate the cost effectiveness of possible scenarios and produce a white paper memorandum summarizing the results.

The specific responsibilities of Milwaukie are as follows:

- a. Review 2025 travel demand forecasts prepared by Metro based on LPA alignment and a baseline alternative
- b. Provide input on locations for southern terminus, alignment, transit stations, and park-and-rides for sensitivity analysis
- c. Review and provide input on results of sensitivity analysis results

4.1.2 Identify Milwaukie design options

Task Objective: This effort will determine whether an additional Milwaukie design option should be carried into the SDEIS scoping process for broader public review and, if so, define the likely location of the alignment, stations and park-and-rides. This task will use the Working Group findings and the results of the sensitivity analysis.

The specific responsibilities of Milwaukie are as follows:

- a. Work with Metro and TriMet to identify possible alignments, station locations and park-and-ride locations
- b. Work with or assist Metro and TriMet in developing the conceptual alternatives
- c. Identify potential land use impacts and issues for further considerations in the study.

4.2. Public Involvement

Task Objective: The purpose of this task is to ensure that stakeholders are consulted throughout the refinement work and development of the Refinement Report.

The specific responsibilities of the City of Milwaukie are as follows:

- a. Participate with Metro and TriMet in meetings with stakeholders.
- b. Participate with Metro and TriMet in implementation of the Public Involvement Plan

4.3. Refinement Report

Task Objective: The purpose of this task is to produce the Refinement Report. This Report will combine work results from above tasks with work of the City of Portland that will define the location of the Willamette River crossing.

The specific responsibility of the City of Milwaukie is as follows:

- a. Coordinate with TriMet and Metro to develop Report outline.

- b. Review and comment on Report drafts.
- c. Participate in the decision-making process.

5.0 Draft Environmental Impact Statement

5.1. *Conceptual Design*

Task Objective: The purpose of this task is to develop conceptual designs for light rail in the Milwaukie Corridor for analysis in the DIES. Concepts will be based on the recommendations of the Refinement Report and the existing LPA. The objective is to develop the conceptual design to the 15% engineering level, which is necessary to accurately determine the capital costs of the project and the impacts of constructing the selected alternative. Throughout the conceptual engineering process, the alternatives will be refined to reduce identified impacts and to include potential mitigation for unavoidable impacts. This will be accomplished through coordination with the traffic and environmental consultants.

Method: TriMet, with consultant assistance, will refine the existing alignment drawings and develop concept designs based the Refinement Report. The drawings will then be reviewed by the Technical Advisory Committee (TAC), Project Management Group (PMG), and in public workshops and then be revised. Some areas will require more focused design work that may be the subject of design charrettes or community dialogues. These areas include the Caruthers Bridge, Southeast Portland (including the intersection at 11th/12th Avenue, the Brooklyn neighborhood, and SE 17th Avenue alignment), the Tillamook Branch alignment, the City of Milwaukie station location, and the southern terminus.

The Conceptual Design Task will be broken into the following sub-tasks:

- Community Dialogues
- Light Rail Design Support
- Bridge Structural Support Analysis
- Roadway Design and Traffic Engineering Support
- Alignment Design Options
- Light Rail Station Facilities and Park-And-Ride Design
- Utilities Support
- Environmental Support
- Capital Costing
- Operating Costs And
- Quality Control And Assurance.

Responsibilities Metro will provide overall coordination for this task. TriMet, with consultant assistance will be responsible for developing the conceptual design for the light rail alternatives. Metro will coordinate public involvement related to the review of the alternatives.

5.1.1. Community Dialogues

The community dialogues will involve sharing current designs and rationale with neighborhood businesses and residents, soliciting response and developing potential modifications prior to the environmental work proceeding.

The specific responsibilities of the City of Milwaukie for this sub-task are as follows:

- a. Coordinate with TriMet and Metro to develop and maintain list of stakeholders.
- b. Participate in community dialogues.

