

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

CALL TO ORDER

Mayor Bernard called the 2010th meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, Engineering Director Gary Parkin, Associate Engineer Jason Rice, Operations Supervisor Ronelle Sears, Operations Director Paul Shirey, and Operations Supervisor Mike Clark

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

CONSENT AGENDA

A. City Council Minutes

1. June 5, 2007 Work Session
2. June 19, 2007 Work Session
3. June 19, 2007 Regular Session

B. Resolution No. 42-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending the City's Intergovernmental Agreement with the Metropolitan Area Communication Commission (MACC) to Ensure Competitive Franchise Applications are Referred to and Processed by MACC

C. Resolution No. 43-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the 2007 Summer Paving of 37th Avenue (Lake to Wister) and 42nd Avenue (Harvey to JCB)

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

AUDIENCE PARTICIPATION

- **David Helms, Milwaukie**

Mr. Helms had been involved in the construction industry for over 45 years. He had been watching the North Main Village project – walking by it this winter and spring as it was being completed. The more he walked by it the more he started to see what he would call substandard craftsmanship. He decided to write a letter to Mr. Swanson, which he read. "What I consider to be substandard craftsmanship, design, and material. Harrison Street sidewalk to the second floor: (1) no finish trim around doors and windows, just rough, pressure treated lumber not well butted together at joints. (2) A long crack in the door header at 2035. (3) The second floor rim joist is even with the siding, not covered by it. (4) The rim joist lumber was very rough and full of knots with sloppy made corners. (5) Plastic box covers over electrical outlets at bottom of wall

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waiting to be kicked off. (6) Nail heads not covered in large panels – courtyard and north end. Corner trim at the balconies is not vertically straight and is not well-butted together (just look up at the corners) lots of caulking used. The enclosed photos help to show what I am saying but don't take place of an actual look and see. The starting of another project at the Texaco [sic] site concerns me in regards to getting a quality job!"

The letter he gave Mr. Swanson included about 8 photographs he had taken of his concerns with the project. Since he wrote the letter he noticed that the caulking was splitting apart on the Harrison Street side and on the side facing the street that goes into the Library. He wondered if the Council people had ever done a walk around and looked at the finished project outside. It should not take too trained an eye like on Harrison Street to see the real rough lumber. On the one doorway you can see where the numbers have been moved, but no putty or anything was put in the old nail holes. In the 2005 [sic] there was a crack through the heading. He believed there was another smaller one starting. Nothing had ever been done to correct it. The corners on the rim joists were sloppy made. The lumber was just butted together instead of trying to make a 45. Some of them looked like they were open, so moisture could get in there. On a cloudy day there was flashing that came right over the top of the rim joists and dropped down maybe an inch. It was not tight to it. When the sun was not out you can see there was not any paint run up under that flashing. The wood was bare. If you went into the courtyard the balconies on the north end he thought there were at least 4 corners where the trim lumber started – it looked like it was cut with a horribly dull saw. It was so rough it was terrible. It looked like gobs of caulking was put on some nails and some had not. It looked like some of the nails holding the large panels on the paint had broken around the head of the nails. Some of the nails had actually started to move out a little bit. He heard at the Lake Road Neighborhood meeting that there were a few people that moved in and were complaining about the plumbing. He had not been able to nail that down. What disturbed him was that the Council gave an okay for the same developer to go to work on that Texaco site in the future. For being right downtown this was just plain substandard. Everyone he talked to was really dismayed at the result. Work could be done on Harrison Street. He needed to take a belt sander on the roughness. They painted some of the wood around the doors. Then he came back and put on white caulking after the painting. It looked like they got some caulking on their fingers and wiped it off on the painted surface. It looked junkie.

Councilor Stone asked Mr. Helms if he had been in touch with the manager of the site or the builder to get some of these things taken care of.

Mr. Helms thought he that would get done when he wrote the letter to the City. He understood that Mr. Swanson gave the letter to Mayor Bernard who gave it to someone else.

Mr. Swanson replied the letter and photographs were sent to Mr. Kemper.

Councilor Stone asked if there had been a response.

Mr. Helms had not heard from anyone.

Mr. Swanson would send the letter again and speak with Mr. Kemper.

Mr. Helms thought the City could have some liability. We were stuck with paying 40% of the property taxes for 10 years. This was not just a private project as long as the citizens were paying the property taxes. They did have some say. To allow the same guy to do anything on the Texaco site was wrong.

Councilor Stone wanted Mr. Swanson to forward on what he hears from Mr. Kemper.

- **Landon Donsbach, Milwaukie**

Mr. Donsbach expressed support for the quiet zone and silencing the trains so his entire house did not shake every night. He was actually there when the lady got smashed up, and it was really disturbing to him and his wife. They supported the upgrade in technology and investment in the future of Milwaukie as a place where people wanted to live as opposed to hearing train noises all the time.

- **Jim McDonald, Milwaukie**

Mr. McDonald said there was a neighborhood problem. There used to be a drug house, and the guy moved out because he had not paid his taxes. In its place there was now an organization called the Oxford House. It was a halfway house for rehab drug and alcoholic women. He understood in looking on the Internet that there were several of them for men, women, or whatever – not combined. He had that now in front of his house. There would be 7, 9, to 10 of these young ladies in this house with three bedrooms. He understood from one of the gentlemen who was supposed to ramrod that project that they were going to make several bedrooms. He knew the house because it was very similar to his, and there was only one bath. There could have been a bath or half-bath added over the years. Where would you put all those people? They were doing work in the house with no visible building permits. What was the zoning for this? Can 10 – 12 people live in a house? Can a person divide their house and rent the rooms? One of the neighbors wrote an e-mail and was told the City's hands were tied because it was a federal law. Can these people just go into a neighborhood and take over? There were months of public meetings when a duplex was built in that neighborhood. Now there was going to be a ladies' halfway house. People did not know what was going on.

Mayor Bernard said Mr. McDonald had asked some legitimate questions, and staff would get back to him.

Mr. McDonald understood that Ardenwald Neighborhood Chair Ronn Palmer was supposed to be looking into getting some answers, but so far he had heard nothing. The neighbors were very concerned. Would he need a building permit if he wanted to improve some of his property?

Mr. Swanson explained the City's zoning code did allow a single-family residence in that particular area. The zoning code did not actually define the number of people or limit the number of people who could be housed in a residential district. As long as it was zoned residential the Federal Fair Housing Act (FHA) took over and basically disallowed any discrimination based on race, color, creed, disability – which included alcoholism – and pretty much preempted what the City could do in terms of zoning. That did not mean that they could run roughshod. If the residents, like any other residents, violated the nuisance regulations including such things as excessive noise, attractive nuisances, and trash, then the City could deal with the residents under the nuisance code. The property being zoned residential was appropriately used as a residence for people with disabilities.

Mayor Bernard asked if contractors needed permits if they were adding closets or something like that and not changing the square footage.

Mr. Swanson spoke with Building Official Tom Larsen, and he was already acquainted with the facility. If that work was being done that required a building permit, then Mr. Larsen would be aware of it and ensure they made an application.

Mr. McDonald understood the garage was being turned into bedrooms, so somewhere along the line they would need electrical permits or something like that. All of these

young ladies had to pay rent. This was an apartment. It was a business now. It was not residential. It was in a residential neighborhood.

Councilor Stone asked if it was zoned for a home business.

Mayor Bernard thought there could be home businesses in all residential zones with certain restrictions such as traffic.

Mr. McDonald's main concern was that the Oxford House would only be a block and one-half from the Ardenwald School.

Mr. Swanson had asked if there were any exceptions in either the City or federal regulations that would preempt. There were no rules related to proximity to schools. The FHA saw that as discrimination. One cannot treat someone with a disability differently in terms of housing than those without. He would prepare a packet of information for Mr. McDonald.

Councilor Collette added there would be a special Ardenwald meeting where this would be a major topic of discussion.

Councilor Stone understood Mr. McDonald's major concern had to do with the number of people in the house, but there was absolutely nothing the Council could do. She understood these women were recovering from drug or alcohol addiction. She suggested Mr. Swanson include some information on Oxford Houses.

Mr. Swanson said there were 2 Oxford Houses in Milwaukie, 3 in unincorporated, 4 in Gladstone, 2 in Clackamas, and 2 in Oregon City at this time. The City had been surprised, and there were no requirements to notify any more than a family moving into a residential neighborhood.

Mr. McDonald noted his neighbors had asked why Lake Oswego did not have its share.

Mr. Swanson wrote to the federal legislators about 5 years ago saying the City would take its share of this type of housing but recommended some provision for spreading it out. They never did answer, but locations had mostly to do with property values.

Mr. Swanson announced he excused the City Attorney pursuant to Resolution 9-2003.

- **Ron Young, Milwaukie**

Mr. Young supported the quiet zone. He lived approximately 5 – 7 blocks from the trains, and it felt like they were in the room with them sometimes. He had some e-mails from Gavin Hales. He understood there had been a work session earlier.

Mayor Bernard said the matter would probably come back to Council at the second meeting in August.

Mr. Young asked if there was a required decibel level.

Councilor Collette replied there was, and it was recently made louder.

Mr. Swanson said the regulation required a certain decibel level a quarter of a mile from each crossing. Mr. Hales explained that some people complained that some of the engineers were really laying on the horn, but they were probably the ones actually following the regulations. Most of the engineers were likely trying not to be so intrusive.

Mr. Young understood this was the rule, but it sometimes seemed excessive. He asked if this would be the last opportunity for input.

Mayor Bernard replied Council would likely consider the matter at its August 21 meeting. He encouraged Mr. Young and others to write or e-mail Council if they were not able to attend the meeting.

- **Brendan Eiswerth, Milwaukie**

Mr. Eiswerth spoke as a Milwaukie citizen about light rail on the Tillamook line. In communities in California if light rail was adjacent to a train they may have to have similar signaling as the trains because of the crossings. It was something to think about and question TriMet about. He was concerned that the plans for light rail into Milwaukie only looked at one option for going through our City. We were told there were 3 options on the table. While this was the case on paper, the fact remained there was only one option for light rail as it cut through the downtown, business, residential core of Milwaukie. That one option was along the Tillamook line, a rather infrequently used train line that cuts through residential neighborhoods and was adjacent to a K-12 school, a church, and sensitive natural areas, i.e., springs that feed the Willamette. This decision to put light rail along the Tillamook line was made over 4 years ago and may have seemed a like the right idea at the time. It may still be the best solution for bringing light rail through Milwaukie. We will know this only if we study, compare, and contrast other options. Where light rail crossed the Willamette to the north there were 4 options being looked at right now. When he asked the TriMet representative about these 4 options being studied in Portland and only 1 option being looked at going through Milwaukie's core, he was informed there had been new development in the South Waterfront area that they wanted to bring light rail adjacent to the condos and the tram. He wondered if TriMet was aware of the new North Main Village development and the plans to develop a 5-story mixed-use project on the Farmers' Market site. If they were aware of those changes in Milwaukie, they may opt to bring light rail adjacent to these projects. If the Tillamook line was used, then the residents of the new Milwaukie developments would have to walk in some cases up to 6 blocks to catch light rail. That also meant that anyone wanting to visit the bustling retail area of North Main Village would have to walk 6 blocks from light rail to support any of these businesses. The Milwaukie Planning Commission, the body that residents looked at to advise the City on development and planning throughout Milwaukie said unanimously that a Main Street/21st Avenue option for light rail should be looked at. He hoped that advice was heeded and more than 1 option for light rail through Milwaukie was considered. There was a large groundswell of support from numerous neighbors and businesses throughout the community to get this light rail decision right. No one was saying they had all the answers. They were just saying let's ask all the questions that needed to be asked for the sake of Milwaukie now and into the future. He hoped the City did not barge ahead with the Tillamook line option and did more to mentally and physically divide the community. Had Milwaukie's politicians in the past looked at more options and asked the right questions maybe we would not have had a 23-year old transit center defining the downtown and sewage treatment plant defining the riverfront. The cost to look at another option would not seem like very much when people looked back and knew the right thing was done for everyone in the community. The fastest and cheapest solution was never the right one. The best-done projects were the ones where numerous options were considered and changes to the original plan were made as they were needed. Steamrolling ahead with a plan crafted over 4 years ago was not what many in the community suggested doing. The Tillamook line might be the easiest and cheapest solution for TriMet, but the real question was did it work for the people of Milwaukie. If the Council cared about everybody – all residents, all businesses, all schools, and all churches – listen to them and look at all the options and try to find the one that worked the best. Everyone wanted light rail and easy access to the airport. He took the 75 bus to make the connection to light rail at the Hollywood transit center, and it was a pain. Coming back, 75 did not operate after 9 p.m. from 45th and Johnson Creek. We all want these options and to do what's best from Milwaukie now and into the future. He announced the meeting at Milwaukie High School on July 18 and 26 to talk about light rail.

