

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
October 2, 2007**

**CALL TO ORDER**

**Mayor Bernard** called the 2015<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor James Bernard and Councilors Deborah Barnes, Carlotta Collette, Joe Loomis, and Susan Stone

Staff present: City Manager Mike Swanson, Community Development & Public Works Director, and Finance Director Valerie Warner

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****A. National Fire Prevention Week Proclamation**

**Mayor Bernard** read a proclamation naming October 7 – 13, 2007 as *Fire Prevention Week*.

**B. National Walk a Child to School Day, October 3, 2007**

**Councilor Barnes** read a proclamation recognizing October 3, 2007 as *National Walk a Child to School Day*.

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

**CONSENT AGENDA****A. City Council Minutes of August 21, 2007 Work Session**

**B. Resolution 60-2007: 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 Allow MACC Staff to Negotiate a Cable Franchise with Qwest Broadband Services**

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

**AUDIENCE PARTICIPATION**

- **Ed Parecki, Milwaukie business owner**

**Mr. Parecki** talked about public area improvements as required by the Downtown Plan, his current situation with the planning department, and the progress on his project on the corner of Main and Monroe. Right now there was no progress. It was halted. He felt it was halted for all the wrong reasons. He hoped the City Council could do something to expedite a building permit so he could continue with the renovation of the building. The building department granted basically all the approvals based on the drawings he submitted. He was waiting for word from the planning department to tell him how much he would be responsible for in public area improvements. He had not been given a number. They expected him to give them a number. He gave them a

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**APPROVED MINUTES**

number, and they basically rejected it. The code read that they expected him to do all the public area improvements on Main and Monroe. To him that was like signing an open blank check and saying, "sure I'll do everything you require me to do." He did not even know what the outcome could be. He referred to case law, *Armstrong v. United States*. One of the purposes of the takings clause was to bar government from forcing some people alone to bear public burdens which in all fairness and justice should be borne by the public as a whole. His view of the public area improvement was that they were public, and they were for the public. Therefore, they should be paid for by the public. Right now the way the City formulated its Downtown Plan, businesses and developers were expected to make improvements to the City. This Downtown Plan was implemented in 2000, and since 2000 there were only 4 public area improvements imposed on people. At this rate the City would have its Downtown Plan implemented in about 30 years. It did not make any sense for him to set a vision and expect it to be instigated and implemented in such in a piecemeal manner where it was practically impossible for it to be adopted. It was extremely counterproductive, and he did not think it made any sense. He offered the City planning department 10% of the total improvement value that he expected to make. That came up to \$22,500 which he was more than happy to put toward some kind of improvements, and he was waiting to hear from them about which improvements they would like to see. They were going back and forth and could not come to an agreement. He did not know how long this was going to take, but every week that goes by costs money. There was a very ugly building waiting to get beautiful. He was ready and willing to do it. He was trying to comply with all the Downtown Plan ideas that were envisioned back in 2000, and it felt like he was being hampered. It was all because someone wrote something in the code that really made very little sense. He had to figure out how to make it work. Mr. Parecki noted the Mayor was smiling and wanted to hear some of his comments.

**Mayor Bernard** thought it was funny that Mr. Parecki was telling the Council just a few weeks ago that it had to adhere to the code. The code said you had to spend so much money on public improvements.

**Mr. Parecki** responded it did not. It said up to 10% or more which meant anywhere between zero and an upper limit which was endless because 'or more' did not give him any cap.

**Mayor Bernard** thought a certain percentage had to be spent on the improvements around the property.

**Mr. Parecki** had to spend up to 10% or more, which was pretty meaningless to him because it did not tell him how much he could spend. That was why he was going back and forth. How much did he need to spend? Give him a number. If he agreed to it, he would go on. Otherwise he would have to go on to whatever next thing. He was here telling the City Council it should keep to the code because there were a lot of codes that were not being enforced. The City chose to adhere to some codes and not to others. That did not seem fair. If the City was going to quote the code and say it had to administer the code, then do it across the board and not just to certain people at certain times. The code says if the development permit value was less than 50% of the value of the land and existing improvements as determined by the county assessor then an amount equal to least 10% of the development value shall be utilized to meet the public area requirements. He offered 10%.

**Mr. Asher** had been tracking this matter because Mr. Parecki's was an important project he wanted to see built as soon as possible. Ms. Mangle and City Attorney Monahan had been working to come up with the appropriate code interpretation and the appropriate public area requirements. He concurred with some of what Mr. Parecki said. It was going slower than people wished. It was an important project and a

building everyone wanted to see done and get beautiful. He did differ with Mr. Parecki's interpretation of the code and the allegations that the planning department or anyone on staff was dragging their feet or being arbitrary. The issue boiled down to the value of this building permit as compared to the value of the property. Mr. Parecki was talking about a 10% contribution, and the code did say if the value of building permit was less than 50% of the value of property, then that was what the City would require the applicant to do. The code read any renovation, expansion, or alteration of an existing building that had a development permit value that exceeded 50% of the value of the land and existing improvements as determined by the County Assessor shall comply with the public area requirements. The building official determines the building permit value. The operative phrase was "shall comply." There was a book that said what those were. Staff provided that book and those requirements to Mr. Parecki because indeed his project was 60% of the value of the property. The length of time that passed was because staff believed "shall comply with the public area requirements" was a very general statement. The public areas requirements were fairly extensive. Staff was continuing a daily dialogue about this matter and trying to assess the appropriate level. The City was not quite there yet, and Mr. Asher believed the planning staff was within days of making the proposal. Staff asked Mr. Parecki for his assessment, and he came back with 10%. The code did not put this in the 10% category.

