

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
October 16, 2007**

CALL TO ORDER

Mayor Bernard called the 2016th 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, and Susan Stone

Excused: Councilor Joe Loomis

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. Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study**

Mr. Asher introduced Bridget Wiegart, Metro Project Manager, who joined him in the update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement (SDEIS) process. The Study was well underway with targeted public involvement. Mainly consultants were doing studies, and Portland engaged in intense discussions about the location for the Willamette River Crossing. There was good representation from Milwaukie on the Safety and Security Task Force and the Citizen Advisory Committee (CAC).

Ms. Wiegart said there were a lot of discussions during the summer when the Steering Committee considered the options to be studied in the SDEIS. Since then she understood that Mr. Otsyula raised a number of concerns about the National Environmental Policy Act (NEPA) process. She discussed a letter from her director Ross Roberts. Essentially, Mr. Otsyula's concern as Metro understood it was whether the project should have been required to study additional options in the SDEIS and whether or not Metro was in compliance with NEPA. Metro had been in a continuous NEPA process since the late 1990's. There was a DEIS in the late 1990's that considered a variety of modes and alternatives. An Alternatives Analysis (AA) reviewed a variety of modes that included busway, bus rapid transit (BRT), commuter rail, and others. In 2002 the SDEIS looked at bus modes as well as light rail along with a number of different alignments. That resulted in the current locally preferred alternative (LPA) that was adopted in 2003. The history was important because NEPA was a progressive process that allowed one to incorporate the historical reviews and move forward into a narrowing process. As they geared up to do the SDEIS this spring and summer, the Portland Waldorf School (PWS) and others suggested looking at additional alignments within downtown Milwaukie. In response, there was a fairly exhaustive review of alignments on other streets. The City Council recommended to the Steering Committee not to add any of those alignments. That was an appropriate process because the Steering Committee was the advisory group that made all recommendations to the project. It agreed with the recommendation not to include any additional alignments. Metro was the local lead agency and worked with the federal lead agency the Federal Transit Administration (FTA). The agencies had been in

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continuous contact as they were during all environmental reviews. The FTA ultimately signed the environmental documents and certified they were complete. Metro was working with the FTA and in contact with Region 10 staff who had in turn been in contact with Mr. Otsyula. Metro has and will continue to do everything the FTA recommended in terms of responding to those concerns.

Councilor Stone said from all the times Mr. Otsyula came before the Council she understood his point was that the City of Milwaukie did not have the authority to not recommend an alignment. According to NEPA, the City was obligated to pass along any alternative that a citizen brought forward to the lead agency. The City did not have the authority. Was that correct?

Ms. Wieghart responded that was not correct. Part of the NEPA process was taking into account local community perspectives, concerns, and land use. Land use needs were a big part of the City's staff report. Not only Metro but also the FTA wanted to know that the local jurisdictions were being consulted. The local jurisdictions did not have the authority to make the decision about whether an option should be studied in the EIS. Ultimately the Steering Committee made the final decision, and it is based partially on a recommendation from the City.

Councilor Stone thought the fact that it was recommended was the issue. It could submit potential alternatives.

Ms. Wieghart said that was not correct.

Mayor Bernard added the City Council could recommend whether it thought one alternative was feasible or was something the community wanted. Otherwise, the federal government would go ahead with what it wanted which would not be fair to the community either. When he asked for the study, there was a process that resulted in a recommendation to the South Corridor Steering Committee that made the final decision.

Councilor Stone thought the word "study" was an issue and that the City did not have the authority to say a certain alignment should not be studied. They should all be submitted and studied in the process the lead agency was responsible for.

Ms. Wieghart commented briefly on the technical distinctions between what level of study was required. Metro had been in communication with the FTA and believed what was done was appropriate.

Councilor Barnes asked for a list of names of those on the Safety and Security Task Force and who represented Milwaukie.

Ms. Wieghart reported the Safety and Security Task Force had 2 of 6 scheduled meetings, and she encouraged the City Council to attend. It was an open group, and Task Force members were encouraged to commit to making all the meetings. The first meeting was a combination of a presentation from the head of TriMet operations talking about the safety program, design, and those kinds of issues. In a work session small groups of participants had discussions about what issues they wanted to see covered in this Task Force process. Those concerns would be address through the course of the subsequent meetings. The last meeting was a tour of Interstate MAX, which was the newest portion of the line with the most up to date design. It was proving to be one of the safest portions of the line. Most comments had to do with seeing the real, live situations. When the lights went on? When was the garbage picked up? It was a live MAX ride, and people got to see how it really worked. The next meeting was a tour of this alignment with stops at some of the proposed station areas. At the end of December and into January, the recommendation will be coming out of the Task Force and passed along to the CAC.

Councilor Barnes requested a tour of the Interstate line for City Council.

Mr. Asher said they had focused on safety and security, and he felt it would serve everyone well in the end. Some felt it was a big issue while some felt safe and secure both in their experience in Milwaukie and transit in general. The way the project was designed and operated should take into account this particular alignment in this part of the region. To that end, TriMet was trying to do more than it had before to work with its partners. He suggested a work session with TriMet next month. The City Council had neither the benefit of the tour nor how TriMet operated the system.

Ms. Wieghart reviewed the overall alignment and options adopted by the Steering Committee. In May the Steering Committee adopted the LPA with an extension to Park and Tillamook alignment to Park. At that time there were park-and-ride options at both Sparrow and Park Avenue. They were in the process of doing some traffic analysis to see how many parking spaces could be accommodated at each one. The goal was to achieve about 1,000 spaces in the entire area. Sparrow was a triangular-shaped lot north of Park in a residential area and was smaller than the Park Avenue site. It did not have a signal onto McLoughlin Boulevard and was not as conducive as Park Avenue for a park-and-ride for all of those reasons. Park Avenue could accommodate the 1,000 spaces more compatibly with the community. Park would be studied at 1,000 spaces, and the Sparrow option was eliminated. What were ranges before were solidified in this area. During the refinement phase there was discussion of station locations in downtown Milwaukie at Harrison, Washington, Monroe, Lake Road, and Bluebird. These were configurations that seemed to fit together in terms of spacing but were not necessarily those that would be adopted in the LPA. Originally when they were looking at crossing McLoughlin Boulevard they were only looking at it in an elevated fashion. The Steering Committee in July raised concerns about the cost of going to Park Avenue. As the alignment crossed over Kellogg Lake and at one point over McLoughlin Boulevard at-grade crossings were being considered that would likely reduce the cost. It would also allow an at-grade station on Bluebird which might fit more into the community. In order to have the elevated crossing on McLoughlin Boulevard the line would stay elevated for some distance and would have a different feel in the community. It was being considered both ways. There were a lot of issues with having an at-grade crossing on McLoughlin Boulevard so there were meetings with the Oregon Department of Transportation (ODOT). On the other hand there were some opportunities. ODOT and others had safety concerns about the River Road and 22nd Avenue area, so there was interest in reconfiguring those intersections. Both options would be looked at equally during the DEIS phase. The Bluebird station would be a walk-up station.

Councilor Collette thought a shared use park-and-ride might be useful across the street from Kronberg Park.

Ms. Wieghart said there had been issues with that concept.

Mr. Asher added that the Cash Spot could serve that function and was identified as such in the Transportation System Plan (TSP).

Councilor Stone observed that was another option.

Councilor Collette said even a walk-up station could provide convenient park access via light rail. It did work to serve the Park in any case.

Councilor Stone asked where the at-grade crossing would be located.

Ms. Wieghart replied it would be just south of Kronberg Park. Light rail would cross over Kellogg Lake and be at-grade at the railroad bridge.

Mayor Bernard initially had concerns about the at-grade crossing and the application of light rail on McLoughlin Boulevard.

Mr. Asher felt the project designers and team were taking the Park Avenue extension seriously. A large park-and-ride at that location was preferable to terminating it at Lake Road. He felt it made sense to look at the impacts of a lower-cost alternative.

Ms. Wieghart added they would be looking at the pros and cons. There was going to be an open house in Oak Grove sponsored by Clackamas County to bring those residents into the process. There had been some outreach, but this Park Avenue location was relatively new. She encouraged the City Council to attend the October 29 open house with its neighbors to the south. She provided copies of the newsletter to the Mayor and Councilors.

Mr. Asher said the next big decision point this community had was where to place the stations. In order for the City to come to some collective decision and keep the project on schedule, they were probably looking at January or February to reduce the options to just a couple. Each station had advantages and disadvantages, and there needed to be some kind of process in which community interests were expressed and what served the project best. There were elements that needed to be considered for station locations. For instance, the more competitive the project was the more transit benefit service it provided in terms of speed and ridership. Station locations had an impact on the model Metro ran and made the project more or less competitive for federal funds. The work the Safety and Security Task Force was doing would be an input. It would be important to locate stations in areas that were perceived to be safe now or that could redevelop to become open, visible, and safe. Most communities got benefits from the stations and the redevelopment that could take place. Those were some of the things the City needed to think about as well. The buses still needed to connect with the stations and would have much less impact downtown over time. The transit center as it existed today would be transformed. The bus network needed to work with light rail when it was built. All of those things needed to be considered in addition to local preference. He was working with Ms. Wieghart and her team to put together a process for a constructive discussion and come to some decision after the first of the year. He appreciated any input from Council on how it would like to see that process go.

Ms. Wieghart addressed the timeline that was in the newsletter. The actual analysis part of the environmental review was underway, and people were out measuring things and looking at buildings in the community. The chapters would be published in April 2008 that would lead to a series of public open houses and hearings and culminate in the various elected bodies voting on an LPA in July 2008.

Councilor Collette asked Ms. Wieghart to discuss station-siting meetings so far.

Ms. Wieghart said the focus had been from Tacoma to Clinton, and those stations were pretty well set because there were no design options in those areas. The focus was much more on how people wanted the station to look and feel in the community and what kind of planning needed to be done to achieve things like pedestrian and bike connections and addressing traffic issues. The community was really rolling up its sleeves at the workshop. There were 2 meetings, and each focused on 3 stations. The Team was reviewing the public input and the consultant's technical work for more workshops in November.

B. Rachel's Challenge – Milwaukie High School Senior Project

Alisha White and **Brittany Johnson** discussed their senior project, which was to raise funds to bring Rachel's Challenge to Milwaukie High School. The non-profit program brought the message of a teenage student written one month before she was killed in the Columbine High School shootings. She urged kindness to avoid violence.

CONSENT AGENDA

- A. City Council Minutes of August 21, 2007 Regular Session
- B. City Council Minutes of September 4, 2007 Regular Session

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

AUDIENCE PARTICIPATION

- Heather Andrews, Clackamas County

Ms. Andrews was a bike commuter and recreational biker who was active in the Transportation System Plan (TSP) process specifically with the bike/pedestrian chapter. There was a lot of involvement in the direction of the document. She expressed her full support for City staff's efforts on this document and recommended adoption as drafted. It became evident there was a very healthy bike community in Milwaukie, and she hoped the relationships did not end with the TSP process. She suggested the Council consider establishing a Bike Advisory Committee. She and others planned to make more formal comments at the December 4 adoption hearing.

PUBLIC HEARING

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

Mr. Swanson discussed the background of this amendment that had been considered monthly since June 2006. Water Environment Services (WES) and the County were working on a number of potentials for wastewater treatment, so it was probably not the time to stick a stick in the hornets' nest by adopting the amendments.

It was moved by Mayor Bernard and seconded by Councilor Barnes to continue the hearing on the amendments to the Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular City Council meeting of November 20, 2007. Motion passed unanimously among the members present. [4:0]

- B. Residential Garbage Rate Increase and Service Charge – Resolution

Mayor Bernard called the public hearing on the proposed residential garbage rate increase and distribution of roll carts for the purpose of commingled recyclables to order at 7:45 p.m. The purpose of the hearing was to hear public comments on the proposed increase.

Ms. Herrigel proposed a resolution for equalizing residential garbage rates with those of Clackamas to become effective November 1, 2007, and approving the distribution of roll carts for commingled recyclables by February 1, 2008. Each year the City received financial information from the haulers that stated the revenues generated in the City as well as the expenses for each hauler. Based on that information a rate of return was determined by each hauler and then all 7 collectively. The City then determined if the rate was healthy for the system and if the rate of return was in a range of 8% - 12%. Generally, the haulers did not request a modification. There were times, however, like this year, when the rate of return was actually at or just below 8%. There were other considerations over the coming year that made it necessary to discuss whether next year was going to be healthy enough for the haulers if the rate was not modified at this time. Metro increased its tipping fee \$1.28 per ton effective September 1 at the 2 Portland metropolitan area transfer stations. Additionally, driver wages would go up

approximately 2.95%, and insurance rates for all employees will go up about 4.79%. Fuel costs were continuing to increase and may reach 7.67% or more.

Given the current rate of return was not that healthy, it was anticipated it would drop over the coming year. Ms. Herrigel spoke with the haulers' financial consultant, representing all 7 companies, and Clackamas County about the notion of equalizing the rates in the City of Milwaukie with those in the County. One reason to do that was to make the allocation of collector costs easier. Milwaukie's 7 haulers were a subset of 23 that services Clackamas County. If rates were equalized, it would make the calculations of revenues and expenditures much easier. Second, the billing would be easier for haulers that had franchise areas both in the City and County. Finally, it would streamline the annual rate review. Currently the haulers submitted all their information to the County that determines the rate of return. After that was done the information was given to the cities, which did the same thing. She would get some assistance from the County, and the City would participate in a more efficient manner.

If this proposal were implemented the haulers agreed to distribute 65-gallon roll carts for commingled recyclables by February 1, 2008, to residential customers. All recyclables except glass and used oil would all go in the same container and sorted at a materials recovery facility.

The major service levels that would be affected by this change were those most often used. The 20- and 32-gallon cans were the most used service levels with 60- and 90-gallon cans being about 27%. The current rate for a 20-gallon can was \$18.02 and would increase to \$20.90. The largest, 90-gallon can would increase by \$5.31. She believed commingling would encourage people to recycle more and to downsize their garbage cans. She provided a current rate sheet for the City of Milwaukie showing the proposed rates. She also provided a Clackamas County rate sheet with the urban rate highlighted that would be analogous to the City of Milwaukie.

Ms. Herrigel noted a letter from Wichita Sanitary Service in support of the modification and the 65-gallon roll cart as soon as possible as there was a tax benefit the hauler might receive from the State. Wichita also requested a month's trial period for the 65-gallon roll carts before customers could ask for smaller containers or bins. She received calls since the work session and the article in *The Pilot* was published, and there were several questions about materials allowed and how to prepare them. All calls were supportive of the program. She noted David White, Joe Cook, and 2 haulers were at the hearing if Council had questions.

Mayor Bernard understood even if rate equalized any increase would still have to come to Council for approval.

Mr. Swanson noted the service level was a weekly number but the rates were monthly.

Councilor Stone recalled the rates were increased a year ago. She was surprised the City was doing it again so soon although she understood it needed to be done. If the haulers had met the 8% - 12% range would the City still be looking at increasing the rates based on the other criteria including the wage increase for the drivers and tipping fee?

Ms. Herrigel replied the haulers did a projection based on where they were now and applied those percentages to this year's numbers to determine what the financials would look like next year. From there they figured out the rate of return. She was hopeful the rate modification would hold for 2 years, but it was difficult to know what costs would do. There was an increase last year but previous to that it was in 2004, and before that it was 2001.

Councilor Stone asked how the increase in poundage of recycled materials might equate to rate fees. If people were going to the commingled cart there might be more recycling. How did that figure in to the haulers' overall return and profit if they brought in more?

Ms. Herrigel cautioned against saying we were going to generate recyclables therefore we were going to save money. Rather we were going to keep rates from increasing as steadily as they might. Instead of spiking, she hoped it would level off and suppress the cost to some extent.

Councilor Stone understood the insurance for all employees was increasing almost 5%. Was that medical?

Ms. Herrigel thought it was medical and liability, but she would confirm that.

Councilor Stone commented in a lot of industries employees absorbed the additional insurance costs.

Ms. Herrigel understood the liability insurance in the garbage industry was high because it was such a physical job.

Councilor Stone did a couple of comparisons between the 60- and 90-gallon carts in terms of the percentage of increase. The 60-gallon was approximately an 11% increase, and the 90-gallon was almost 17%. How did they arrive at that other than just increasing all of them 12%?

Ms. Herrigel replied the rates were usually built from the bottom up. The haulers determine the actual cost of going down a street and the number of stops. They likely also considered the weight of a 90-gallon cart versus a 20-gallon can.

There was no audience testimony or further questions of clarification.

Mayor Bernard closed the public hearing on the proposed garbage rate increase at 8:05 p.m.

Mayor Bernard had never heard any concerns about the rate increase and felt Milwaukie received good garbage service.

Councilor Stone liked that the haulers helped with the neighborhood cleanup day.

Councilor Collette thought commingled recycling would have a major impact on people's habits.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution equalizing the City and County residential garbage rates and approving the distribution of roll carts for commingled recyclables.

Councilor Stone was pleased to see commercial rates would be considered in the coming year.

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

RESOLUTION 60-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE EQUALIZING RESIDENTIAL GARBAGE RATES WITH THOSE OF CLACKAMAS COUNTY EFFECTIVE NOVEMBER 1, 2007, AND APPROVING THE DISTRIBUTION OF ROLL CARTS FOR COMMINGLED RECYCLABLES TO ALL RESIDENTIAL CUSTOMERS BY FEBRUARY 1, 2008.

OTHER BUSINESS

A. Railroad Crossing Safety and Quiet Zone Proposal – Resolution

Mr. Parkin reported the proposed resolution addressed efforts to implement traffic safety at the 3 at-grade railroad crossings and establish a quiet zone as a result of those improvements. Mr. Hales worked to establish the level of community desire for the quiet zone and determine its feasibility. Since the last meeting, staff proceeded with the permit it needed from Oregon Department of Transportation (ODOT) rail and arranged a meeting with the owner of the car wash property on Harrison Street.

Mr. Hales reported this project if implemented would increase safety and accessibility at the 37th Avenue, Oak Street, and Harrison Street crossings of the Union Pacific (UP) mainline. It would also qualify the City for a train horn quiet zone which would eliminate the routine sounding of train horns at 3 of the 4 crossings in this corridor. It would build on an existing community development block grant (CDBG) crossing safety project to install sidewalks and crossing panels at all 3 subject crossings. The proposal had been through an extensive community process including neighborhoods and affected businesses. The proposal had the endorsement of the City Manager, Community Development and Public Works Director, the Operations Director, Resource and Economic Development Specialist, and the Community Services Director. All 7 Neighborhood District Associations also expressed support. Over 165 citizens responded to public outreach as well as Milwaukie MarketPlace, North Clackamas School District, Comfort Care Dental, Bob Dant, Union Pacific Railroad, and ODOT rail.

Mr. Parkin estimated the cost the quiet zone portion of the project to be approximately \$285,000. Funding sources from transportation system development charges (SDC) and fees in lieu of (FILO) construction in the amount of \$200,000. The balance of the money needed was not readily available. The designs for Oak Street and 37th Avenue were nearly done as a result of the CDBG project and were ready for permitting. The City was staying on track with CDBG funding to make sure that part of the project was completed within grant timelines.

Mr. Hales noted this was an issue with a lot of community support. The proposal was primarily about livability and safety. If implemented, the proposal would bring the City in line with rigorous state and federal crossing safety standards and reduce the risk of injuries and fatalities at rail crossing in Milwaukie. These improvements would be in keeping with the City's overall direction toward increased safety and livability. Staff recommended Council adoption of the resolution initiating efforts to improve 3 at-grade rail crossings and establish a quiet zone.

Councilor Collette said Councilor Loomis had wanted to clarify that this would not require the use of gas taxes.

Mr. Swanson replied at the work session Councilor Loomis made an argument that he did not want and did not think it appropriate to identify funds out of existing road and street money because the City had asked for additional street maintenance funds. As the budget officer, he would work to identify the money in next year's budget process. In doing that he would focus on and remember Councilor Loomis's remarks as he did have a point. He would be looking at other sources in going through the budget.