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- **John Otsyula, Milwaukie**

Mr. Otsyula followed up on his comments from last meeting. He was surprised at the end of the meeting even after he had asked if a decision was going to be made in terms of the McLoughlin Boulevard alternative that the City Council went ahead and voted to exclude McLoughlin Boulevard. As an environmental scientist and policy administrator and regulator he wanted to mention a few things. He talked about the National Environmental Policy Act (NEPA), and a transportation project fell under NEPA. He tried to talk with Councilor Collette and Councilor Stone after the meeting the last time just to explain what happened. The light rail process was a NEPA process managed by the lead agency which in this case was Metro. All alternatives, even those with limited local support, must be included in the Supplement Draft Environmental Impact Statement (SDEIS) at this point. This was a scoping point. The lead agency must take into consideration all comments received from the public and other parties on the NEPA documents during the comment period. Only the lead agency, Metro, had the authority to remove any alternatives including the no build alternative. Removal of alternatives must be documented as having no viability at all. In other words they did not answer the question of purpose and need. He spoke directly with the Federal Transportation Authority (FTA) in Washington, D.C. last week, and they confirmed that elimination of an alternative proposed by the public without full review in the SDEIS process would violate the required NEPA analysis standards. The City did not have the authority to eliminate an alternative, and only Metro did as the lead agency. The Federal Highway Administration, which was the sister agency to the FTA would not fund projects that violated the required NEPA analysis standards. To the extent that an SDEIS was being produced meant that conditions had changed substantially from the DEIS. The Milwaukie Jr. High School building was a historic structure as defined by the City of Milwaukie which was sufficient for the National Historic Preservation Act. Given the historical status of the building additional NEPA standards of review were required. Many assumptions had been made in making this one alignment that did not hold water. The logical termini of a project needed to be addressed. With all due respect, Mayor, this process had gone on for a while. Things had changed, and all cumulative impacts needed to be addressed. He saw his time was running out. He had received information on the Sellwood Bridge in the mail. It was a fixed structure. It was already there. They explored 6 alternatives from the public, and many alternatives from other agencies. They were still in the process. They got down to 3 from the public through a process of looking at those, which were similar. If he suggested that people be flown from Tacoma across to Oregon City, that would be too costly. It did not make sense. Any alternative must be included.

Mayor Bernard commented that he was on the Sellwood Bridge Committee, and it would choose one alternative.

Mr. Otsyula said that was not what happened here. With all due respect he did not want to get into a polemic here. However, he wanted to emphasize when alternatives were suggested, all alternatives that answered to the purpose and need must be looked at. He was a NEPA specialist – especially in transportation and decision-making. He knew what he was speaking about. Okay?

Mayor Bernard reminded Mr. Otsyula that he needed to finish his comments.

Mr. Otsyula said in all due respect. First of all.... Finally, it was a waste of people's time and money and taxpayers' money and the City Council's time to try to eliminate or to do something the City Council did not by federal nexus have the authority to do.

Mayor Bernard appreciated that. He was a member of the Metro South Corridor Steering Committee where certain things would be eliminated.

Councilor Stone had a question about the process of elimination. Mayor Bernard just said the South Corridor Committee eliminated. Don't you have to study something to eliminate it from being a possible solution? How do you eliminate something when you did not study it? She was looking at Mayor Bernard because he said the Committee would be eliminating, but she was asking Mr. Otsyula if that was allowable – to eliminate a potential solution without having studied it.

Mr. Otsyula replied it was not possible. That was where this City Council – and he had feedback from his colleagues in the Federal Highway Administration --- who talked about this. This City Council without the federal nexus could do whatever it wanted. However, when it came to the lead agency, which was Metro, it could not eliminate an alternative without setting it up on a metric system. There were 10 alternatives. This is how much this one costs and the impacts and the mitigation. These were all the controversial issues. At that time public comment was solicited in terms of eliminating those. They cannot just willy-nilly eliminate them without an explanation. They have to study each alternative to get to an explanation. If you ask the residents who have no idea about the NEPA process or what the costs and impacts of the McLoughlin Boulevard alignment will be, they will be making an emotional decision, which was okay. Maybe I like it; maybe I don't. They will be making an emotional decision; not a fact-based decision. It was like asking him to become a heart surgeon. He was not. He would not be able to do that. He would not be able to make a decision of whether to eliminate this operation or that operation.

Mayor Bernard reminded Mr. Otsyula that his time was up.

Mr. Otsyula said things needed to be studied and put in a manner the public could easily understand and then weigh. The locally preferred alternative ...

Mayor Bernard asked Mr. Otsyula to finish his comments.

Mr. Swanson suggested they might have played too easily with words when talking about City Council's eliminating or forwarding an alternative. In the end the agency deciding what alignments were brought into the Environmental Impact Statement would be Metro. Milwaukie may make a recommendation about bringing in Tillamook and Main Street, but that was only public input. Metro would make the decision on what was going to be studied. They would be doing the eliminating. It would not be this City Council or City staff. It would be Metro. The City would only be making a recommendation.

Mr. Otsyula said absolutely.

Mr. Swanson said that was the process the City was going through right now and looking at the local level if there was something Milwaukie wanted to recommend to the South Corridor Steering Committee and the Metro Council for a final decision. This Council would not make the final decision. Not the Mayor, and not the policy committee. Metro would certainly protect its status because it had the contacts with the Federal Highway Administration and Federal Transit Administration. There may be some confusion. We talk about eliminating, but we are not eliminating anything.

Mr. Otsyula said 'yes.'

Mayor Bernard had asked for permission to hold a City Council discussion, and he would forward Milwaukie's recommendation. Metro would decide whether or not those recommendations should be included or excluded from the SDEIS. A number alignments have been considered, and certain decisions were made to cut or add options.

Councilor Stone asked if that was based on studying them.

Councilor Collette added the alternatives analysis had already been conducted.

Councilor Stone said the Council had Mr. Otsyula come before it several times. The question was raised in terms of being required to do an SDEIS because things had changed. Her understanding after looking into the NEPA stuff was that the Council did not have the authority to eliminate ideas or alternatives from consideration. The Council had done that. The public asked the Council to look at Main Street and McLoughlin Boulevard. She was looking into this too. It did not make sense to her if the City was in violation of NEPA. Did the Council have the authority to make that recommendation? That was what she was also questioning.

Mr. Swanson replied public process was also part of the whole process. The City was merely part of the public process. The City was not the determining factor. It would be making a recommendation, but that was all it was. Metro could weight it and accept or reject it with reasons.

Councilor Stone understood Metro would determine the outcome. Her understanding of the NEPA stuff and looking into it was that the lead agency had to consider all comments and all suggestions. The Council was asking that Metro not consider the Main Street and McLoughlin Boulevard alignment. There were 600+ signatures asking the Council to do that. Was the City out of line in taking this upon itself?

Mr. Swanson took comfort in the fact that Mr. Otsyula had done a lot of work in NEPA. He urged people to remember that Metro had successfully negotiated that process on very large projects a number of times. The Metro project manager was overly cautious and would not let the City of Milwaukie lead it around by the nose in terms of making decisions. Metro was the lead agency and would exercise its responsibility. What the City of Milwaukie was doing was part of the process. It was not making a final determination on anything.

Councilor Barnes understood Mr. Otsyula had not been in the area for a very long time and appreciated his expertise. She was trying to understand his background. Everyone comes into this with his or her own feelings and emotions. She asked Mr. Otsyula if he previously worked for the State of Oregon prior to coming to Milwaukie to start is own business.

Mr. Otsyula said he did.

Councilor Stone asked Councilor Barnes to clarify the significance of her question.

Councilor Barnes wanted to know Mr. Otsyula's background and if he was coming in with an open mind or with a prejudgment. Now that she knew his background she had a better understanding of why he came forward.

Mr. Otsyula came with an open mind.

Councilor Stone did not feel Councilor Barnes answered her question.

Mr. Otsyula wanted to make one more suggestion.

Mayor Bernard said Mr. Otsyula's time was up and suggested he leave the written material for the record.

Councilor Stone asked Mr. Otsyula what he would like to do.

Mr. Otsyula said the City Manager could look at the *Citizen's Guide to NEPA*. It was a process that took him a long time to study and did not expect any of the Council or public to understand it clearly. The issues were spelled out. The next time he would try to limit his comments to 5 minutes.

- **Ronn Palmer, Milwaukie**

Mr. Palmer asked if he would also get 28 minutes. He spoke as the Ardenwald Neighborhood Association Chair and addressed the Oxford House situation. A special meeting was called on July 18 at 7 p.m. at Ardenwald Park. They would have the area Oxford House Executive Director there to answer questions that people might have about that organization. For the record, he personally hand-delivered flyers to Mr. McDonald to pass out to some of his neighbors who might have concerns. Mr. Palmer personally invited them. He had inspected the site a couple of times. As Mr. McDonald indicated they were building additional bedrooms in this house. He was told it would house 7 to 9 people. All of them would be women, and some of them would have children that would attend Ardenwald Elementary School. He met with the principal of the elementary school, and those children would be treated like any other students at that school. He spent a lot of time looking into this issue over the past 2-1/2 weeks. For the record, Oxford House was not a halfway house situation. For someone to get to this level, they had to be one step away from final integration into the community. It was actually a level of achievement. There were no drugs, prescription or otherwise, no methadone. They were not even allowed to take aspirin or have NyQuil on the premises. That would be grounds for elimination. If someone were eliminated, then they would not be allowed back into the system. The terms were pretty strict. He commented on the fact that people had to pay rent. They had to pay rent upon 30-days of moving in through gainful employment. Just because a group of people lived together and paid rent did not constitute a business. He as many other people had a number of roommates in college. Mr. Palmer had been assured there would be property improvements such as landscaping to increase the property value which he was personally concerned about. He encouraged people to attend the special Neighborhood meeting and address their questions to the Oxford House representative.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson reported this came up in June 2006 when Comprehensive Plan and Zoning Code amendments were presented. One issue was housekeeping having to do with what was then community use overlay. Also included in the proposed amendments were two sections, 19.321.7 and 19.321.3, which dealt with major utility facilities and specifically the Kellogg Treatment Plant. Both of those sections combined would have basically declared the Plant to be a nonconforming use and require that it cease operations by December 15, 2015. If it did continue to operate it would be subject to heavy civil penalties. One year ago the amendments regarding the community use overlay were adopted. The City Council did adopt the Comprehensive Plan amendments but continued these two sections because the Citizens Advisory Council (CAC) was in the middle of its process. Rather than throw this huge wrench into the works the City thought it would be best to delay. There were now two committees working on the issue. One was the stakeholders' committee and one was the site selection committee. This matter was placed on the agenda for the second Council meeting of each month, so that it would not go away. It was still feasible an issue might develop that argued toward adoption of these code amendments. At this time he requested consideration of these code amendments at the August 21, 2007 meeting.

It was moved by Mayor Bernard and seconded by Councilor Collette to continue the matter to August 21, 2007. Motion passed unanimously. [5:0]

OTHER BUSINESS

A. Fat, Oil and Grease (FOG) Program – Ordinance

Mr. Rice asked for City Council approval to amend the code to fix a maintenance issues and be able to track, inspect, and enforce the fat, oil, and grease being introduced into the system. Fat, oil, and grease were byproducts of food produced by commercial businesses. Typically the fat is fairly warm when it is introduced into the system and cools and hardens in the sewer mains.

Ms. Sears reported the average sewer line was cleaned once every 5 years, but there was an extreme case in the City whereby lines were cleaned 4 times in one year. That was a 20:1 ratio that tied up crews and prevented them from doing other scheduled maintenance.

Mr. Rice said the existing code met the DEQ standard for what was allowed into the system which was 10 ppm. The City was looking to keep that standard and modify the code so it could be enforced and a program set up to ensure it was being done in the community. The City would perform the inspections during the maintenance period, and businesses would be responsible for maintaining their records to ensure it was being done correctly. This program would establish enforcement, and the City would be reimbursed for the time it spent cleaning the lines. Staff believed there were about 50 businesses in the community that produced fat, oil, and grease. About 40 had systems, and he estimated only about 10 of them were maintaining their systems. That left 30 businesses that were letting the systems overflow which was just as bad as not having any. There were likely 10 businesses that still needed to install a system.

Councilor Stone asked if businesses were being cited when the City went to the site to clean the traps.

Mr. Rice replied the City did not clean the traps but did have to clean the sewer lines. If this ordinance were adopted staff would set up the program that included scheduled inspections. Those who did not have interceptors would be asked to install them within a certain time period.

Ms. Sears reported that staff had visited 6 sites. Five of the businesses already had grease traps or interceptors installed and were doing maintenance on them. One of the businesses had no idea of what it was and did not have any maintenance records.

Mr. Rice added some businesses had them but knew nothing about what they did or the need to maintain them.

Councilor Stone asked what it had cost the City to go out and clean these pipes for people.

Ms. Sears said it would cost about \$500 per day for equipment, personnel, and flaggers. Staff might have to go back to one trouble spot 4 times a year.

Councilor Stone asked if businesses that did not have a system in place were receptive to doing so, since there was a code in place.

Ms. Sears replied many did not know where it would be. They thought they had one but that it was covered up.

Councilor Stone asked if would people would be given a certain amount of time to have a system installed?