**Mayor Bernard** commented on the remodel work at Key Bank that triggered the sidewalk improvements.

**Mr. Asher** said that was a 10% case. This was the first project in that category of code. Part of the mutual struggle was that the code was not written perfectly and did not anticipate everything. It was going slowly because this was a unique situation.

**Councilor Collette** asked if Mr. Parecki could not move forward on the interior remodel.

**Mr. Parecki** did not have a permit and would not start without one. He did begin with the roof because he was granted a permit to pull that out of the overall project. He was postponing it because of the weather; it could have been done two weeks ago. He did not want to do any interior remodeling to happen until the roof was done. He and Mr. Asher were talking daily, and he met with Ms. Mangle and talked on the phone. There was frustration on his part that he could not move ahead. All he really needed was for the City to grant the permit subject to figuring this out, and he could continue. He could do it. Hold off on the final occupancy permit that could take 3 or 4 months to complete. Within that time they could figure out what this code really was trying to say. One of the problems he had was that the value of property based on the assessor's value was over 10 years old. The improvements he was doing were over 50% of a 10-year old assessed value and not of the current value or what he paid for it. That was a problem with the code. It was punishing people because of increased value. Mr. Asher said market value. That was where the ambiguity came in. Mr. Asher said market value; Mr. Parecki was listening very carefully. Then Mr. Asher read the proper one, which said "assessed value." It was right there; people heard that.

**Mr. Asher** said if he misspoke it was indeed assessed value. There was a market value that the assessor used which still was not the market value that one would transact. This was what we were down to. He wanted to be more specific about how close they were. It was not the best practice to grant conditional permits and figure things out later. That was done on occasion in the past, and it tended to make things more difficult. It was better to come to an agreement upfront. They had a list of all the improvements that was provided to Mr. Parecki. The list he provided the City did not meet with the code. They would meet tomorrow morning to come up with another list and provide it to Mr. Parecki in hopes of reaching some agreement upfront. They were trying to meet the spirit of the code, serve the customer, and do the right thing by the

Downtown Plan. He agreed with Mr. Parecki that the City opted not to fund its public area requirements downtown through urban renewal or any other mechanism. The Plan was pretty clear. The developers will provide those sidewalk improvements, the lights, the benches, and the street trees along with development. The City wanted to do that in a way that allowed the buildings to be redeveloped.

**Councilor Collette** thought this was an important project, and everyone would love to see the building as Mr. Parecki's drawing showed. She was comfortable having people move forward and see this get done. The sooner the better.

**Mr. Asher** added this was a Type 1 permit handled by the planning director and could be appealed to the Planning Commission and City Council. If the parties could not come to terms, Mr. Parecki's course of action would be to take it up with the Planning Commission. If still dissatisfied, then he could ask the City Council's opinion.

**Mr. Parecki** really wanted to avoid doing that because it took so much time. That meant he would be back before the City Council in 2 or 3 months. That was counterproductive and was why the conditional permit idea would work well. He was not going anywhere. He had 16 businesses to take care of and 4 of his own. This was where he landed. He felt he could do a lot more for the City if they could work together. It felt really ugly when someone said you would not get your permit unless you gave us money. Tell him how much the City wanted, and maybe it could be worked out. That was not a good way to conduct business. He did not have an open checkbook and did not plan to write a blank check. He just needed to know what it was. He was given a list that included absolutely everything possible, and he had no clue how much he might be liable for. He would not sign on this dotted line. Whatever they came up with he would appeal to whatever level he needed to appeal to. That was the problem. This was an open checkbook, and no one was giving him any figures on how much it would cost to do all of these enhancements to the City.

**Councilor Stone** had a question in terms of interpretation of the code. When she looked at the code and heard the term developers she thought of big developers like Gramor and people who had much deeper pots of money to do improvements in terms of City improvements and public improvements. Were there any concessions to private developers to help them so they were not so overwhelmed with doing public improvements? The list looked fairly extensive and did not know if everything on there was a reasonable thing to expect a private developer to do. Or was this more in line with a bigger developer taking care of these things?

**Mayor Bernard** did not believe one could classify big or small developers as things needed to be fair across the board. He agreed there were problems with parts of the code and its interpretation. He felt it needed to be more lax, but everyone needed to be treated equally. There were some things that affected him, and he would like to see a broader interpretation. He asked if Mr. Parecki's first project was before the Plan adoption because it looked like about 70% of the building.

**Mr. Parecki** replied it probably was. He guessed it was interpreted differently. The planning director had the ability to interpret the code anyway she wished. Back then it was interpreted one way, and now it was being interpreted a little more harshly or more to the letter of the current state of the rules.

**Councilor Stone** said in looking at the 3 sections, the Main Street frontage, the Monroe Street frontage, and the intersection a couple of things popped out at her as high end items. She did not know how a private developer could do this. Like the bulb out design transition for Monroe Street from 2 lanes to 3 lanes and 15-foot corner radius. Those were expensive. They were very expensive. She was looking at 7-foot parking strips, new curb and gutter, and 12-foot sidewalks. Was there any way that the City

could help private developers to offset some of these costs? These were public rights-of-way; they did not belong to the developer. She thought it seemed like the City should have some responsibility to do some of this.

**Councilor Collette** understood even residences had to make public improvements on sidewalks and the surrounding area to bring it up to standards and code.

**Councilor Stone** thought that was what blew the deal for Norm Scott in terms of developing because he could not afford to do the sidewalk improvements. She did not think the intention was to make it difficult for private developers to improve our City. We encourage that.