5.1.2. Light Rail Design Support

The LRT design support task includes providing a refinement of the light rail alignment and station locations between Portland and Milwaukie. Specific areas of concern include:

- refinement of the bridge crossing across the Willamette River
- roadway and traffic impacts related to the light rail alignment
- potential design options for the light rail alignment south of SE Tacoma Street
- the southern terminus
- light rail station location in the City of Milwaukie
- park-and-ride locations.

This work will include the right-of-way needs and how these needs could impact the railroad, future roadway plans, buildings, utilities and neighborhoods.

The specific responsibilities of the City of Milwaukie for this sub-task are as follows:

- a. Provide data and actively participate in the development of light rail alignment, station and park-and-ride location, and southern terminus alternatives
- b. Review and comment on plan and profile drawings and cross section drawings.
- c. Provide technical review and support.
- d. Provide policy support and review.

5.1.3. Bridge Structural Support

The bridge structural support task involves analysis of the Caruthers Bridge crossing and one other bridge crossing over the Willamette River. The Caruthers Bridge provides access across the Willamette River for light rail vehicles only. The City of Portland, TriMet and Metro are currently studying an additional bridge crossing location and a recommendation for an additional crossing location will be developed. Alternative bridge locations are being evaluated to minimize the cost and impacts and maximize the ridership potential. Both bridge options included in the SDEIS will be evaluated for light rail and streetcar only and light rail, streetcar and bus.

The specific responsibility of the City of Milwaukie for this sub-task is as follows:

- a. Provide policy review

5.1.4. Roadway Design and Traffic Engineering Support Task

The roadway design and traffic engineering support task relates to roadway and traffic improvements or mitigation as it relates to the light rail alignment. Specific areas of concern include the intersection of SE 11th/12th Avenues and SE Clinton Street, and freight and bus access on SE 17th Avenue.

The specific responsibilities of the City of Milwaukie for this sub-task are as follows:

- a. Provide data and actively participate in the development of options along SE 17th Avenue.
- b. Review and comment on plan and profile drawings and cross section drawings.

5.1.5. Light Rail Alignment Design Options Task

The light rail alignment design options task includes evaluating two potential light rail alignments design options between SE Tacoma Street and the City of Milwaukie station.

The specific responsibilities of the City of Milwaukie for this sub-task are as follows:

- a. Provide data and actively participate in evaluating light rail alignments between SE Tacoma Street and the City of Milwaukie station.
- b. Review and comment on plan and profile drawings and cross section drawings.

5.1.6. Utilities Support Task

The utilities support task includes developing a better understanding of the major utilities that exist along LRT alignments. Consultants will coordinate with TriMet to assure that the capital cost include allowances for utilities.

The specific responsibility of the City of Milwaukie for this sub-task is as follows:

- a. Provide data as requested

5.1.7. Environmental Support Task

The environmental support task involves providing information on issues related to wetlands, water quality, and floodplain fill.

The specific responsibility of the City of Milwaukie for this sub-task is as follows:

- a. Provide data as requested

5.1.8. Capital Costing Task

The capital costing task includes assisting with the development of capital cost for the alternatives. TriMet will develop the capital cost estimates. Costs will be calculated in both year 2007 and year of expenditure dollars.

The specific responsibility of the City of Milwaukie for this sub-task is as follows:

- a. Provide data as requested

5.1.9. Quality Control And Assurance Task

The quality control and assurance task is intended to assure that design and capital cost are accurate and will be consistent with the quality control plan for the overall South Corridor Study.

The City of Milwaukie has no assigned responsibility for this sub-task.

5.2. *Definition of Alternatives Report/Plan and Profiles*

Objective. The purpose of this task is to prepare a report that defines study related improvements for each of the alignment alternatives and options. These improvements will be evaluated in the SDEIS.