Mr. Rice said there would be a timeline for compliance. Staff had discussed 6 months, and that would depend on if the business needed a grease trap or an interceptor.

Councilor Collette understood the business was required to collect, store, and transfer the waste. She asked if there were places that would reuse the fat, oil, and grease for diesel fuel.

Mr. Rice said the companies that collected the fat, oil, and grease separated out the grease that could be used for biodiesel. The companies who picked up the grease also marketed it.

Mr. Swanson requested a 10-minute recess to make some clarifying changes to the ordinance that did not change the meaning or intent. The ordinance would be changed to read, "Whereas, Milwaukie Municipal Code Section 13.12.060 and Milwaukie Municipal Code Section 13.12.063 remove general requirements ... Now therefore, the City of Milwaukie does ordain as follows: Section 1. Milwaukie Municipal Code Section 13.12.060 and Milwaukie Municipal Code Section 13.12.063 are amended to read as set forth in Exhibit B."

It was moved by Councilor Barnes and seconded by Councilor Collette for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Section 13 – Public Services. Motion passed unanimously. [5:0]

Mr. Swanson read the ordinance two times by title and followed each reading with an amendment to the form.

The City Recorder polled the Council: Councilors Stone, Loomis, Barnes, Collette, and Mayor Bernard voting 'aye.' Motion passed unanimously.

ORDINANCE NO. 1972:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 13 – PUBLIC SERVICES TO REMOVE GENERAL REQUIREMENTS AND CREATE AN INSPECTION AND ENFORCEMENT PROGRAM THAT WILL AID THE OPERATIONS DEPARTMENT

B. Council Reports

Councilor Collette would attend the light rail alignment meeting on July 18. The Ardenwald Neighborhood was planning its summer concert series that would begin August 2 in conjunction with the National Night Out potluck and ukulele festival. She attended the Transportation System Plan (TSP) open house where some changes to Johnson Creek Boulevard were proposed.

Councilor Barnes lauded staff for attending the Sunday Farmers' Market and providing information on the TSP. She would attend the light rail meeting on Wednesday and the Library Board meeting to discuss the children's show proposal. The wastewater group would meet again on July 26.

Councilor Stone would attend the wastewater site selection committee that was scheduled to meet monthly until July 2008 when a decision was to be made. She understood the light rail meetings were consecutive and would attend both meetings.

Mayor Bernard explained the meetings were not about light rail but rather a specific alignment on Main Street and what might and might not work. He would attend the Oregon Mayors' Conference at the end of the month. He attended a number of the TSP meetings and thought there were several great proposals.

ADJOURNMENT

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

CITY COUNCIL REGULAR SESSION – JULY 17, 2007

APPROVED MINUTES

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Mayor Bernard adjourned the regular session at 8:24 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL JULY 17, 2007

MILWAUKIE CITY HALL
10722 SE Main Street

2010th MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
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. **June 5, 2007 Work Session**
 2. **June 19, 2007 Work Session**
 3. **June 19, 2007 Regular Session**
 - B. **MACC Intergovernmental Agreement -- Resolution**
 - C. **2007 Summer Paving Bid Award– Street Surface Maintenance Program -- 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.)*

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. **Fat, Oil and Grease (FOG) Program – Ordinance (Gary Parkin)**

B. **Council Reports**

7. **INFORMATION**

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.

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

June 5, 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, Community Services Director JoAnn Herrigel, Police Chief Larry Kanzler, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle

Park and Recreation Board Work Plan

Ms. Herrigel was joined by Park and Recreation Board members Kate McCready and Sherri Dow. She reviewed the top five goals: renegotiating the intergovernmental Agreement with the North Clackamas Parks and Recreation District to move all parks onto the list of things for the District to do including the riverfront; reinforcing existing maintenance; and update language including the makeup of the Milwaukie Center Board. Metro Local Share has \$650,000 to use in the City of Milwaukie and the list was given to Metro for initial review which includes; Homewood Park, Spring Park, Riverfront Park, and two acquisitions west of 32nd and one south of Lake Road. Work needs to be done on Park Rules enforcement specifically at North Clackamas Park and they are working on a dog enforcement volunteer group. The Parks District will want to weigh in on the SDEIS effort there are park areas as well as the Trolley Trail that are impacted. There is an ongoing process to come up with a master plan for the North Clackamas Park north area and they will meet on June 20.

Ms. Dow said she appreciates Ms. Herrigel's hard work and she makes it easy to be volunteers. She takes excellent minutes and they extend their appreciation.

Ms. Herrigel added that both Ms. Dow and Ms. McCready were great volunteers including their work at the community booth.

Mayor Bernard asked if Metro sold bonds to get the money.

Ms. Herrigel responded that they have sold bonds and generated additional monies. She said that IGA's have to be signed before they can get the money, and the City has to expend the money and then request reimbursement from Metro.

Mayor Bernard asked what form the money would be used in for the riverfront.

Ms. Herrigel said the riverfront is perfect because there is a lot of re-vegetation that the money could be used for. It could be used on Klein Point. She doesn't think there is anything at the riverfront that the money couldn't be used for. They could re-contour; build pathways, construct the play area, and to do other ground work.

Mayor Bernard asked if there was a specific piece of land that was being looked at on Lake Road.

Ms. Herrigel responded that she met with the Lake Road NDA and went over the lot map and pointed out areas that they wanted to look at further. There was a

discussion about going on a field trip and looking at various sites, which hasn't happened yet.

Mayor Bernard walked the area a lot, but had not seen any land available.

Ms. Herrigel said a small subcommittee from Ardenwald had walked their area and seen some property, so it was a little further along. They would pursue that in the next month or so. She has taken the top three park projects that the NDA's and City has identified like Spring and Homewood parks and the Riverfront and what it would cost to complete; then she took what she thought was appropriate for acquisition in the amount of about \$400,000 and the balance could go to the Riverfront Park in the amount of \$120,000. If she could get some more money from Metro from the excess of the bond sales she will do it.

Councilor Stone asked about the Kronberg Park master plan.

Ms. Herrigel replied that the money allocated for Kellogg was MTIP funds in 2010. The revegetation of lakebed and up into Kronberg would be a natural extension. She has not figured out the interim step at this time. She said that Mart Hughes would cut out some of the blackberries. It is important to remove vegetation to discourage the homeless from camping there.

Councilor Stone asked about the enforcement of off-leash dogs. How responsible was the district.

Ms. Herrigel replied that the district had no enforcement personnel. They have maintenance personnel and an onsite person who is retiring and will be replaced. The hope is that when the replacement is hired they will become more of an onsite ranger person and will be deputized to take care of that.

Councilor Stone has seen Ms. Herrigel in action and she does a great job. People on boards appreciated her work.

Councilor Barnes would like a list of all the parks so people new to Milwaukie had a resource and a list of amenities.

Councilor Collette asked for clarification as to which parks the district would take over.

Ms. Herrigel replied Homewood, Lewelling, enhanced Spring Park, and Riverfront.

Ms. McCready said the contract was rewritten to describe the maintenance of how they want the work done so when there is an enhancement it is covered.

Mayor Bernard referred to a comment from Councilor Stone regarding the money for Kellogg Dam in that it is a 10 million dollar project and that was just for the study. It is a long ways off from doing anything with Kronberg.

Ms. Herrigel said that we could use some of that process to move into Kronberg.

Light Rail Briefing – Safety and Security Focus

Ms. Herrigel said that they have been hearing a lot regarding safety and security concerns during the recent light rail meetings. The staff of Community Development, Community Services, and the Police Department has been working really closely with each other and they are committed to integrating the security strategies into the planning for this process. The Chief is interested in doing that to ensure this was a safe system.

Chief Kanzler introduced Tim Garling with TriMet security. They met and talked about security issues and changes that TriMet has implemented over the years. He gave a benchmark as to where are we now, where have we been, and where are we are capacity-wise. He reviewed the crime rate, which has dropped over the years. The average statewide was about .5 so Milwaukie is well below the state average of crime per capita. When there is talk about crime near transit centers we hear about Hillsboro, Gresham, and Portland. Light rail has transitioned from gangs and crime near the stations. Over the years they have mitigated that. The ratio of officers in Milwaukie being 1.5 officers per thousand populations was a planning figure that worked for Milwaukie. We are Currently at capacity because we have lost 3 positions in the police department from the time he took over as Chief. When thinking about what is happening in cities like Gresham it has a lower ratio of 1.2/1000, so the capacity to deal with problems is much less than in Milwaukie. Crime on the TriMet system is going down annually by increased capacity. He created a City of TriMet and illustrated the crime rate and how it corresponded to the crime rate in Milwaukie. It included all crimes that occurred in the TriMet system. Actual ridership was high at 8.3 million trips per month on bus and rail. His comparison was that it was not like a residency and could take four trips. That was probably more representative of the population. The comparative numbers were almost 1000% below Milwaukie.

Councilor Collette understood the TriMet population was about 1.5 million, and the amount of crime per TriMet person was about 1000% less than the City of Milwaukie.

Chief Kanzler said the ratio was way below the City. It is not absolute but it gave a comparison.

Councilor Collette said she hears of crooks taking TriMet to communities to commit crimes and return on TriMet.

Chief Kanzler replied that just like crooks drive cars into communities to commit crimes they also ride the bus. He explained the trend last year at the end of summer was crooks who lived in transient camps would ride bikes into the community and commit crimes in unoccupied houses on Johnson Creek and surrounding areas. With the collaboration of Portland Police they relocated those people. It can be any conveyance.

Mr. Garling said statistics cover 575 square miles on bus and rail. The rail system is 44 miles and they have 91 bus lines with about 300,000 trips per day. It is a big system with a lot of activity. They are working on a major extension on I-205 as well as the downtown transit mall. Focusing on safety and security they use statistics from the same report that goes to the FTA. He talked about the rate of crime per ride. When looking at TriMet City they have about 3 part 1 crimes per day to put in perspective. When you count the numbers of what the crime actually is the reality of the crime and perception has a real gap on what the real amount of crime is. Add to that perception was not civil behavior and rambunctious ness. Both of our goals were to reduce crime as well as its perception. It is Important to address visibility as a deterrent to crime and was an important aspect of what they want to do. TriMet has 35 TriMet officers and contracts with Wackenhut Corp. to have 21 security officers that stage visible deployments. They created a 3 dog canine unit with the help of Homeland Security. Operators at any given time were about 600. They want to do a better job of using the concept of visibility to deter crime and partner with police departments and other members of the community. The chief alluded to the evolution of light rail. When first created from Gresham to downtown safety and

security was not a big concern. With each extension of the line they learned a lot about how to actually design safety and security in the systems, and they are still learning. The best example was the Interstate line. There was a lot of concern about safety and security on that segment of line. The projection from Portland police was that it might take 40 more officers to keep that line secure. They actually added two and it is one of the safest lines in the system using SEPTET principles that included good lighting and closed circuit TV. They believe safety and security can be designed into the project. The best time to do it was to do it at inception. Historically, security was put in at the end. Lessons learned from the yellow line were to think about camera angles to make sure they have a good picture. Design was not necessarily just a TriMet issue but best practices by transit systems everywhere. A good way to put safety security in a project was at inception and to think about post operation. After 9/11 they are learning more and more. From the start one of the foundational things they can do is to make sure they have safety security designed in. Then it is the hard work of day-to-day operations. They feel they are a member of the community and cannot solve problems themselves and they cannot turn their back on problems.

Chief Kanzler discussed forming a security task force to address issues on the entire line. We do not want issues in Milwaukie nor do our partners. If we work together we can build those strategies throughout the entire system. Also, discussed was where does the alignment end. There has been some discussion if this goes to Park Avenue in Clackamas County how would that effect Milwaukie. We need to make sure that we offer, and TriMet is aware that we need to annex into the City. If the Park-and-ride was outside the City's jurisdiction they did not want to share that response with Clackamas County because they may not have the same level of interest. We need to have a mitigation plan. Hillsboro demonstrated the progression of rail. When Hillsboro opened they had gang problems and it took some time to mitigate because they did not have plan. Now they mitigated that and the crime rate has gone down to below the regional average. They have a police contact office at the end of the line. One of Milwaukie's officers Billy Wells is assigned to the Interstate Line. He said you could put \$100 bills in your pocket and travel the line. He can see first hand the change that has happened. When he was young police officer that was his assignment; gentrification was incredible.

Councilor Collette said she had questions relayed from Waldorf parents. They contacted one school with light rail nearby and were told they needed to double its security. Was that common.

Chief Kanzler replied he thought that was urban legend. There are other schools that are adjacent to other lines and there is a person from TriMet that comes out and works with schools to create safety security plan and what to watch for. There have been some incidents of people being killed by TriMet trains, but in most cases they have been suicides. There will be due diligence to safety issues. He has talked with Milwaukie High School and there are many rumors and innuendo and perception of crime when there is no crime in reality. The media often focuses when something happens on TriMet and it is blown out of proportion.

Councilor Barnes said one concern brought up to her was that an agreement needed to be in writing. How do we allay those fears and put it in writing with money to finish those projects.

Chief Kanzler he said the City will enter into an IGA with TriMet, and there will be conditions specified in that agreement.