**Mr. Asher** thought that was an important question. In community development there was nothing he would like more than more tools to help people like Mr. Parecki get these projects done. This came down to money and who would pay for the new, envisioned Main Street that included lights, trees, benches, bulb outs, pedestrian improvements, and the wonderful environment this community envisioned in 2000 and still wholeheartedly bought into. The City had no tools to help other than its best efforts at making these projects go quickly and being smart about how the code was applied. The City had no subsidy or funds lying around to make it easier. The code did not begin to distinguish between developers with shallow pockets and developers with deep pockets. The City was somewhat handcuffed by what the code said. They were trying to get the street built. Someone needed to pay. They were trying to stay true to that without being overly onerous on the developers to the extent there was not any latitude at all. Council had more latitude than staff. If that bulb out were not built as part of this project, no one else would come forward build it. There was nothing in the street fund to do it with. It was an important question, and he would like to do more.

**Mayor Bernard** commented on the feasibility of tax increment financing (TIF) and noted people said in the past they did not want to do that.

**Mr. Parecki** observed that Councilor Stone made a very interesting point about the difference of leveling a City block or leveling 3 buildings versus restoring an existing building where the footprint was not larger and there was no additional height. Nothing was changing; only the building was being beautified. There was a huge difference. If one was going to level a City block then it should be rebuilt to standards in the Downtown Plan. If one were remodeling and beautifying an existing building, there was a huge difference.

**Councilor Stone** asked what the requirements were on the McLoughlin Building with Spring Creek.

**Mr. Parecki** did not remember. There was a public area requirement imposed on his last tenant to install bike racks.

**Mayor Bernard** noted the sidewalks were built as part of the ODOT improvements.

**Mr. Parecki** did not have to do the sidewalks because it was already being done as part of ODOT's money.

**Councilor Collette** thought ideally some of this could be phased.

**Mr. Parecki** would love to add lighting as it was critical. Okay, fine. He could call someone and ask how much for the post and those 2 lights. He would know what the costs would be, but he did not know how much a bulb out would cost.

**Mr. Asher** committed that staff would have items by the end of the week because the intent was not to let this drag on while the City was pondering it.

**Mayor Bernard** thought there might be neighborhood funding for a street light and suggested Mr. Parecki check with the Historic Milwaukie Neighborhood Association.

**Mr. Asher** stated a refined list would be forthcoming.

**Councilor Stone** said the way the code was written in terms of the developers, it was pretty generalized in terms of what the City wanted the developers to do. It was generalized in terms of big guys and little guys, big pots of money and little pots of money. She loved development that came from private money because it did not at all encroach on public funds. The public was not supporting it. This was a particular development with private money with absolutely no public subsidies in it at all, and no tax abatements. It would be revenue for the City. If it was anything like the success of the Spring Creek Coffee House it would be a wonderful amenity for the City. She would like to see everything done for any developer, not just Mr. Parecki, but any private developer to help them to revitalize the downtown and taking some of these old buildings and turning them into things of beauty again. She agreed with things like sidewalks; they were fine now unless they were all broken up, but she thought that would be the City's responsibility as well and that the City would own some of that. It was not like we were completely tearing down that block and starting over. Mr. Parecki brought up a good point.

**Councilor Collette** said there were some funds, and she gave Mr. Parecki the information, when she came back from a conference. There was some money from the Oregon Heritage Foundation, which was a State office that had money for this kind of restoration. She recalled talking with Mr. Parecki about it.

**Mr. Parecki** said he was not sure, but he was not asking for any money for the restoration. He was doing the restoration.

**Councilor Collette** understood, but it might help offset the cost of the public area requirements. This was all private money, and there may be government pots that could be tapped into. For the sake of the viewing public, she did not want this conversation to go on all night. There were other sources, and she could help Mr. Parecki by going through her files for the information. There were also some grant funds available for street area improvements.

**Mr. Parecki** said that was where he would like to go.

**Mayor Bernard** suggested contacting the Oregon Downtown Development Association (ODDA).

**Mr. Asher** summarized. Mr. Parecki was not really asking where to go to get the funds. He did not hear Councilor Stone trying to figure out where to go for the funds. There seemed to be a real issue being raised here by Mr. Parecki and Councilor Stone about the City's code and the way it was written. The planning department would likely agree that this and other sections of the code were not written in the best way. The City did not have that discretion to begin to apply it on an ad hoc basis depending on who staff was dealing with. People were doing their best, especially in this climate, to be as consistent as they could be in applying the code. That required staff to interpret it in a certain way. The Planning Commission and City Council were sitting in a place, if they wished to reinterpret it or overturn judgments made by the planning director and staff, then that could happen. However, staff could not do that. He could come back to the very next work session to talk about things the City could do to raise public funds to help in a situation like this.

**Councilor Stone** was concerned about having a code that was subject to interpretation. To her a code was something that should be spelled out very clearly. If the Council can interpret it and if someone else can interpret it as Mr. Asher was suggesting in another

way and could overturn what was interpreted that told her there was some flaws in the code and how it was written. Maybe it needed to be a lot more specific.

**Mr. Asher** responded staff would not disagree.

**Mayor Bernard** noted people were interpreting the Constitution since it was written.

- **John Otsyula, Milwaukee**

**Mr. Otsyula** followed up on what he asked one month ago about the Supplemental Draft Impact Statement (SDEIS). From what he read in *The Pilot* it was underway. He never did get a response from the City, so he had to go ahead and talk with the FTA. He was wondering if there was any response at all.

**Councilor Collette** said the City responded in writing and at the meeting in a discussion with Mr. Otsyula. The City responded with the information from Metro. She understood the City responded on several levels to Mr. Otsyula in writing.