Methods. Significant work has been done to define the potential alternatives to be studied in the Milwaukie corridor and a LPA was adopted in 1998 and again in 2003. Further refinement of the LPA is currently underway. Recommendations from the Project Management Group and Project Steering Committee will further refine the alignment. Staff will continue to work with the Technical Advisory Committee, and stakeholders to assess and refine the design. Consultant staff will prepare draft designs on roll maps that display conceptual designs. These maps will be presented in a series of public meetings. Based on input from consultant designers, jurisdictional staffs and the public, designs will be modified. Either the roll maps or plan and profile drawings will be issued with the Detailed Definition of Alternatives Report. These drawings will indicate where design changes are likely to occur. Further refinement of designs will be documented in a revised set of plan and profile drawings.

Relationship to Other Tasks. The Detailed Definition of the Alternatives Report along with the plan and profile drawings will define the project-related improvements that will be studied during the evaluation of environmental impacts.

Responsibilities. Metro will be responsible for the coordination and overall production of the report. Metro staff will work with TriMet and local jurisdictions to determine the appropriate transit and highway network and operating assumptions. TriMet will be responsible for the

preparation of the light rail alternative plan and profile drawings. Consultant staff will be responsible for assisting TriMet with the plan and profile drawings for the light rail alternative.

The specific responsibilities of the City of Milwaukie for this task are as follows:

- a. Provide technical support and review.
- b. Provide policy support and review.
- c. Participate with TriMet and Metro in outreach and public involvement efforts.

Products

1. Definition of Alternatives Report.
2. Roll maps/plan and profiles for all study alternatives.

5.3. Environmental Documents

5.3.1 Methods Reports

Objective. The purpose of this task is to define and document the methods that will be used in the analysis of the South Corridor Phase II alternatives. The methods will be presented in a series of methods reports that will specify the technical methods and assumptions that will be used for the analysis of alternatives. The results of the analysis will be documented in the various results reports, the SDEIS and the FEIS.

Methods. The methods reports that were developed for the South Corridor SDEIS will be updated for Phase II and will be reviewed and revised to address issues specific to the Portland-Milwaukie Corridor. Corridor specific issues will be addressed where appropriate. Analysis methods will be defined for the following topic areas:

- Social, Economic and Environmental Assessment, including Environmental Justice
- Transportation Analysis
- Financial Analysis

Data Requirements:

- The preliminary description of the light rail alternative and related design options for the corridor.
- South Corridor Phase II SDEIS methods reports.
- Related new and/or updated Federal, State, Regional and local regulations and guidance.

Relationship to Other Tasks. The methods will be used to guide the subsequent analysis in the Corridor. The methods will be made available for review by interested federal agencies, state agencies, local jurisdictions and the public. The analysis resulting from application of these methods will be compiled in a series of topically specific results reports, the South Corridor Phase II SDEIS and the FEIS. The Evaluation Method will be applied to the analysis and findings in the SDEIS and will guide the selection of the Locally Preferred Alternative for the Corridor.

Responsibilities. Consultants, with Metro oversight and management, will be responsible for the development of the Methods Reports. FTA and other interested Federal agencies, State agencies and interested local jurisdictions should review and comment on the methods.

The specific responsibility of the City of Milwaukie for this task is as follows:

- a. Review and provide feedback on draft Methods Report.

Products. The primary products from this task will be a series of topically specific methods. A draft of each of the methods will be circulated for review and comment. Final methods documents will be published by Metro.

5.3.2 Results Reports

Objective. Evaluate and document the potential impacts of the South Corridor Study alternatives. This analysis will be consistent with the analysis methods as defined in the Methods Reports task, and the results will be documented in a series of topically specific reports called Results Reports. The analysis will be developed in compliance with the National Environmental Policy Act (NEPA) and other related regulations and guidance.