Mr. Garling said that the Federal Government makes TriMet do an analysis of hazards and risks and they have to show and demonstrate that there is mitigation, and that it is followed through the process, and they have over 600 tracking items on the green line. There is an amount of rigor that is put in and a lot of attention on safety and security. They have monthly meetings on safety and security. TriMet takes safety and security very seriously because if it is not done during the construction phase you have problems during operation.

Chief Kanzler said in 2004 the federal government passed the Transportation Safety Act and it requires transportation entities to identify security and safety plans, and actions they are going to take to mitigate terrorism. We get some benefit from that because if you defeat terrorism you have a good chance to defeat crime.

Councilor Stone asked about the ridership of 300,000 trips per day. Is that bus and rail combined?

Mr. Garling replied those were rough numbers about 100,000 on rail and 200,000 on bus at this point. That will change with the implementation of the green line with a higher percentage of rail riders. As a total percentage there was more crime on rail. On a bus there was an authority person while on the train there was not. As was pointed out the levels were low. The Challenge is to figure out how to make people more comfortable and using technologies to look inside the train from the operators' position. Technologies are advancing and they are trying to be more dynamic. Since 9/11 there has been a lot of money spent on security technology especially pertaining to cameras.

Councilor Stone said looking at different types of crimes. Under part 2 crimes ABC alcohol and drugs was pretty high. What was exclusion behavior?

Mr. Garling said those are people excluded from system for not paying fares.

Councilor Stone said the one that popped out was alcohol and drugs and that was a major concern. Were these statistics associated with actual arrests?

Mr. Garling said yes. When looking at the light rail system those activities occur and are most prevalent on platforms. They have a special crimes unit that goes undercover and that has been effective in some areas. It is an issue of strategy, resource and visibility.

Chief Kanzler added that those things were mobile. When Milwaukie puts pressure on the Milwaukie transit center they are displaced. He likes to keep presence high so this was the last choice to come to.

Mr. Garling said regarding deterrents they are working 20 of the 60 platforms with cameras. Cameras are a very good deterrent for those activities and they help in prosecution.

Councilor Stone said she liked the idea of a dynamic monitoring system in real time.

Chief Kanzler said we need to look at it from a system approach and not just one location. The security task force concept would ferret out the issues in order to mitigate problems. If it works the way it should work just about every issue would be identified along with a strategy to deal with it and that would be part of the implementation plan.

Councilor Stone asked what the impact was on police department staffing.

Chief Kanzler this would not open until year 2014. We are at capacity right now, and we would have to increase staffing levels. There are ways to mitigate issues by the City Council identifying more resources along with TriMet.

Councilor Stone is interested to know the statistics for not just one fiscal year. Is crime going up or down?

Mr. Garling responded there is a 10% reduction in these specific numbers between 2006 and 2005. The system was continuing to grow and TriMet continues to learn. The reality was that ridership was going up and crime was going down, but there are still perception issues that have to be dealt with. He would provide additional statistics.

Mayor Bernard asked if we have an intention of annexing to Park Avenue.

Chief Kanzler said we would want to maintain a one-response system with TriMet applying to annex to take care of the park-and-ride station if it did go there. He wanted to mitigate any response issues.

Chief Kanzler talked about SEPTED, which is institutionalized into the TriMet planning process. It is a smart way to do business.

Mayor Bernard adjourned the work session at 6:37 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

June 19, 2007

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

Council Present: Councilors Barnes and Loomis.

Staff Present: City Manager Mike Swanson, Community Development/Public Works Director Kenny Asher, Operations Director Paul Shirey, Facilities Maintenance Coordinator Willie Miller, Library Director Joe Sandfort, Planning Director Katie Mangle

Library Board Work Plan

Greg Chaimov, Library Board Chair and **Joe Sandfort**, Library Director presented the work plan for the Library Board. The emphasis was put on long- and short-term planning to increase visibility of the Ledding Library. Activities to raise its profile included attending NDA meetings to inform neighbors of upcoming events; gift bags for new residents of North Main Village, and creation of a DVD on library activities. They honored William Stafford and Poet Laureate Lawson Inada will come to Milwaukie this fall. Other efforts include regular *Pilot* articles and helping select a security system for the library.

Councilor Barnes suggested working with the School District on a feature library book of the month program in the elementary schools that could be aired on cable.

Councilor Loomis asked how the parking with North Main Village was working out and the status of the Pond House.

Mr. Sandfort replied it was working well.

Mr. Chaimov reported there was a volunteer willing to staff the booktique at the Pond House once physical improvements were made.

Parks System Development Charges

Dan Zinzer and **Michelle Healy** from North Clackamas Parks & Recreation District (NCPRD) were introduced. Mr. Zinzer provided a draft of the plaque that would be installed at the North Clackamas Park ballfields.

Mr. Zinzer said they are working on an updated CIP for the Parks District. They have added an east expansion to Happy Valley. It will be updated based on current land values as well as construction costs. He presented a report that showed existing rates and how much they would be if 100% were collected under the new CIP. Two zones east of I-205 worked into one that included Happy Valley and Sunnyside. The last time rates were established, they were reduced based on certain pressures. The proposed new rates would be reviewed at stakeholder meetings. If they reduce the rates somewhat then projects would be pulled out. After the first meeting was held the homebuilders decided they did not want to pull projects. The City of Happy Valley believed facilities were needed. A one-time \$80 per employee fee was added to non-residential development. Homebuilders liked the mix of residential/commercial/industrial.

CITY COUNCIL WORK SESSION – JUNE 19, 2007

DRAFT MINUTES

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Ms. Healy added that fee could be considered on a case-by-case basis.

Mr. Zinzer said they increased the cost estimate of the Milwaukie Riverfront Park to \$3 million. He observed it was difficult to find acreage for community parks.

Councilor Barnes noted the first community park on the list was an aquatic facility. The existing aquatic park was not profitable, so how serious was the District about adding another?

Ms. Healy replied the intent is to say that was a potential use, but there were no set ideas for that park.

Mr. Zinzer added there is not huge push for another aquatic park, but there was interest in a skate park and community center.

Councilor Barnes liked the projects identified in Milwaukie. She is excited to see Spring Park and Riverfront Park on the list.

Mr. Zinzer said there is a lot of input from the City of Milwaukie.

Mayor Bernard said he heard there was buy in from the development community.

Mr. Zinzer thought the conversations with the homebuilders was positive, but the District still needed to talk with commercial/industrial stakeholders.

Mayor Bernard noted the multi-family charge was huge.

Mr. Zinzer said there was a dramatic increase in the price of land and was a factor when land was sold. It is a way to have the huge increase in land values pay for services. People needed to know when they buy land what they would be faced with. A 90-day notice would be sent prior to the County Commissioners' considering the rates. He requested a letter of support from the City.

Climate Protection and Sustainable Approaches to Delivering City Services

Mr. Shirey and **Mr. Miller** were joined by Cheryl Welsh of the Tualatin Valley Water District. Councilor Collette had provided the climate agreement several months ago. When looking at public works there were a lot of things that could be done differently to contribute to reduction in global warming and be more sustainable. To date the City converted a diesel fleet to B20, enhanced recycling, installed variable speed pumps, conducted an energy audit, purchased its first hybrid vehicle, and created a sustainability team.

Mr. Miller said the audit was done through Energy Trust of Oregon. They City has purchased energy-reducing products beginning in the 1990's such T-8 lights. Other projects in City Hall were done through energy loans include a lighting upgrade, energy efficient windows, and central air system. They did the same in the Library and public works. They are looking at other available options in the energy audit such as solar panels to heat water and generate electricity. He hoped to have some suggestions and recommendations for the City Council regarding the costs and worthiness of the projects.

Mayor Bernard asked if the City had a waste oil burner to reduce the gas bill using a catalytic converter.

Ms. Welsh was hired by water district as a financial analyst and then was asked to be sustainability coordinator. She walked around headquarters looking for lights and computers left on and told people what she found. Just by an increased awareness energy bills went down by about \$12,000 over a 24-month

period. Along with economic benefits there were social and environmental benefits. She recommended a holistic approach. The District reduced the size of its trash receptacle as people began recycling more. They were spending a little more to purchase 100% post consumer paper. She felt she was a success when others came up with their own innovative ideas. She initiated an employee recycling benefit for those things that could not be recycled at home. The Board approved a resolution and over 18 months the cost was far less than estimated. She created a DVD and booklet, which she left with Council.

Councilor Loomis commented that awareness was the key.

Councilor Barnes was interested in the employee benefit element. She noted at Linwood cleanup that people wished there were a place in Milwaukie to recycle paint.

Ms. Welsh said Metro does sponsor events. The liability was such that the District did not want employees to bring paint to work.

Mayor Bernard said his business does take waste oil from the public and he gets tax reductions for doing so. He uses it to heat his shop. He was interested in motion sensors.

Mr. Miller said switching lights on and off is minimal to the amount of electricity used to burn the whole time.

Ms. Welsh said Tualatin Valley purchases energy from other provider.

Town Center Site Memorandum of Understanding (MOU) Progress Report

Mr. Kemper, Main Street Partners and **Megan Steele**, Metro were introduced. They agreed at a previous session to come back to the City Council with an update on the MOU process. An MOU was a statement of intent and was not legally binding. It set the intentions for a formal agreement. The sellers of the property were the City and Metro and the buyer was Main Street Partners.

Ms. Steele was pleased with the progress. It was a three-party agreement, so its complexity was exponential. They were falling a little behind schedule and would need a few more weeks. The parties were very close on all points and there had been a lot of discussion of design. Some can be grouped under the code amendment process and how that would work. The final point was on developer performance. They were prepared to discuss in some detail the vertical housing tax zone, which was a development tool. That incentive was used in North Main Village. Main Street Partners attended the TSP workshops related to downtown parking.

Mr. Kemper said discussions have tracked the 14 points initially raised when Council approved negotiations. The sidewalk area design was a primary concern to what the City is mandating. As the design moved along they were trying to negotiate for angle parking on Jackson and doing it within the street grid would be positive. The fifth story was an issue along the McLoughlin Boulevard side. Issues in terms of meeting exterior material requirements will come with code amendment requests under limited circumstances. Both height and exterior materials were about design and would be an important discussion. One issue was the second level connection. They want to create a visual connection rather than a pedestrian connection to keep the area secured.

Mr. Asher added they wanted the second level courtyard to be an amenity that pedestrians could enjoy from Jackson and Harrison.

Mr. Kemper said they wanted a pop in on Main Street to create a small area that connected to the second floor courtyard. There are some issues with maximum setback. They made green building commitments in the proposal. Parking was a big issue, and everyone was participating in that lively discussion. Schedule had slipped but was moving forward. The first Design and Landmarks Committee (DLC) presentation was on July 9 to get that group up to speed. Tree preservation was an issue that was very difficult because they were building to the line, so the trees will go. They will come back and do street trees with a vegetated courtyard. Hopefully on the penthouse level they will have greenery. Basically, they will put back more than was taken.

Mr. Asher said trees were sentimental, but once the project was built it will still be green.

Ms. Steele added that the selection committee members distinguished between urban trees and trees in natural setting.

Mr. Kemper said the bus pullout on McLoughlin Boulevard was an issue, and he did not believe that block was appropriate. It would throw a major monkey wrench into the proposal. If it was done on the next block, the building could be L-shaped.

Mr. Asher stated that TriMet south have the Southgate site configured by fall, and no one was arguing for a pullout on this block.

Mr. Kemper endeavored to get public input and wanted to make it clear he was not opposed to transit. From the start Main Street Partners had been extremely transit oriented and focused on centers projects. People took his comments at the Planning Commission meeting out of context. His point was twofold. Main Street Partners had a vision for Main Street and what downtown Milwaukie could be with carefully designed pedestrian oriented streets where cars drove slowly and people crossed the streets. He envisioned an interactive Main Street with great retail on both sides. Light rail on Main Street would destroy that kind of environment. He would rethink the Town Center because it would blow the environment. People took him as saying he is opposed to light rail in Milwaukie. They were concerned about putting it on McLoughlin Boulevard because of the technical challenges that could not be solved and could not build it. He stated that he did want light rail to Milwaukie. They thought the Planning Commission charge was to do what was best for the community at large. He didn't agree with the vocal Waldorf and St. Johns parents and felt the locally preferred alternative (LPA) was the best alternative. It would tend to stretch the downtown eastward toward the line. People who choose to live in a pedestrian environment would be willing to walk 3 or 4 blocks. The fallout from the meeting surprised him.

Mayor Bernard went to downtown Portland where the buildings were 20-stories and tried to visualized what light rail would be like on Main Street.

Mr. Asher spoke about the progress and the hope to be back track at the second meeting in July or the first meeting in August. The team had a pre-application conference scheduled, and the development review process would begin. Ms. Mangle will be more involved in what was a more regulatory process.

Councilor Barnes was happy to hear about the business at North Main Village and felt that will be the start.

Mr. Kemper replied he had signed with a good tenant and a good restaurant.