**Mr. Otsyula** said, 'no.' As a matter of fact he wanted to make a correction. The last time he was at a City Council meeting, he picked up what was supposed to have been a response to him. Councilor Barnes gave it to him. If the City responded by mail, it never came to him. There was never a section that said a copy was sent to him. He had not received anything. That was a misrepresentation. He did not receive even that one. He did receive a copy from Councilor Barnes. The Mayor had stated that a copy had been sent to him. There was no copy sent to him. It was one thing to have amnesia about issues, but the reality was alternatives needed to be included in the SDEIS. The City Council had no authority. Even Metro was here saying the City Council had no authority to remove viable alternatives. This project had gone on for over 10 years, and things have changed dramatically in 10 years. Even prices have changed. Even the previous EIS written over 10 years ago did not address the full range of alternatives. Even Metro agreed that whatever token effort they did in assisting the City to invalidly reject alternatives was not a complete scoping process. Just because Metro had done this over and over again did not mean they were really right. It was like someone running a red light all the time. Maybe no one called them on that. In this case, he just wanted to assist the City in not making as grievous mistake as happened with the Kronberg property where his acquaintances keep asking if the City was still trying to get the property from that lady and take it away by false efforts. Mr. Otsyula says 'no' and tries to defend it all the time. The director said he would make sure a response was sent. Councilor Stone did ask that he get a copy of the response.

**Mayor Bernard** asked that a copy be sent.

**Mr. Asher** committed he would follow up with Metro and make sure Mr. Otsyula had a copy. Ms. Wieghart would brief the Council on the project in 2 weeks. He asked explicitly that she address the questions raised about NEPA and requested something in writing for his Council. She committed to doing that if not before the meeting but certainly by the time of the meeting. It would be copied for Mr. Otsyula. He was not sure if that would necessarily address the concerns that Mr. Otsyula raised, but it was in Metro's court. There would be something forthcoming, and Mr. Asher was working to shepherd it along.

**Mr. Otsyula** clarified his concerns had to do with the alternatives. He added it was nice to see that Councilor Stone was back, and from the public point of view, he felt sorry for her at the last Council meeting.

**Councilor Stone** said he should not feel sorry for her because she was the one who got re-elected. She ran for office. She was looking through some things and did not see a response particularly to him. There was an August 27 letter from the City to Ms. Wieghart, Metro Project Manager, and then there was a letter from Mr. Otsyula to Mr.

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Krochalis, the Region X Administrator, and a September 18 e-mail from Mr. Asher with an update to the City Council on this issue. She did not see any other response.

**Mr. Asher** said it was his understanding that the first letter was the Council's response to Mr. Otsyula.

**Councilor Collette** recalled the request was to forward his recommendation to Metro which was what the Council did in that letter which was handed to Mr. Otsyula at the last meeting.

**Councilor Stone** said all of this went to Ms. Wieghart about a month ago, so the City Council was waiting for her response.

**Mr. Otsyula** said a copy of that was not sent to him.

**Councilor Barnes** gave him her copy that night at the Council meeting.

**Mr. Otsyula** did get the copy from Councilor Barnes, but the Mayor said that night that a copy had been sent to him. He was clarifying.

**Councilor Stone** said he was only saying a copy had not been sent to him. The correspondence had not been getting to him contrary to popular belief.

**Councilor Collette** would make sure a copy was mailed.

**Mr. Otsyula** offered to pick it up at City Hall.

- **Rosemary Crites, Clackamas County**

**Ms. Crites** wanted to clarify the development in downtown Milwaukie. She was a commercial broker and had been behind both of the Parecki buildings. She felt strongly about private investment. Private investment was very expensive especially when there was no federal or state money or whatever. When you were dealing with Metro, they had really deep pockets. She would say to look at what you really want in Milwaukie. She went back to the original plan. Do you want it more institutionalized or do you want the private money and some really unique architecture plan? If you do, then those codes – she was being redundant – they needed to be tightened up now. She was looking at another project. When you negotiate the deal, it was very expensive. When you come to an agreement and the investors were in there but you do not have that final equation about the other permits, etc. that put a developer into a very bad position of going back and saying it was going to cost x amount of dollars. Was that clear? Going forward with the next project that will probably not include any government money, if those codes could be tightened so people would know exactly what was going to be required. When people got to the final agreement they knew what they were dealing with. She knew the City did not have any money. It was really important to get the right businesses in this town. One of the hottest neighborhoods around was N. Mississippi; it was hot and had some life to it. They had PDC money. She did not know what the City could come up with because it did not have the money. What can we do to help people? She was not here for Mr. Parecki. He did not know she was coming tonight. She was not teaming up with him. She was teaming up because she believed in this town. Help all of us to have a really concrete formula on how to reach their objectives so the City can reach its objectives and visualize the final project.

**Mayor Bernard** thought the City needed to look at an economic improvement district or tax increment financing (TIF). When someone bought a piece of land, they put in for a building permit and were handed the list of public improvements if it met the dollar threshold. Do people do that before they buy the property? When he talked about the North Main Village he recalled penciling out the how much the public improvements would cost before the property was purchased. The buyer knew he had to have a



certain amount of money. Is that not what happens when one walks into the department?

**Mr. Asher** wished it happened more regularly and with more diligence. It may happen more than we know because there was not a lot of downtown development. Part of the reason may be that there was not a lot of help to offer people downtown. In most places like Milwaukie there were more tools. More Main Streets had more public funds to help with the public part. Milwaukie's Plans said these improvements will come on the developer's nickel. He was not sure people realized that in a way Mayor Bernard suggested they might. He was not sure Mr. Parecki knew he would be in the other category that said it was not 10%. He was putting a lot of value into the building compared to what was there today, throwing him into the other category. There was a pre-application process that Mr. Parecki went through. This was presented to him months and months ago. As Milwaukie became more attractive to Ms. Crites's clients there will be more of that kind of dialogue between the City and prospective developers. Each new project brought more and more people interested in doing things here, and it cannot be prohibitive. On the other hand if we just got private development and nice architecture in these buildings and the state of Main Street stayed the same with dying trees and broken street grates and no shelters and so forth and the public realm was not improved by somebody or some combination, then the vision for this town would not happen, and the private investment would not happen. After all no one benefited more from those public area requirements than the private investors. Usually there was more of a dialogue. In Milwaukie it was not done a lot yet, and the City was not bringing a lot to the dance. Maybe the time was ripe for refining the way things were done.