Mayor Bernard believed the resolution was broad enough to allow some work on Harrison Street. It acknowledged the City did not have the funds this year, and staff would continue to work on resolving some of the issues at the Harrison Street crossing.

Mr. Swanson responded the resolution was intentionally broad so the City could begin the permitting process and not delay the CDBG process. The resolution endorsed the idea in order to move onto the next stage with the understanding other issues needed to

be resolved.. He discussed the competing demands for funding. A meeting was scheduled with Mr. Murphy, and hopefully there was a solution there.

Mayor Bernard commented he had spoken with the owners of Purdy's carwash, and they appreciated staff's efforts to accommodate some of his concerns.

Councilor Stone asked if Purdy's was supportive. She understood he had concerns about how his customers would get in and out.

Mr. Parkin replied the owners expressed their desire to have quiet zone implemented but had concerns about access. Staff successfully met those concerns, and they were agreeable to the access option. The fallback solution with left turns would be confusing and was not preferred.

Councilor Stone asked the location of the fourth crossing.

Mr. Hales replied it was the Harmony Road crossing.

Councilor Collette explained it was being redesigned as part of the Harmony Road project. She imagined Mr. Murphy would appreciate the quiet zone as it would likely increase the value of his property for redevelopment.

Mr. Parkin replied Mr. Murphy was in favor of the quiet zone but not all of the improvements.

Councilor Stone asked when that project be completed.

Mr. Parkin responded the CDBG sidewalk work would be done this spring at Oak Street and 37th Avenue. Once funding was secured for the quiet zone the permitting will have been done, so it would be a matter of bidding out the work.

Mr. Swanson added in 2001 the Federal Railroad Administration (FRA) had just promulgated the rules and sought comment. At that time it was a 6-figure estimate with a lot of expensive technology. Staff kept pushing and looked at a lot of alternatives. Now the alternative was \$285,000. The rail people would not approve a permit that did not enhance safety. The initial estimate of \$1 million was not achievable, and today there was a doable option that a small city like Milwaukie could pursue.

Mayor Bernard asked if the City would be responsible for repair and maintenance of the arms and signals.

Mr. Hales replied Union Pacific would be responsible.

Mr. Parkin added the City would be responsible for maintaining the median.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution initiating efforts to improve three at-grade railroad crossings and establish a quiet zone. Motion passed unanimously among the members present. [4:0]

RESOLUTION 61-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING EFFORTS TO IMPROVE THREE AT-GRADE RAILROAD CROSSING AND ESTABLISH A QUIET ZONE.

B. Adoption of City Investment Policy – Resolution

Ms. Warner reported the 2004 policy called for a periodic review. She incorporated some updated sample language supplied by the State, changed a sentence to limit the ability of the finance director to delegate investment authority to finance staff, and removed the requirement for a specific audit to be conducted upon extraordinary events

by changing “must” to “may”, and modified the maturity and diversification parameters in the policy.

Councilor Barnes was concerned about changing the requirement for the audit under and extraordinary event considering recent issues in local jurisdictions.

Ms. Warner replied Council could consider a special audit, but even the State had stopped doing turnover audits. With the language change, the City would not be forced to do something that was not well defined.

Mr. Swanson added when a former finance director left in 2001, the auditor did not recommend an audit. If there were an extraordinary event of some kind like theft, then the City would undergo an extensive process to determine the class of felony.

Mayor Bernard added in a certain jurisdiction an audit was not allowed for a number of years. It was about having a tight system.

Mr. Swanson commented these kinds of things were found in random checks of transactions and observed changes in behavior.

Councilor Stone understood the Council would still have the option of a special audit and was a ‘may’ and not a ‘must.’

Councilor Collette noted the City’s overall yield was 8 basis points below OSTF.

Ms. Warner said if the City had put all of its money in the OSTF then it would have had a return on investment that was 8 points higher. Right now the City had a “pool-plus” account with a bank that was always a little better. There was also a CD with a fixed rate for 12 months, but one did not know what the short-term rates would do. She had reviewed the policy, the results of the investment program, and reviewed internal controls.

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the resolution adopting the City investment policy. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 62-2007

A RESOLUTION ADOPTING A CITY INVESTMENT POLICY,

C. Amend Milwaukie Municipal code by Adding Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition – Ordinance

Mr. Monahan reported this was a housekeeping measure modifying the code. The City of Corvallis had an explanatory statement rejected by the County elections officer because it did not have such an authorizing ordinance. In order that the City may put an explanatory statement in a voters’ pamphlet when there was an initiative or referendum, it must have authorizing ordinance. The code would be amended by inserting Section 1.04.100. When directed by the City Council, the city manager, city attorney, or the city recorder were authorized to prepare such an explanatory statement for the Clackamas County voters’ pamphlet.

The voters and citizens expect the City to provide such a statement, so to authorize that and be compliant with election laws, it was important to adopt such an ordinance.

It was moved by Councilor Stone and seconded by Councilor Collette for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code by adding Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition.

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

The City Recorder polled the Council. Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye.' Motion passed unanimously among the members present. [4:0]

ORDINANCE 1974:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING SECTION 1.04.100 – AUTHORIZATION TO SUBMIT EXPLANATORY STATEMENTS RELATING TO MUNICIPAL LEGISLATION REFERRED OR INITIATED BY PETITION.

D. TOPOFF 4

Mr. Swanson reported on the City's participation in the TOPOFF 4 exercise. The City had done a lot of emergency operations exercises, and those who staffed the EOC's were adept at working together.

E. Council Reports

Councilor Collette attended a Town Hall with Senator Kate Brown, Rep. Carolyn Tomei, and Diane Rosenbaum and the Oregon Downtown Development Association (ODDA) Conference in Albany. She staffed the Farmers' Market community booth, and there was a huge amount of support for what was going on in the City.

Councilor Barnes continued to attend the Wastewater Solutions Committee and taping of the Library reading show would begin this month. She would tape 4 segments for the State of the City address, and she hoped to talk with other members of Council about what they wanted to see in the Milwaukie segment.

Councilor Stone would attend the Site Steering Committee meeting on October 25, and she understood the Clackamas County Board of Commissioners would make a determination on November 6. She attended the Ardenwald NDA meeting and encouraged everyone to go to the Davis Graveyard.

Mayor Bernard attended Ardenwald NDA meeting and the Oregon Economic Development Conference, acknowledged the Dark Horse Comics window improvements, and announced the pumpkin carving contest at the final Farmers' Market of the season.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 8:58 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL OCTOBER 16, 2007

MILWAUKIE CITY HALL
10722 SE Main Street

2016th MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Rachel’s Challenge – Milwaukie High School Senior Project**
 - B. **Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study (Kenny Asher)**
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 August 21, 2007 Regular Session**
 - B. **City Council Minutes September 4, 2007 Regular Session**
4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*
5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 (Mike Swanson)**

5. PUBLIC HEARING, Contd.

B. Residential Garbage Rate Increase and Service Charge – Resolution (JoAnn Herrigel)

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. Railroad Crossing Safety and Quiet Zone Proposal – Resolution (Gavin Hales & Gary Parkin)

B. Adoption of City Investment Policy – Resolution (Valerie Warner)

C. Amend Milwaukie Municipal Code by Adding Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition – Ordinance (Bill Monahan)

D. Council Reports

7. INFORMATION

Park and Recreation Advisory Board July, 24, 2007

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Community Development & Public Works Director

Subject: Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study

Date: October 3 for the October 16, 2007 Meeting

Action Requested

None. This is an informational update on progress related to the Supplemental Draft Environmental Impact Statement study ("SDEIS") for the South Corridor Phase 2 Portland-Milwaukie light rail project.

Background

At its September 4, 2007 Council meeting, Council requested regular monthly updates on the Portland-Milwaukie Light Rail SDEIS. The project schedule has not changed significantly; the data collection phase will continue through the end of the year, with the SDEIS being drafted over the winter and published for comment in April. Bridget Wieghart, the project manager for Metro, will cover the project schedule in more detail at the meeting.

Additionally, the update will cover questions that have been raised with regard to the National Environmental Policy Act (NEPA) and the project's conformance with NEPA regulations; an update on the Safety and Security Task Force, which will have met twice by the time of the update and is charged with providing input to the design and operation of the project that will enhance safety and security on and around the project; a review of the alternatives that are being analyzed as part of the SDEIS study, which include two modifications to the Milwaukie segment (inclusion of Washington Street as a possible station location and exclusion of the Sparrow Park and Ride, which has been dropped from the study); station location possibilities in Milwaukie and factors to consider in the community discussion of possible station locations.

Staff intends to brief Council at the second meeting in November as well, and to continue these monthly briefings until otherwise directed by council.

Concurrence

There is no action with which to concur.

Fiscal Impact

Not applicable.

Work Load Impacts

Not applicable.

Alternatives

Not applicable.

Attachments

None.

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
AUGUST 21, 2007**

CALL TO ORDER

Mayor Bernard called the 2012th 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, and Joe Loomis. Councilor Stone was excused.

Staff present: City Attorney Bill Monahan, Community Development & Public Works Director Kenny Asher, Operations Director Paul Shirey, Engineering Director Gary Parkin, Planning Director Katie Mangle, and Finance Director Valerie Warner.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Transportation System Plan (TSP) Update – Downtown Parking

Ms. Mangle introduced Rick Williams the City's parking management consultant who had been working with the City for about a year on the downtown parking issues. He was also involved in the *2003 Downtown Milwaukie Parking and Traffic Management Plan*.

The Transportation System Plans (TSP) did not typically deal with parking; however, staff believed it was important to address unresolved issues. The current TSP would adopt much of the 2003 Plan including the framework and principles that helped the City make its decisions; however, gaps made it difficult for staff to implement certain Plan elements. Some of the questions had to do with proper regulation of development and downtown resident and employee parking. There was a lot of public participation in the workshops, and some key recommendations were made on how to help downtown Milwaukie become a great multimodal environment. It was about creating Main Street as a shopping corridor and retail center by developing parking policies that helped businesses. When talking about parking, it was not just one type of user. The City had a different attitude in its investment and policies depending on the type of user, employee, visitor, or park-and-rider. She referred to Table 1 – Parking Facility Priorities by Parking User Type on page 3 of the staff report. The main thrust of the Downtown Plan was to support Main Street redevelopment and retail that were supported by visitors, customers, and clients. The City needed to make the decision to prioritize that group. The park-and-riders were at the opposite end of the spectrum, and the decision needed to be made to de-prioritize those who were not coming to downtown Milwaukie but rather going to downtown Portland. The effort would be made to move park-and-ride to the fringe of downtown. Many of the recommendations in 2003 were about setting up a policy so the City could make choices as the downtown continued to develop. The proposed framework would help guide decisions. Principles were to manage parking to support downtown revitalization, keep an updated parking inventory, adjust parking management practices when parking areas were over 85%, implement development requirements that require the private sector to identify sufficient parking but not asking them to overbuild, provide public off-street parking for downtown employees, work with property and business owners to decrease employees auto

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DRAFT MINUTES

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parking needs, develop a plan to finance and locate a public parking structure, and discourage park-and-ride lots in the downtown. As the downtown transitioned to a multimodal environment there would be more opportunities to driving and parking. Many people were interested in a public parking structure, and that was something the City needed to be planning for and consider how it might be financed. The City has long held the downtown should not serve as a park-and-ride for downtown Portland, but there may be an opportunity to design a structure related to the light rail project that allowed for retail customer parking.

Ms. Mangle discussed development requirements. Staff looked at the development code to evaluate the City's attitude as a regulator by considering a few key sites. If one looked at a 4-story development in the office zone, for example, the City could require 8 – 15 parking spaces per 1,000 square feet. Mr. Williams concluded the parking centers alone would preclude the development from happening because the sites were constrained. Given high quality transit, pedestrian, and bike access, did the City really need to require that much parking? There were some parts of the code that required too much parking yet there needed to be enough. The code changes in the TSP would be looking to create a uniform set of standards for commercial development in the downtown, which right now were all over the map. The commercial standards would be uniform throughout the downtown and create a minimum 0 spaces and a maximum of 2.5 per 1,000 square feet. That would put the burden on the developer as to how many spaces were really needed. There would be no limit if parking were within a structure. Small storefront units that did not require more than on street parking for customers would be allowed to do that. Larger office buildings that might require 2.5 or more spaces per 1,000 square feet would also be allowed to do that. It would simplify the equation for the developer and ensure that commercial and office development would be consistent.

She discussed residential development. Currently in the downtown storefront zone the City had no requirements in the core area. In the downtown commercial and office zones there were 1.25 spaces per unit which was standard for apartments all over town. In response to community concerns about downtown residents, the proposal was to put in the code for all of downtown including the storefronts a minimum of one parking space per unit with a maximum of two unless in a structure. The maximum was important in that the City did not want more parking than was needed or numerous surface parking lots.

Policy aside, staff ended up with an action plan that helped bridge the gap between the policies and what staff needed to do. A key element was public information and helping downtown employees understand the permit system. Some employees provided valuable feedback such as the lots' being too dark. She discussed the "no parking overnight" zone on Main Street in front of North Main Village that was a direct result of the policy to manage parking to support retail. Cars parking overnight impacted the coffee shop business and rentability of the restaurant spaces. Going back to the principles, parking was managed for the retail environment and not for the residents who had 1 parking space per unit. That was an example of choices that would have to be made that would not likely make everyone happy. The community was asking for active management and wanted to see the City making those choices and rules clear for residents, employees, and developers. Parking was a multi-disciplinary issue and involved planning, engineering, facilities, community services, budget, and community development. Staff agreed with City Council this was a high priority. There needed to be a plan, and it was important to show the City was effectively managing this resource. It was really about the future of downtown and success of the retail. Staff would propose a parking manager position in next year's budget. Right now no one was

working on issues. The program did bring in revenue for the City, so there was some funding for the position.

Councilor Loomis asked where the cars moved if they could not park on Main Street overnight.

Ms. Mangle showed residents other options than the Main Street slots such as Scott and Harrison Streets. The main point was the parking was being protected for adjacent businesses while parking in other places including in front of City Hall did not affect anyone.

Councilor Loomis observed when the restaurant went in and the retail spaces filled up more than those few places in front would be needed. Were the people living there parking in front because they had more than one car? Were the spots designated for the tenants full? Some people were using their garages for storage and parking on the street, and others had 2 cars. Communication needed to be more consistent regarding City policy, and people cannot not rely on parking on the streets because it was prioritized for businesses.

Councilor Collette asked if people could use Odd Fellows at night.

Ms. Lander replied Odd Fellows did not allow overnight parking, but people could use the City Hall lot which was actually closer.

Councilor Barnes was glad public information was the first priority and recommended the rules be handed out to new businesses. She agreed it was important to have a consistent message for people considering buying a condo in downtown Milwaukie.

Ms. Mangle thought it was important to help people understand what they should do. Neil Hankerson, Dark Horse Comics, suggest employee training. Right now it was easier for them to do the wrong thing than the right thing because they did not understand how buy permits. The City can improve the permit system along with going out to employers with training and offering transit and bike route maps.

Mayor Bernard thought overnight parking needed to be expanded. All of Scott Street was taken up with cars, and he imagined Mr. Parecki's parking lot was probably full. Park-and-riders also started parking on Monroe Street at about 6 a.m. and walked to the transit center, so neighborhood parking needed to be addressed. He asked how square footage was addressed and what occurred if there were changes in the types of businesses.

Mr. Williams addressed transit riders parking on residential streets. More signs were going up that stated a 2-hour limit or by permit. It was difficult to manage because no one knew who should legitimately be parking on the street. That was why it was desirable to go to a permit system on streets that had capacity. It was not that people would not be allowed to park on the street during the day in certain areas, but people would have to prove they lived or worked downtown. Those park-and-riders would not be able to park and walk to the transit center because it was 2-hour parking. Unless they displayed a permit they would be tagged. His mentor always said businesses came and went but buildings did not. They tried to size the parking system to the demand. The City had 59 different use categories in its existing code, and each category had a specific parking requirement. During the parking study it was found the highest rate of parking use was 2 per 1,000 square feet as a blended mix. That demand would theoretically drop if transit were considered. The current use was based on a transit mode split of 10% or less. If the split goes up to 15% or 20% even the 2 per 1,000 may be overbuilt. They tried to size it with a maximum to what the current demand was and put a reasonable minimum in place expecting that the downtown will continue to operate at a demand equal to or less than what it was today for commuter

uses. Basically any new developments in downtown will need to develop a structure because they will not have the geometry to accommodate surface parking.

Mayor Bernard understood there was a possibility that the Southgate park-and-ride would not happen because a different alignment was being studied that would keep it along the Tillamook Branch. That could, he understood, delay getting the transit center off the City streets. There would need to be a park-and-ride somewhere, and that need had to be accommodated.

Ms. Mangle commented the transit chapter of the TSP addressed a long-term plan for park-and-ride along the light rail corridor and to the east along King and Linwood to capture the east side commuters. The policy statement on parking was to keep the downtown from being a park-and-ride in the broader sense. Even if the Southgate park-and-ride was not built, steps could be made not to sell valuable permits to people who were taking the bus to downtown Portland. She understood TriMet would build a park-and-ride of some sort at Southgate.

Councilor Collette asked if there would be permit parking in Historic Milwaukie so people were protected from having park-and-ride overflow.

Ms. Mangle said the 2-hour or permit was more about effectively using the downtown streets, and where there was no retail an employee could park all day. The chapter also recommended adopting a framework for a residential permit parking zone that would only be applied outside of the downtown zone that included the Historic Milwaukie Neighborhood and parts of the Lake Road Neighborhood where the problem was already being experienced. It would be up to the Neighborhoods to decide when they were ready for the permit system.

Mr. Williams added the proper time to implement a system was really when residents thought it was bad. When the framework was outlined the residents came to the realization that it would require some administration. It was a real fix for parking overspill into neighborhoods, but it meant people had to get a permit. One may or may not have to pay for the permit, and there may have to be guest passes. The framework outlined the actual steps that would be presented to the community to determine if people were ready to go. The residents could establish a temporary boundary for a residential permit program. If 51% of the people polled within that boundary agreed with the program, then the City would begin to work with them on implementation. It was believed that was better than imposing a program on the neighborhood.

Mayor Bernard recommended training to help people realize they needed permission to park in private lots.

Ms. Mangle announced the draft chapters of the TSP were on the City website and would be before the Planning Commission in October for a public hearing. She would bring one more update to City Council with final adoption scheduled for December.

CONSENT AGENDA

- A. City Council Minutes of July 17, 2007 Regular Session;**
- B. Resolution 52-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving Transfers of FY 2007 – 2008 Appropriations and Approving a Supplemental Budget;**
- C. Resolution 53-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Purchase of City Vehicles That Were Approved for Replacement in the Fiscal Year 2007 – 2008 As Per the City Vehicle Replacement Criteria; and**
- D. OLCC Application for the Golden Nugget, 11032 SE Main Street, New Outlet.**

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

AUDIENCE PARTICIPATION

- **John Otsyula, Milwaukie**

Mr. Otsyula attended the Metro Committee meeting, and the Mayor presented that the City Council was in favor of not studying other light rail alternatives by 4-1. Metro admitted on record that City Council had no such authority to reject or remove an alternative that was proposed by citizens. He was requesting on record that the City Council submit to Metro his other alternative alignments as required by NEPA to be included in the SDEIS. Additionally, Metro transportation committee chair and the project manager were open to taking alternative suggestions. He requested again that the City submit his alternatives. He asked his City Council. If the City was unwilling to further the alternative suggestions coming from him, then please let him know in writing so he could notify Metro of the City's unwillingness to adhere to federal regulations.

Mayor Bernard said this was part of the record of all the meetings that went to Metro.

Mr. Otsyula was specifically asking that the City as his representative to Metro to further his alternative suggestions. If the City was unwilling please let him know so he can let Metro know the City was not adhering to federal regulations that would give him an avenue to put his alternatives in. He could say he went to his city, and if they were not willing, then he had the right to go to Metro. He wanted that so he could let them know.