Councilor Barnes commented on the perception that downtown Milwaukie had a parking problem and that this development would cause more problems. She

asked Mr. Kemper if he had talked with the Historic Neighborhood to come up with some options.

Mr. Kemper was attending the Historic NDA meetings, and the City had hired a very knowledgeable parking expert. Those who worked downtown needed to find other parking options. Development needed to satisfy the parking needs it created. The residential parking ratio in a downtown community like this needed to be 1:1. People choosing to live in that environment should choose to have one car or pay to park and walk to it. There is argument about the ratio being higher in a downtown area.

Mr. Asher said Ms. Mangle would provide a TSP update during the regular session. The parking chapter was the downtown parking strategy. It has some real substance with short- and long-term changes in parking ratios. They are moving toward more intelligent discussions of parking for residents, and employees, and others. Some people moved into North Main Village with more than one car based on looking around thinking they could find other parking. It would be important to communicate parking availability more effectively with the next development. Prospective buyers needed to understand they were allotted one space and not allowed to park on the street.

Councilor Barnes was glad to hear Mr. Kemper's comments about his Planning Commission testimony. It cleared up things for her and hopefully others understood as well.

Mr. Kemper assured Council and the public that he supported bringing light rail to Milwaukie. He added that he hired Michelle Reeves with Windermere as his commercial realtor.

Mr. Asher said the vertical housing discussion would be done when Councilor Stone present.

Mayor Bernard said the City Council would discuss the Planning Commission recommendation during the regular session and at the July meeting.

Councilor Loomis wanted to see the Planning Commission testimony before having a discussion.

Mayor Bernard did not feel he could form an opinion without some preliminary drawings and requested something on the two proposed alignments.

Mayor Bernard adjourned the work session at 6:48 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 19, 2007**

CALL TO ORDER

Mayor Bernard called the 2008th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Councilors Deborah Barnes and Joe Loomis

Staff present: City Manager Mike Swanson, Community Development and Public Works Director Kenny Asher, and Planning Director Katie Mangle

PLEDGE OF ALLEGIANCE

Mr. Swanson announced the City Attorney had been excused from the meeting pursuant to Resolution 09-2003.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Drive Less/Save More Campaign

Pam Peck, Metro Regional Travel Options Manager, reported on the Drive Less/Save More campaign which was a multi-pronged effort to reduce single-person car trips and increase the use of transportation options. Three families from the Portland metro area were competing against themselves to reduce their mileage for one week in the area's first Drive Less/Save More Family Challenge. She encouraged people to visit the Metro website for more information on the program or stop by information booths at various farmers' markets in the region.

B. Transportation System Plan Update

Ms. Mangle updated the Council and public on the Transportation System Plan (TSP) project and reviewed some of the traffic projections for the region. One of Metro's functions was to manage the urban area transportation forecast model to determine future traffic volumes. Current conditions were tracked and projections were made out to 2030 based on adopted land uses. Clackamas County was growing to the east, so managing that traffic in the future was important. There was significant employment growth projected in downtown Milwaukie, so while there would be some internal growth most of the pressure was from the outside.

Ms. Mangle reviewed the Working Group efforts to date. The Pedestrian Solutions group held two workshops and considered updates to the 1997 TSP giving particular attention to pedestrian connections to schools and parks. The Bike Working Group considered bike routes on high volume streets such as Linwood Avenue and identified potential bicycle boulevards to provide a network of routes on low-traffic streets. Milwaukie had a lot of good potential for a connecting bike system. A lot of challenging and innovative work was being done in the Street Design Alternatives Working Group to make the current standards more flexible. Most development in Milwaukie was infill, and the group was looking for creative options. The Downtown Parking Group recommended adopting the 2003 Downtown Parking and Traffic Management Plan into the TSP, and members agreed that on-street parking should be for visitors and

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customers. The Group would recommend code amendments changing the City's parking requirements for downtown development that would transition to a multi-modal solution, planning for a parking structure, and considering a neighborhood parking zone when neighbors thought that was necessary. The Transit Solutions Working Group considered improvements that would significantly raise the quality of downtown transit facilities and improve east/west service. The Freight Access Group worked most intensely on the North Industrial Area and access from 99E. The Group came up with 9 alternatives for what could be done that would be studied in more detail. Finally, the Traffic and Auto Circulation Solutions Group was focused on changing regional traffic patterns and neighborhood connections. The Group would make recommendations regarding street classification changes, connectivity, and approaches to managing growth along Hwy 224. In the next few months staff would work with the City's consultant, DKS Associates, to integrate these ideas and develop chapters of the TSP.

Councilor Barnes announced a hearing on June 25 regarding the Harmony Road project. She urged residents to attend so Milwaukie's views could be heard. It was a Clackamas County project that could have a huge impact on Railroad Avenue, Linwood Avenue, and Lake Road.

Councilor Loomis appreciated the work and diversity of opinion. He asked if there had been a discussion of the Trolley Trail.

Ms. Mangle replied there was some discussion but not in great detail because it was on the books elsewhere.

Mayor Bernard commented from his perspective speed bumps were not a solution. He commented on the size of the traffic island on 34th Avenue which was difficult for some drivers to navigate. He preferred the long, narrow islands like the ones on Monroe Street.

Mr. Swanson encouraged people to attend the Advisory Committee meeting in July. He was pleasantly surprised at the energy of the participants and particularly the members of the bike group.

CONSENT AGENDA

A. City Council Minutes

- 1. May 1, 2007 Work Session;**
- 2. May 1, 2007 Regular Session; and**
- 3. May 15, 2007 Work Session**

B. OLCC Application, Widmer Brothers Brewing Company, 1750 SE Ochoco Street, Milwaukie, New Outlet

C. Resolution No. 38-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Acting as the Local Contract Review Board, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2007 – 2008

D. Resolution 39-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; and Classifying the Fees Imposed by This Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution;

Resolution 40-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Providing for Cost of Construction Indexing of System Development Charges.

It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the consent agenda. Motion passed unanimously among the members present. [3:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson reported one year ago the City Council received a Planning Commission recommendation on some Comprehensive Plan and code amendments. Consideration of both subsections had been continued since June 2006 and were now being considered at the second City Council meeting of each month.

It was moved by Councilor Barnes and seconded by Councilor Loomis to continue the matter to July 17, 2007. Motion passed unanimously among the members present. [3:0]

OTHER BUSINESS

A. Set the Date for the First Council Meeting in July 2007

Mayor Bernard announced the first meeting date in July would not be changed from July 3.

It was moved by Councilor Barnes and seconded by Mayor Bernard to suspend the Council rules in order for the City Manager to introduce a proposed resolution to approve transfers of FY 2006 – 2007 appropriations. Motion passed unanimously among the members present. [3:0]

B. Transfer of FY 2006 – 2007 Appropriations

Mr. Swanson requested the Council adopt a resolution transferring \$5,000 from Administrative Services, City Manager to Administrative Services, City Council to cover the costs occasioned by additional meetings not anticipated and the costs of the City tour conducted as part of the 2006 League of Oregon Cities Annual Conference; \$3,000 from the Engineering Fund, Materials and Services to Engineering Fund, Capital Outlay to cover unanticipated costs of staff changes within the department; and \$25,000 from Fleet Services, Contingencies to Fleet Service, Materials and Services to cover higher than anticipated costs in materials and services.

It was moved by Councilor Loomis and seconded by Councilor Barnes to adopt the resolution approving transfers of FY 2006 – 2007 appropriations. Motion passed unanimously among the members present. [3:0]

RESOLUTION NO. 41-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING TRANSFERS OF FY 2006 – 2007 APPROPRIATIONS.

C. Council Reports

Mayor Bernard attended both Planning Commission meetings on the light rail alignment. He thanked the Planning Commission and staff for their hard work in gathering public testimony on the proposal to add Main and/or McLoughlin Boulevard to the Supplemental Draft Environmental Impact Statement. The two questions he asked were if the idea had broad community support and if the idea supported the downtown vision? He agreed with the Planning Commission that Main Street was an interesting option and that McLoughlin Boulevard was a non-starter. He agreed the community consensus was unclear. He felt more work needed to be done prior to his making a recommendation to the South Corridor Phase 2 Steering Committee on July 9. He understood the City Council would get the Planning Commission material to review this week.

Councilor Barnes did not attend the Planning Commission meetings because she wanted to have the perspective of people watching at home. She could tell from the looks on the Commissioners' faces and their body language that this was a difficult position to be in. She congratulated the Planning Commission for what it did and the time it spent on gathering input. She attended the Milwaukie High School graduation as a Council representative and as a North Clackamas School District teacher. The Harmony Road meeting was next week, and the Wastewater Policy Group was meeting on Thursday. She would volunteer at the Friends of the Ledding Library Book Sale on Saturday and the Farmers' Market Community Booth on Sunday. The Young Leaders Group, which included her daughter, would be honored at the North Clackamas Chamber of Commerce Banquet, and Mayor Bernard would be installed as the Chair.

Councilor Loomis commented on the North Clackamas Park North Side Planning Process. The new ballfields were very popular with those visiting the Park, and there were very few complaints. Lights and noise were not proving to be a problem.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Loomis to adjourn the meeting. Motion passed unanimously among the members present. [3:0]

Mayor Bernard adjourned the regular session at 7:52 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: MACC Intergovernmental Agreement

Date: July 5, 2007

Action Requested

Approve a resolution amending the City's Intergovernmental Agreement with the Metropolitan Area Communication Commission (MACC) to ensure competitive franchise applications are referred to and processed by MACC.

Background

The Federal Communications Commission (FCC) recently issued an Order establishing a limited time for local governments to review, negotiate and authorize a competitive cable television franchise. Among other restrictions on local government, the Order limits a city's review of new applications, including the negotiation of a new franchise, to just 90 days (or 180 days in the case of a company with no current right of way authorization). The Order also establishes a very weak application process – essentially just name, address and basic service information.

The FCC Order does allow local governments to review competitive franchise applications under current practices, such as an established application procedure. The Metropolitan Area Communications Commission, the agency that administers the City's Comcast franchise, has established such an application process and has offered to assist the City by reviewing all the City's cable applications using their process. In order to grant MACC this authority, an amendment to the current intergovernmental agreement is required.

Under the MACC application process, new applications to the City would be referred to MACC for review and a determination as to whether the application is complete. If incomplete, the City could ask MACC to pursue unanswered questions from the applicant, or could retain that authority. The City would

continue to be responsible for negotiating a franchise after the initial application and information gathering process is complete, just as it did with the Comcast franchise.

Concurrence

MACC staff and the Community Services Director have discussed this amendment and feel that it is to the City's benefit to implement.

Fiscal Impact

None. MACC is not requesting additional remuneration for this service.

Work Load Impacts

The approval of this amendment would assist city staff in minimizing workload impacts resulting from the recent FCC Order

Alternatives

Do not approve the amendment, leaving the City with little recourse to request additional information if cable providers request franchises from the City.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE CITY'S INTERGOVERNMENTAL AGREEMENT WITH THE METROPOLITAN AREA COMMUNICATION COMMISSION (MACC) TO ENSURE COMPETITIVE FRANCHISE APPLICATIONS ARE REFERRED TO AND PROCESSED BY MACC.

WHEREAS, the Federal Communications Commission (FCC), as part of its March 5, 2007 Local Franchising Order (Order) established a limited time for local governments to review, negotiate and authorize a competitive franchise for cable services; and

WHEREAS, MACC has an established application process which will allow them to review competitive franchise applications; and

WHEREAS, MACC has offered, as the administrator of the Comcast cable franchise for the City, to assist the City in reviewing competitive cable franchise applications;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE that the Intergovernmental Agreement with the Metropolitan Area Communications Commission is amended as shown on attachment A.

Introduced and adopted by the City Council on _____ .

This resolution is effective immediately.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

INTERGOVERNMENTAL AGREEMENT

Between

CITY OF MILWAUKIE, OREGON

and the

METROPOLITAN AREA COMMUNICATIONS COMMISSION

THIS AGREEMENT is made and entered into by the City of Milwaukie, a municipal corporation of the State of Oregon (hereafter "City") and the Metropolitan Area Communications Commission (hereafter "MACC") an intergovernmental commission established in accord with ORS Chapter 190.

AUTHORITY

This AGREEMENT is authorized by:

1. The Constitution and general laws of the State of Oregon.
2. Section 4 of the Charter of the City of Milwaukie.
3. ORS Chapter 190.003 through 190.110 inclusive.

RECITALS

WHEREAS, MACC is organized by intergovernmental agreement with thirteen cities and Washington County as participating signatories, however, this AGREEMENT is only to govern the relationship described below between the City and MACC, and shall not be construed in any fashion to affect the parties' responsibility pursuant to said intergovernmental agreement; and

WHEREAS, City desires MACC to administer the day-to-day operational and regulatory aspects of its separate cable television agreement with Comcast, Inc., and any other franchise agreements as set forth herein; and

WHEREAS, MACC is able and willing to perform such operational and regulatory services and functions for the City as more fully set forth herein and in *EXHIBIT A* hereto.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and covenants contained herein, the City and MACC agree as follows:

ARTICLE 1 - PURPOSE OF AGREEMENT

The purpose of this AGREEMENT is to set forth the obligations and rights of the City and MACC and the limits thereof, and to otherwise clarify the relationship between the parties hereto. In general, MACC shall perform certain cable television franchise agreement operational and regulatory services for the City, acting as the City's authorized AGENT, and as herein specified. In consideration thereof, City shall pay to MACC such monies and in such manner as herein described.