**Councilor Stone** said whatever was done the City needed to take into account the private developer to encourage that kind of thing. Ms. Crites made a really good point. It was about envisioning the unique types of businesses that we want down here or everything could be cookie cut. People wanted some beautiful unique features to these buildings and unique businesses.

**Mr. Asher** understood people wanted that. He could speak from experience having shepherded the Town Center project through a year and one-half of planning and taking that committee through the process that the public wanted public space. Everyone on the committee recognized that no matter how the building turned out – gorgeous or funky or something else – they wanted public space with sidewalks that were wide with big, beautiful street trees and places to sit and meet. All of his negotiating on that deal was about getting the public space into the requirements with the expectation that the development would pay for all of that. The City had a good design review process that ensured some of that would happen. The public improvements were not as clear. They were desired in the community, and now the rubber was meeting the road about who would put them into place. It was painful for those who had to foot the bill because there were a lot of them. The Main Street plan was expensive. The Plan envisioned a nice, beautiful Main Street, and code tells us to try to implement it.

**Councilor Stone** asked, since the assessment was 10 years old, if a current assessment could be used since the application was already in the process.

**Mr. Asher** had Mr. Campbell checking into the datedness of the assessment. More problematic was whether or not some other methodology could be used. Mr. Parecki suggested appraised value rather than assessed value, but that was not promising. The code clearly said 'assessed value.' Staff was being responsive to some of the ideas being brought forward by Mr. Parecki, so that effort was slowing the process. He thought staff would have an answer from the City Attorney tomorrow.

**Mayor Bernard** said it was a common story of an old building that probably needed to be gutted and remodeled. Once you reached a certain point, the sidewalks and other

amenities needed to added. When he bought his building and gutted it, he had to rebuild the sidewalks and plant trees. His advantage was that he only had the frontage. Mr. Parecki was on the corner and had to do it all.

**Councilor Collette** said in some communities downtown business associations had funding access, and perhaps the Milwaukie Downtown Development Association (MDDA) might be reactivated. They had access to funds through the membership and downtown business associations.

**Mayor Bernard** added the MDDA was a taxing entity, and it was dissolved because the businesses did not feel they were getting anything out of it.

**Mr. Asher** said Mr. Campbell was getting businesses talking in downtown to discuss common interests. The City also had its Riverfront Park that needed funding, and there was no developer to turn to there.

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **Council Reports**

**Councilor Collette** attended the League of Oregon Cities (LOC) Conference, and she commented on things she learned about downtown redevelopment and financing efforts around the state. She attended the Harmony Road Visioning session last week.

**Councilor Stone** attended the LOC conference in Bend and the Site Steering Committee for wastewater treatment.

**Councilor Loomis** attended the LOC conference and toured the Norm Scott property.

**Councilor Barnes** attended LOC Conference and met with County Administrator Mantay and County Commission Peterson regarding wastewater treatment.

**Mayor Bernard** attended the LOC Conference and was on a panel that discussed street maintenance funding. He would walk in the Portland Marathon next weekend and challenged residents to join him next year and lose weight for better health in 2008.

## **ADJOURNMENT**

**It was moved by Councilor Collette and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously**

**Mayor Bernard** adjourned the regular session at 7:59 p.m.

*Pat DuVal*

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Pat DuVal, Recorder

# AGENDA

## MILWAUKIE CITY COUNCIL OCTOBER 2, 2007

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**2015<sup>th</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**  
**Pledge of Allegiance**
  
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. **National Fire Prevention Week Proclamation**
  - B. **National Walk a Child to School Day, October 3, 2007**
  
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 of August 21, 2007 Work Session**
  - B. **Metropolitan Area Communications Commission (MACC) Contract Amendment – Resolution**
  
4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*
  
5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**None scheduled**

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

**Council Reports**

7. **INFORMATION**

**Report on Collection Services**

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.

## **NATIONAL FIRE PREVENTION WEEK**

**WHEREAS**, Fire Prevention Week was established to commemorate the Great Chicago Fire, the tragic 1871 conflagration that killed more than 250 people, left 100,000 homeless, destroyed more than 17,400 structures and burned more than 2,000 acres. The fire began on October 8, but continued into and did most of its damage on October 9, 1871.

**WHEREAS**, While the Great Chicago Fire was the best-known blaze to start during this fiery two-day stretch, it wasn't the biggest. That distinction goes to the Peshtigo Fire, the most devastating forest fire in American history. The fire, which also occurred on October 8th, 1871, and roared through Northeast Wisconsin, burning down 16 towns, killing 1,152 people, and scorching 1.2 million acres before it ended.

**WHEREAS**, On the 40th anniversary of the Great Chicago Fire, the Fire Marshals Association of North America (today known as the International Fire Marshals Association), decided that the anniversary of the Great Chicago Fire should henceforth be observed not with festivities, but in a way that would keep the public informed about the importance of fire prevention. The commemoration grew incrementally official over the years.

**WHEREAS**, In 1920, President Woodrow Wilson issued the first National Fire Prevention Day proclamation, and since 1922, Fire Prevention Week has been observed on the Sunday through Saturday period in which October 9 falls. According to the National Archives and Records Administration's Library Information Center, Fire Prevention Week is the longest running public health and safety observance on record. The President of the United States has signed a proclamation proclaiming a national observance during that week every year since 1925.

**NOW, THEREFORE**, I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim that the week of October 7 - 13, 2007, is designated as

### **FIRE PREVENTION WEEK The Great American Fire Drill**

and urge all citizens, government agencies, public and private institutions and businesses to increase their participation in our community's fire and burn injury prevention efforts and thereby good citizenship.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 2nd day of October 2007.

ATTEST:

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Pat DuVal,  
City Recorder

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James Bernard, Mayor  
City of Milwaukie

## **WALK A CHILD TO SCHOOL DAY**

**Whereas**, hundreds of children could be saved each year if communities take steps to make pedestrian safety a priority.

**Whereas**, a lack of physical activity plays a leading role in rising rates of obesity, diabetes and other health problems among children and being able to walk or bicycle to school offers an opportunity to build activity into daily routine.

**Whereas**, driving students to school by private vehicle contributes to traffic congestion and air pollution.

**Whereas**, an important role for parents and caregivers is to teach children about pedestrian safety and become aware of the difficulties and dangers that children face on their trip to school each day and the health and environmental risks related to physical inactivity and air pollution.

**Whereas**, community leaders and parents can determine the "walkability" of their community by using a walkability checklist.

**Whereas**, community members and leaders should make a plan to make immediate changes to enable children to safely walk and bicycle in our communities and develop a list of suggestions for improvements that can be done over time.

**Whereas**, children, parents and community leaders around the world are joining together to walk to school and evaluate walking and bicycling conditions in their communities.

**Now Therefore, Be It Resolved** that I, James Bernard, proclaim October 3, 2007, "International Walk to School Day" in Milwaukie, Oregon. I encourage people to join Ardenwald School children, adults and staff, Milwaukie police and fire, and members of the Ardenwald/Johnson Creek neighborhood on October 3rd to walk to Ardenwald Elementary School together.

Signed this 2nd day of October 2007.

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James Bernard, Mayor

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Pat DuVal, City Recorder

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

August 21, 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, and Loomis

Staff Present: Community Development/Public Works Director Kenny Asher,  
Operations Director Paul Shirey

#### Advisory Board Interviews

Mayor and Council interviewed Parker Fitzpatrick for a vacant position on the Design and Landmarks Committee and David Hedges for a vacant at-large position on the Public Safety Advisory Committee.

#### Scout Troop Interview

Dennis Rangel and Troop 143 introduced themselves. Mr. Rangel explained that the troop was working on the communication merit badge. They were learning about communication and some different methods for communication. They created a make believe business to see how businesses are run, and they had a product and they used different methods of communication to tell people about their product. They wrote a letter to an editor regarding something they felt passionate about. The last step to earning their communication merit badge was coming to a City Council meeting and see how communication takes place between the citizenry and the elected officials. Troop 143 meets at the Elks Lodge and they have been there for over 50 years. He asked the troop to come up with some questions to ask the Council.

**Zach Jensen** asked when construction of Riverfront Park would start.

**Mayor Bernard** responded that the City needs money to construct the park. He said hopefully in two years they would begin construction. It will need to go before the Planning Commission and then City Council for approval before the project can start, and they have to raise the required funds to complete the project.

**Councilor Loomis** added that it is moving forward and that there is a plan that is being designed and he said that Council would be approving the contract extension with the corporation that will do the permitting process for the park. There are a lot of issues dealing with the water and the environment that have to be dealt with.

**Michael Thompson** asked do you think Milwaukie needs to industrialize or stay a small city and why?

**Councilor Barnes** said that right now there is a really good mixture of businesses that employ a lot of folks and bring in a strong economic base for

our community, which is very important. She explained without resources the City couldn't have police, library and all of the other necessary services our citizens need. There is a very good mix of wonderful residents and strong people committed to their community. There nice mixture of business and citizens make it a very livable community.

**Councilor Loomis** explained that the cost of serving industrial and commercial is much less than serving residential, so we need a balance of both.

**Mayor Bernard** said that the City is built out so it would be difficult to expand the industrial base. The industrial makes up 15% of the City's tax base.

**Aaron Leip** asked where the Farmer's Market be relocated?

**Mayor Bernard** responded likely near the post office on Main Street. He explained the format of the Market and role of the market master.

**Brett Amsen** said he was wondering if the many improvements that have been made would have to be eliminated when light rail to Milwaukie and would Council still support light rail if those improvements were eliminated.

**Mayor Bernard** said the City Council decided at the previous council meeting not to bring light rail on to McLoughlin Boulevard or Main Street and/or 21<sup>st</sup> Avenue. It will stay along the existing railroad tracks. It would not have an impact on the improvements that have been made.

**Michael Thompson** asked a three part questions. How much pollution does Milwaukie produce per day? What is being done to reduce it? What is the main cause?

**Councilor Loomis** said that one of the things the City does is they have a "Down to Earth Day" each year in City where they partner with the garbage collectors and at a nominal fee citizens can bring their garbage and they recycle everything brought there.

**Mayor Bernard** said they are looking at new lighting fixtures and other changes that could be made over time. The New Town Center Project will have green elements. Logus Road will be a green street with bio swales. The City is working on being a certified DEQ facility. He is unsure how much pollution that is generated, but they are trying to reduce the carbon footprint.

**Councilor Collette** said they are looking at trying to become a more sustainable City, and they hope in the next couple of months that the Mayor will be able to sign the Mayor's Agreement on Climate Protection. She explained that mayors' all around the United States are signing agreements in order to upgrade air and water quality and energy use of our cities. The #2 polluter in the US is auto traffic and the City is looking to reduce dependency on cars with light rail.

**Mayor Bernard** said the City has bio-diesel shop vehicles and the City purchased its first hybrid vehicle. The City is looking at other possibilities to reduce pollution.



**Michael Thompson** asked what is the hardest part in keeping Milwaukie a safe and well-organized City.

Council agreed it was getting and keeping good staff.

**Councilor Collette** said to keep the City livable we need to keep people involved so they can express their opinion. The most difficult thing is to move forward when people have differing opinions. They have to listen to all opinions and make decisions – getting to consensus and share the vision to how we move forward and paying for it.

**Councilor Loomis** asked if this was the troop that cared for Milwaukie Pioneer Cemetery.

**Mr. Rangel** responded that yes they do take care of the cemetery and have for as long as they have been there. They mow, weed and do the daily flag ceremonies. They have been interviewed by the Oregonian a couple of times. He thanked the Council for the opportunity to attend the meeting and complete the merit badge.

### **Clackamas River Water (CRW) Contract Update**

**Mr. Shirey** briefed council on the status of efforts to engage CRW to discuss a change in the agreement. The contract was signed 9 years ago to purchase 500,000 gallons of water per day. The cost of that has increased to \$50,000 annually. At the time they were motivated by a desire to have a margin of safety if supply could not meet demand. As a result of the recent challenge with Well 8 and the need to ultimately re-drill that well they started about a year ago to look more closely to see if there was continuing need for that much water, and because of our decrease in demand that can be partly attributed to the fact that the rates were modified from fixed to variable rates and the assumption of water saving devices and conservation our demand has been going down for the past 4 years. In combination with an analysis of what Well 8 could produce and in light of a reduced demand they concluded they did not need to buy additional water every day from anyone else. Once well 8 is back on line, in the spring, we can meet peak day demand plus 25%. So in the ratepayers' best interest they went back to CRW to enter into negotiations under the terms of the agreement to restate our water use and eliminate the requirement for a fixed quantity of water. They would amend it to include an Emergency intertie with CRW and a new rate was the goal. They started about 1 year ago to enter into negotiations for reasons not clear to him he was stiff-armed for some time, and could not get CRW to sit down at the table and abide by the terms of the agreement that states "we have a right to restate the water and the right to ask to enter into negotiations to change the agreement". As a result in a change in the composition of the board and the election of a new board chair things started to turn around in July when they received a call from the new board chair apologizing for the delay recognizing that they do have an obligation under the terms of the agreement. It went to their board August 16, 2007 and they directed their staff to set up a time with a team from Milwaukie to commence negotiations. The board understands what was wanted which was seeking an elimination of the fixed purchase agreement while maintaining the emergency intertie to purchase water if needed. It is conceivable that they would be unable to reach an agreement and have to follow with arbitration or go to a legal proceeding. He is hopeful given the tone of

the conversations with the board chair that it will not need to turn to litigation. He hopes to come back to council with request to ratify a new contract.

**Councilor Barnes** asked if there was a date set yet.

**Mr. Shirey** responded not yet. The board directed the acting general manger to contact Mr. Shirey upon his return form vacation to set up a date to talk. It will probably be sometime in September.

**Councilor Barnes** said she was concerned that there has been a lot of, “we will call you”. She said if Mr. Shirey does not hear from the general manager by next week the council needs to know - was this another stall. Every day it is literally money going down the drain. The attitude from CRW angered her as they were putting off all residents. She said if Mr. Shirey got a stall tactic next week they will need to think of something else to do.

**Mr. Shirey** said he would come back on September 4 with a report.

**Mr. Monahan** said in working through the CRW attorney they tried not to put the director in a position to force an attack from a different front and go over his head. It sounds as if there was an internal issue and the current board understood the matter. Their former attorney indicated they are making an effort so he felt confident that they would meet with them relatively soon. As Mr. Shirey stated and he cautioned there is no guarantee they would meet our demands. It is important to advocate the City’s position because the next window of opportunity for discussion was in five years. They will put their best efforts forward.

**Councilor Collette** asked for clarification on the intertie. Was there a cost involved in creating a new one or was it existing and just how to we utilize it.

**Mr. Shirey** responded that it was existing and there was no cost. He understood from CRW that they saw this as a guaranteed source of revenue, but Milwaukie did not need the water. Conversations with the board chair have been very positive and she thought that some people she had talked with did not understand the agreement, and that may have something to do with the foot dragging. He will send Council an e-mail and provide a brief report on September 4.

**Councilor Loomis** asked if every 5 years they would talk about the contract.

**Mr. Monahan** replied that the contract states that once there is an initial request for discussion it requires that the terms of the contract be discussed, and then after that there isn’t another mandatory window for another 5 years. The reason for that term is that is what was negotiated, and the situation the City was in when it was negotiated in 1998 is different than today. Perhaps the terms aren’t as favorable to the City as we would like them to be because of that. You have to put the agreement in the context of the times. We can request it go to the next level. They will need to determine once all the information is on the table if it made sense to push to mediation and on to arbitration.

**Councilor Loomis** asked what if they say in the discussion that they are fine with the way things are. Can they do that?

**Mr. Monahan** replied they could request it go to the next level, but he thinks we will have to determine during the negotiations if it makes sense for us to seek to push it to mediation and then on to arbitration. We need to get the facts out on the table.

**Mayor Bernard** asked who paid for the intertie?

**CITY COUNCIL WORK SESSION – AUGUST 21, 2007**

**DRAFT MINUTES**

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**Mr. Shirey** responded that he did not know. He said he would find out who paid for the installation of the intertie. He thinks there was a cost sharing. The intertie goes both ways so Milwaukie can sell water to CRW. They have been approached by Oak Lodge water who is interested in establishing an intertie and the more interties there are the better the region will be. Milwaukie has an emergency intertie with the City of Portland. The cost per unit is very high.

### **Adjournment**

**Mayor Bernard** adjourned the work session at 6:31 p.m.

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Pat DuVal, City Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Amending MACC Intergovernmental agreement

Date: September 17, 2007

**Action Requested**

Approve a resolution amending the intergovernmental agreement (IGA) with the Metropolitan Area Communications Commission (MAAC) to allow MACC staff to negotiate a cable franchise with Qwest Broadband Services (Qwest) on the City's behalf.

**Background**

In August of 2007, the City received a request from Qwest to enter into negotiations for a competitive cable franchise in Milwaukie. Qwest recently completed franchise negotiations in Portland and now wishes to pursue franchises in Milwaukie. Because the subtleties of the franchise negotiation may be fairly complex, staff would prefer that MACC lead the negotiations with Qwest.

**Concurrence**

The City Manager and City attorney concur with staff's proposal to work with MACC.

**Fiscal Impact**

The City may require any applicant for a telecommunications franchise to pay the City a fee of \$2,000 in order to cover any expenses incurred by the City during negotiations. The City may request additional payment if the costs of negotiations exceed \$2,000. Although MACC staff will not charge the City for their work, any attorney's fees required will be recovered from the applicant's fees.

### **Work Load Impacts**

The Community Services Director will participate in some, but not all, of the negotiation meetings. MACC staff will provide her with regular updates on the progress of negotiations.

### **Alternatives**

Deny approval of the resolution and request that City staff complete negotiations with Qwest.

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 ALLOW MACC STAFF TO NEGOTIATE A CABLE FRANCHISE WITH QWEST BROADBAND SERVICES.**

**WHEREAS**, the City signed an intergovernmental agreement with MACC in 2002 for administration of the Comcast franchise; and

**WHEREAS**, in addition to franchise administration, MACC monitors the legal and political aspects of telecommunications issues in the state and across the country; and

**WHEREAS**, MACC staff has the expertise required to conduct franchise negotiations with telecommunication companies; and

**WHEREAS**, MACC has offered, as the administrator the City's current cable franchise for the City, to assist the City in negotiating a franchise with Qwest; and

**WHEREAS**, requests for competitive cable franchises are novel developments in local regulation, with rules governing those franchises undergoing constant changes at the federal level;

**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:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

## 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.

**QWEST COMMUNICATIONS CABLE TELEVISION FRANCHISE**

In addition to its responsibilities described above concerning initial review of Competitive Franchise Applications, the parties further agree that MACC shall provide lead negotiation services to develop a cable television franchise, as requested by Qwest Communications on August 28, 2007. MACC will receive no additional compensation for this service. The City will be responsible for any legal and technical fees required during negotiations.

Lead negotiation services as referenced herein include:

1. Determination of Qwest's requirements within the City's rights of way.
2. Discussion with Qwest personnel of terms under which the company may be granted additional use of the City's rights of way to deliver cable television programming.
3. Development of a mutually agreed upon franchise document.
4. Reports to and discussion with City staff and Council as directed by the City.

The objective of the negotiations will be to achieve a negotiated franchise agreement for presentation to and consideration by the Milwaukie City Council. MACC will have no administrative responsibilities under any approved franchise agreement unless the parties separately agree to a written amendment to this AGREEMENT as required by Section 4.3 hereof.

Either party may end MACC's negotiation responsibilities under this IGA at any time by providing ten (10) days' advance written notice to the other party.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Valerie Warner, Finance Director

Subject: Report on Collection Services

Date: September 21, 2007 for October 2, 2007 City Council Meeting

**Action Requested**

This report is for your information only.

**Background**

Among the city's various revenues are utility fees, court fines, code enforcement fines, business license taxes, library fines and others. When these amounts go unpaid, the city employs the services of a professional collection agency to pursue collection. An Oregon law enacted in 2003 allows the collection agencies to add 25% to the amount due to the city so that there is actually no cost to the city for the successful collections.

In July 2004, the city selected Valley Credit Services to provide collection services and awarded a three-year contract. The provisions of this contract allowed a three-year extension at the discretion of the parties. After a review of the collection rate and a check-in with staff members on their satisfaction with the services, the contract was recently extended until July 2010.

The contract provides for an annual report to council, to include statistics about the types and numbers of accounts referred to collection as well as the success rate. The report for the fiscal year ending June 30, 2007 is attached.

One might wonder if the results of Valley's efforts are considered above average, average or below average compared to other firms providing this type of service. Their overall collection rate for all City of Milwaukie accounts is 21%; for traffic violations – 29%; for parking tickets – 33%; for code violations – 2% and for NSF checks – 3%. An article in Business Credit Magazine estimates the overall average collection rate for collection agencies to be 28-30%. But this benchmark, while interesting, should not be our only tool in evaluating Valley's performance. A number of factors contribute to Valley's ability to collect including: the type of fee, the age of the fee, the demographics of the population, etc. In the coming period staff will search out more meaningful benchmarks so that future reports will provide more useful information.

Another benchmark for collection agencies is how timely they are in turning over recovered proceeds. City records show that Valley Credit Service remits between the 14<sup>th</sup> and 21<sup>st</sup> of each month. The new contract requires remittance by the 15<sup>th</sup> of the month and performance of this requirement will be specifically monitored over the next 12-month period.

### **Concurrence**

None required.

### **Fiscal Impact**

None.

### **Work Load Impacts**

None.

### **Alternatives**

N/A

## Valley Credit Service Performance Summary FY2006-07

	Number of new items sent during the year	Dollar value	Number of items paid in full	Number of dollars collected	% collected	% collected for prior year and current year
Traffic Violations	1012	533,698	91	35,922	7%	29%
Parking Tickets	154	10,663	19	1,506	14%	33%
Business Registrati	2	88	1	14	16%	not available
Code Violations	37	52,069	3	3,094	6%	2%
Utilities	305	64,430	14	3,043	5%	not available
NSF checks	4	245	0	-	0	3%