Methods. The evaluation element of this work will be conducted in accordance with the analysis methods as defined in the analysis methods task above. The documentation will be presented in a series of Results Reports, each addressing one of the following topics:

1. Land Use and Economic Impacts.
2. Community Impacts (social, neighborhoods, displacements and environmental justice)
3. Historic, Archaeological and Cultural Impacts (Section 106)
4. Parklands, Recreation Areas, Wildlife and Waterfowl Refuges (Section 4(f))
5. Ecosystems Impacts
6. Hydrology and Water Quality Impacts
7. Visual Quality and Aesthetic Impacts
8. Transportation Impacts (traffic and transit)
9. Air Quality Impacts
10. Noise and Vibration Impacts
11. Energy Impacts
12. Soils, Geology and Seismic Impacts
13. Hazardous Materials
14. Capital Costs
15. Operations and Maintenance Costs
16. Financial Analysis
17. Evaluation of Alternatives/New Starts Analysis

Adopted regional and local land use and transportation plans and forecasts will be used as the basis for the year 2030 planning horizon assumptions for these analyses.

Data Requirements:

1. Methods reports.
2. Definition of Alternatives (including plan and profile drawings).
3. Adopted regional and local land use and transportation plans.
4. Adopted regional and local data and forecasts, and
5. Data specific to each of the topics listed above.

Relationship to Other Tasks. Completion of the results reports is dependent upon the Methods Reports and the Definition of Alternatives being completed. The Results Reports will be summarized in the SDEIS.

Responsibilities. . Consultants, with Metro oversight and management, will be responsible for the development of the Results Reports. TriMet will provide significant assistance in several tasks, such as capital costing, operations and maintenance costs, operations and maintenance facilities. Federal and state agencies and local jurisdictions will be consulted for specific data or analyses as required and will also review and comment on each of the Results Reports as they are developed.

The specific responsibilities of the City of Milwaukie for this task are as follows:

- a. Provide data as requested.
- b. Provide technical assistance and support as requested
- c. Provide policy assistance and support as requested
- d. Review and comment on draft Results Reports as requested

Products. Draft and final Results Reports addressing the list of topics shown above.

5.3.3 SDEIS Preparation

Objective. Prepare and publish the South Corridor Phase II Draft Supplemental Environmental Impact Statement (SDEIS). The SDEIS will comply with the National Environmental Policy Act (NEPA) and other applicable Federal, State, Regional and local regulations.

Methods. The South Corridor Phase II SDEIS will be produced primarily through summarizing the relevant portions of the Results Reports described above. The SDEIS will contain summary information including tables, figures and narrative text. It will be organized generally as defined in the FTA's suggested EIS outline. The SDEIS will also contain references to Results Reports or other studies as appropriate. The SDEIS will contain six chapters, as follows.

1. Purpose and Need
2. Alternatives Considered
3. Affected Environment and Impacts of Alternatives
4. Transportation Impacts
5. Evaluation of Alternatives
6. Public Involvement and Agency Coordination

Study staff, with consultant assistance, will draft the SDEIS chapters. Each chapter will be circulated for local jurisdiction and agency review prior to being forwarded to FTA for review and comment. Based on the comments received, each chapter will be revised as necessary.

Upon FTA approval of the chapters and related sections of the SDEIS, copies of the completed document will be prepared and forwarded to FTA for processing and authorization to publish. Copies will be printed and distributed to interested persons, local, state and federal agencies, and other interested parties.

Data Requirements.

- Study Purpose and Need Statement
- Final Definition of Alternatives Report
- Social, Economic and Environmental analysis as documented in the Results Reports
- Transportation Impacts Analysis as documented in the Results Report
- Financial Analysis as documented in the Results Report
-

Relationship to Other Tasks. The majority of the tasks defined in this work plan must be completed for the SDEIS to be prepared. The Results Reports must be complete, the Public Involvement process must have effectively engaged the public in a discussion about issues in the corridor, the evaluation of the alternatives must be complete, the financial analysis must be substantially complete, etc.

Responsibilities. Consultants, with Metro oversight and management will draft the SDEIS document. Local jurisdictions and interested state and federal agencies must review and

comment on specific areas of interest. FTA must review and ultimately approve the document for publication. Metro will publish and is responsible for all final documents.

The specific responsibility of the City of Milwaukie for this task is as follows:

- a. Review and comment on draft chapters of the SDEIS.

Products. The major product of this task will be draft and final chapters of the South Corridor Phase II Draft Environmental Impact Statement document.

5.3.4 SDEIS Publication/Distribution

Objective. To publish the SDEIS document and distribute it to the general public and interested local, state, regional and federal agencies.

Methods. Metro staff will be responsible for document production, once FTA has authorized printing. The staff will work to efficiently produce the document and then distribute it to a pre-defined list of interested parties. The list of interested parties will be developed throughout the time that the study is being done.

Data Requirements.

1. FTA approved SDEIS document.
2. List of interested parties for distribution.

Relationship to Other Tasks. The SDEIS must be made available to anyone who is interested, for review and comment during the formal comment period, following the publication. The public hearings and selection of a Locally Preferred Alternative cannot move forward until the document is available to the public.

Responsibilities. Metro will make copies and distribute the document to interested parties.

The specific responsibility of the City of Milwaukie for this task is as follows:

- a. Work with Metro to ensure interested parties are identified and notified.
- b. Work with Metro to ensure that document is distributed to interested parties.

Products.

1. Copies of the SDEIS Document for public review.
2. Names, addresses and e-mail addresses of interested parties for distribution.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Mary Rowe, Human Resources Director
Subject: Labor Contract Negotiations
Date: April 9, 2007

Action Requested

To pass a motion authorizing the Mayor and City Manager to enter into an agreement with both AFSCME and MPEA for a 3 year collective bargaining agreement.

Background

The City has two unions that represent employees. One is the Milwaukie Police Employees Association (MPEA) which represents sworn officers and the other is AFSCME which represents other non supervisory personnel. The current contract with each union expires on June 30, 2007. The City began negotiating with each union in February. At this time a tentative agreement has been reached with each union.

Concurrence

The terms of the agreements was previously discussed in Executive session with City Council and agreed to. The City manager is also in agreement with the terms of the collective bargaining agreements as are both unions.

Fiscal Impact

The additional terms of the contract over current language regarding wages and benefits would result in an additional cost to the City of \$70,800 for the first year. This includes both unions.

Work Load Impacts

None at this time.

Alternatives

Decline to ratify the contract and continue to negotiate. This would cause ill will with the union and make it difficult to achieve an agreement.

North Clackamas Parks and Recreation District
MILWAUKIE CENTER/COMMUNITY ADVISORY BOARD
Minutes of February 9, 2007

MEMBERS PRESENT: Katie Rudolfelt, Ben Horner-Johnson, Molly Hanthorn, Kathi Schroeder, Kim Buchholz, Jim McCready, Eleanor Johnson, Joan Staley, Chuck Petersen, Joy Estes

MEMBERS ABSENT: Ben Tabler, Carolyn Mills, Jane Hanno

GUESTS: None

CORRESPONDENCE: None

CALL TO ORDER: Joan Staley called the meeting to order at 9:35. Kathi Schroeder moved to adopt the minutes with minor corrections. Chuck Petersen seconded and the motion passed unanimously.

DISCUSSION ITEMS: Joan Young led the group in brainstorming about ideas for consideration in the Budget for 2007/2008. The group had a number of suggestions which were all recorded for future discussions when the Budget Committee meets. Dan Zinzer gave the Board a brief update on the new Marketing push for the ball fields to be supported by naming and other forms of sponsorship.

BOARD/COMMITTEE REPORTS:

NCPRD Board: Molly presented some examples of the new Marketing effort. A Sponsorship policy was discussed and the DAB asked for some clarification before approving it. The DAB approved the Capital Improvement Plan with some changes that were discussed at the last meeting. Milwaukie Center is slated for \$100,000 in 07/08, \$100,000 in 08/09 and \$50,000 in 09/10. Two applicants for the Board were interviewed. Michael Morrow and Marylee Walden were recommended for Board membership. Kristin Mitchell has been appointed to the Board by the City of Happy Valley; Ronald Keene will be interviewed at the next Board meeting.