ARTICLE 2 - SERVICES TO BE PROVIDED

MACC shall provide those cable television administration/regulation services described herein, and more fully in the attached *EXHIBIT A*, which is by this reference, incorporated herein in its entirety. Such services shall be provided in the manner and with the frequency set forth herein and in said *EXHIBIT A*.

ARTICLE 3 - TERM OF AGREEMENT

3.1 Term - The term of this AGREEMENT shall be from July 1, 2005 through June 30, 2008 inclusive.

3.2 Renewal - This AGREEMENT may be renewed only by a duly executed amendment hereto and as more fully set forth in Article 5 - Amendments.

ARTICLE 4 - COMPENSATION AND METHOD OF PAYMENT

4.1 Comcast Agreement -- MACC and the City agree the City should pay MACC its fully allocated share of the costs for administering the Comcast agreement. MACC and the City have determined that a payment by the City to MACC derived from the cable franchise will result in appropriate compensation to MACC for services to be performed hereunder. Therefore, the City shall disburse up to 28% of its quarterly payments of franchise fees to MACC within fifteen (15) working days following City's receipt of Comcast franchise fee payment for the previous calendar quarter.

4.2 Compensation Review -- Annually, during the term of this AGREEMENT, the parties agree to review the compensation rates paid to MACC. If the parties agree on a change in compensation, above the stated maximum 28%, it will be made through a duly executed amendment to Article 4.1 and will modify the compensation for the next fiscal year of the AGREEMENT.

4.3 Future Agreements -- Should the City grant a separate cable television agreement to another provider during the term of this AGREEMENT which MACC would administer, MACC will be compensated for such work. The City and MACC will negotiate such assistance as a separate agreement.

ARTICLE 5 - AMENDMENTS

No material change in this Agreement or in the services to be provided under this AGREEMENT and *EXHIBIT A* hereto shall be authorized unless and until first reduced to writing and duly executed by both MACC and the City.

ARTICLE 6 - TERMINATION

This AGREEMENT may be terminated under the following conditions:

- a) By written, mutual agreement of both the City and MACC. Termination pursuant to *this* Subsection may be immediate.

- b) Upon thirty (30) calendar days written notice by either party to the other of intent to terminate, and;
- c) If this AGREEMENT is terminated by either party, the City agrees to negotiate with MACC any reasonable amount of compensation due MACC for work performed or to be performed prior to the actual date of termination.

ARTICLE 7 - WHOLE AGREEMENT

This AGREEMENT is the complete and exclusive statement of the understandings between parties relevant to the purposes described herein and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties relating to the subject matter of this AGREEMENT. No material modification of this AGREEMENT shall be binding on either party except as a written and duly executed amendment hereto as provided in Article 5.

ARTICLE 8 - WRITTEN NOTICE

Any notice of modification, termination, or other communication having a material effect on this AGREEMENT shall be served in one or both of the following manners:

- a) In-person delivery to either individual identified in Article 8.c) below, or;
- b) Deposited in the US mails, postage prepaid, posted to either individual identified in Article 8.c) below.
- c) Notices shall be deemed to have been served in accord with either Article 8.a) or 8.b) above if delivered/mailed as follows:

TO CITY: City Manager, City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

TO MACC: Administrator
Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006

ARTICLE 9 - GOVERNING LAW/VENUE

The laws of the State of Oregon shall govern this AGREEMENT. Any action or suit commenced in connection with this AGREEMENT shall be in the Circuit Court of Washington County.

ARTICLE 10 - ATTORNEY FEES

In the event any suit, action, or other proceeding is brought with regard to this AGREEMENT, or to enforce any of the provisions hereof, the prevailing party in any such suit, action or other proceeding, or any appeal therefrom, shall be entitled to reasonable attorney fees and court costs.

All rights and remedies of the City or MACC shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to, or waiver of, any other rights or remedies of the City or MACC according to law. It is agreed that fifteen (15) calendar days shall constitute reasonable notice for the exercise of any right in the event that applicable law specifically requires such notice.

ARTICLE 11 - JUDICIAL RULINGS/SEVERABILITY

If any provision of this AGREEMENT as applied to either party or to any circumstance, shall be adjudged by a Court of competent jurisdiction to be invalid, void, or unenforceable, the same shall in no way affect the validity or enforceability of any other term, condition, or provision of this AGREEMENT.

ARTICLE 12 - PERSONNEL/WORKERS' COMPENSATION

All persons employed to furnish services under this AGREEMENT are employees or subcontractors of MACC and not of the City. MACC is a subject employer under Oregon workers' compensation law and shall comply with ORS 656.017, which requires it to provide workers' compensation coverage to all its subject workers.

ARTICLE 13 - INDEMNIFICATION

To the extent permitted by law, City and MACC shall save harmless, defend, and otherwise indemnify the other, their employees, agents, and officers for any and all claims, damages, losses, and expenses, including but not limited to attorney fees, penalties and fines, arising out of the responsible party's performance of this AGREEMENT. City and MACC agree that neither is indemnifying or holding the other harmless for the negligent acts of the other's own employees, agents, or officers under this AGREEMENT.

Nothing in this AGREEMENT is intended nor shall it be construed as imposing any liability on a jurisdiction for claims in excess of the Oregon Tort Claims Act. City and MACC agree to maintain insurance levels, or self-insurance in accordance with ORS 30.282 for the duration of this AGREEMENT to levels necessary to protect the entities against public body liability as specified in ORS 30.270.

ARTICLE 14 - SUBCONTRACTING AND NON-ASSIGNMENT

14.1 No portion of this AGREEMENT (except those circumstances specified in § 14.2, 14.3, and 14.4) may be subcontracted to any third party, whether an individual firm or other entity without the advance, written approval of the City.

14.2 The City understands that MACC may incur legal costs from its outside legal counsel related to their work on the City's Comcast franchise. Therefore, the City agrees to allow MACC to recover the City's proportionate share of those costs from the City. Such costs are in addition to any compensation as defined in Article 4. MACC will invoice the City for these costs and will provide written evidence of the legal work performed and the total costs incurred. City will reimburse MACC for these costs within thirty (30) days of receipt of MACC invoice.

14.3 The City understands that MACC may incur costs related to the periodic financial review of Comcast's gross receipts. Those costs would specifically involve the retaining of specialized outside professional consultant services to perform the review. Therefore, City agrees to allow MACC to recover the City's proportionate share of those costs from the City. Such costs are in addition to any compensation as defined in Article 4. MACC will invoice the City for these costs and will provide written evidence of the consultant work performed and the total costs incurred. City will reimburse MACC for these costs within thirty (30) days of receipt of MACC invoice.

14.4 The City understands that MACC may incur costs for technical advice/assistance provided by an outside expert consultant(s) related to the Comcast cable system. Therefore, City agrees to allow

MACC to recover the City's proportionate share of those costs from the City. Such costs are in addition to any compensation as defined in Article 4. MACC will invoice the City for these costs and will provide written evidence of the consultant work performed and the total costs incurred. City will reimburse MACC for these costs within thirty (30) days of receipt of MACC invoice.

14.5 No portion of, nor any interest in this AGREEMENT, may be assigned to a third party without the advance, written approval of the City.

ARTICLE 15 - RESPONSIBILITY FOR TOOLS, EQUIPMENT, AND MATERIALS

The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, supplies, or other personal property of MACC, its employees, or agents which may be stored in, or used on or in City premises.

ARTICLE 16 - DOCUMENTS PROVIDED

16.1 On an ongoing basis, the City will provide MACC with the following documents:

- a) Cable Franchise: AT&T/TCI (June 1999); and
- b) Copies of such correspondence and other material which would or could materially affect MACC's ability to perform the obligations specified in this AGREEMENT including but not limited to, City produced area maps, right-of-way agreements, and like documents.

16.2 The City shall respond in a timely manner to MACC's reasonable requests for historical or current data, information, and correspondence relating to Comcast, to the extent that such materials are reasonably available to or practicably obtainable by the City.

16.3 - The City will notify Comcast in writing that:

- a) MACC has been contracted to act as the City's AUTHORIZED AGENT for the purposes enumerated in this AGREEMENT, that;
- b) MACC, as the City's AGENT, is empowered to request, have access to, and receive any information, data, reports, records, and other materials to which the City is or otherwise would be entitled pursuant to its agreement with Comcast, and that;
- c) MACC shall be extended every consideration and courtesy to which the City is or otherwise would be entitled.

ARTICLE 17 - REPORTS

MACC shall provide the City such oral and written reports and in such frequency and level of detail as set forth herein, in *EXHIBIT A* hereto and as otherwise agreed. MACC further agrees to provide such other reports as may be requested from time to time by the City or as otherwise mutually agreed upon by the parties.

ARTICLE 18 - NON-APPROPRIATION OF FUNDS

In the event the City Council of the City of Milwaukie reduces, eliminates, or otherwise modifies the funding for the services to be provided hereunder, MACC agrees to abide by any such decision, including termination of services as provided in this AGREEMENT.

ARTICLE 19 - AGREEMENT

19.1 The City and MACC hereby agree to all provisions of this INTERGOVERNMENTAL AGREEMENT. Each person signing below represents that he/she is duly authorized to execute this

AGREEMENT on behalf of the affected party.

FOR the Metropolitan Area Communications
Commission

FOR the City of Milwaukie, OR.

Bruce Crest Date
Administrator

Mike Swanson Date
City Manager

APPROVED AS TO FORM

Date

See *EXHIBIT A and B*, each of which is hereby made a part of this Agreement

EXHIBIT A

SCOPE OF SERVICES

GENERAL

It is the intent of the parties hereto that the City shall by this INTERGOVERNMENTAL AGREEMENT, delegate to the Metropolitan Area Communications Commission (MACC) sufficient authority to accept and process competitive cable franchise applications submitted pursuant to 47 C.F.R. § 76.41 and to properly administer the day-to-day operational/regulatory aspects of the City's current cable television franchise agreement (Franchise) with Comcast in a manner similar to the relationship MACC has with its member jurisdictions participating in the MACC Intergovernmental Agreement. The parties understand, furthermore, that this AGREEMENT does not extend to the resolution of substantive cable television policy issues involving Comcast that are, and shall remain, within the City's jurisdiction and discretion. MACC's obligations with respect to such policy issues are limited to bringing them to the City's attention as they arise, to recommend action and/or to act in an advisory and technical assistance capacity as mutually agreed by the parties as the City moves to resolve those same policy issues. The City reserves the sole right to determine which cable television issues emerging during the term of the AGREEMENT rise to the level of policy significance (*see detail in Exhibit B*).

COMPETITIVE CABLE FRANCHISE APPLICATIONS

MACC shall accept and process all competitive cable franchise applications to provide cable service within the City, whether submitted to the City or to MACC, pursuant to 47 C.F.R. § 76.41. MACC shall review every competitive cable franchise application submitted pursuant to this AGREEMENT to ensure compliance with the Competitive Franchise Application Rule adopted by MACC, as such rule is amended from time to time, and with any related forms, processes, rules, administrative procedures and application fees subsequently established by MACC related to competitive cable franchise applications (the "CFAR"). Within ten (10) days after receipt of a competitive cable franchise application, MACC shall complete its review and provide notice to the City of whether or not that the application complies with the CFAR. In the event that the application does not comply with the CFAR, MACC will provide the City with a detailed description of the bases for MACC's determination that it does not comply. If requested by the City, MACC will contact the applicant to request any missing or additional information required by the CFAR, review any additional information submitted by the applicant to MACC or the City, and provide notice to the City of whether or not the additional information brings the application into compliance with the CFAR. MACC shall have no further obligations under this AGREEMENT with respect to a competitive cable franchise application unless MACC and the City amend this AGREEMENT or enter into a separate agreement as set forth in Section 4.3 of this AGREEMENT.

CONSUMER PROTECTION

1. MACC shall respond to all cable-related complaints whether notified by the City, other public bodies, or individual citizens, by working with Comcast and by providing sufficient follow-up to ensure complaint resolution and/or consumer satisfaction.
2. MACC shall periodically review and analyze the complaints it forwards to Comcast and advise the City in a timely fashion, of any emerging complaint issues and/or trends which have or may

have, cable policy implications for City.

3. MACC shall identify and report to the City, any consumer practices and cable procedures of Comcast which MACC believes are not or may not, be in the best short or long-term interests of cable service consumers within the franchise areas of each respective cable firm.

CONSTRUCTION

Accordingly, MACC shall, subject to the requirements contained in the franchise agreement with the City, monitor any cable system upgrades, new construction, or other substantial work in the rights-of-way. In addition, MACC shall:

1. Monitor new residential and public agency development in the franchise area, including multiple dwelling unit developments, and work with the City and Comcast to ensure that all such developments are provided cable service in a timely fashion, subject to the appropriate requirements of the franchise agreement with the City.