- **Brendan Eiswerth, Milwaukie**

Mr. Eiswerth wanted to talk about community development on Main Street. The Council was familiar with the downtown design guidelines. He supposed all the Council had read those. Milwaukie Downtown and Riverfront Land Use Framework Plan and Milwaukie Downtown and Riverfront Plan. He assumed all Council had read those. He asked if the Council had seen the article about Mr. Parecki's building that was in the *Oregonian* last week. Good article. It was nice to have positive news coming out of the City of Milwaukie, and it was too bad we had seen some unfortunate things recently. He felt bad about that because this was a beautiful place. He owned two houses and paid taxes and planned to raise his child here and send him to school in Milwaukie. Dennis McCarthy's article on Mr. Parecki's renovation of the First State Bank Building on Milwaukie's Main Street in last Thursday's *Oregonian* showed what he thought smart development in Milwaukie could look like. The project to restore the First Bank Building and his previous restoration of the McLoughlin Building on Scott were prime examples of what Milwaukie development could and should look like. Whether he knew it or not Mr. Parecki had stayed true to the design guidelines adopted by City Council on April 1, 2003, Resolution 11-2003 and to the vision of redevelopment as laid out by the citizens of Milwaukie in 1999, of which he was one, in a long series of meetings involving hundreds of residents discussing what the future of Milwaukie would look like. While Mr. Parecki was not a part of the community in 1999, he had an uncanny ability to fit his development into the vision of redeveloping Milwaukie as residents had 8 years ago. Restoring historic buildings no matter what their condition, staying in scale to the surrounding buildings using fine craftsmanship and high quality materials. These were all spelled out in the Milwaukie downtown design guidelines and were adhered to the utmost level by Mr. Parecki in his two projects so far in Milwaukie. Not only had Mr. Parecki stayed with Milwaukie's citizens' vision but also he took the risk on his own without government subsidies and property tax abatement. Milwaukie politicians and

planners can learn much from Mr. Parecki's quality developments. Now, let's contrast Mr. Parecki's successful development with North Main Village that enveloped the old Safeway site along Milwaukie's Main Street. The North Main development was a hodgepodge of condos, town homes, low-income housing, and ground floor retail that surrounded the historic Masonic Lodge – some would say dwarfed the Masonic Lodge – at the corner of Harrison and Main. Contrary to the development by Mr. Parecki this development was quickly built with mediocre at best craftsmanship. It was as if the developer of this project never read the Milwaukie downtown design guidelines or was never informed that there were guidelines to follow – hopefully that was not the case. He was here a month ago when a Milwaukie citizen who said he was a lifelong carpenter came to the Council and explained in detail the shoddy workmanship visible at the North Main development. He talked about cracked trim and unpainted caulk and spackle around windows and doors plus complaints of plumbing problems already. It was really too bad, but the proof was in the pudding. Mr. Parecki's McLoughlin Building was 100% filled, and North Main had absolutely no tenants who had moved in yet. The question should be asked by the Council and planners as we go ahead and develop Main Street was "why is that?" He was not criticizing. He was criticizing the quality. He hoped the Council looked at it as he did after hearing that. We needed to have high quality development. Look at Mississippi. Look at Hawthorne. Belmont, Division, even places like North Williams. Places that were completely, utterly not places people would ever think they could develop. That was grassroots development like Mr. Parecki's that turned those areas into places where people wanted to go with locally-owned wine shops, boutiques, restaurants that he would drive over to enjoy. He would like to be able to walk down the street and do that. Unfortunately nothing has come into North Main. Look at it and try to figure out why that was before we went ahead and changed any planning laws to build over twice as high as this building across the street which was the plan they wanted to do. Pay attention to these. There was a lot of work put into them, so please adhere to that.

- **Ed Parecki, Milwaukie business owner**

Mr. Parecki did not know Mr. Eiswerth was going to be at the meeting but thanked him for his comments. He brought the same documents and intended to say the same thing, but Mr. Eiswerth said it very eloquently. He wanted to challenge the memorandum of understanding (MOU) based on the resolution adopted by the City on April 17, 2007 which stated in part that the City would enter into exclusive negotiations with Main Street Partners for 60-days. The ambiguity in the contract should nullify it, and we should stop the proceedings now. The reason he thought it should be nullified was that it went beyond the 60-days on an exclusive basis. It was clear the City was not supposed to do that. This thing had been going on for an extra 60-days. No other developer such as Winkler or the other one came into negotiations beyond the 60-days. He urged the Council to look at the contract signed into the record and maybe re-think what was going on. A lot of what Mr. Eiswerth said was true. One cannot actually enforce the MOU unless the downtown plan was changed which the Council loved so much. The one used against us with the light rail alternatives. Remember the downtown plan. 2,000 people and countless hours went into it. The Downtown Plan called for a greenspace where the Tillamook line was. It said it clearly. It was a brilliant idea that could not be implemented now because the Tillamook line was going to inevitably be built. He urged the City Council to re-read the genius plan that was developed in 1999 and try to get some of it implemented instead of changing it as things came along. There was already the village concept which was a total change to the Plan. It was very unfair unless the City Council created a Parecki concept plan downtown and gave him some variances and code changes as well. He was not going to ask for those; he was being ludicrous. It just seemed like it should be on a level

playing field and things should be done according to the Plan because Mr. Asher said, "remember the document."

Mr. Monahan had some opportunity to discuss the agreement and final provisions of the MOU. It made reference to if an impasse were reached that the discussion with another potential developer would occur. To his knowledge no impasse was reached. He referred to page 2 of Resolution 29-2007 that said if for any reason the MOU negotiations between the project management group (PMG) and Main Street Partners came to an impasse, PMG was authorized to begin negotiations with Winkler Development. To Mr. Monahan's knowledge no impasse was reached.

Mr. Parecki said that same document said exclusive negotiations would only occur within the first 60-days, so there was an ambiguity.

Mr. Monahan said it did say the PMG was directed to enter into exclusive negotiations for 60-days. Nowhere was there anything that said at the close of 60-days an impasse existed. It did not say the 60-days could not be extended.

Mayor Bernard added assuming all parties were acting in good faith to come up with an agreement.

Mr. Monahan said there was nothing that triggered that at the end of 60-days the resolution went away.

PUBLIC HEARING

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

Mr. Monahan discussed the background of this matter and the recommendation to continue the hearing to give the Citizens Advisory Committee time to do its work.

It was moved by Councilor Barnes and seconded by Councilor Collette to continue the hearing on the amendments to the Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular City Council meeting of September 18, 2007.

Councilor Barnes said the policy group was meeting later this week that included Mr. Knapp, Gladstone, Damascus, and herself. The situation had changed some and not for the better. She would go into detail on the Water Environment Services (WES) report when there was more time during a work session. She would update the group of the Thursday meeting. The CAC had started holding separate meetings in subcommittees. The CAC was not happy, and Clackamas County indicated things might change in November. Things were at a point where either they were resolved, or Mr. Knapp said publicly he would sue Milwaukie over getting out of the Kellogg Treatment Plant. The question was whose money he would use to hire legal counsel. This was starting to get nasty again.

Mayor Bernard added \$3 million was spent in studying this issue, and the answer was the same every time.

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

OTHER BUSINESS

A. Riverfront Park Design Contract Amendment – Resolution

Ms. Herrigel provided a brief update on the Riverfront design and asked for approval to amend the contract with David Evans & Associates (DEA) to continue some of that work. The contract was awarded to DEA in September 2006 and was signed December

2006. Councilors Stone and Loomis have been attending most of the Riverfront Board meetings where Gill Williams described the various components of the riverfront project. The design team met with the Oregon State Marine Board (OSMB), Clackamas Service District #1 regarding access issues, Oregon Department of Transportation (ODOT), and several other organizations to get a firm grip on the components of the project. The project met with City staff in a pre-application conference to discuss local land use approvals. The components have been finalized, and the next logical step was for DEA to go into the detailed design. This project was along the Willamette and between Kellogg and Johnson Creeks making it important to get input from federal and state agencies. She anticipated the permitting and design would move forward in parallel, and all of that should be completed by September 2008.

She pointed out some design changes. The final grading was done, and she noted soil was neither brought in nor removed from the site but moved around. The site would be re-contoured so there were inlets with small bridges. The boat ramp and parking moved closer to Kellogg Creek after lengthy discussions with the designer, Riverfront Board, and OSMB. She pointed out the transient dock. Right now the riverfront was accessed by either right-in or right-out at Jefferson Street or Washington Street. As part of this design the Jefferson and Washington Street entrances would be closed. The entrances to the Kellogg Treatment Plant and Riverfront Park would be south of Kellogg Creek. That drove the location of the boat ramp and parking lot and meant agreements had to be reached with ODOT and the Kellogg Treatment Plant regarding access. She pointed out the parking areas near the boat ramp and near the log dump, the restrooms, and water feature.

Ms. Herrigel said in order to move forward with the permitting project several tasks would need to be added to the scope of work, the contract extended to September 2008, and amend the 2007 – 2008 budget to transfer \$100,000 from contingency into the community services budget. In the 2006 – 2007 budget she, Mr. Swanson, and Mr. Taylor spoke about having \$200,000 in the budget. One half was to come from the North Clackamas Parks and Recreation District (NCPRD) and the other from the general fund and specifically from Mr. Swanson's budget. In that budget year she spent \$100,000 of the District's funds which were appropriately allocated in the budget. She did not spend the bulk of the remaining \$100,000, and unfortunately that \$100,000 was not moved to the 2007 – 2008 budget in any formal way. The proposed action would transfer funding from contingency to community services in order to have the necessary \$200,000 to finish this project.

The action requested was to adopt a resolution amending the DEA contract by extending the term to September 2008, increasing the compensation to \$300,000, adding two additional tasks, and appropriating \$100,000 in the 2007 – 2008 budget for use in the Riverfront design and engineering.

Mayor Bernard asked if the Budget Committee chair had seen the proposal.

Ms. Herrigel understood Mr. Aschenbrenner was working out of town, but she had talked to Mr. Swanson before he left town.

Mayor Bernard supported the staff proposal but would like to consult with Mr. Aschenbrenner. He asked if the Council could make a motion to approve the staff recommendation contingent upon Budget Review Board approval.

Ms. Warner said according to ORS this change did not require Budget Committee approval. The City Council was welcome to talk to the Budget Committee if it wanted to, but the ORS allowed Council to make a change of this magnitude without running it through the Budget Committee.

Councilor Loomis said his vote would not change as he was in favor of the staff proposal.

Councilor Collette was also in favor of it.

Councilor Barnes understood the concerns because there was a process to which everyone had agreed even though it was not an ORS requirement. The City Council did depend on the appointed members of the Budget Committee.

Mayor Bernard asked if Metro funds could be used.

Ms. Herrigel allocated \$120,000 of Metro funding for the riverfront but anticipated using it for construction in 2008 – 2009 to use as a match for other funding she would pursue. She would call Mr. Aschenbrenner and talk to him personally. She proposed that the City find the money. If the Council did not wish to take action, she would bring it back. The contractor cannot be paid at this point pending this action.

Mayor Bernard requested that Ms. Herrigel talk to Mr. Aschenbrenner and supported taking this action. During the budget process going into contingency was a major concern for all involved and special efforts were made not to touch it.

It was moved by Councilor Loomis and seconded by Councilor Collette to adopt the resolution amending contract 2006-097 with David Evans & Associates, Inc. for landscape design and engineering services for the Milwaukie Riverfront Park. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 54-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CONTRACT #2006-097 WITH DAVID EVANS AND ASSOCIATES, INC. FOR LANDSCAPE DESIGN AND ENGINEERING SERVICES FOR MILWAUKIE RIVERFRONT PARK, BY EXTENDING THE TERM TO SEPTEMBER 2008, INCREASE COMPENSATION TO \$300,000, ADDING TWO ADDITIONAL TASKS AND APPROPRIATING \$100,000 IN THE FISCAL YEAR 07-08 BUDGET FOR USE IN THE RIVERFRONT DESIGN AND PERMITTING.

B. Town Center Memorandum of Understanding – Resolution

Mr. Asher sought approval for the memorandum of understanding (MOU) with Main Street Partners and Metro on the Town Center Project which was a non-binding agreement. This was an opportunity for a project update. There were simultaneous processes under way that were all important for the fruition of the project, so it was not linear. All the steps, signing the MOU, selling the property, design, permitting, and construction, had to gel so the developer knew he would be able to build the project he wanted to build. This was moving away from community development and toward the planning department and Planning Commission. The Commission discussed the code modifications being requested by Main Street Partners. The Design and Landmarks Committee (DLC) also heard from the developer. Staff was thinking through how to process that application. It was important the City Council had a window to the Planning Commission process to basically be on the same page. Staff was again prepared to talk about the vertical housing tax abatement (VHTA) that had been scheduled for Councilor Stone's benefit, but he noted she was not present.

Councilor Collette would like to hear the VHTA presentation even though Councilor Stone was not present.

Councilor Barnes suggested staff make an appointment with Councilor Stone to discuss the matter.

Mr. Asher reviewed the background of the project. The request for proposals (RFP) was done in December 2006, and there were three submittals. An advisory group made a recommendation, and the general public participated in the process in March. Main Street Partners was selected as the private sector partner to see if an agreement could be reached whereby Metro and the City would sell the property in exchange for a mixed-use development, or signature project, which as proposed would be 3-stories on the Main Street side, 4-stories on the McLoughlin Boulevard side, and setback penthouses on the 5th story. There was a courtyard in between. During the RFP process and after, Metro and the City identified the public objectives for this project which tended to cluster around high quality design, attractive and durable materials, pleasant public spaces, and active retail uses at the ground floor. The developer's objectives were to make this an economically viable project where the condos and retail could be sold with all the amenities in place that would make it a marketable project. The developer was also motivated by high quality architecture and design and positive public spaces and amenities. On April 17, 2007 Council adopted Resolution 29-2007 which authorized the City to begin negotiating the MOU with Main Street Partners. Main Street Partners made a presentation to Council on May 1 to provide more information on the project. Staff provided an update to Council at the June 19, 2007 work session prior to coming for authorization on the MOU and discussed progress on the memorandum. The Council asked questions about tree preservation, downtown parking, and retail leases at North Main Village. At that work session it was indicated the process was at the 60-day mark, and all the parties agreed progress was being made and more time was needed. It ended up taking 120-days which was unfortunate but all right given the overall schedule.

Main Street Partners had several other projects it was working on and was a diversified company. The City was happy to have Main Street Partners' attention on this negotiation. He had the sense this was a priority project for the developer, and he was responsive while working at other sites. Main Street Partners understood it was important to be active and available in all the discussions about downtown parking, light rail, pre-application conferences with staff, and Historic Milwaukie Neighborhood District Association (NDA), DLC and Planning Commission meetings. Main Street Partners made it a point to understand where the community was around downtown development specifically around North Main Village and the proposed project. They put a deposit down for the traffic study that considered traffic impacts and parking to ensure the design worked for the site.

The MOU was like a letter of intent by the three parties saying what they intended to make this project come to fruition. The focus of the negotiations was the importance and relevance of the City's code and land use approval process. The DLC makes recommendations to the Planning Commission about design guidelines adopted as part of the Downtown and Riverfront Land Use Framework Plan. The DLC made its recommendation to the Planning Commission which had a process for considering things like zoning changes. The City Council was the body that would hear any appeal. In that regard it was no different than any other land use application that would come through staff. Metro had to abide by those as well. It was the partner at the table that wanted certain things out of the project and design, but Milwaukie was the host jurisdiction. The MOU said the City would do 4 things. The City would agree to pursue creation of a vertical housing tax abatement zone, and all 3 proposals made that request. Clearly, VHTA was a tool developers needed and wanted to get the kind of development Milwaukie was asking for. This kind of cost, this kind of density, this kind of finish. Staff will pursue creation of that abatement zone. They discussed a new possible stop for the #33 bus, and it was agreed another site would be identified rather than taking a bite out of the McLoughlin Boulevard side. The zoning code amendment requests would be processed expeditiously and professionally. The City will support

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Main Street Partners in taking these applications through as it would any applicant. They were being initiated and paid for by Main Street Partners and will move through the Planning Commission process. Options would be evaluated to support the project's parking needs. Main Street Partners had looked at angle parking on Jackson Street instead of parallel, and staff was helping figure out if that could be done. Staff would work to ensure the interior structured parking was laid out appropriately.

Mr. Asher referred to the letter from Main Street Partners to Metro and Milwaukie on the 14 topics that traced a lineage of interest that first arose in the advisory committee through the selection process. The committee told the PMG it wanted certain things to happen in the project. Those were presented when Main Street Partners was recommended to City Council and subsequently a few more were added. All were in a letter from Main Street Partners to Metro and the City tracing the lineage and commitments. Several of them came down to seeking code approval such as height, exterior materials, and a special public space on Main Street. The MOU said that Main Street Partners would process those code requests, and staff would usher them through the DLC, Planning Commission, and City Council. They will try to execute a purchase and sale agreement by October or November. The closing date in the document would be next July commensurate with the start of construction. The MOU lays out the basic framework on the sale of property in the next few months. If Council approved moving forward with the MOU, he and Mr. Swanson would continue to negotiate. Meanwhile, Main Street Partners would continue its land use approval and design processes. All would be aiming at a July 2008 deal closing and groundbreaking.

Mayor Bernard said Mr. Monahan noted there was nothing in the agreement that said after July it had to be opened up for other bidders. Mr. Asher mentioned he came to Council in those 60 days and said negotiations were moving forward in good faith. There were comments tonight about the Downtown Plan and design standards were not being adhered to. This was a 4-story and not a 2-story lot as compared to the one down the street. It was already zoned that way. The only thing Main Street Partners was asking was that the City consider a fifth floor for penthouses.

Mr. Asher replied this was more complicated than it might appear for the Planning Commission to which Ms. Mangle and the Commission can attest. When the City gets an application like this it was a large complicated building in a zone that had a lot of rules attached to it and frankly not a lot development had occurred. The Planning Commission had work to do to understand all the implications that were in the code and help the DLC so it can do its piece.

Ms. Mangle wanted to do two things. One was to outline the process for a better understanding of the roadmap as it was complicated and involved 3 decision-making bodies. Once she did that she would update the City Council on the 2 conversations that had already taken place at the DLC and the Planning Commission. The decision-making bodies were the DLC, Planning Commission, and City Council. There were two different land use processes. One was the design review that would lead to land use approval that included the design review and transportation and traffic impact study. Then there were the code changes that would go from the Planning Commission to the City Council. These were overlapping processes. The developer needed to know the rules and wanted to know if they could plan on the fifth story. The fifth story would tell them how much they can sell the property for and what level of finishes could be used on the building. The developer wanted to know the outcome of the code amendments before they had the public hearings with the DLC and Planning Commission. So far there was a work session with the DLC with an initial discussion of the design review. That was a "get your feet wet" presentation by Michael McLaughlin to get to know the project. The same thing was basically done last week with the Planning Commission. The DLC focused more on the design guidelines, and the Planning Commission

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focused on the code amendment. There would be another work session with the DLC next week where it would be taken to the next level to determine how the design did or did not meet the guidelines. This was still at the work session level as there was no application yet. It would give the developers a little bit of an idea how the DLC was feeling about the overall building and materials. The Committee will consider the request for the cementitious panels. The real work would happen at the DLC that would make a recommendation to the Planning Commission after having a public hearing on what materials should be allowed and if it met the design guidelines. The DLC was a recommending body to the Planning Commission and would hold a recommendation hearing. It was not a quasi-judicial land use hearing in the way the Planning Commission's would be. It would allow for testimony. The DLC was doing the work, so the process did not have to start over again with the Planning Commission. The Planning Commission was focusing on the code amendments and would put it together with the whole land use approval including transportation and traffic issues and design review. The Planning Commission would have a hearing and make a recommendation to the City Council. The City Council will have a public hearing as the decision-making body.

Councilor Barnes asked what kind of feedback the Planning Commission would give.