NC Park Stewardship Committee: Eleanor reported that an ad hoc committee will be checking various areas in the park for noise levels. The dog ad hoc committee is still looking at switching the dog and horse areas. A working group is being established to work on signage.

Nutrition/Transportation: Kathi reminded the group of the March for Meals for mutts and people on March 10.

Building Committee: No meeting.

OTHER REPORTS:

Friends of the Milwaukie Center: Eleanor urged board members to support the Spaghetti Dinner on March 3 by selling and or buying tickets and the Poker Tournament still has openings. The Mystery dinner will be on May 5 and they need auction items for that.

Governor's Commission: No meeting but Joan S. distributed a report on the Future of Long-Term Care in Oregon.

CENTER REPORT:

The tax aide program is up and rolling. The kitchen and drivers got meals out to the home bound every day of the snow event. The Center policy on norovirus includes posting warnings and daily sanitizing of contact surfaces.

INFORMATION/ANNOUNCEMENTS:

Joan Young announced that Janet Waldron Witter, one of the founders and a long time supporter of the Milwaukie Center, had passed away on February 2 at the age of 91.

Agenda for March 9, 2007: Draft 2007/2008 Budget from Staff

The meeting was adjourned at 10:55 am.

Molly Hanthorn, Secretary pro tem

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

Programs and Services

About 20 people attended local attorney Geoff Bernhard's workshop *Elder Law Planning for Mid-Life and Beyond*; addressing the many financial and health decisions we have to make as we age and the important ways they affect our futures.

The quarterly Cooking Class-"Baking at It's Best" was presented by Lori Sobelson of Bob's Red Mill; it was another wonderfully scrumptious afternoon at the Milwaukie Center.

The Creative Writing Classes have concluded this winter term with more than twenty participants getting great ideas down on paper and creating interesting work.

Explore the Arts Workshop: "Using Acrylics" was the subject for winter term special art class on Saturday February 24. Painters learned through instructor Edith Turner how to paint landscape in a seven hour production.

A work party of volunteers was organized to cut and haul 10 -15 trees donated for the Emergency Wood Program. Many thanks to the Seventh Day Adventist Church in Canby for the generous donation which will be split and stacked by other volunteers and then seasoned for the next winter's program.

The Travel Program had three successful day trips in February including lunch outings and visits to interesting places such as the Pendleton Woolen Mill and the Candy Basket Chocolate Factory. Several patrons also participated in vendor overnight trips to Costa Rica and an Eastern Caribbean cruise in February.

The Sara Hite Memorial Rose Garden Committee is purchasing replacement roses where needed, pruning over 450 bushes and finalizing a spraying and weeding program. Through these preparations, we can ensure a beautiful garden during the summer months to be enjoyed by many people in our community.

Fund-Raising

The Transportation Program's annual See's Valentine Candy Sale netted \$2,500 which supports transportation services for older adults and people with disabilities in north Clackamas County. This effort was possible with the help of many volunteers at Milwaukie Center and point of sales at North Clackamas Aquatic Park and the Milwaukie branch of Clackamas Community Federal Credit Union.

The Friends of the Milwaukie Center have turned over the day-to-day management of the Endowment Fund to a professional investment and consulting firm. With the continuing oversight of the Endowment Committee, the investment firm will maximize the returns which support the programs and services at the Milwaukie Center.

Coming up

March for Meals – awareness and fund-raising campaign throughout the month of March!

13th annual "Airing of the Quilts" Quilt Show, Mar. 23, 9 am – 5 pm & Mar. 24, 9 am – 4 pm

Giant Rummage Sale, benefit for Nutrition, Mar. 30, 9 am – 4 pm & Mar. 31, 9 am – 2 pm