TECHNICAL PERFORMANCE

1. MACC shall review the *Annual Proof of Performance Test* required of Comcast.
2. MACC shall monitor and evaluate any technical modifications either proposed or actually implemented to the Comcast system, and shall make such recommendations to the City related thereto as appear appropriate.

GENERAL FRANCHISE ADMINISTRATION

1. MACC shall perform or cause to be performed, periodic financial review/audit of Comcast franchise payments to City.
2. MACC shall maintain appropriate records on Comcast activities.
3. MACC shall perform general administration of other franchise activities.
4. MACC shall, on an annual basis, provide the City a written *Franchise Administration Report*, which shall be in such form and in such detail as mutually agreed by the parties.

PEG ACCESS/INSTITUTIONAL NETWORK

The parties understand that the administration and management the City's PEG Access program and its Institutional Network will continue with the City and are generally not part of the scope of work for this Agreement.

CHANGES IN SERVICES PROVIDED

Material additions to, or deletions from, the services described herein shall not be affected unless and until they are reduced to writing in accord with the amendment provisions of this INTERGOVERNMENTAL AGREEMENT and, further, have been first authorized by both the City and MACC.

Exhibit B

MACC Regulatory Services For Milwaukie, OR

Activity	Frequency	COMCAST Franchise Level
Subscriber Complaint Resolution	Ongoing	<input checked="" type="checkbox"/>
Subscriber Outreach	Ongoing	<input checked="" type="checkbox"/>
Cable Provider Information (Who serves me?)	Ongoing	<input checked="" type="checkbox"/>
Rate Regulation	Ongoing	<input checked="" type="checkbox"/>
Telephone Response Monitoring	Ongoing	<input checked="" type="checkbox"/>
Service Response	Ongoing	<input checked="" type="checkbox"/>
Construction Standards Enforcement	Ongoing	<input checked="" type="checkbox"/>
Construction Monitoring	Ongoing	<input checked="" type="checkbox"/>
Maintain Complaint Database	Ongoing	<input checked="" type="checkbox"/>
Public Information on Telecom Issues	Ongoing	<input checked="" type="checkbox"/>
Annual Audit	Annual	<input checked="" type="checkbox"/>
Franchise Fee Review	As Needed	<input checked="" type="checkbox"/>
General Administration	Ongoing	<input checked="" type="checkbox"/>
Monitor Legislative & Legal Trends	Ongoing	<input checked="" type="checkbox"/>
Monitor Industry Trends	Ongoing	<input checked="" type="checkbox"/>
Physical Plant Inspection	Ongoing	<input checked="" type="checkbox"/>
Commission Reports	As Needed	<input checked="" type="checkbox"/>
Quarterly Reports	Quarterly	<input checked="" type="checkbox"/>
Annual Reports	Annual	<input checked="" type="checkbox"/>
Monitor Interactive Service Development	Ongoing	<input checked="" type="checkbox"/>
Maintain Paper Records	Ongoing	<input checked="" type="checkbox"/>
Review & Maintain Correspondence	Ongoing	<input checked="" type="checkbox"/>

Exhibit B

MACC Regulatory Services For Milwaukie, OR

Activity	Frequency	COMCAST Franchise Level
MDU/ROEs	Ongoing	<input checked="" type="checkbox"/>
Liability Insurance Review	Ongoing	<input checked="" type="checkbox"/>
Legal Review	Ongoing	<input checked="" type="checkbox"/>
Track New Service Offerings	Ongoing	<input checked="" type="checkbox"/>
Advance Review of Promotional Material	Ongoing	<input checked="" type="checkbox"/>
Periodic Meetings With Cable Co. Staff	Ongoing	<input checked="" type="checkbox"/>
Process Transfers of Ownership	Ongoing	<input checked="" type="checkbox"/>
Process/Manage Franchise Modification Requests	As Needed	<input checked="" type="checkbox"/>
Work w/ Local Government on Franchise Issues	As Needed	<input checked="" type="checkbox"/>
Enforce Franchise Provisions on SMATVs	Ongoing	<input checked="" type="checkbox"/>
Assist with Process RSN Requests For Public & Nonprofit Facilities Inst	Ongoing	<input checked="" type="checkbox"/>
Cite Grantee for Franchise Violation & Penalties	Ongoing	<input checked="" type="checkbox"/>
Monitor Grantee Compliance with FCC Standards	As Needed	<input checked="" type="checkbox"/>
Monitor Franchise FCC/EEO Compliance	Ongoing	<input checked="" type="checkbox"/>
Review Communications Between Grantee & FCC	Ongoing	<input checked="" type="checkbox"/>
Technical Standards Compliance	Ongoing	<input checked="" type="checkbox"/>
Review Proofs of Performance Tests	Semi-Annually	<input checked="" type="checkbox"/>



To: Mayor and City Council

Through: Mike Swanson, City Manager
Paul Shirey, Operation Director
Gary Parkin, Engineering Director

From: Jason Rice, Associate Engineer
Ronelle Sears, Operations Supervisor

Subject: Fat, Oil and Grease (FOG) Program Ordinance

Date: June 20th for the July 17th, 2007 Regular Session

Action Requested

Amend the existing Municipal Code to create an inspection and enforcement program implementing the Code restriction of fat, oil and grease into the wastewater system.

Background

Residual fat, oil and grease (or "FOG") are by-products that food service establishments should consistently manage. Typically, FOG enters a facility's plumbing system from dishwashing, floor cleaning, and equipment sanitation. If excessive amounts of FOG are allowed to flow into the public wastewater system, pipes and pumps are clogged and much time expended to maintain the system. The best way to manage FOG is to keep the material out of the system, utilizing designed maintenance systems, such as grease traps and interceptors at the source.

The City of Milwaukie's Municipal Code (section 13.12.060 – Discharge Regulations) restricts the amount of FOG that may be discharged to the City's wastewater system. There is not however, a program in place to ensure

compliance. Currently, wastewater mains, pumps and the treatment plant are inundated with FOG, restricting flows and requiring frequent cleaning.

The following pictures are examples of pipes within Milwaukie that are not being protected by proper maintenance systems.



There are approximately 50 businesses in Milwaukie that need to control FOG. 10 sites have systems in place and are maintaining them, 30 sites have systems in place but are not maintaining them, and 10 sites do not have adequate systems in place.

On April 19th staff visited the City of Wilsonville and went with their FOG Inspector during routine site visits. Since the implementation of their program, Wilsonville has reduced line cleaning costs by 75%. Their wastewater treatment plant no longer has to treat for excessive FOG in the aeration tanks. Other local entities that have adopted FOG programs include the City of Portland, Clackamas County, and the City of Beaverton.

The proposed code was developed from Wilsonville's.

Concurrence

The Operations and Building Departments worked closely with Engineering to develop the proposed Code amendment.

The City Attorney has reviewed the proposed Code amendment and finds no legal issues with adopting the new code.

Fiscal Impacts

Positive fiscal impacts include:

- Less time and expense cleaning FOG from the City sewer system
- Up to 50% reduction in grease at Kellogg Treatment Plant (source: City of Wilsonville and Clackamas County FOG Programs)
- Increased sewer main life
- Less sewer backups (fewer claims against the City)

Negative Fiscal Impacts:

- Increased inspection time (the reduction in cleaning time and expense more than compensates)
- Minor printing costs for inspection forms and violation notices
- Property owners needing grease traps or interceptors will incur costs associated with the maintenance and/or installation. Costs include;
 - Regular maintenance of grease traps (approx. \$80 - \$100 per visit)
 - Retro-fit of grease trap (approx. \$1000 - \$1200)
 - Retro-fit of grease interceptor (approx. \$6000 - \$8000)



Example of a working in-ground grease trap



Example of a working retrofit grease trap

Work Load Impacts

Once adopted, the program will send a letter to each business producing FOG. The letter will ask the business to schedule a time for their first inspection. This inspection will consist of data gathering. A follow-up letter will ask the owner to provide a routine maintenance schedule and install and/or repair any grease traps or interceptors needed. The letters will go out within three months of the

adoption of this code amendment and will give a time frame of 6 months for compliance. The program will then begin monitoring maintenance and scheduling inspections.

Communication is an important part of this program's success. Regular inspections of businesses provide opportunities for education and awareness of the program.

The FOG program inspections will be handled by the City's Wastewater Supervisor and the Wastewater Utility Specialist. Inspections will typically occur on a bi-monthly basis, the actual frequency of each site inspection will be determined after the second visit to the site.

Alternatives

1. Approve
 - Provide a program to assist in the reduction of FOG in the wastewater system
 - Raise awareness of the problem
 - Improve the functionality of the wastewater system
2. Deny
 - FOG continues to be an issue
 - Without specific Code language, enforcement continues to be ineffectual
3. Postpone changes to Municipal Code with a request for more information
 - The program may be adjusted to suit preferences

Attachments

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 13 – PUBLIC SERVICES TO REMOVE GENERAL REQUIREMENTS AND CREATE AN INSPECTION AND ENFORCEMENT PROGRAM THAT WILL AIDE THE OPERATIONS DEPARTMENT.

WHEREAS, the proposed amendments to Title 13 remove general requirements and create a set of standards for which an inspection program will be implemented; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie; and

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

Section 1. Title 13 Public Services Ordinance Amendment. Exhibit A (Strikeout Version).

Section 2. Title 13 Public Services Ordinance Amendment. Exhibit B (Clean Version).

Read the first time on July 17th, 2007, and moved to second reading by _____ vote of the City Council.

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

13.12.060 Discharge regulations.

- A. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, cooling water or unpolluted industrial process waters to any sanitary sewer. In the event the sewer system user fails to comply with any order requiring disconnection or it is impractical to require the disconnection of any storm drain from the sewer system, the sewer system user shall be required to pay a surcharge for such use of the system as established by resolution of the council.
- B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as stormdrains to a natural outlet or into drywells as approved by the director.
- C. Except as provided in this section, no person shall discharge or cause to be discharged any of the following waters or wastes to any public sewer:
1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit;
 2. Any water or waste which may contain more than one hundred parts per million, by weight, of fat, oil or grease;
 3. Any gasoline, benzine, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;
 4. Any garbage that has not been properly shredded;
 5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer system;
 6. Any waters or wastes having pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
 7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process or constitute a hazard in the receiving waters of the sewage treatment plant;
 8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
 9. Any noxious or malodorous gas or substance capable of creating a public nuisance;
 10. Any material from septic tanks or recreational vehicle holding tanks.
- D. ~~Grease, oil and sand interceptors shall be provided when, in the opinion of the public works director, they are necessary for the handling of such wastes; except that such interceptors shall not be required for private living quarters. All interceptors shall be of a type and capacity approved by the public works director and be located so as to be easily cleaned and inspected. Where installed, all grease, oil and sand interceptors shall be maintained by the sewer system user, at their expense, in continuously efficient operation. The city may inspect facilities at any time for proper operation and maintenance. Repealed.~~

- E. No unauthorized person shall maliciously, wilfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewer system.
- F. Industrial and commercial sewage shall be monitored in accordance and must comply with the treatment regulations of Clackamas County Service District No. 1.
- G. The director may adopt specifications and additional regulations consistent with city ordinances to carry out the purpose of this chapter. A copy of such additional material shall be maintained in the department.

13.12.060 Discharge regulations.

- A. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, cooling water or unpolluted industrial process waters to any sanitary sewer. In the event the sewer system user fails to comply with any order requiring disconnection or it is impractical to require the disconnection of any storm drain from the sewer system, the sewer system user shall be required to pay a surcharge for such use of the system as established by resolution of the council.
- B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as stormdrains to a natural outlet or into drywells as approved by the director.
- C. Except as provided in this section, no person shall discharge or cause to be discharged any of the following waters or wastes to any public sewer:
 - 1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit;
 - 2. Any water or waste which may contain more than one hundred parts per million, by weight, of fat, oil or grease;
 - 3. Any gasoline, benzine, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;
 - 4. Any garbage that has not been properly shredded;
 - 5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer system;
 - 6. Any waters or wastes having pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
 - 7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process or constitute a hazard in the receiving waters of the sewage treatment plant;
 - 8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
 - 9. Any noxious or malodorous gas or substance capable of creating a public nuisance;
 - 10. Any material from septic tanks or recreational vehicle holding tanks.
- D. Repealed.

- E. No unauthorized person shall maliciously, wilfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewer system.
- F. Industrial and commercial sewage shall be monitored in accordance and must comply with the treatment regulations of Clackamas County Service District No. 1.
- G. The director may adopt specifications and additional regulations consistent with city ordinances to carry out the purpose of this chapter. A copy of such additional material shall be maintained in the department.

13.12.063 Fat, oil, and grease control.

A. Purpose

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

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

B. Applicability

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

C. Definitions

1. **City** means the City of Milwaukie Oregon, employees of the City, or an authorized agent of the City.
2. **Discharger** means the Food Service Facility that is discharging gray water to the City sewer system.
3. **Food Service Facility or Facility** means any business which prepares and/or packages food or beverages for sale or consumption, on or off site, with the exception of private

residences. Food service facilities shall include, but are not limited to, food courts, food manufacturers with an average daily discharge volume of 25,000 gallons per day or less, food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools, and all other food service facilities not listed, herein.