Ms. Mangle replied the Planning Commission talked about four amendments: height, the setback that would create the mini-plaza, angle parking on Jackson Street, and adding some standards for parking structures. The latter two amendments were minor compared to the former. There was a lot of general interest and support for the project design and enthusiasm about the quality of the design and appreciation for the fact that the height was on McLoughlin Boulevard. It was a work session in which ideas were exchanged. It was helpful for her and the developer to get a sense of what would be in the best interest of the City to change the code. Should there be a broader application extending beyond this one block? Generally, the sense was to focus on this one block, so a technical analysis needed to be done to ensure this was the right thing for the City. This was very preliminary, and the Planning Commission suggested site visits to buildings with similar designs. She hoped to have more information for the Planning Commission at its next work session and more specific ideas about what the code change might be and under what conditions, for example, 5 stories might be allowed. It had to be drafted based on the City's best interests. The DLC will begin its initial discussions about design review and how the project stacked up to the guidelines. There would be a DLC recommendation hearing, so minutes would be available.

Mayor Bernard asked if the meeting would be televised and noted it was very helpful for him to go meetings. He suggested the Planning Commission chair might attend the DLC meetings.

Ms. Mangle discussed the importance of the DLC and Planning Commission being partners and working together. A lot of time was going into explaining all parties' roles. The Planning Commission had the burden of understanding the DLC's work so having a Planning Commission representative present was a good way to do it.

Councilor Collette was interested in being kept informed of the DLC's focus, as she believed it would be valuable information for the City Council.

Councilor Loomis asked if there were feelings about exterior materials.

Ms. Mangle replied the DLC would talk about that. There was some concern about concrete at the ground level although it was allowed. She did not hear any concerns about the metal or cementitious panels, but that was not a full Committee meeting.

Councilor Loomis asked if the code changes were just for this block.

Ms. Mangle replied potentially, but there were several approaches that could be taken. The general feeling of the Commission was that it would like to encourage this project on this block. The comments were very preliminary.

Mr. Asher added the developer was asking for this block. The Planning Commission and staff were aiming at this block. The staff was saying any changes needed to be right because the request may be relevant to other blocks. He did not think the Planning Commission, staff, or developer was asking for anything else to happen. It would be appropriate for the Planning Commission or the City Council to ask for something else. At the moment it was site specific.

Councilor Loomis asked if there was a legitimate reason for changing the code.

Ms. Mangle said the material issue was not a code change but rather an adjustment, so there was a process in place for any developer to request an adjustment to the list of prohibited materials. The City did not want anyone to use certain materials without careful oversight, and the DLC can say 'no.' It was not a code change issue.

Mr. Asher commented Main Street Partners was not as familiar with the process as staff. The difference between variance and adjustment was difficult to keep straight. If the code needed to be cleaned up, then it would be. He would ask Meganne Steele to discuss the vertical housing tax abatement (VHTA) program and Ron Skov to discuss the project from Main Street Partners' perspective and answer questions about North Main Village.

Mayor Bernard called for a 10-minute break.

Mr. Asher noted tax abatement seemed to have a negative connotation, and people had an immediate reaction. It was a subsidy and there were many out there for all kinds for projects both public and private. This tended to add to the public coffers rather than take away funds by enhancing the tax base.

Ms. Steele said as the PMG was looking at the question of the VHTA program she thought it would be helpful to give a general description of its intent and to add some specific numbers for a better understanding of the fiscal impact on the City budget. It was designed as an economic development tool specifically with incentives. It was an economic downtown revitalization tool. It was intended to provide an incentive for developers to specifically develop mixed-use projects in a manner that did not reduce what the City was currently getting in terms of property tax income because the land was not exempt. The taxes were not abated on the land. If there was a vacant lot, for example, and it was being taxed at a certain level, the City would continue to receive those tax revenues. The City also received the full tax revenues associated with the value of a one-story building. The PMG assessment was that right now a one-story retail building with surface parking was what would be economically viable on that site. The incentives came into play when housing was constructed over that ground floor retail space. For the first floor of housing there was a 20% abatement in the value of the improvements. For the third floor, it went up to 40%, and the abatements went up progressively for each floor of housing. It started at 20% abatement to a maximum of 80% abatement for the value of the improvements. Essentially this was intended to be close to the tax revenue flow from what the real estate market could afford to build at this point in time. It was complicated because the Downtown Design Guidelines called for multi-story buildings with a 35-foot minimum height, which could not be built economically at this point in time given the cost of construction and the cost of the land. When we try to understand the fiscal impact of having this abatement it was first compared to the scenario of what could be built in the market, the one-story building. Then it was compared to building a project like the one proposed for the Town Center site but waiting 8 to 10 years until that project could actually be supported and be

economically feasible in the market. When she put numbers to this she tried to make it an apples to apples comparison and use the actual pro forma numbers from the proposal from Main Street Partners and then got current information on assessment rates and adjustments. The conclusion was that if the City with the VHTA on the project as proposed, the yield would be roughly \$18,600 annually in taxes. If the project were developed in a form the market could currently support, those tax revenues would be less than \$12,000 per year. That demonstrated the City was getting about 50% more in tax revenues even with the abatement than it would if this project were not the one being built. After 10 years the property tax revenues from the Town Center project would go up to nearly \$55,000 annually. When the scenarios were compared of the 10-year abatement and then going to the full tax rate to waiting for the same project to be economically feasible in the market place which might be 8 to 10 years, one ended up with substantially more tax revenues flowing from the Town Center project. The calculation of the Town Center project was a 15-year tax revenue flow would be over \$450,000. If the City waited and did not have the abatement to offer, the tax revenues would be somewhere between \$270,000 and \$380,000. The way this worked was to create an incentive for the development to come in earlier and to have a larger scale development and investment in the property. Overall, the City tax base would increase more in the long-term.

Mayor Bernard asked what the advantage was to a condo purchaser.

Mr. Asher footnoted Ms. Steele's presentation. We were talking about property tax relief for the owners of the units in this case since it was a condominium project. It was the condominium purchaser who did not pay full property taxes for 10 years if they bought into this project. It was not the developer because the developer would not own all the housing. It was actually a benefit passed through to whoever ended up buying a condominium in the Town Center Project. So why do we like that and why was it important to the developer? There were two reasons. One was that it helped market the project and was one more reason for buying here instead of buying in a comparable project somewhere else. Secondly, it allowed a prospective condominium buyer to afford more condominium because that portion of income that would normally be set aside for property taxes could go into the project. The City cared because if the condominiums could be sold for a little bit more, the project could not afford to be built to a higher standard. He thought the developers would say it was an important tool because they could build a better project. The absorption was less of an issue, the finishes were a little bit higher, and the carrying costs were a little bit lower. There were indirect benefits to both the public and private partner. The cash in pocket benefit went to the condominium buyer in this case.

Mayor Bernard understood the tax break was evened out among those living on the various floors.

Mr. Asher said it depended on how many floors of housing there were, and it was aggregated. If there were 4 stories, then 80% of the assessed value of the improvement was abated and then divided by the number of units or the value of the units.

Councilor Collette understood the maximum was 80% no matter how many stories.

Mr. Asher added that calculation determined the overall percentage abatement was against the assessed value of those improvements.

Councilor Collette asked if the retail space would be condominiumized so that it could be purchase.

Mr. Asher replied that was proposed in this project.

Councilor Collette asked if the businesses would also get the tax abatement.

Mr. Asher replied this was just for residential abatement. This program was available anywhere the City wished to apply it. There was nothing special about this site or project that made it uniquely qualified other than the fact it was housing over retail. It could be done anywhere in town. The only unique thing about this site was the product that was being built.

Councilor Barnes understood there was no low-income housing proposed with this project. That has been a concern for some people in this town and had caused some problems. She wanted Mr. Skov to be aware she was going to ask him about that issue. It lends to the credibility of the company and how it dealt with Milwaukie in the past. She was not saying it was good or bad, but she did have some questions that needed to be answered.

Mr. Asher said this was the kind of tool that allowed for a little higher price point. If the desire was to attract a kind of household income level that was not currently downtown, then this was a tool that would push it in that direction. There were both types in North Main Village.

Mayor Bernard noted people had moved from Lake Oswego to North Main Village and purchased multiple units.

Mr. Skov talked about North Main Village and the apartments specifically. It was nice to be here to talk about the Town Center. Personally he was disappointed we were still talking about North Main Village particularly in this venue. He took exception to the notion he and Mr. Kemper were inept or non-responsive which people were using to attempt to derail Main Street Partners or whatever their reasons were. Mr. Kemper addressed some of the Council and some of the neighborhood group. He reviewed a chronology of the actions that had taken place. In February, March, and April the facility was leasing up. In May the police notified Mr. Kemper that there were some problems. In that Mr. Kemper found a new management company that started on June 1. In the month of June the new management company met with the residents and maintained the onsite staff person living in the building. They met with the neighborhood association and reviewed all the files. They ended up evicting 3 households in that process during the month of June. They had a part time manager from the first management company and ended up putting in a full time manager. This all happened in the month of June. In July they inspected all of the units. Two residents that asked to be released decided to stay in the apartments after the improvement of management. There were some system issues. They heard about the trash compactor technical issues that were resolved. The thermostat problem was fixed. There was a process set up with R&H in which all of the warranty requests went to them. A lot of the time, Main Street Partners was out of the loop until it got to be an issue going to the developer. The HVAC issue did come to Main Street Partners and was resolved in 3 days. Part of that had to do with the management change over and part- and full-time maintenance. This was completely behind Main Street Partners, and there was an active property manager who would continue to deal with everything that came up. It was behind us, and he would love to put it to bed and know they were keeping on top of things. There was a note on stats about who lived there and what their incomes were. 50% of the people living there were from Milwaukie, and 95% of the units were occupied. It was a successful project. He thought the issues and growth pains were done.

Councilor Barnes thought this was good news. People have come to the City Council and said certain things. She was acting as a middle person, but she had concerns too. If we have someone who says he has been in the construction business for 30 years saying there were certain things about North Main Village that were not up to speed

construction-wise. How do you respond to that? She was not saying he was right or wrong.

Mr. Skov understood one of the issues was the gentleman who took photographs and walked around with a magnifying glass and took a nail hole where the nail was not buried or where there was a crack in a beam. Everything he picked out – this was not fine woodworking. This was not furniture. Everything was within industry standards. They did look at the pictures and chose not to respond. There were issues with installation of materials. You cannot bury nail heads in siding and maintain warranties. There were a lot of technical aspects to some of the things taking place. He did not see anything personally that needed immediate attention. This was still within a one-year warranty, and there will still be a walk around with R&H before the year was up. There will be another envelope inspection. There would be the standard processes to close out the job at the end of the year. He was satisfied with R&H's work.

Mr. Asher added in his mind R&H was one of the most reputable builders in town. He did not have expertise in that area, but Main Street Partners did.

Mr. Skov said relationships in the building industry were very important. R&H was not the least cost effective building in town, but it was the most responsible and responsive. R&H built 60th and Glisan, Esther Short, and Bend with Main Street Partners. That working relationship allowed for constant communication. R&H was a great asset and did what it said it would do. Time was everything for builders and developers. In relationship to the contract and end of the day close out, he had not seen more than 2% and 3% budget increases.

Councilor Barnes knowing what you know now and what you have dealt with on this first project in Milwaukie, what would you do differently on this next project if the Council went ahead with this MOU in relationship to dealing with the public, the project, construction, marketing, and property management.

Mr. Skov felt Main Street Partners had been through the learning curve. Main Street Partners plans to use the same contractor. He understood there was a concept that Main Street Partners would use similar materials, and the company learned a lot about materials in North Main Village. There were no issues about timing and scheduling. A better job could be done on marketing, and there has been a candid conversation on retail. A change was made there as well, and some success was being seen. It was tough being a pioneer.

Mayor Bernard commented on the plumbing problem. He knew the owner, and a child stuffed something down the toilet. He understood complaints were not reported. Someone else wanted to get out of the agreement to accept a cheaper opportunity elsewhere. Others said they did not know about the one parking space per unit which was identified in the agreement. The difficulty may be that people need to understand the City was not its parking spot.

Mr. Skov agreed and said that was why Main Street Partners wanted to be involved with the development program. He went through the report records for requests from R&H. People went to the neighborhood to complain about parking and not to the management.

Mr. Asher said this was an interesting process to watch. The circle around the project was becoming larger and included the DLC and Planning Commission. More people will be touching this project and getting down to the hard questions about what precisely was wanted. Can we rely on the people in these positions and the processes we have in place to do that hard work? The PMG needed to work on the purchase and sale agreement which will be done over the next few months with Council's approval tonight. The process outlined by Ms. Mangle whereby the design needed to go forward and be

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reviewed by the DLC and Planning Commission. The code amendments needed to be processed. He hoped good progress would be made in all those areas so that after a few months there will be a purchase and sale agreement as well as more understanding and more confidence that Main Street Partners wanted to do the project and be the best in the company's portfolio.

It was moved by Councilor Collette and seconded by Mayor Bernard to adopt the resolution authorizing the City Manager to execute a Memorandum of Understanding with Metro and Main Street Partners for redevelopment of the Town Center site and begin calling it Olson Point as soon as possible.

Councilor Collette had a number of questions going into this discussion, and she felt they were answered. It was uncomfortable to be moving in a new direction, and this building did that. As Mr. Asher pointed out, more and more citizens were becoming involved to help with the design criteria and codes. That gave her much more comfort. As we move forward, the City was doing so with a broader community of citizens being involved. This was an exciting and scary process as was all growth and change. She was excited to move forward, and she supported the MOU. She understood it was not binding if something came up, and other options would be sought.

Councilor Loomis had two things. One Councilor Stone called at 4:30 p.m. and asked him to read something for her into the record. He was blessed with that honor. He had a few questions but would go after Councilor Barnes.

Mayor Bernard asked if it could be entered into the record.

Councilor Barnes thought technically it could.

Councilor Loomis said Councilor Stone requested it, and he said he would do it for her.

Councilor Collette thought it would be good to do.

Mayor Bernard did not believe Councilor Stone wanted to be at the meeting.

Councilor Collette understood Councilor Stone was out of town.

Councilor Loomis concurred and suggested Councilor Stone be called as she had a phone just like David Aschenbrenner.

Councilor Loomis read:

“Though I have been known to lend my support for the development of the Texaco site into a multi-story housing structure for “a few” with retail on the bottom, I have also been known to question whether this is the best use for this park-like piece of property that is enjoyed “by thousands” every week. I question it at this moment.

I am completely open to the idea of developing our downtown core for all the people of Milwaukie, not just for those who will dwell in the very heart of a downtown that rightly belongs to every tax-paying citizen living within the boundaries of our city. I am open to development that will preserve our beautiful waterfront view for everyone, not just for those “living” in a multi-story condominium. I am open to development that preserves the trees and park-like settings. I am open to development that honors the documents we have created to ensure the vision of our downtown and waterfront is realized. For it is our vision, not the vision of a developer and not the vision of Metro that is at stake and of great importance to me and to the citizens of Milwaukie.

I have nothing against development that honors our goals and our standards as spelled out in such documents as our Comprehensive Plan, Zoning Ordinance,

and our Downtown and Riverfront Plan. I think it's important that we draw on our community values, philosophy and intent with which these documents were created. It was no accident that built into these documents are stated limits for building height and restrictions as to the type of exterior materials to be used. These documents are not out-of-date, nor were they developed haphazardly. The purpose for their existence has everything to do with what we envision our downtown core to become; what we envision our downtown to look like. We should hold fast to the foundation of these plans as we invite developers to come into our city. We have standards in place, and we should require developers to conform to them, not change them."

Councilor Loomis noted that was only the first page.

Mayor Bernard questioned sitting here listening to the long, drawn-out thing that has been heard many times. There was a motion and a second, so he suggesting calling for the vote. Her comments could be submitted for the record.

Councilor Loomis felt like Councilor Stone.

Councilor Barnes said with all due respect, she understood Councilor Stone's position. She made the choice to go on vacation this week. She did not leave town as of the moment Councilor Loomis picked up the letter, which was this afternoon. She thought having Councilor Stone's information put into the record via the city recorder was sufficient. Councilor Stone made a choice not to be here tonight. She was given the option. The VHTA issue was brought up twice for her benefit, and she was not here.

Mayor Bernard asked if there was a concluding paragraph.

Councilor Loomis did not know because he had not read it yet.

Councilor Barnes called for the question.

Councilor Loomis preferred to read it since he said he would. He could have been half way through page two by now.

Councilor Collette thought she could read it faster.

Councilor Loomis replied Councilor Collette was welcome to it.

Councilor Collette thought the conclusion was that she was "not against promoting a viable retail downtown core. What I am against is sacrificing our community values" which was what she said in the beginning. "I am against shaping our zoning, our design elements, and our plans we have in place.... I would support deferring action on the MOU agreement tonight. With the recent statements at council from an owner of a condominium at North Main..." Councilor Collette said we had already heard about that. There was really nothing new in the letter.

Mayor Bernard thought the Council should vote. He asked Councilor Barnes if there was any other discussion.

Councilor Barnes replied she had no other comments.

Mayor Bernard thought the Council should vote, and Councilor Stone's comments should be entered into the record.¹ The MOU was not a binding agreement. It was an effort to proceed in discussion with the developer. It will go through all the process.

Councilor Barnes called for the vote.

¹ Pdf of Councilor Stone's full letter attached as part of the Council record.

Motion passed 3:1 with the following vote: Mayor Bernard and Councilors Barnes and Collette 'aye' and Councilor Loomis voting 'no.' Councilor Loomis was opposed. He did not even have a chance to have his own discussion, so he was opposed.

Mayor Bernard apologized. He did not realize and would open it back up for Councilor Loomis' comments.

Councilor Loomis said that was all right; Mayor Bernard had made his point.

RESOLUTION NO. 55- 2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH METRO AND MAIN STREET PARTNERS FOR REDEVELOPMENT OF THE TOWN CENTER SITE.

C. Council Reports

None.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 9:35 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
September 4, 2007**

CALL TO ORDER

Mayor Bernard called the 2013th 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, and Susan Stone. Councilor Loomis excused.

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development & Public Works Director Kenny Asher, Community Services Director JoAnn Herrigel, Police Chief Larry Kanzler, Civil Engineer George MacGregor

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mayor Bernard announced there was a misprint in *The Pilot*, and the quiet zone would not be discussed at this meeting.

Poetry Reading Series Grant

Greg Chaimov, Ledding Library Board Chair, announced through Tom Hogan's good work, the Clackamas County Cultural Coalition selected the Ledding Library to receive a grant that would allow it to conduct a monthly poetry reading series for the coming year. They hoped to continue to use it to market the Library as the City's cultural cornerstone. Mr. Hogan attended grant writing classes and doggedly pursued the matter until his efforts came to fruition.

Tom Hogan, Library Board member, reported the Arts Alliance fully funded the grant request that would sponsor the Milwaukie Poets Series featuring local poets reading their own works. With this grant the poets would be paid an honorarium and their works would be featured each month. The grant also involved sponsoring one writing workshop to fulfill the Library's cultural goals.

Mr. Chaimov announced the Celebrity Reading Series on cable access.

Councilor Collette would discuss a Milwaukie Arts Committee later in the meeting, and this was exactly the type of project or series on which she hoped the Committee would focus.

Mr. Hogan had to leave the meeting, but he was very supportive and hoped to collaborate.

South Corridor Security and Safety Task Force

Mr. Asher provided an update on the South Corridor Portland-Milwaukie light rail project. He received a copy of the Supplemental Draft Environmental Impact Statement (SDEIS) study which was currently underway and distributed a number of copies to the City Council. The technical work was either underway or would be soon. It was a study of the many environmental impacts that are desired to be understood including social, environmental, economic, traffic, financial, and others. The expectation was that this work would be done by the end of December. This may be sooner than some members

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of the public and City Council might be prepared for. Part of the reason for that was because this was a supplemental, so this was building on a lot of work that was already done. The first draft SDEIS was hoped to be finished by January 15, 2008, reviewed by multiple parties, and then published for general public review and partners in the project at the beginning of April. The expectation was a new locally preferred alternative (LPA) would be arrived at by July 1, 2008. He asked if the Council would like to hear a more complete report from Ms. Wieghart, Metro Project Manager at its next meeting.

Councilor Stone asked what information would be available at the September 18 meeting.

Mr. Asher replied he did not think it would be as much content driven but more an elaboration of the schedule. It would be more than just dates including more process and methodologies and answering questions about the timetable and various pieces of the study.

Councilor Collette suggested monthly updates between now and December. The first meeting in October would be a good opportunity to do that.

Councilor Stone was good with that too because she for instance would like to have some questions answered regarding financial, economic, traffic, and those kinds of impacts.

Mr. Asher thought it would be good for the project people to hear the questions and make sure the dialogue was open. In the spirit of over-communicating he would continue to bring things to the City Council to ensure it was in the loop. He would plan on giving an update at the first meeting in October. This update was about an element of the project which was a little bit outside of the SDEIS but was a component that was added by Metro and TriMet in part by the City's urging. That was the startup and formation of a Safety and Security Task Force which to his knowledge had not been designed into a project in this manner. Certainly not this early in a project. This was an innovation partly to be responsive to what was heard in Milwaukie which in a nutshell was that people were concerned about safety and security of the train, its operation, stations, and the whole experience. The decision was made to create a task force the intent of which was both to learn from the professionals who operate light rail transit systems and the jurisdictions which help to police them and provide input on such things as station design and lighting.

Ms. Herrigel said there were various concepts of what this task force should be and how it should function. She, Mr. Asher, Chief Kanzler, TriMet, and Metro have put together the public input heard to date to talk about how to go forward. Announcements would be put in *The Pilot*, interactive video bulletin board, e-mail lists, and the website. She also believed it was important to send out notices or letters directly to those entities along the alignment that expressed the most concern such as the Portland Waldorf School, St. John's, and the School District. It was important that people along the alignment were notified and able to participate if they wished. Anyone may attend the meetings to discuss safety and security issues, but too large a group might result in a not-too-cohesive list of recommendations. City staff and TriMet were discussing how to pare down the group yet make sure everyone got adequate information and participated while at the same time making decisions on a list of recommendations at the end. Chief Kanzler for example has said it was really important to get public input while moving forward. Advertising will be done soon with a deadline for submittals by those who were interested in participating.

Mr. Asher announced the first meeting was tentatively scheduled for later this month. It was important that people listening and watching understood there was an opportunity to participate in the project even during the study.

Karen Whitrow, Metro, said from the regional perspective the intent was to address the concerns heard in this community as well as similar issues along the rest of the alignment. The task force will have members from all along the alignment, so there will be members from downtown to Milwaukie and into Clackamas County. Similar outreach was occurring in Portland and connecting with people who had expressed concerns through their neighborhood associations. They were looking for a broad cross section of interests that included the business community, neighborhoods, property owners, residents, schools, and others. Staff was working on a submittal form that included contact information that should be on the website tomorrow. The goal was to include everyone, but that might create an unwieldy group. The applications would be reviewed, and staff would do its best to include people. The application and information would be found at www.metro-region.org/southcorridor. The first planning meeting was tentatively scheduled for September 25.

Councilor Barnes asked how members would be chosen.

Ms. Withrow replied they would be looking for people who have expressed concerns and representation along the corridor. They would look for a balanced membership along the alignment as well as a broad cross section of interests. She anticipated one meeting each month between September and February.

Councilor Stone understood the actual number of people on the committee was yet to be determined.

Ms. Withrow replied a particular number may not be set because they wanted to be as inclusive as possible. For example, 50 applicants would be an unwieldy group, but 20 would be fine.

Councilor Stone said Milwaukie had been vocal about its concerns. Along this alignment where else has there been these little hotspots of concern, or was it mostly situated in Milwaukie.

Ms. Withrow replied this project had been going on for a long time, and she had not been working on it since the beginning. She thought at various times concerns had been expressed at a variety of locations along the alignment. At 11th and 12th at Clinton there was a convolution of streets with a little triangle of cement in the middle. It was a terrible area for bikes and pedestrians now, and light rail tracks would be added. People have expressed concern about the ability for safe crossings with the train operating and where the station would be located. That was another example of a community issue along the alignment.

Councilor Stone agreed with Councilor Barnes in terms of wanting to make it fair for everyone. But she would also say from everything she heard and read about this project most of the contention seemed to be focused in the City of Milwaukie where many, many concerns were raised about safety and security and livability and going past schools. She hoped Milwaukie would be well represented on this committee. There were some e-mails floating around in the last couple of days about our Public Safety Advisory Committee (PSAC) looking to maybe help with this committee. She thought that might be good. She hoped some people would apply for that. She was not sure when she got the e-mail if this was going to be a broader regional committee, and that was what it was sounding like. She was thinking it probably would not have been a bad idea to just have the PSAC be this committee instead of reinventing the wheel, but it sounds like staff wants it to be a little more broad.

Ms. Withrow said it would be important. As Mr. Asher said, it was a little unusual to address these concerns at this time in the process, but she did learn it had been done before. It would be important to consider the whole alignment because as they moved

forward in final design and construction they have to know all of this. It would be useful to gather the input from the whole corridor.

Councilor Stone did not know if there would be an actual statement about what this committee's goals were and what its purpose was. She noted in the staff report it said in Milwaukie the task force should be charged specifically with contending with concerns raised by PWS, St. John's Catholic School about the presence of light rail in proximity to school children. She thought it should also be added with proximity to the adjoining neighborhood as well because that neighborhood would be impacted.

Councilor Collette thanked Metro and TriMet for coming forward at this time in the process. She thought there was certainly value in doing it alignment wide. She also read in Mr. Asher's report that there would be opportunities to have large group meetings and smaller localized meetings that would address specific issues. That was also a good way to address the Milwaukie portion of those concerns. It also occurred to her it might be useful for PSAC to have regular updates and be involved in the process.

Mayor Bernard observed starting at the front end of the process was the best.

Mr. Asher said the task force would educate stakeholders about basic safety and security requirements, practices, features, and facts associated with light rail operations. There was already a system in place and certain ways of doing things. The group would help ensure safety and security issues were well understood as one evaluation criteria in the decision-making process. As the project moved along, they wanted to this was not new he read the bullet points and making sure safety and security were established as a criterion whether it was an alignment selection or a station location selection or how the train would be operated. This would help solidify that. It would identify design principles that would improve safety and security at and near possible stations and provide input into community discussions about station design and location. The task force would help plan outreach and education efforts that can be implemented before, during, and after final design and construction. By doing it early and doing it now a group of people can be established who knew what was going on and broaden the discussion of how to do it and how to do it well.

Chief Kanzler saw this as a due diligence process. If we did diligence to the big picture, then there will be credibility at the end. There was one comment about what it would take from the law enforcement perspective to provide a safe and security environment today. He suggested 5 additional officers to continue the level of safety and security people in Milwaukie have grown to appreciate. When this came to fruition he had no crystal ball to tell what the environment would be or the percentage of police officers in the Milwaukie department at the time. If we keep the status quo with the ratio of police officers per population and we can keep crime rate at or below what it was today, then the concept of having an effective number of people would depend on the crime rate and projected problems. He had talked with his colleagues about the prospect of being involved in this process. The TriMet Police Commander thought it was very important that she or her representative be involved in this process along with precinct commanders. When you get someone by name with a commitment, it was much stronger. He wanted to see that commitment so the parties went into it with their eyes open and understand that barriers and burdens and what the staff tasks will be both from Milwaukie, TriMet, and the Portland Police bureau. This was not something Milwaukie could do alone. This should not be a burden on the community but rather a positive influence.

Councilor Stone heard Chief Kanzler throw out an arbitrary number of 5 police officers on the Milwaukie force.

Chief Kanzler replied he had in mind 5 more people dedicated to supervising the transit process in today's time. We want to own it when we first operate and ensure there was a viable police presence to dissuade poor conduct.

Councilor Stone understood people needed to work together, but she thought TriMet primarily had its own police force to deal with security issues on light rail and their buses, and most of them are on light rail. We would have to hire more officers to have light rail come through?

Chief Kanzler replied the TriMet police department was a collaboration of agencies that created the department. The officers were funded by TriMet. Milwaukie had Officer Wells assigned right now. Portland, Multnomah County, and Gresham did also. If there were 5 more officers in the mix, in today's time, assigned to this rail line, a level of security and safety could be assigned to the rail line. He recommended those officers be paid for by TriMet because this was TriMet's property.

Councilor Stone said that would be her recommendation too.

Chief Kanzler continued as long as the security element was there no matter who paid for it, it would be a safe operation. TriMet paid for it in other parts of the region, and this should not be any different.

Councilor Barnes noted there had been a discussion of security cameras, and she had not heard it on Chief Kanzler's list. She felt it was very important to have enough security cameras that go somewhere and are in focus. It seemed like Council heard about the crimes at the stops.

Chief Kanzler replied TriMet was aware of the commitment to the camera system. It was a federally mandated requirement to provide safety on rail lines and was part of the security and safety plan that TriMet integrated into all of its rail projects. It was part of the criteria to operate the system.

CONSENT AGENDA

- A. City Council Minutes of July 17, 2007 Work Session;**
- B. City Council Minutes of August 7, 2007 Regular Session;**
- C. Resolution 55-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Parker Fitzpatrick to the Milwaukie Design and Landmarks Committee;**
- D. Resolution 56-2007: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing David Hedges to the Public Safety Advisory Committee as a Member-at-Large; and**
- E. OLCC Application for the Cha Cha Cha Mexican Taqueria, 11008 SE Main Street, New Outlet.**

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

AUDIENCE PARTICIPATION

- **Ed Zumwalt, Metro, Oregon**

Mr. Zumwalt addressed the past, present and future. The "14 Points" were brought up a month ago when talking about light rail. It was about time just to get rid of those because they were used by people if it benefited the City or whoever was pushing light rail they waived the "14 Points" around like they were the Ten Commandments. Then when they don't want to look at it and say it's a good document, they say it was not a

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legal document. Had anyone ever heard of a gentleman's agreement. This was the time he would discuss the "14 Points." Point 9 said they were going to help us buy the school. The Mayor was there with him when they could not swing that deal. A Metro Councilor got in the room with the School Board and from all reports he made a wonderful presentation. When it came time to close the \$400,000 gap he rattled the change in his pocket and took a hike because he couldn't do anything else. And then getting across to the riverfront – it never happened. Mr. Zumwalt went in front of the Metro Council twice and discussed it because that was part of the "14 Points." Then a parking structure for Milwaukie alone – who knows what will happen there. Then we get to item #1 which was no impact on the neighborhoods – stay out of the neighborhoods. Right now that rail would come into the community. The only part of the City that was a community. Churches, schools, and homes. That was what made a community. Business was important; industrial was important. McLoughlin Boulevard and the Park were important. Churches, schools, neighborhood. You know who that was. The Council was protective of its neighborhoods and everything.

He switched to the future. He was very worried that PWS had no future. He fought Waldorf almost to the death to have a community center, but that did not work out. Now he thought there would be such impacts that its enrollment would be impacted, and they cannot financially make it. They will have a site committee pretty soon looking for another place to go. That school and the grounds will go over to a developer or Metro or something and be developed. He could see 8 to 10 story buildings there. He was talking about the future. He did not like it. If they knocked down that beautiful building which was the fifth rated historic site in the County we would all be unhappy. But you know you cannot stop development and progress, can you? The quality of life in the neighborhood will go down hill – down the tubes. Traffic and everything else. What came forward tonight with Mr. Asher, Ms. Whithrow, and Chief Kanzler. He had complete faith in the Chief; if anyone could do it he could. He would not be here forever. He would set up a good program, but then what was going to happen. Metro and TriMet have not been successful in controlling crime in Gresham, Gateway, Lloyd Center, Beaverton, and Hillsboro. Ms. Herrigel pointed out that a wonderful job was done on the Interstate line. That was probably true. He did not see how they could defeat the crime. There was an old saying that light rail was a conduit for crime. If they were on top of it, fine.

In the present, who was going to handle mitigation for the neighborhood? We feel in our neighborhood – he was not talking out of line because he and Dion Shepard had discussed it thoroughly and so had the whole NDA – who was going to handle mitigation for the neighborhood? Who was going to protect us? Up to now we have been listened to very little. That was the feeling anyway. Who was going to handle mitigation? Metro? Sure. TriMet? Sure. The City? He wanted to see it; we wanted to see it. He wanted promises that the quality of life and livability would not be trashed. They won two elections and would like to have something for the results and the fruits of the two elections they won before it was shoved down our throats.

Mayor Bernard had not heard a positive word out of Mr. Zumwalt's mouth.

Mr. Zumwalt replied this was not one of his positive nights.

Mayor Bernard asked about the fact that students from all over the region could come to PWS? What about job access to Portland and for Portland residents to Milwaukie? All he ever hears is that the sky is falling. What about redevelopment opportunities? The increased value in the community? The latest line, Interstate, was the newest line and the most secure line. That was because of years of experience. Milwaukie had the opportunity to take on some of those experiences which Metro, TriMet, and police departments have learned over the years. We had lots of positive things, and all he

heard were negative things. When he attended Portland State University he had to drive or take the bus. Now he could hop on light rail. If he wanted to take his children in the future to OMSI, he could hop on light rail. If he wanted to pick up people at the airport, he could hop on light rail. There were many positive things. For some communities like Interstate, the bars that were havens for crime were closed. Redevelopment was taking place, and there were a lot of positive things. All he ever heard from Mr. Zumwalt were negative things. He asked Mr. Zumwalt if he could think of anything positive.

Mr. Zumwalt positively despised light rail. There were hundreds and hundreds of people smarter than anyone in this room who studied light rail and came up with the fact that it was a complete boondoggle. It was expensive. It was inflexible. It was slow and did not do what it was said to do.

Mayor Bernard remarked the same thing could be said about global warming.

Mr. Zumwalt said that was not a comparison, and this could be argued for years. It was too big for this skinny little town. It would destroy this town.

Mayor Bernard would help protect the neighborhood. He was just as big a part of the Neighborhood as Mr. Zumwalt was.

Mr. Zumwalt did not think so. There was no way in the world anyone would convince him otherwise. Even the General Accountability Office said light rail was a boondoggle. He knew Mayor Bernard was right because he was mayor.

Councilor Stone appreciated Mr. Zumwalt's concerns and the "14 Points" being brought up. For her watching something like this come through the neighborhood she was concerned about the noise and frequency and gates coming down and the noise from that as well the crime. Mr. Zumwalt brought forward genuine concerns. She thought the Council needed to be respectful of those no matter who brings them forward. They are definite – it was a reality. We were dealing with reality. There will be those kinds of impacts. It was certainly one of the reasons she thought the train should not even come there. It should just stop at Southgate. Period.

Mayor Bernard asked about the reality of access to PSU and OMSI and economic development and investment in the community?

Councilor Stone replied light rail had not been shown to drive economic development. In terms of getting to OMSI or downtown Portland or PSU – she did it for years. She took public transit, the bus. Buses were a lot more flexible and took you to more places than the train would. They were less expensive. Light rail did not decrease traffic congestion; it increased it. That was the thing that people had bought into all these years saying that this was going to relieve traffic congestion. If we use light rail and kept our bus system intact and had it be an adjunct to our infrastructure that we have already in place rather than have it replace some of what we have maybe then she could get behind this mode of transportation that was costing upwards of \$1 billion.

- **John Otsyula, Milwaukie**

Mr. Otsyula discussed light rail. Two weeks ago he was here and requested that the City let him know if they were going to send his alternatives that had been suggested previously to Metro and reconsider them in the SDEIS. He got tired of holding his breath.

Councilor Barnes provided him a copy of the letter sent by the City on August 27, 2007 sent to Ms. Wieghart.

Mayor Bernard added the attachment had Mr. Otsyula's alternatives.

Mr. Otsyula said that was good. He was here to let Council know the Federal Transportation Administration (FTA) in Washington, D.C. acknowledged the scoping process was flawed by NEPA statutes. To the extent that both the City Council of the City of Milwaukie and Metro prematurely removed viable alternatives, the issue was ripe for litigation. The Federal Transportation Administration preferred to resolve issues at the local level. You, the City Council and Metro, have until this Friday to include the suggested alternatives. The Federal Transportation Administration was expecting his response on Monday, September 10, 2007, at which time the Federal Transportation Administration would take up the issue as they are responsible for writing the final environmental impact statement.

Councilor Barnes asked Mr. Otsyula to provide a copy of the correspondence which he must have had with the Federal Transportation Administration.

Mr. Otsyula said it was done by phone.

Councilor Barnes understood Mr. Otsyula had a conversation but there was nothing in writing from the FTA.

Mr. Otsyula said the City had until this Friday, and on Monday ...

Councilor Barnes wanted something in writing to give to the City Attorney, which would make sense prior to litigation.

Mr. Otsyula said they preferred the issues were resolved before going to them. They were going to write the final environmental impact statement. Normally, issues like this were addressed after the supplement draft environmental impact statement was published.

Councilor Barnes did not understand why a federal agency would not contact the city of record if there was potential litigation. She found that hard to believe.

Mr. Otsyula said there would be litigation if this did not work. The FTA would prefer to resolve our issues here and whatever concerns we had. If that did not work, they were willing to look at it. Normally this issue was not ripe until the supplemental draft environmental impact statement was published. To the extent that this prematurely removed alternatives, which was at the heart of NEPA, it was ripe for litigation. They would prefer to look at it but only after City Council and Metro, who were responsible for the flaws in the scoping process, had an opportunity to address it.

Mr. Swanson asked if the FTA had issued an order of some sort.

Mr. Otsyula replied 'no.' The FTA was waiting for his response. He was here to give the City and Metro an opportunity to let him know. He did not know the letter was already sent.

Mr. Swanson asked if they made a finding of some sort.

Mr. Otsyula replied this was not something that usually required a finding. It usually just required looking at NEPA and if they followed this process. He was saying the City Council and Metro did not follow the proper scoping process. They were willing to address it with him on Monday if City Council was not willing ...the alternatives. That was at the heart of NEPA. You cannot prematurely remove viable alternatives in favor of a locally preferred by Metro. He asked if there were any more questions.

Councilor Stone wondered if Council could hear something also from its staff. She would like to see something in writing as well. She did not know the process. It sounded like Mr. Otsyula knew the process. She was wondering why there was nothing in writing at this point. She would like to see something in writing. She wanted City

staff to address what Mr. Otsyula had said in terms of how viable this was -- that this was going to happen.

Mayor Bernard was not interested in having staff waste its time. Obviously, if the federal government had an issue, they would contact one of the agencies. TriMet that had been working with the Federal Transportation Administration and had not been told any of this. Mr. Otsyula seemed to have some special contact that did. He thought it was a waste of time. We were in the SDEIS and approved to continue. Someone gave that approval, and he was pretty sure it was coming from the FTA. We were in the process right now. Mr. Otsyula's information was submitted to TriMet, and we were ready to go.

Mr. Otsyula responded the FTA would normally not get involved in the process until they had to write the final environmental impact statement. He knew NEPA. To reject alternatives was flawed – it was a flawed scoping process. There was case law that addressed that.

Mayor Bernard said this was the supplement draft impact study meaning it had been studied before. We did not have to add every alternative that someone thought up. Burying it. Coming under the river. Flying over the City or anything like that. We had to give viable alternatives. Not any alternative. Mr. Otsyula's were not alternatives. It was a chart that gave specific things.

Mr. Otsyula said those were not alternatives. He hoped the alternatives were in this letter.

Mr. Swanson said without an order or some kind of explanation from the FTA – he had been under the impression the FTA had the same empowers as the Internal Revenue Service. Without an order or some kind of communication ... The process in our democracy was that a decision was not made until one was apprised of the issue and had a chance to respond. He also knew that the local agency Metro was in close contact with regional FTA officials. Mr. Swanson assumed if there had been any kind of required action on the City's part that the FTA probably talked to itself. That was as far as the City had to go rather than getting into the technical requirements. Metro has been through this process often and has successfully negotiated the NEPA process time and again. His advice at this point was that the City had nothing to respond to.

Mr. Otsyula said Rick (last name unintelligible) was in Washington, D.C., and he would be back on Monday.

Mayor Bernard suggested that Rick give the City a call.

Councilor Stone asked if there were any comments from City or Metro staff about that.

Councilor Collette noted Mr. Swanson's comments.

Councilor Stone wanted to know if this was all true.

Mr. Asher had been in at least one meeting with Metro and FTA at which this question was raised and put to rest. He had no reason to believe that there had been any flaws in the NEPA process to date, and that was from Metro. He said we should follow up as Mr. Otsyula has raised yet again new information that would not take a lot of time. He would make sure Metro followed up and communicated the results to the City Council.

Councilor Stone wanted that communicated to Mr. Otsyula as well.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Proposed First Addendum to the Intergovernmental Agreement between the City and Local Jurisdictions Involved in Stormwater Litigation – Resolution

Mr. Monahan reported Milwaukie along with a number of other jurisdictions had been in a process of litigation for about one year with various claimants who contend that the Willamette Basin and Portland permits known as the Municipal Separate Storm Sewer System (MS4) permits were not properly issued. As a result environmental organizations filed suits claiming the MS4 permits were in violation of the Clean Water Act. Milwaukie was a co-permittee and one of the defendants. This group of organizations that had their permits challenged have cooperatively worked with the Cable Huston law firm to successfully defend these permits throughout the process. However, at this stage of the process there was continuing litigation as well as a recently re-energized LUBA appeal. Before the Council at this meeting was a request for the City's continued participation in the process and identification of potential responsibility for paying legal fees by the City in the range of \$6,174 to \$7,056. As indicated in the proposed agreement, the City of Portland was responsible for 51% of the total cost while the other jurisdictions together were responsible for 49%. He noted that with the recent renewal of the LUBA challenge there would likely be another addendum to this agreement for the mutual defense of the MS4 permits. The staff recommendation was for the Council to authorize the City's continued participation. So far the permittees have been successful in the defense of these permits.

It was moved by Councilor Barnes and seconded by Councilor Collette to adopt the resolution approving the first addendum to the IGA for joint counsel between the City of Milwaukie and other local MS4 permittees.

Councilor Stone noted the staff report showed Milwaukie's share of the increase was \$1,543 and assumed all parties would participate. She asked if the City was fairly certain all of the 10 entities would continue to participate.

Mr. Monahan was confident all would continue to participate. There was no indication any of the permittees who had been participating would drop out. In fact, it was likely 2 additional jurisdictions would join and further reduce the responsibilities of the parties.

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

RESOLUTION NO. 57-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE FIRST ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT FOR JOINT COUNCIL BETWEEN THE CITY OF MILWAUKIE AND OTHER LOCAL MS4 PERMITTEES.

B. Council Reports

Councilor Collette discussed the feasibility of establishing an Arts Committee and its charter. She talked briefly with Mr. Asher and Ms. Mangle. The main reason to form an Arts Committee was to begin looking at ways to raise the City's cultural profile for local artists and musicians and poets and bringing artists here and raising the look of the community by having art as part of the development processes. Many art groups are looked at better when they go for grants if they are also part of a city arts committee. There were a number of reasons for forming an arts committee, and many cities had done so even in small towns. When this was first discussed in 2004, she looked at charters in other cities and did a 'cut and paste' of what seemed to be the most applicable elements. She thought the next steps would be to look at the charter, meet

with key people to determine interest in being on the committee, develop a contact group, publish an article in the next edition of *The Pilot*, and at some stage adopt an ordinance. She suggested something similar to the Design and Landmarks Committee and advisory to the Planning Commission. She was planning on having some very energized members and hoped most of the work would be done by volunteers. She hoped for an October kickoff meeting and soliciting membership.

Councilor Barnes supported the proposal and suggested it would be helpful to have a grant writer on committee. She suggested using the Bertman House for Arts Committee meetings.

Mayor Bernard thought Councilor Collette was doing a great job.

Councilor Stone asked Councilor Collette if she would bring back a second draft. She liked the sound of an Arts Commission rather than a committee. What did that mean in terms of state statutes.

Councilor Collette understood they were structurally different. She agreed with Councilor Stone, but a commission would have a different role. She suggested starting with a committee and upgrading it to an Arts Commission if there was enthusiasm in the community. Lake Oswego eventually converted it to a private, non-profit foundation that handled the Festival of the Arts. She saw a number of opportunities for an Arts Committee to be engaged in helping local artists and making connections with the schools.

Councilor Barnes thought Councilor Collette could get some support from Dark Horse Comics.

Councilor Stone wondered about including St. John's School since the document identified PWS and North Clackamas School District.

Mayor Bernard suggested not naming schools specifically.

Councilor Collette included PWS because it had a space it let the community use, and it was also interested in sharing a performing arts space where PWS might participate. The Committee would look more broadly, and she suggested just referring to all schools.

Councilor Stone referred to vacancies and removal that said the Council would be responsible for declaring the position vacant. That was how it worked on current committees. She thought the chair and liaison were also involved in bringing it to the Council. It seemed unrealistic for the Committee to report to Council more than once or twice annually. The minutes of the meetings should be provided to Council in a timely manner. She liked the idea too.

Councilor Stone provided an update on the Site Steering Committee for wastewater treatment. It was down to looking at 3 sites, and she just received a packet in the mail last week. She had gone to all the sites and ranked them in terms of technical criteria, fair market costs for land, operating costs, presence of wetlands, and fault lines. One site was on SE Mailwell Drive, 82nd Drive at Hwy 224 on the K-Mart site, and Hwy 212 near Camp Whitycomb. The group would meet again on September 20 to discuss this in more detail. She asked the Council to give its input. This was a decision that would go to the Board of County Commissioners.

Mayor Bernard thought it was a waste of time since those options were twice the cost. He heard things might change quickly.

Councilor Barnes understood the site committee would be finished by October or November.

Mayor Bernard told a story about a Texaco that was about to close. He had received a lot of e-mails and letters. There was an offer on a piece of property, an inappropriate e-mail, and some votes that City Council took. He knew the Olson Family very well and had known them for many years. He was also in the gas business and dealt with the big Texacos and Chevrons. Basically, the owner of Olson Bros. Texaco was tired of dealing with them and wanted to sell the property. He had a buyer who wanted to put in a mini-mart, but Olson did not like that idea because they were Milwaukie people too. The family came to Mayor Bernard and asked if the City would be interested. He replied the City would be interested, but it did not have any money. He suggested the Olsons talk to Metro which they did. Metro said it did not have any money either but agreed to look at what could be done. Over a number of months while the Olson Family waited with the offer on the table, Metro decided to buy the property. Metro came to the City first, and in August 2005 the Council approved Resolution 39-2005 to jointly market that property along with the City property on Main Street. That was 10700 SE McLoughlin Boulevard and 10721 SE Main Street. There was an opportunity for Metro to invest in that property which it did and spent about \$750,000 plus a significant amount to remove the tanks and demolish the building. In August 2005 the Council voted unanimously to work with Metro to buy that property. Over time a lot of things had happened. There was a Farmers' Market group that talked about where it would be located in the future. They also talked about different plans. Three different proposals came to Council. On April 17, 2007 the City Council voted 5 – 0 to approve Resolution 29-2007 that directed the Project Management Team (PMG) to enter into exclusive negotiations for an MOU with Main Street Partners for the two above mentioned properties.

The City had been working on this since 2005. Recently on August 23, 2007 Mr. Dietrich put in a bid for \$250,001 to buy that piece of property. Staff sent letter back to Mr. Dietrich saying there was an agreement which Council voted unanimously to work with Main Street Partners and Metro in developing that piece of property. Mr. Dietrich offered \$250,001. The Council appreciated the offer. Mayor Bernard suggested that since Mr. Dietrich owned the next block if he was that generous maybe he would tear that down and build a park there. Mayor Bernard was very concerned about a number of letters that went out. When Mr. Asher replied to Mr. Dietrich's offer that Milwaukie already had an agreement, Councilor Stone sent an e-mail to Mr. Asher asking why this was not a public process. This issue was controversial and should be a Council discussion in a public forum – not a staff decision. Actually in Resolution 29-2007 which passed unanimously the Council directed the project and Mr. Asher to negotiate only with Main Street Partners. His concern was that he did not want to give citizens and taxpayers any reason to question the Council's integrity or ethics. He was a solid believer in contracts and agreements. When Council voted 5-0 two times to support redevelopment of that property and when someone throws in \$250,000 bid he was concerned that someone was saying this was unethical or questioned Council's integrity. He got a letter from an 84-year old lady the other day saying Mr. Dietrich's offer was good and asking why it should be developed. The story was for that for the rest of our lives there would be a gas station and mini-mart there. The Farmers' Market could not have expanded. Metro and the City gave the Market the opportunity to lease the property to expand it to what it was today. We would never have had the opportunity to move down to Main Street some day. He was getting tired of people suggesting that staff was unethical and questioning Council's integrity. He was disturbed by Councilor Stone's e-mail. She was one of the people who voted 5-0 on this resolution to support the MOU discussion. She was also one who voted to negotiate with TriMet and Metro on this piece of property. Why would Mr. Asher's reply to Mr. Dietrich be unethical? Councilor Stone commented it was important to draw on our community values. He wanted to hear specifically the community value to which the

Council was not adhering when it adopted the Downtown Plan and Design Guidelines which said this should be a 4-story building. What community value was the Council failing to adhere to. At the same time Councilor Stone could question the integrity of Mr. Asher when she actually voted for him to discuss it. He was really getting upset about this. The community sees the Council as being split apart, but the votes actually say it was supportive.

Councilor Stone asked to read the e-mail Mayor Bernard was upset about. She was e-mailing about the response to Howard Dietrich's offer to buy the Texaco site to be preserved as a green space with the trees and used for the Farmers' Market. It was a controversial issue. She put that in her e-mail. The reason she e-mailed this was because after Mr. Dietrich sent the letter to everyone this was put on e-mail. Three Councilors, not five, over e-mail, not publicly, gave staff the go-ahead to send Mr. Dietrich a letter to deny him to buy the property. Her concern had always been we needed to be doing business in public, in a public forum, not in e-mail. We have been cautioned not to do that, and it continues to happen. She asked why the rush in sending off a response letter. She would have liked to see this come before the City Council at this meeting and have a discussion about it. She did say in her e-mail that it placed the staff and the Council in an awkward position. She did not want to give the taxpaying citizens any reason to question the Council's integrity or its ethics. Every member of this Council should have had input, and only three did. They were the three sitting with her tonight. That was what she was upset about. She did not like that Council did not follow the process.

Mayor Bernard said they did not have input. He received the e-mail that this was the letter sent to Mr. Dietrich. He was never asked, and Councilors Barnes and Collette concurred they had not been asked.

Councilor Stone said they responded to the e-mail.

Councilor Barnes noted Councilor Stone had the right to respond to e-mails, but she did not attend Council meetings let alone respond to e-mail. Councilor Stone had not been here 50% of the time. If one looked back Councilor Stone was excused without asking permission to leave Council meetings on a regular basis. Anyone else who left their job 50% of the time would not have that job.

Councilor Stone was on vacation just so people would know.

Councilor Barnes asked how Councilor Stone could constantly be on vacation.

Councilor Stone sent everyone an e-mail to let them know she would not be at the City Council meeting. As far as the allegation that she was there less than 50% of the time please show her what was meant.

Councilor Barnes asked in the past month if Councilor Stone had been at one meeting or two.

Councilor Stone responded she had been on vacation twice this summer. It was summer break. Council was allowed to have vacations.

Councilor Barnes thought vacations could be arranged on non-meeting nights like the rest of the Council members.

Councilor Stone said she tried. It did not work.

Mayor Bernard said twice meetings were scheduled to talk about VHTA. There was a special meeting, but Councilor Stone called to say she was not coming. There was another meeting which was the last one, and Councilor Stone did not come.

Councilor Stone asked when the special meeting was. She did not believe there was a special meeting.

Mayor Bernard replied a person was scheduled to talk to the Council about the VHTA, and Councilor Stone called and did not come. That presentation was cancelled. It was rescheduled for the last meeting, but Councilor Stone did not come. Councilor Stone then talked about how she thought VHTA was a terrible thing, when she did not hear what it did. It actually increased taxes. He was concerned Councilor Stone was making these judgments without being educated on what a tax abatement was. It actually increased tax revenue from what it would be if it sat undeveloped. Almost 6 times if he remembered correctly. He was concerned there was a meeting, but Councilor Stone did not come. There was another meeting.

Councilor Stone asked him not to make it sound like she did not come because she did not want to be there. She was on vacation, and she had a right to be on vacation.

Mayor Bernard agreed. The 4-page letter came to the City Council. He did not intend to get into this a lot, but he was frustrated. The 4-page document came to City Council. Councilor Stone left town at 4:30 p.m. or 5:00 p.m. just before a Council meeting. He was sure she did not write this in last 5 minutes before she left. According to the Council agreement members were supposed to get this kind of thing.

Councilor Stone replied it was hot off the presses.

Mayor Bernard thought it looked like it took 2 or 3 days to write.

Councilor Stone said it might have taken Mayor Bernard 2 or 3 days, but it took her a couple of hours.

Mayor Bernard had a problem that Councilor Loomis came to the meeting with the letter. Another part of the agreement was that the other members of Council should have had copies ahead of time right before the City Council meeting instead of suddenly after going through a long night. Everyone was tired, and then there was a 4-page note.

Councilor Stone had asked that it be read into the record, and the Council did not allow it.

Councilor Barnes said if it had been important enough Councilor Stone would have been at the meeting.

Councilor Stone said that was not true. It was important enough she wrote it.

Councilor Barnes asked why she did not send it to all the members of Council.

Councilor Stone said she just got it done. This was not appropriate venue; it could be discussed after the Council meeting. She was upset that she had asked Councilor Loomis and he agreed to read it into the record. She was very disappointed it was not read into the record.

Mayor Bernard said the Council Communication Agreement, which Councilor Stone signed, was that information would be provided before the meeting started. He could have asked Councilor Loomis to have staff make copies.

Councilor Stone said it was just like the letter received tonight from Mr. Dietrich. She had not had time to read it. Are you going to say you are going to read through this whole thing during a meeting? Councilor Collette just got the letter tonight too.

Mr. Swanson explained it was a different letter from Mr. Dietrich.

Mayor Bernard said the City already replied to Mr. Dietrich on the issue.

Councilor Stone wanted to read her statement into the record.

Mayor Bernard was not interested in hearing it at this meeting. This was Council report. The letter was already in the record from the previous meeting.

Councilor Stone felt it was very disrespectful of Mayor Bernard not to let her read the letter into the record. Mayor Bernard had gone on and on for over 10 minutes. People listened to him talk.

Mayor Bernard replied the letter was already in the record. This was Council report time.

Councilor Stone said his comments did not sound like a Council report at all. It sounded like Council chastisement.

Councilor Barnes was proud of the Milwaukie police department. Last week she went on a ride along with one of the officers which she tried to do every summer to get a perspective of the police officers' work. Officer Danovich was very professional. She felt very safe. All of the officers on duty work very hard. They put in 10- and 12-hour shifts and protect the City. She was very proud of the police department and was glad she got to go on the ride along. She thought most members of Council should think about doing that because it gave one a different perspective. She attended the State of the City Address at the Rotary and thanked Grady Wheeler for putting together the PowerPoint presentation. School started tomorrow and she reminded people to watch for the school speed zones.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 8:31 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Residential Garbage Rate Increase and Service Change

Date: October 3, 2007

Action Requested

Approve a resolution equalizing residential garbage rates with those of Clackamas County, effective November 1, 2007 and approving the distribution of roll carts for commingled recyclables to all residential customers by February 1, 2008.

Background

The City receives financial reports from the seven franchised garbage companies annually. These reports contain information regarding the expenses and revenues of each garbage hauler for the previous year. The information submitted by the individual collectors is consolidated to create a composite 'company'. Costs are adjusted to eliminate those costs allowed for tax purposes but not allowed for determining collection rates. This composite is used to analyze the financial health of the entire system.

The City determines the system's health based on what is called return on revenues (ROR). Chapter 13.24 of our municipal code states that rates should be adequate to provide a ROR equal to 10% of the composite gross revenue. When the system falls within a range of 8 to 12%, typically, neither an increase nor decrease in rates is deemed necessary. Special circumstances, such as the addition of new programs or anticipated increases in expenses outside the control of the companies may, however, warrant rate increases.

For 2006, the collectors' collective rate of return was close enough to the 8% minimum to warrant discussion of a rate increase. In early September, City staff met with the collectors' representatives, Joe Cook and Dave White, and Rick

Winterhalter of Clackamas County to discuss City garbage rates. During this and subsequent meetings with the garbage collectors, the following issues were raised:

- The City's seven garbage companies are a subset of the 23 companies servicing Clackamas County. Thus, when financial data is submitted each year, the City's seven collectors have to "allocate" their tonnages and costs between the City and the County. The accuracy of these allocations is very low due to the nature of collection practices. For example, one company's truck may cross the City/county boundary several times in one route. Allocating which materials are collected in which jurisdiction from any one truckload is veritably impossible. Yet, we ask for the collectors to at least estimate how much waste or recyclables came from each jurisdiction. They are also asked to allocate costs such as truck repair, maintenance and acquisition between the two jurisdictions.
- Collection rates in the city and in the county's urban area have always been unequal. The City's residential rates are a bit lower than the county's and the county's commercial rates are a little lower than the City's. Since the services provided by the collectors are the same in the two jurisdictions, the reason for this disparity is unclear and probably unwarranted. Thus, City and county staff have been discussing the possibility of "equalizing" the rates in the two jurisdictions. The collectors servicing Milwaukie concur that using one set of rates in both jurisdictions would increase efficiency of billing.
- Currently, both the City and County collectors franchised with the City submit their financial information to the County. County staff and accounting consultants review the information, collate it and determine whether a rate increase is required for county customers. When this is completed, the rate information for the City's collectors is conveyed to the City and the City works with the collectors' representatives to determine what rate changes are necessary. City staff, the collectors servicing the city, and county staff feel that by "equalizing" the rates of the county and city, rate review could be streamlined and the accuracy of cost and tonnage allocations in their annual reports may increase.
- City staff has been participating in discussions with other jurisdictions in the Metro area regarding shifting residential recycling collection from the smaller curbside containers to larger roll carts (carts with wheels). Beaverton, Gresham and several Clackamas County areas have already employed commingled collection and Portland will begin commingling in carts within the next year or so. Using the carts for commingled recycling has been shown to increase participation in recycling programs. Beaverton data has shown a 17% increase in pounds of materials collected annually. Further, the carts can be lifted mechanically by truck arms, rather than by the driver. This decreases injury. Residential customers would each receive a roll cart into which they would place mixed recyclable materials (paper, metal and plastic containers, cardboard). Glass would be kept out of the carts and placed in a separate bin.

- The collectors are anticipating several financial impacts over the next year. Among these is a \$1.28 per ton increase in tip fee at the Metro disposal facilities, which took effect September 1, 2007. Driver wages are increasing by 2.95% and insurance for all employees is increasing 4.79%. Finally, the west coast fuel indexes for the coming year predict a 7.67% rise in fuel prices (the collectors report an even higher increase over the past year).

Proposed Changes for 2007-08

Based on the issues described above, the collectors have proposed that the City make the following changes:

- Raise residential rates to equal those currently used by county collectors. These rates would be effective November 1, 2007. Following is a chart of selected service levels showing the proposed increases (full garbage service rate sheet with proposed rates shown is attached to this staff report).

Service Level	Current City Rate	Proposed (County) Rate	Rate Increase
20 gallon can weekly	18.02	20.90	2.88
32 gallon can weekly	21.62	24.00	2.38
60 gallon cart weekly	28.81	31.95	3.14
90 gallon cart weekly	31.89	37.20	5.31

- Collectors will purchase roll carts and upgrade their collection trucks to accommodate semi-automated collection (where necessary) by February 1, 2008. Carts may be provided to customers before the February 1 deadline if they are available to the collectors.
- City staff, county staff and the collectors’ representatives will meet over the next several months to discuss rate review process modifications, drop box service rates (held over from last year’s rate review) and commercial rate equalization for the county and city for 2008.

Concurrence

The Community Services Director, the County solid waste staff, and the franchised garbage collectors support this proposal.

Fiscal Impact

A small increase in garbage franchise fees paid to the City may result from the increase in residential rates. The garbage rates were last increased in September, 2006.

Work Load Impacts

No additional work should be required in implementing the new rates. Staff time will be shifted from City-only rate review to county-city rate review process.

Alternatives

Deny approval of the resolution and direct staff to develop an alternative proposal for garbage rate adjustment.

**City of Milwaukie
Uniform Solid Waste and Recycling Rates**

Uniform Monthly Residential Fees
Proposed Rates as of November 1, 2007

SERVICE	MONTHLY RATE	PROPOSED
<u>20 Gallon Can (Mini-Can)</u>		
1 Can (1 time/week)	18.02	20.90
<ul style="list-style-type: none"> • Weekly collection includes recycling and yard debris service. 		
<u>32 Gallon Can</u>		
1 Can (1 time/week)	21.62	24.00
2 Cans (1 time/week).....	40.46	48.00
Each Add'l Can	17.68	24.00
Extra can of garbage (occasional)*	6.17	6.05
Extra Can of Yard Debris (occasional).....	2.67	2.60
Court Apartments (1 time/week).....	18.84	19.50
<ul style="list-style-type: none"> • Weekly collection includes recycling and yard debris service. Recycling bins and yard debris carts <u>must</u> be placed at the curb. • Additional stops per week are charged at 100% of the first stop per week rate. * This rate is for the first extra can collected, each additional at the stop is \$3.08. 		
<u>Roller Carts</u>		
60 Gallon Cart (1 time/week).....	28.81	31.95
90 Gallon Cart (1 time/week).....	31.89	37.20
Extra Can of Yard Debris (occasional).....	2.67	2.60
<ul style="list-style-type: none"> • Weekly collection includes recycling and yard debris service. Recycling bins and yard debris carts <u>must</u> be placed at the curb. • Additional stops per week are charged at 125 % of the first stop per week rate. • A deposit of \$30 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first). • A \$10.00 redelivery fee may be charged for redelivery within one year, regardless of reason. • Maximum weight for 60 gal. cart is 100 lbs and for 90 gal cart is 120 lbs. 		
<u>Monthly and On-Call Service</u>		
Per can (cash) Monthly	8.24	10.50
Per can (billed) On Call.....	8.24	11.35
<ul style="list-style-type: none"> • Monthly service includes recycling <u>but not yard debris service</u>. • Monthly and on-call customers must subscribe for one year in advance for yard debris service. • Haulers may provide Monthly and/or On-Call service. • Customer must provide hauler with 24 hours notice or contact driver on the route (Yoo-Hoo service). 		

Uniform Monthly Commercial Fees

SERVICE	MONTHLY RATE	PROPOSED
<u>32 Gallon Can</u>		
One Can (1 time/week)	20.46	n/a
Two Cans (1 time/week)	40.91	n/a
Each Addt'l Can	20.46	n/a
Extra can (occasional)*	6.17	n/a

- Additional stops per week are charged at 100% of the first stop per week rate.
- This rate is for the first extra can collected, each additional at the stop is \$3.08.

Roller Carts

60 Gallon Cart (1 time/week)	27.65	n/a
90 Gallon Cart (1 time/week)	30.73	n/a

- Additional stops per week are charged at 125 % of the first stop per week rate.
- A deposit of \$30 may be charged when cart is placed. Refunds will be made after return of cart or after five years (whichever comes first).
- A \$10.00 redelivery fee may be charged for redelivery within one year.

Compacted Containers

2.2 times the loose container fee

- Containers weighing in excess of 500 lbs per cubic yard will be charged this fee plus disposal for the excess weight.
- Compactors furnished by the customers shall be compatible *with* the equipment of the collector. If the collector agrees to furnish the compactor, the collector may charge a reasonable rental fee based on the value of the compactor and the cost of repair and maintenance.

**Uniform Fees for Miscellaneous Services
Commercial and Residential**

Hourly Fee

Truck + 1 person	75.04	73.00
Truck + 2 people.....	107.93	105.00
Recycling Truck + 1 person.....	71.95	70.00

Other Miscellaneous

Furniture and Recyclable Appliance Pick-Up.....	5.60 to 29.96	5.45-29.15
	(Plus 15.00 freon removal charge)	
Tire Pick-Up (Off Rim).....	1.70 (plus disposal)	1.65
Tire Pick-Up (On Rim).....	5.29 (plus disposal)	5.15
Over 18 Inches	Special Handling Fee	

Clean-up containers

First Collection 33% of regular container fee, plus
\$17.06 handling charge

Each Add'tl Collection 33% of regular container fee

Rent of Box after 5 days:

1 - 2 Yards.....	2.31 per day
3 Yards	3.44 per day

- Rent not to exceed \$20.00 per container in a 30-day period.
- Each additional collection charged at 33% of regular collection fee.

Resolution # _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE equalizing residential garbage rates with those of Clackamas County (as shown on attachment A), effective November 1, 2007 and approving the distribution of roll carts for commingled recyclables to all residential customers by February 1, 2008.

WHEREAS, Section 13.24.160 of Milwaukie Municipal Code provides that the City Council may set rates and implement rate changes, and

WHEREAS, the franchised collectors have reported rates of return for 2006 for residential services that are at the low end of the acceptable range of 8% to 12%; and

WHEREAS, projections for 2007 show an increase of 2.95% in driver wages, 4.79% in insurance for all employees, 7.67% in fuel costs and disposal costs due to a \$1.28 tip fee increase at Metro Transfer Stations on September 1, 2007; and

WHEREAS, the City is interested in maximizing waste reduction in our community and believes that commingling recyclable materials in roller carts will help us achieve this goal; and

WHEREAS, the proposed rates are comparable to local jurisdictions in the Metro area,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON that residential garbage rates shall be equalized with those of Clackamas County, effective November 1, 2007 and distribution of roll carts to all residential customers shall take place by February 1, 2008.

Introduced and adopted by the City Council on _____, 2007.

James Bernard, Mayor

ATTEST:

APPROVED TO FORM:
Jordan, Schrader, Ramis PC.

Pat DuVal, City Recorder

City Attorney

Clackamas County's Solid Waste Management Fee Schedule for Waste and Recycling Collection Services *Effective: September 1, 2007*

(Milwaukie rates effective November 1, 2007 shown in yellow)

Uniform Residential Monthly Fees

See Miscellaneous Section for distance charges, extra bags, etc.

Weekly Service

15-20 Gallon (Mini)

	Roadside			Occasional Extra*		
	Roadside	Differential	Yard	Roadside	Differential	Yard
Urban	\$20.90	\$3.00	\$23.90	\$6.05	\$0.70	\$6.75
Rural	\$18.25	\$3.00	\$21.25	\$6.10	\$0.70	\$6.80
Distant Rural	\$20.85	\$3.00	\$23.85	\$6.65	\$0.70	\$7.35
Mountain	\$22.10	\$3.00	\$25.10	\$6.65	\$0.70	\$7.35

32-35 Gallon

	Roadside	Differential	Yard	60 Gal	90 Gal
Urban	\$24.00	\$3.00	\$27.00	\$31.95	\$37.20
Rural	\$21.35	\$3.00	\$24.35	\$31.20	\$35.35
Distant Rural	\$24.30	\$3.00	\$27.30	\$33.05	\$37.25
Mountain	\$25.55	\$3.00	\$28.55	\$34.30	\$38.50

Greater than 1 can per week service: Multiples of the single can fee.

The fees listed here for Roller Carts are based upon roadside service.

Cart Redelivery: \$10.00 Charged if cart picked up then service restarted in less than a year.

**Occasional extra: Charged for first "extra" can/cart collected, each additional extra at the stop to be charged \$3.00*

Recycling Only Service - Roadside

Urban	\$3.75	Distant Rural	\$6.50
Rural	\$5.80	Mountain	\$6.50

Yard Debris Subscription Service *Annual fee must be paid in advance.*

Available to Non-Customers & Customers with less-than-weekly service within the Urban fee zone.

Basic Service includes weekly set out (roadside) of a 60 gallon roll cart:

	Monthly Basis for Annual Fee	Annual Fee	Occasional extra Basic Service	Each
Basic Service	\$5.05	\$60.60		\$2.60
Permanent 2nd Can	\$3.60	\$43.20		

Yard Debris Cart must be Roadside; must subscribe to service for one year, subject to cart redelivery charge.

Terrain Fee

\$3.00 This fee applies to private roads and areas that must be provided service off a County Road because of safety concerns for the service provider, pedestrians, and motorists.

Uniform Residential Monthly Fees

See Miscellaneous Section for distance charges, extra bags, etc.

Less than Weekly Service

- Putrescibles must not be placed in can in excess of 7 days prior to scheduled collection.
- To receive yard debris the customer must subscribe, see page 1. (Available in Urban zone only)

Monthly Service - Includes weekly recycling service.

				Each Additional		
	Roadside	Differential	Yard	Roadside	Differential	Yard
Urban	\$10.50	\$0.90	\$11.40	\$6.05	\$0.90	\$6.95
Rural	\$10.60	\$0.90	\$11.50	\$6.10	\$0.90	\$7.00
Distant Rural	\$11.80	\$0.90	\$12.70	\$6.65	\$0.90	\$7.55
Mountain	\$12.10	\$0.90	\$13.00	\$6.65	\$0.90	\$7.55

On Call Service - To receive recycling service customer must subscribe, see page 1.

Regular Collection Day	Each	Each
Urban	\$11.35	Distant Rural \$11.95
Rural	\$11.95	Mountain \$12.50
Any other weekday-Hourly rate:	\$73.00 + disposal	

Uniform Fees for Miscellaneous Services Exhibit

Commercial and Residential

Fees below apply to Milwaukie residential customers - Effective November 1, 2007

Hourly Fee

Disposal charges are additional to these hourly fees.

Truck & 1 Person	Truck & 2 People	Recycle Truck & 1 Person
\$73.00	\$105.00	\$70.00

Extra Bags

Light	<i>does not require extra trip</i>	
Placed by can in yard or roadside		\$3.00
Heavy	<i>requires extra trip</i>	
Placed by can in yard		\$5.80
Placed roadside		\$5.00

Distance Charges:

Measured from roadside:	15-32 Gal. Can	Roller Cart *	Monthly Charge added to roadside fee
3 - 50 feet <i>(Yard Differential)</i>	\$3.00	\$3.00	\$3.00
51 - 100 feet	\$1.10	\$1.10	\$4.10
101 - 200 feet	\$2.15	\$2.15	\$5.15
201 - 400 feet	\$3.20	\$3.20	\$6.20
401 - 800 feet	\$4.25	\$4.25	\$7.25
Greater than 800 feet	\$5.30	\$5.30	\$8.30

Unopened gate that must be re-closed: \$1.00

Reinstatement Fee \$5.00

Applied when service is reinstated after it has been stopped due to non-payment; or when customer stops and starts service more than once in a calendar year.

Furniture and Recyclable Appliances

If not easily accessible hourly rate applies.

Rate based on weight and need for special handling.

Rate Range = \$5.45 to \$29.15

*The Transfer Station Freon Removal Charge will be added for Air Conditioners & Refrigerators**

Residential & Commercial

Currently: \$20.00

**The County is not responsible for this fee and it is therefore subject to change.*

Tires

Disposal Charges are additional to these handling fees.

Rim Size	Off Rim	On Rim
18 in. & less	\$1.65	\$5.15
Over 18 in.	Special Handling Charge	



To: Mayor and City Council

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

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

Subject: Railroad Crossing Safety and Quiet Zone Proposal

Date: October 2, 2007 for October 16, 2007 Regular Session.

Action Requested

Adopt a resolution (Attachment 1) initiating the establishment of supplemental safety measures at three at-grade rail crossings and the designation of a Quiet Zone.

Background

Over the past year, staff has been working to determine the need for, and the feasibility of, establishing a Quiet Zone. Information has been presented to the City Council several times and direction has been provided to staff. (See Attachment 2 for the previous City Council staff reports).

At the March 20, 2007 City Council regular session, staff identified cost efficiencies in co-permitting the Community Development Block Grant pedestrian improvements and the Railroad Crossing Safety and Quiet Zone improvements.

Most recently, at the September 18, 2007 City Council work session, staff received direction to proceed with the permitting process and seek funding for Quiet Zone improvements.

Since receiving Council direction to proceed, staff has begun developing detailed plans for submission to the Oregon Department of Transportation's Rail Crossing Division (ODOT-Rail.) Staff anticipates the permit will be ready to submit later this month.

Another issue discussed at the work session was access to Purdy's Car Wash, adjacent to the Harrison Street crossing. The proposed plan, (egress from 31st Ave, ingress from the east driveway), anticipates cooperation from the property owner. While the use of

the driveway is a private matter, staff was asked to make efforts in facilitating an agreement between the landlord and tenant.

Staff has contacted the property owner, John Murphy, to discuss an access agreement. Staff is working to arrange a meeting between the property owner, his tenant, and city officials to discuss site access and plans for redevelopment.

Concurrence

This proposal has the endorsement of the City Manager, the Community Development and Public Works Director, the Operations Director, the Resource and Economic Development Specialist, and the Community Services Director. Support has been expressed by seven city NDAs, 165 citizens who responded to public outreach, and the following businesses: Mr. Roger Shirley, Milwaukie Marketplace; Ms. Tonya Fellner, North Clackamas School District General Transportation Routing Specialist; Dr. Kenneth Chung, Comfort Care Dental; Mr. Bob Dant, adjacent property owner; ODOT and Union Pacific Railroad.

Fiscal Impact

Construction of the Railroad Crossing Safety and Quiet Zone improvements is anticipated to cost \$285,000. \$200,000 has been identified as available in the current fiscal year budget through SDC and FILOC revenue. \$85,000 has been identified as unavailable in the 2007-08 fiscal budget. Staff is discussing options for filling the funding gap and will return to Council with an update when funds have been identified.

Work Load Impacts

Engineering will coordinate with ODOT-Rail, submitting design plans for permitting. Additional staff work is needed to update plans for the 37th Avenue and Oak Street crossings and to prepare plans for Harrison Street. When funding is secured, the project will be contracted for with construction. Community Development will coordinate with ODOT-Rail, Union Pacific, and the Federal Railroad Administration throughout to secure a Quiet Zone designation.

Alternatives

Staff will proceed with the Community Development Block Grant pedestrian improvements (37th Ave and Oak Street crossings) under any alternative.

Attachments

1. Resolution initiating efforts to improve three at-grade railroad crossings and establish a Quiet Zone
2. Table listing prior reports and minutes from Council Meetings

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING EFFORTS TO IMPROVE THREE AT-GRADE RAILROAD CROSSINGS AND ESTABLISH A QUIET ZONE.

WHEREAS, the City of Milwaukie has identified the need to improve crossing safety; and

WHEREAS, approximately 82% of Milwaukie households are affected by train horn noise above the level considered normally acceptable for residential land use; and

WHEREAS, the Federal Railroad Administration has ruled that local public authorities may designate and request approval of Quiet Zones through their State Department of Transportation, the establishment of which provides that train horns will not be routinely sounded at grade crossings; and

WHEREAS, the Federal Railroad Administration has also approved specific railroad crossing safety measures for use in Quiet Zones; and

WHEREAS, City staff have evaluated these measures and identified specific improvements, including median barriers, that will enable the establishment of a Quiet Zone; and

WHEREAS, these improvements reflect both the interests of businesses affected by these measures, and the interests of Milwaukie's Neighborhood District Associations; and

WHEREAS, pedestrian improvements at the 37th Avenue and Oak Street crossings, which meet the pedestrian requirements for a Quiet Zone have been funded by the Community Development Block Grant program; and

WHEREAS, City staff have identified cost efficiencies in co-permitting the Community Development Block Grant pedestrian improvements and the Railroad Crossing Safety and Quiet Zone improvements; and

WHEREAS, construction of the Railroad Crossing Safety and Quiet Zone improvements is anticipated to cost \$285,000, of which \$200,000 has been identified as available through SDC and FILOC revenue, and \$85,000 has been identified as unavailable in the 2007-08 budget;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie authorize application to the Oregon Department of Transportation for permitting of the Railroad Crossing Safety and Quiet Zone improvements for the 37th Avenue, Oak Street, and Harrison Street railroad crossings; and

BE IT FURTHER RESOLVED that the Railroad Crossing Safety and Quiet Zone improvements for the 37th Avenue, Oak Street, and Harrison Street railroad crossings be added to the City's Capital Improvement Program; and

BE IT FURTHER RESOLVED that the Railroad Crossing Safety and Quiet Zone improvements be given due consideration as a priority project during the City's annual budget process; and

BE IT FURTHER RESOLVED that the Railroad Crossing Safety and Quiet Zone improvements be constructed as soon as the required funds are identified and available; and

BE IT FURTHER RESOLVED that the Community Development Block Grant funded pedestrian improvements at the 37th and Oak Street crossings be implemented this fiscal year;

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHEMNT 2

Quiet Zone Report Background Information		
<u>Meeting Date</u>	<u>Link to Quiet Zone City Council Packet Reports and Minutes</u>	<u>Report Attachments</u>
9/18/07 WS	http://www.ci.milwaukie.or.us/council/councilpackets/2007/CCWS091807p.pdf	July 17, 2007 Work Session Council Report
9/18/07 Minutes	Not posted yet. When posted it will be: http://www.ci.milwaukie.or.us/council/councilminutes/2007/CCWS091807m.pdf	
7/17/07 WS	http://www.ci.milwaukie.or.us/council/councilpackets/2007/CCWS071707p.pdf	<ol style="list-style-type: none"> 1. Area impacted by Train Horns (Pdf). 2. Quiet Zone Interested Persons List. 3. Access Management Study for Purdy's Car Wash. 4. Construction Schedule. 5. Interim Approval for the Use of the Wayside Horn System. 6. City of Sugarland, Texas. Letter to the Union Pacific Railroad. 7. Quiet Zone Ppt Presentation.
7/17/07 Minutes	http://www.ci.milwaukie.or.us/council/councilminutes/2007/CCWS071707m.pdf	
3/20/07 RS	http://www.ci.milwaukie.or.us/council/councilpackets/2007/CCRS032007p.pdf	<ol style="list-style-type: none"> 1. List of interested persons 2. Additional list of community support 3. Safety Benefits of Quiet Zones. 4. Sketches showing proposed medians at the Harrison Street, Oak Street and 32nd Avenue crossings
3/20/07 Minutes	http://www.ci.milwaukie.or.us/council/councilminutes/2007/CCRS032007m.pdf	
11/9/06 WS	http://www.ci.milwaukie.or.us/council/councilpackets/2006/CCWS110906p.pdf	<ol style="list-style-type: none"> 1. Train Horn Estimated Impact Area Map 2. Sound-Shed Report
11/9/06 Minutes	http://www.ci.milwaukie.or.us/council/councilminutes/2006/CCWS110906m.pdf	



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Valerie Warner, Finance Director

Subject: Resolution – Adopting City Investment Policy

Date: September 21, 2007 for October 16, 2007 City Council Meeting

Action Requested

Approve the resolution adopting a City Investment Policy.
Review results of City's investment activity for the fiscal year ended June 30, 2007.

Background

Oregon Revised Statutes Chapter 294 sets forth the regulations for county and municipal finance administration. Among the provisions is a requirement that surplus funds be invested according to a written order of the governing body. The written order is generally provided through an investment policy adopted by the County Commission or City Council.

The current investment policy for the City of Milwaukie was last reviewed by the OSTFB on September 29, 2004. The Oregon State Treasury Department recommends that the governing body should review the investment policy annually. Before a governing body can make material changes to an investment policy, the policy must be submitted to the Oregon Short Term Fund Board (OSTFB) for review and comment.

The proposed policy includes minor changes to the October 2004 policy. The changes:

- Incorporate most recent sample language provided by the Oregon State Treasury Finance Division
- Limit the ability of the Finance Director to delegate investment authority to Finance staff
- Removes the requirement for a special audit to be conducted upon extraordinary event
- Slightly modifies the maturity and diversification parameters

These changes have been discussed with officers of the Oregon State Treasury and are not considered to be material and so the proposed policy has not been submitted for OSTFB review.

The policy calls for the Custodial Officer to establish an earnings benchmark and make a periodic performance evaluation. The following information addresses that requirement.

During the fiscal year ended June 30 2007, the average amount of surplus funds was \$11,998,212. The funds were generally invested in the Oregon Short Term Fund (also known as the Local Government Investment Pool).

- The average amount in the OSTF was \$8,500,000.
- The average interest rate paid by OSTF was 5.16%
- In late September \$2,000,000 was placed in a 12 month CD with Umpqua Bank at an interest rate of 5.16% yielding 5.3%
- In late September \$2,000,000 was placed in a liquid savings account with Umpqua Bank at a variable interest rate equal to the OSTF rate plus 5%.
- Using the average OSTF rate as a benchmark, the city's overall yield from investment was 8 basis points below the OSTF.

The policy also calls for several other reviews, reports or processes to be performed periodically. These include:

- An annual review of the financial condition and registration of participating financial institutions and broker/dealers
- An annual review and test of the internal controls for investments
- An annual audit by independent auditors
- Ongoing maintenance of sufficient collateral for deposits

All of the above tasks are programmed into the work plan for the Finance Department.

Concurrence

None required.

Fiscal Impact

The policy establishes parameters for investment of surplus City funds.

Work Load Impacts

Managing the City's investments is included in the duties of the Finance Director.

Alternatives

1. Approve the policy as proposed.
2. Modify the policy.
3. Do not approve the policy.

Attachments

Draft Investment Policy October 2007

RESOLUTION NO. _____

A RESOLUTION ADOPTING
A CITY INVESTMENT POLICY

WHEREAS, Chapter 294 of the Oregon Revised Statutes sets forth the regulations for county and municipal finance administration; and

WHEREAS, the statute provides that surplus funds be invested according to a written order of the governing body; and

WHEREAS, the written order consists of an investment policy reviewed by the Oregon Short Term Fund Board and adopted by the City Council; and

WHEREAS, the current City investment policy was last reviewed by the Short Term Fund Board in September, 2004; and

WHEREAS, the policy suggests a periodic review by the City Council and comment by the Short Term Fund Board upon material changes to the policy; and

WHEREAS, minor changes are proposed to the current investment policy that have been discussed with officers of the Oregon State Treasury, and are not considered to be material changes and not subject to review by the Oregon Short Term Fund Board

WHEREAS, the primary objective of the investment policy continues to be preservation of capital and protection of investment principal.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON:

The attached investment policy dated October, 2007 is hereby adopted.

BE IT FURTHER RESOLVED that this resolution shall be effective immediately upon its passage.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS DAY OF
OCTOBER, 2007.

ATTEST:

SIGNED:

Date:_____



Investment Policy
October, 2007

City of Milwaukee Investment Policy

I. Scope

This policy shall apply to all investable funds of the City of Milwaukee except for deferred compensation fund assets, pension fund assets, and assets of restricted trust and escrow funds (for example, tax exempt bond proceeds). Included under the provisions of this policy are financial assets of general operating funds, enterprise funds, special revenue funds and any other funds not specifically excluded which are recognized in the City's Comprehensive Annual Financial Report.

The investment portfolio will have seasonal and operational fluctuations but will typically range between twelve and fourteen million dollars.

II. Objectives

The primary objectives, in priority order, of investment activities shall be safety, legality, liquidity and yield.

Safety. Preservation of capital and protection of investment principal are the foremost objectives of the investment program. In order to meet this objective, the city will take steps to mitigate credit risk and interest rate risk. Credit risk is the risk of loss due to the financial failure of the security issuer or backer. Interest rate risk is the risk of loss due to changes in the market value of securities in the portfolio.

Legality. All investments will be made in conformance with city, state and federal regulations.

Liquidity. The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This will be accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands. Furthermore, since all possible cash demands cannot be anticipated, securities in the portfolio will be limited to those with active secondary or resale markets. A major portion of the available surplus funds shall be deposited in the Local Government Investment Pool (LGIP) in order to achieve next-day liquidity for short-term needs.

Yield. The investment portfolio shall be designed with the objective of attaining a market value rate of return throughout budgetary and economic cycles. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The portfolio shall be limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed.

III. Standards of Care

Prudence. The standard of prudence to be used for managing the City’s assets is the "prudent investor" rule which states, “Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital, as well as the probable income to be derived.”

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally risk-free and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security before maturity is in the best long-term interest of the City.

The City’s Custodial Officer (ORS 294.004 (2)) and staff acting in accordance with this investment policy, written procedures, and Oregon Revised Statutes 294.035 and 294.040 and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price change or other loss in accordance with ORS 294.047, provided that these deviations and losses are reported as soon as practical and action is taken to control adverse developments. Losses that are sustained in the City’s portfolio shall be charged against current or future investment earnings.

Ethics and Conflicts of Interest. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall disclose in writing to the City Manager any material interests they have in financial institutions that conduct business with the City. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio.

Officers and employees shall comply with ORS 244.040 (Code of Ethics), ORS 244.120 (Methods of Handling Conflicts), GARS Article 3.15 (Standards of Conduct), any amendments to these provisions, and any Code of Ethics applicable to employees that the City may adopt in the future.

Delegation of Authority. The ultimate responsibility and authority for the investment of City funds resides with the City Council. The City hereby designates the Finance Director as the Custodial Officer for the City’s funds. The Custodial Officer shall invest City funds in accordance with ORS Chapter 294, Public Financial Administration, and with this investment policy. This policy shall constitute a “written order” from the City Council per ORS 294.035. The Custodial officer, with the consent of the City Manager, may further delegate the authority to invest City funds to additional City finance personnel, bearing in mind the qualifications of such personnel and the constraints of internal controls. The Custodial officer shall be responsible for all transactions

undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

Subject to required procurement procedures, the City may engage the support services of outside professionals in regard to its financial program, so long as it can be demonstrated or anticipated that these services produce a net financial advantage or necessary financial protection of the City's resources. External service providers shall be subject to Oregon Revised Statutes and the provisions of this investment policy.

IV. Safekeeping and Custody

Agencies. Investment and safekeeping services shall only be made in qualifying obligations offered through agencies and instrumentalities of the United States as qualified pursuant to ORS 295.005 to 295.165. In addition, all financial institutions and broker/dealers must provide the following, as appropriate:

- Audited financial statements
- Proof of National Association of Securities Dealers (NASD) certification
- Proof of state registration
- Completed broker/dealer questionnaire
- Certification of having read and understood the City of Milwaukie's investment policy
- Certification of agreement to comply with the City of Milwaukie's investment policy

An annual review of the financial condition and registration of participating financial institutions and broker/dealers shall be conducted by the Custodial Officer.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis in accordance with ORS 294.145 (4) and (5). It is the intent of the City that all purchased securities be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

Except for the State of Oregon Local Government Investment Pool, time deposit open accounts, certificates of deposit, money market accounts and savings accounts, all investment securities purchased by the City, and all purchased securities under the terms of a City approved Master Repurchase Agreement, shall be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

Internal Controls. The Custodial Officer shall establish and maintain a system of written internal controls consistent with this policy designed to prevent the loss of public funds due to fraud, error, misrepresentation or imprudent actions by third parties or by employees of the City. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. Written internal controls shall be reviewed and tested at least annually or upon any extraordinary event such as turnover of key personnel or the discovery of inappropriate activity.

Accounting Method. The City shall comply with all required legal provisions and generally accepted accounting principles (GAAP) relating to investment accounting. The accounting principles are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants (AICPA), and the Financial Accounting Standards Board (FASB).

Annual Audit. The Custodial Officer shall establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. The review shall include the following issues:

- Control of collusion,
- As much as possible, the separation of transaction authority from accounting and record keeping,
- Custodial safekeeping,
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary,
- Clear delegation of authority to subordinate staff members, and
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third-party custodian and implementation of the appropriate safeguards described in the GFOA Recommended Practice on “Electronic Transactions for State and Local Governments.”
- Compliance and oversight with investment parameters including diversification and maximum maturities.

In addition, an independent special review by an external auditor may be conducted upon any extraordinary event such as turnover in key personnel or the discovery of any inappropriate activity.

Pooling of funds. Except for cash in certain restricted and special funds, the Custodial Officer shall consolidate cash balances from all funds to maximize opportunities for investment and investment earnings. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

Collateralization. All bank deposits, time deposits, certificates of deposit, money market accounts and savings accounts, shall be collateralized through the collateral pool for any excess over the amount insured by an agency of the United States government in accordance with ORS 295.015 and ORS 295.018. The Custodial Officer is responsible for insuring that a Certificate of Participation has been issued to cover City deposits.

V. Investment Parameters

All investments of the City shall be made in accordance with Oregon Revised Statutes: ORS 294.035 (Investment of surplus funds of political subdivisions; approved

investments), ORS 294.040 (Restriction on investments under ORS 294.035), ORS 294.135 (Investment maturity dates), ORS 294.145 (Prohibited conduct for custodial officer), ORS 294.805 to 294.895 (Local Government Investment Pool). Any revisions or extensions of these sections of the ORS shall be assumed to be part of this investment policy immediately upon being enacted.

Maturities and Diversification. Surplus funds available for investment are those funds not required for immediate expenditure and include investments and include deposits in the Oregon Short Term Fund (OSTF). Balances in checking account, negotiable order of withdrawal (NOW) accounts and demand deposits are not considered surplus funds.

To the extent possible, the Custodial Officer shall match investments with anticipated future cash flow requirements. The maximum maturity shall be the anticipated use of the cash, or 18 months, whichever is shorter. In addition:

- At least 35% of the actual portfolio must mature within 90 days
- Not more than 25% of the actual portfolio may mature in over one year
- If the Custodial Officer determines a need to invest with maturities over 18 months in order to coincide with a specific capital project or debt service payment, the Investment Policy must be re-submitted to the Oregon Short Term Fund Board for comment prior to Council approving the action.

Diversification for surplus funds shall be consistent with the following:

- No more than 75 percent of the actual portfolio must be in U.S. Treasury and/or U.S. Government Agency securities.
- No more than 25 percent of the actual portfolio may be in Bankers Acceptances or Repurchase Agreements.
- No more than 25 percent of the actual portfolio may be in time certificates of deposit
- No more than 30 percent of the actual portfolio may be invested in any one financial institution with the exception of the Local Government Investment Pool to the extent allowed under ORS 294.810.

Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time subsequent to the purchase of a particular security. Securities need not be liquidated to realign the portfolio, however consideration should be given to this matter when future liquidations are made.

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds, such as the OSTF or overnight repurchase agreements, or held in bank balances to ensure that appropriate liquidity is maintained to meet ongoing needs.

VI. Other Investment Guidelines

Prohibited Conduct. Oregon State Statutes have addressed several areas of prohibited conduct for the Custodial Officer when making investments, ORS 294.145. Specifically, the Custodial Officer shall not:

- Make a commitment to invest funds or sell securities more than fourteen business days prior to the anticipated date of settlement of the purchase or sale transaction,
- Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest,
- Lend securities to any person or institution, except on a fully collateralized basis, and except when such lending is specifically permitted under an investment policy adopted pursuant to ORS 294.135 (1)(a), or
- Pay for any securities purchased by the custodial officer until the officer has received sufficient evidence of title thereof. Evidence of title shall be consistent with modern investment, banking and commercial practices and may include physical possession, book entry and automated recordation of such title. However, the Custodial Officer may instruct one or more custodian banks, as defined in ORS 295.005, to accept or release securities as the Custodial Officer considers advisable to be held in safekeeping for collection of principal and interest or other income.

Performance Evaluation. The Custodial Officer shall establish a benchmark yield for the City's investments and shall periodically report actual performance compared to the benchmark. Considerations for establishing the benchmark yield shall include the current yield on the State of Oregon Local Government Investment Pool, and the average yield on the three-month U. S. Treasury Bill. When comparing the performance of the City's portfolio, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return.

Policy Review. This investment policy shall be reviewed periodically by the Custodial Officer, the City Manager and the City Council. The policy shall be submitted to the Oregon Short Term Fund Board for review and comment if the city intends to invest in maturities exceeding 18 months or if material changes are made since the last OSTF Board review.

(Revised 10/2007)



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Amend Milwaukie Municipal Code by Adding Section 1.04.100 –
Authorization to Submit Explanatory Statements Relating to Municipal
Legislation Referred or Initiated by Petition
Date: October 3, 2007 for October 16, 2007 Regular Council Session

Action Requested

Adopt an ordinance amending the Milwaukie Municipal Code (MMC) to authorize City preparation of an explanatory statement for citizen-initiated ballot measure.

Background

Oregon Administrative Rules (OAR) governing elections states that:

For any initiative or referendum by petition, an impartial, simple and understandable statement explaining the measure and its effect shall be submitted by the governing body of the local government only if the local government has an ordinance requiring the submission of such a statement.

Thus, if Milwaukie wishes to provide an impartial explanatory statement in the Clackamas County Voters' Pamphlet for a citizen-initiated legislation, the City must include a provision in the Municipal Code authorizing the preparation of such a statement. Absent such a provision, the City would not be able to provide information that the voters could find useful in making an informed vote.

It is to the benefit of Milwaukie and its citizens if the City is able to provide such an impartial explanatory statement explaining the consequences of any citizen-initiated legislation upon the City and its citizens.

The need for such an ordinance recently came to the attention of Oregon local governments when the City of Corvallis submitted an explanatory statement on a phone tax referendum appearing on the September 2006 ballot for Corvallis voters. The Elections Division advised the City of Corvallis that it did not have the right to print an explanatory statement because the City did not have an authorizing ordinance. A governing body is required to submit a voters' pamphlet explanatory statement when it refers a measure to the voters.

Concurrence

This came to the City's attention through the Oregon Association of Municipal Recorders, and the City Attorney concurs with the proposed code amendment.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

Do not approve the proposed ordinance, but rather on a case-by-case basis consider an authorizing ordinance when the Council deems it desirable to submit explanatory statements for a specific referendum or initiative.

Attachments

1. Proposed Ordinance
2. OAR 165-022-0040

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING SECTION 1.04.100 – AUTHORIZATION TO SUBMIT EXPLANATORY STATEMENTS RELATING TO MUNICIPAL LEGISLATION REFERRED OR INITIATED BY PETITION.

WHEREAS, the initiative and referendum power are reserved to the people by the terms of Article IV, Section 1 of the Oregon Constitution as to both state and municipal legislation; and

WHEREAS, Article IV, subsection 1(5) provides that municipalities such as the City of Milwaukie may provide for the manner of exercising the initiative and referendum powers as to the municipal legislation; and

WHEREAS, under the terms of OAR 165-022-0040 the City must pass an ordinance if it wishes to prepare explanatory statements on matters that are initiated or referred to the voters by petition; and

WHEREAS, the City Council believes it is in the public interest for the City to exercise its Constitutional authority to provide for the manner of exercising the initiative and referendum powers as to municipal legislation and to comply with the aforementioned administrative rule and to therefore, when directed by the City Council, authorize the City Manager, City Attorney, or City Recorder to prepare explanatory statements for matters referred or initiated by petition in order that the City is assured of its ability to explain municipal legislation to the voters of the City of Milwaukie.

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

Section 1. The Milwaukie Municipal Code is hereby amended by adding Section 1.04.100 to state:

Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition.

When directed by the City Council, the City Manager, City Attorney, or City Recorder is authorized to prepare explanatory statement(s) for the Clackamas County Voters' Pamphlet for matters relating to municipal legislation referred or initiated by petition.

Section 2: This ordinance shall be effective 30 days after its passage by the Council.

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

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

165-022-0040

Filing Explanatory Statements

(1) The governing body for any local government, which has referred a measure to the voters, shall submit an impartial, simple and understandable statement explaining the measure and its effect.

(2) For any initiative or referendum by petition, an impartial, simple and understandable statement explaining the measure and its effect shall be submitted by the governing body of the local government only if the local government has an ordinance requiring the submission of such a statement.

(3) Explanatory statements shall be limited to 500 words.

(4) The county clerk shall reject any referred measure submitted without an explanatory statement.

Stat. Auth.: ORS 246.150, 251.305 & 251.325

Stats. Implemented: ORS 251.345

Hist.: ELECT 19-1989, f. & cert. ef. 10-16-89; ELECT 6-1991(Temp), f. & cert. ef. 7-2-91; ELECT 8-1991, f. 8-16-91, cert. ef. 9-1-91; ELECT 16-1993, f. & cert. ef. 4-29-93, Renumbered from 165-060-3040; ELECT 6-1994, f. & cert. ef. 3-31-94; ELECT 7-2006, f. & cert. ef. 4-18-06

Park & Recreation Board

PARB

Tuesday, July 24, 2007

7:30AM

City Hall – Conference Room

10722 SE Main Street

Minutes

Type of meeting:	Regular
Attendees:	Mart Hughes, Sherri Dow, Kate MacCready, Ray Harris
Absent:	Val Hubbard, Bob Cooper
Staff:	JoAnn Herrigel, Joan Young, Rose Marti, Kevin Cayson

Minutes

Harris moved to approve, and Dow seconded. Motion passed 4-0.

City Update

Herrigel reported that City Council agreed to IGA negotiations with the District.

Herrigel advised that the next South Corridor meeting will be held on July 26, and that TriMet will present the plans that are the most feasible. She said that staff would also prepare an impact report regarding a Main Street alignment. Herrigel added that City Council would examine the possibility of an additional alignment at their August 7 meeting.

Herrigel and Cayson reported on issues at Furnberg Park that include the misuse of the area at the end of the boardwalk including loitering by juveniles and camping by other individuals. Herrigel pointed out that the area in question is currently not well planted, and that cutting the overgrowth would act as a deterrent to increase visibility into the pond area. Cayson and Herrigel suggest replacing the overgrown grass with a thorny plant.

- Hughes questioned if the police have been contacted, and Herrigel said no arrests have been made and that she is currently working with the Milwaukie Police on this issue.

- Dow and MacCready agree that replanting with thorny plant material is a good option.
- Hughes asked if there is an “area closure” mechanism that can be used, and Young suggested signage. Herrigel and Cayson respond that “park rules” signs have been posted, but smaller signs may be eventually destroyed or removed.
- Hughes recommends using the fence, plant, and sign method.

District Update

Young reported that the North Clackamas Park master planning process is well on its way and that concept plans will be presented at the next meeting on Wednesday, August 22 from 6:00pm to 8:00pm.

Young discussed the temporary no-alcohol rule that has been imposed at County parks, and said that a long-term solution will be discussed at the North Clackamas Park District Board meeting that will be held tonight.

Cayson reported that the soccer fields at Lot Witcomb and View Acres are nearly complete, and that Pfeifer Park is near completion as well. Cayson said that Century Park is now pesticide-free. Herrigel asked whether a basketball court might be considered for that site and Cayson noted that one was already in place. He said he is getting estimates for resurfacing both the tennis courts and the basketball court this year.

North Clackamas Park

Herrigel advised that the South-Side Project is now complete and operational. Now in the middle of the first season, noise is the number one complaint from the surrounding neighborhood. Herrigel said quieter leaf blowers have been purchased, and that later start times for games are being considered.

- Young added that most of the comments she has heard have been positive, however, it has been brought to her attention that a petition has been circulated in the surrounding neighborhood that addresses the excessive noise levels.
- Dow, MacCready, and Harris agree that the tournaments are held at the park for only a few weeks out of the year and that it is under good, controlled circumstances. Young added that April through August are the affected months and Harris pointed out that people buy homes surrounding the park with the knowledge there will be issues but expect changes, and likened it to those who buy homes near the airport and then complain about noise.
- Harris feels there is an obligation from the district to negotiate with the neighborhoods and Herrigel said that is the role of the Stewardship Group.

- Young advised that lighting is also an issue, and that the lights are scheduled to be turned off by 10:00pm with only one exception so far this year.
- Harris is open to realistic complaints and suggests using a negotiator.
- Hughes questioned if the Board may feel the complaints from the public are selfish, and would like to avoid a “them-against-us” attitude.
- Cayson pointed out that an effort is being made to deal with these issues through the stewardship group, and MacCready agreed with Cayson that there will always be people we cannot please.

Announcements

Harris announced that the Lewelling Neighborhood Association potluck picnic would be held Saturday, July 28, 2007 at 12:00 noon.

Harris moved to adjourn, and MacCready seconded. Motion passed 4-0.