4. **Garbage Disposal** means a device which shreds or grinds up waste materials into smaller portions for discharge into the City's sanitary sewer system.
5. **Gray Water** means all of the liquid contained in a grease interceptor that lies below the floating grease layer and above the food solids layer.
6. **Grease** means a material either liquid or solid, composed primarily of fat, oil and grease from animal or vegetable sources. The terms "fats, oils, and grease (FOG)," "oil and grease" or "oil and grease substances" shall all be included within this definition.
7. **Grease Trap Service Company** means a person, or company, who provides maintenance services for grease traps and interceptors. Maintenance service to include cleaning, minor repairs, grease and solids removal from the interceptor, and transport of the removed material to an appropriate recycling or disposal facility.
8. **Grease Interceptor** means a device located underground and outside of the food service facility designed to collect, contain or remove food wastes and grease from the wastestream while allowing the balance of the liquid wastes (gray water) to discharge to the wastewater collection system by gravity. Interceptors shall have at least one inspection hatch on the top surface to facilitate inspection, cleaning, and maintenance.
9. **Grease Trap** means a device located in a food service facility or under a sink designed to collect, contain, or remove food wastes and grease from the wastestream while allowing the balance of the liquid waste (gray water) to discharge to the wastewater collection system by gravity. Traps shall have a removable lid on the top surface to facilitate inspection, cleaning, and maintenance.
10. **Waste Grease** means fats, oils, and grease that can be collected following use and prior to discharge to the sewer or interceptor. Waste Grease is collected from pans, deep fat fryers, and cooking grills.

D. Grease Interceptor/Trap Required

1. General Requirements

Grease interceptors and/or traps shall be provided by the facility owner, when, in the opinion of the City, they are necessary to prevent grease in excessive amounts from entering the sanitary sewer system. Owner shall provide documentation and/or calculations on all sizing and model selections to the City Building Division for approval prior to installation. The interceptor shall be located as to be easily and safely accessible for cleaning and inspection. All prospective grease trap users must provide manufacturer's capacity data and an estimate of the product rate at the facility that is within the capacity of the grease trap to be approved by the Building Permit Department.

2. Existing Facilities

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

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

- a. The facility is found to be contributing grease and oil in quantities greater than 100 mg/L (or ppm) or necessitates increased maintenance on the wastewater collection system.
- b. The facility does not have a grease interceptor or trap.
- c. The facility has an undersized, non-repairable or defective grease interceptor or trap.
- d. Remodeling of the food preparation or kitchen waste plumbing system is performed which requires a building permit to be issued by the City.
- e. The existing facility does not have plumbing connections to a grease interceptor or trap in compliance with the requirements of this ordinance, or current building codes.

3. New Facilities or New Interceptor Installations

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

E. Maintenance of Grease Interceptor/Trap Required

1. Maintenance

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

2. Routine Maintenance Schedules

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

3. Record-Keeping Requirements

The discharger is responsible for maintaining appropriate maintenance records that documents the routine pumping, cleaning, and repairs made to interceptors and traps. Where the discharger hires a Grease Trap Service Company to clean the interceptor/trap

and remove and dispose of the accumulated grease and solids, a copy of the pumping manifest or billing must be retained with the maintenance records. All maintenance records should include at a minimum the following information:

- a. Name of facility
- b. Date service performed
- c. Total volume of the interceptor/trap
- d. Total volume of material removed from the interceptor/trap
- e. List of all deficiencies identified from an inspection of the empty interceptor/trap
- f. Name of the Grease Trap Service Company
- g. Address of the Grease Trap Service Company
- h. Name and address of final disposal site
- i. Signature of the Grease Trap Service Company employee performing the work
- j. Signature of the discharger's employee observing and accepting the services

4. Record Retention

All Grease Interceptor/trap maintenance records shall be retained for a period of no less than, three (3) years. These records shall be retained at the food service facility and shall be made available for inspection by the City.

F. Disposal of Wastes from Interceptors and Traps

Storage, handling, transportation and disposal of all wastes from interceptors/traps shall be performed in accordance with applicable Federal, State, and Local regulations that pertain to the type and/or class of waste. Materials removed from waste interceptors/traps must be disposed of at legally designated locations for those specific type wastes. Materials removed from waste interceptors/traps shall not be discharged to the City sanitary sewers or storm drains.

G. Collection, Storage, and Disposal of Waste Grease and Solids

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

H. Clean up of Spilled Grease and Oil

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

I. Use of Chemicals and Other Additives

The use of chemicals, emulsifying agents, enzymes, microorganisms, and/or other additives that are added to the grease interceptors/traps to reduce or eliminate the pumping and cleaning of the

interceptor/trap is prohibited. Dischargers currently using a chemical or other additive must halt such use immediately on the effective date of this ordinance or be subject to citation and fine under section K. of this chapter.

J. Right of Access

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

K. Enforcement

Failure to comply with the provisions of this ordinance is considered a misdemeanor and subject to enforcement actions under the City Codes. In addition, to these misdemeanor enforcement actions the City is authorized to take the following actions to achieve compliance to the City Ordinance.

1. Mandatory Interceptor/Trap Service

The City may issue an order requiring the discharger to conduct Interceptor/Trap Maintenance Services within a mandatory time period. The cost of the services shall be the direct responsibility of the discharger.

2. Mandatory Interceptor/Trap Service Schedule

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

3. Cost Recovery

The City may assess the discharger the amount of those expenditures made by the City to clean up or prevent sewer blockages and overflows caused by the discharge from a Food Service Facility. The City may also recover costs associated with any testing performed for reasons associated with violations or repeat offenders.

4. Administrative Fines

The City may assess fines to the discharger, not to exceed \$1,000 per day per violation, for violations of the City Ordinance.

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

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

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

5. Emergency Suspensions

The City may immediately suspend a discharge and/or water services, after informal notice to the discharger, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons.

13.12.060 Discharge regulations.

- A. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, cooling water or unpolluted industrial process waters to any sanitary sewer. In the event the sewer system user fails to comply with any order requiring disconnection or it is impractical to require the disconnection of any storm drain from the sewer system, the sewer system user shall be required to pay a surcharge for such use of the system as established by resolution of the council.
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 9. Any noxious or malodorous gas or substance capable of creating a public nuisance;
 10. Any material from septic tanks or recreational vehicle holding tanks.
- D. Repealed.
- E. No unauthorized person shall maliciously, wilfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewer system.
- F. Industrial and commercial sewage shall be monitored in accordance and must comply with the treatment regulations of Clackamas County Service District No. 1.

- G. The director may adopt specifications and additional regulations consistent with city ordinances to carry out the purpose of this chapter. A copy of such additional material shall be maintained in the department.

13.12.063 Fat, oil, and grease control.

A. Purpose

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

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

B. Applicability

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

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4. **Garbage Disposal** means a device which shreds or grinds up waste materials into smaller portions for discharge into the City's sanitary sewer system.

5. **Gray Water** means all of the liquid contained in a grease interceptor that lies below the floating grease layer and above the food solids layer.
6. **Grease** means a material either liquid or solid, composed primarily of fat, oil and grease from animal or vegetable sources. The terms "fats, oils, and grease (FOG)", "oil and grease" or "oil and grease substances" shall all be included within this definition.
7. **Grease Trap Service Company** means a person, or company, who provides maintenance services for grease traps and interceptors. Maintenance service to include cleaning, minor repairs, grease and solids removal from the interceptor, and transport of the removed material to an appropriate recycling or disposal facility.
8. **Grease Interceptor** means a device located underground and outside of the food service facility designed to collect, contain or remove food wastes and grease from the wastestream while allowing the balance of the liquid wastes (gray water) to discharge to the wastewater collection system by gravity. Interceptors shall have at least one inspection hatch on the top surface to facilitate inspection, cleaning, and maintenance.
9. **Grease Trap** means a device located in a food service facility or under a sink designed to collect, contain, or remove food wastes and grease from the wastestream while allowing the balance of the liquid waste (gray water) to discharge to the wastewater collection system by gravity. Traps shall have a removable lid on the top surface to facilitate inspection, cleaning, and maintenance.
10. **Waste Grease** means fats, oils, and grease that can be collected following use and prior to discharge to the sewer or interceptor. Waste Grease is collected from pans, deep fat fryers, and cooking grills.

D. Grease Interceptor/Trap Required

1. General Requirements

Grease interceptors and/or traps shall be provided by the facility owner, when, in the opinion of the City, they are necessary to prevent grease in excessive amounts from entering the sanitary sewer system. Owner shall provide documentation and/or calculations on all sizing and model selections to the City Building Division for approval prior to installation. The interceptor shall be located as to be easily and safely accessible for cleaning and inspection. All prospective grease trap users must provide manufacturer's capacity data and an estimate of the product rate at the facility that is within the capacity of the grease trap to be approved by the Building Permit Department.

2. Existing Facilities

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

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

- a. The facility is found to be contributing grease and oil in quantities greater than 100 mg/L (or ppm) or necessitates increased maintenance on the wastewater collection system.
- b. The facility does not have a grease interceptor or trap.
- c. The facility has an undersized, non-repairable or defective grease interceptor or trap.
- d. Remodeling of the food preparation or kitchen waste plumbing system is performed which requires a building permit to be issued by the City.
- e. The existing facility does not have plumbing connections to a grease interceptor or trap in compliance with the requirements of this ordinance, or current building codes.

3. New Facilities or New Interceptor Installations

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

E. Maintenance of Grease Interceptor/Trap Required

1. Maintenance

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

2. Routine Maintenance Schedules

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

3. Record-Keeping Requirements

The discharger is responsible for maintaining appropriate maintenance records that documents the routine pumping, cleaning, and repairs made to interceptors and traps. Where the discharger hires a Grease Trap Service Company to clean the interceptor/trap and remove and dispose of the accumulated grease and solids, a copy of the pumping manifest or billing must be retained with the maintenance records. All maintenance records should include at a minimum the following information:

- a. Name of facility
- b. Date service performed

- c. Total volume of the interceptor/trap
- d. Total volume of material removed from the interceptor/trap
- e. List of all deficiencies identified from an inspection of the empty interceptor/trap
- f. Name of the Grease Trap Service Company
- g. Address of the Grease Trap Service Company
- h. Name and address of final disposal site
- i. Signature of the Grease Trap Service Company employee performing the work
- j. Signature of the discharger's employee observing and accepting the services

4. Record Retention

All Grease Interceptor/trap maintenance records shall be retained for a period of no less than, three (3) years. These records shall be retained at the food service facility and shall be made available for inspection by the City.

F. Disposal of Wastes from Interceptors and Traps

Storage, handling, transportation and disposal of all wastes from interceptors/traps shall be performed in accordance with applicable Federal, State, and Local regulations that pertain to the type and/or class of waste. Materials removed from waste interceptors/traps must be disposed of at legally designated locations for those specific type wastes. Materials removed from waste interceptors/traps shall not be discharged to the City sanitary sewers or storm drains.

G. Collection, Storage, and Disposal of Waste Grease and Solids

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

H. Clean up of Spilled Grease and Oil

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

I. Use of Chemicals and Other Additives

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

J. Right of Access

The City, employees of the City, or authorized agents of the City, have the authority to enter the property of the discharger to conduct inspections of the entire facility, including the interceptors,

traps, cooking and storage areas, restrooms, offices, service areas, and other areas of the facility. The City is also authorized to collect samples of any wastestream, including the discharge from the facility and the interceptors and traps. The City may obtain search warrants for inspection and sampling purposes. Failure to grant access may result in the suspension of sewer and water services provided by the City.

K. Enforcement

Failure to comply with the provisions of this ordinance is considered a misdemeanor and subject to enforcement actions under the City Codes. In addition, to these misdemeanor enforcement actions the City is authorized to take the following actions to achieve compliance to the City Ordinance.

1. Mandatory Interceptor/Trap Service

The City may issue an order requiring the discharger to conduct Interceptor/Trap Maintenance Services within a mandatory time period. The cost of the services shall be the direct responsibility of the discharger.

2. Mandatory Interceptor/Trap Service Schedule

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

3. Cost Recovery

The City may assess the discharger the amount of those expenditures made by the City to clean up or prevent sewer blockages and overflows caused by the discharge from a Food Service Facility. The City may also recover costs associated with any testing performed for reasons associated with violations or repeat offenders.

4. Administrative Fines

The City may assess fines to the discharger, not to exceed \$1,000 per day per violation, for violations of the City Ordinance.

- a. Unpaid charges, fines, and penalties shall, after 60 calendar days, be assessed an additional penalty of twenty-five percent (25%) of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine. A lien against the user's property will be sought for unpaid charges, fines, and penalties.
- b. Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user.
- c. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

5. Emergency Suspensions

The City may immediately suspend a discharge and/or water services, after informal notice to the discharger, whenever such suspension is necessary to stop an actual or

threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons.