

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 20, 2006**

CALL TO ORDER

Mayor Bernard called the 1982nd meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Mike Swanson, City Manager	Stewart Taylor, Finance Director
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Larry Kanzler, Police Chief	Katie Mangle, Planning Director
Kenny Asher, Community Development/Public Works Director	

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

- A. **Karen Martin** was recognized by Public Safety Advisory Committee (PSAC) Chair Susanna Pai for her service as the Hector Campbell Neighborhood District Association (NDA) representative and by Hector Campbell NDA Chair David Aschenbrenner for her service as the Association Secretary.
- B. **Sgt. Terry Marthaller** (retired) was recognized for volunteer service to the police department in his organization of the property room that reduced the City's liability and restored its credibility.
- C. **Sgt. Dave Rash** was given the Meritorious Service Medal for his efforts in coordinating law enforcement training that served as a statewide model. Sgt. Rash was also recognized by Crime Stoppers, Inc. for his dedication to the program
- D. Nature in the Neighborhoods Grants

Metro Councilor Brian Newman discussed recent Nature in the Neighborhoods grants awarded to several projects in and around Milwaukie. The Metro Council created this grant program last year as part of its Goal 5 efforts by transferring about \$1 million from solid waste. Watershed councils, schools, cities, and other similar groups from all over the region submitted applications. On May 27 Metro awarded \$560,000 in grants many of which had their own matches totaling about \$3 million in restoration projects. In Milwaukie, the Hector Campbell Neighborhood was awarded \$1,000 for Homewood Park trail enhancements. The Johnson Creek Watershed received \$16,000 for a community outreach brochure and signage projects, and Clackamas County Water Environment Services (WES) received \$25,000 for its 3 Creeks Community Restoration

Project. The Clackamas River Basin Council received \$72,000 to remove invasive species throughout the lower Clackamas.

The City of Milwaukie was a co-applicant with the Johnson Creek Watershed Council on the Klein Point restoration. Although it was a great application, it did not receive funding because the intent of the grants was to fund implementation and not the soft costs of engineering and design work that Milwaukie asked for. He hoped the City and Watershed Council would be able to find partners to cover those soft expenses so an application for implementation could be submitted in a future round of funding.

CONSENT AGENDA

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

- A. City Council Minutes of May 2, 2006 work session and regular session minutes;
- B. Right-of-way Agreement Extension with the Oregon Department of Transportation for the McLoughlin Boulevard Project;
- C. OLCC Application for ABC Kitchen located at 10880 SE McLoughlin Boulevard for a change in ownership;
- D. OLCC Application for the Sunny Corner Market located at 5020 SE Monroe Street for a change of ownership;
- E. Resolution No. 24-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; Classifying the Fees Imposed by This Resolution as Not Subject to Article XI, Section 11B of the Oregon Constitution;
- F. Resolution No. 25-2006: A Resolution of the City Council of the City of Milwaukie, Acting as the Local Contract Review Board, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2006 – 2007;
- G. Resolution No. 26-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving a Transfer of Appropriations;
- H.
 1. Resolution No. 27-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting a Request for Funds to Metro under the Metro Transportation Improvement Program for Regional Flexible Funds to Design a Replacement McLoughlin Boulevard Bridge over Kellogg Creek to Allow Removal of the Dam and Restoration of the Creek.
 2. Resolution No. 28-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting a Request for Funds to Metro under the Metro Transportation Improvement Program for Regional Flexible Funds to Build Sidewalk and bike Lane Improvements along 17th Avenue between Lava Drive and Ochoco Street.

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- Mike Guidoni, 4024 SE Jackson Street.

Mr. Guidoni said the first time he was in this room was about a month ago during municipal court. The person he came to watch was his neighbor who had several code enforcement violations. Of all the people who were in court, the judge said fines were, for example, \$200 plus the amounts on the board. Except for this person. The judge saw this person had no violations other than this, but that was not quite true. He had a violation in 2004 but not a citation. The cost was \$500 per day for the citation that amounted up to \$26,500, but the judge fined him \$100. He did not know how the City

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could be fiscally responsible under these circumstances. He thought the Council might look at getting a different judge. He thought the judge should have some latitude, but it probably costs \$100 each time the car or truck was started to go look at the code violation. How could the City get by with a \$100 fine on a \$26,000 bill? The same person did not have a business license to rent out the house in the first place, and he did not intend to get one. There was no incentive unless violators were fined to the point they would take it seriously. The City was not getting cleaned up, and it was costing too much money. His water bill was going up, and his taxes were going up. This guy paid \$100 out of a \$26,000 fine.

Mayor Bernard suggested the Council discuss an ordinance for code violation fine reductions similar to the one it adopted for traffic violations. A lot of time and money goes into code enforcement, and he felt the City should ensure taxpayers' money was well spent.

Mr. Guidoni understood the judge's contract was up for renewal.

Mayor Bernard said under any circumstance he felt the Council needed an ordinance that restricted the reduction whether or not the judge's contract was expiring.

Mr. Guidoni thought the City should cover its expenses for trying to take care of these problems. People tend to shrug off compliance if they only have to pay \$100.

Councilor Collette had spoken with Mr. Guidoni about the issue and encouraged him to come forward and comment. The City was spending more money trying to get people to comply than could be recovered in a \$100 fine. She thought the Council should look at adopting an ordinance that established minimum fine amounts and consider the issue of renewing the judge's contract. Taxpayers were paying a lot of money, and this was an area where the City could help. It was being responsible.

Mayor Bernard was also greatly concerned about this. Years ago there was a citation on an overweight truck for \$15,000, and the judge lowered it to \$100. Not only were the Milwaukie police involved but also the state police. Shortly after that the state legislature established a maximum fine reduction.

- **David Aschenbrenner, 11505 SE Home Avenue.**

Mr. Aschenbrenner was concerned about the rebuild of Hwy 224 and Oak Street that would be six lanes wide. There was going to be a dedicated right turn lane from Oak to Hwy 224, two through lanes, and one dedicated left turn lane. There was no signal for the dedicated left-turn lane, which he thought was unacceptable. It was difficult to make a left-turn against two lanes of traffic and pedestrians crossing the intersection. He talked to a lot of people about this, and they thought it was a problem now and would be more of a problem with the new Oak Street project. The Hector Campbell Neighborhood voted to send a letter to the City to be forwarded to ODOT requesting that the left turn lane lights be installed. He believed the Ardenwald and Island Station Neighborhoods would make similar requests. He had not had a chance to go to the other Neighborhoods since many were taking the summer off. He intended to ask the Public Safety Advisory Committee for its support. He understood engineers had manuals they had to go by, but the common person looked at those guidelines and found them unacceptable. That many lanes of traffic at that kind of intersection with that many businesses with pedestrians just did not work. He asked the Council to be aware of the situation and take action in some way if it could. A letter would be nice because it was a cause Mr. Aschenbrenner felt needed to be addressed. The intersection was going to be re-built, and construction would start in the next few months. If studies had to be done to determine if the left-turn light was necessary he recommended at least putting in the facility. He could not believe a left-turn lane light would not be needed.

He was taking the cause around to the neighborhoods seeking their support, and people at the market just shook their heads and did not understand why there was no left turn lane light there now.

Mayor Bernard commented when he went to the Hwy 224 improvement open house. ODOT indicated it had forgotten to do the public outreach process. ODOT said it was going to put in a left turn light, and about a week later Mayor Bernard was told the ODOT representative had misspoken. He had asked for a meeting, but it had been delayed. He could lie down in front of the tractor to stall the project until it got straightened out. He thought the Council should send a letter to ODOT to deal with this matter because it was wrong.

Mr. Aschenbrenner blamed ODOT but not the project. He would be reluctant to lie down in front of the tractor, though.

Mayor Bernard remarked there was a proposal for 150 condos near that intersection.

Councilor Collette asked if the matter came up in the meeting with ODOT and if so what was the response.

Mr. Shirey attended a meeting with ODOT but had not realized Mayor Bernard had wanted to attend. He briefly reviewed the conversation. The good news in respect to this poorly operating intersection was the two additional lanes on Oak Street being built by Gramor would improve the situation even though there would not be a dedicated left-turn phase as part of the improvements because it was not warranted. Warrants were a threshold established by engineers to make it okay to do something like adding more green time one way and taking away green time the other way. In order to understand the problem a progression analysis needed to be done. The City talked to ODOT about its interest in participating in doing that. He also talked to ODOT about its willingness to come out and talk to people in a meeting labeled 'Why ODOT would not allow a left-turn signal on Oak & Hwy 224' meeting. He told them the house would be packed. They all laughed and agreed to do it. They needed to take the warrant matrix and turn it into language that a common person could easily grok. There was a reason for doing this, and it might make sense. In any event, the improvements would be done by the end of September and things would need to be looked at after the improvements were made. The meeting with ODOT should be some time this summer. The Transportation System Plan (TSP) was underway, and the analysis needed to be incorporated. ODOT was a willing player but just because people thought there was a problem did not mean there was a problem. It was a matter of quantifying the problem, and that was the progression analysis.

Mayor Bernard observed that was a horrible intersection. The McLoughlin Boulevard project was great, but in this case ODOT admitted it had overlooked the public input part of the Hwy 224 improvements. He sat at the table with the Joint Policy Advisory Committee on Transportation (JPACT) with the new head of ODOT where he said he wanted to attend any meetings. He felt there should be a way to apply some pressure. He was concerned Milwaukie would have to pay for it.

Mr. Shirey said a signal cannot be built if it was not warranted. If it did not meet the threshold test, ODOT could not fund it. The City could work with ODOT to get a better idea of how to get to the point of getting the left-turn signal installed, but it would not be part of the Hwy 224 preservation project.

Mayor Bernard asked if the condos were built up the street, could the developer be made to pay for a left-turn light.

Mr. Shirey replied the developer could be required to pay part of it, and the City would probably have to pay part of it as well. Given the land use issues around the area

Harrison, Monroe, and Oak Streets would have to be looked at together making it a complicated matter. The City wanted to be ahead of the development curve and have some answers. He noted there was a pre-application conference for that development later in the week, so the information was public.

Councilor Stone understood ODOT said the left-turn light was not warranted.

Mr. Shirey advised that ODOT did not think it was warranted, but they did not have the data.

Councilor Stone asked based on what.

Mr. Shirey said ODOT had the data from the Gramor traffic study. They have a formula for determining if it met the warrants.

Councilor Stone asked if that was an inclusive study or was it just the bare basics.

Mr. Shirey replied it was a very inclusive study.

Councilor Stone understood the progression analysis had not been done.

Mr. Shirey said Gramor was told if they were interested in a left-turn phase then they would have to do a progression analysis. It was not pursued.

Councilor Stone asked if Gramor could have been held accountable to do that.

Mr. Shirey said they could not. He speculated it was not something the state said Gramor had to do. He believed Gramor was looking at the option of doing the signal, but ODOT told them they would have to do the analysis.

Councilor Stone asked if it was possible that the progression analysis needed to be done in order to determine if the signal was warranted. Was that something that could be shared by the City, ODOT and the developer?

Mr. Shirey replied it was too late to capture the developer's interest or financial participation. It was something the City talked about with ODOT, and most of the cost would be on the City.

Councilor Stone asked the accident history at that intersection.

Mr. Shirey did not know.

Mr. Aschenbrenner said it was in the top five.

Councilor Stone recommended putting that with any letter because it gave credibility to the need for the turn signal. In her opinion, ODOT could not say it was not warranted without the data.

Mr. Asher explained the warrant test and progression analysis were two different things. The City might be able to get the dedicated signal if the warrant were met, but he understood that rarely happened at this kind of intersection. Information on volume and turning movements was collected as recently as last year. It was close but not warranted. The progression analysis looked at whether green time could be taken away from either Hwy 224 or Oak Street and be dedicated to a turn while still getting pedestrians and cars through the intersection. It was a different kind of study that was more qualitative. That might not even lead to a signal. There were also issues about getting poles that could support the lights. That was something the City could talk to ODOT about once the intersection was improved to determine how it operated.

Councilor Stone asked if ODOT was aware this was in the top five intersections that were problematic for accidents.

Mr. Asher did not believe that issue had been brought up, and staff would keep Council informed of any upcoming meetings with ODOT.

PUBLIC HEARING

2006 – 2007 Budget Hearing

Mayor Bernard called the public hearing on the 2006 – 2007 Budget and 2007 – 2011 Capital Improvement Plan to order at 7:55 p.m.

The purpose of the hearing was to consider resolutions required to effect the adoption of the FY 2006 – 2007 Budget and to hear public comment.

Staff Report: **Mr. Swanson** said in order to fully adopt the budget Council had to adopt three resolutions. The first was to declare the City's election to receive state revenue sharing that included alcohol, cigarette, and gas taxes. The second certified those services the City provided for state revenue sharing. The final resolution adopted the budget and the capital improvement plan (CIP), made appropriations, and categorized taxes for fiscal year 2006 – 2007. This was a public hearing as required by ORS 294.430(1). This was a hearing to accept comments on the appropriate use of state revenue sharing pursuant to ORS 221.770(1)(b) and (c). It was the time to comment on the budget as a general proposal and to comment on the use of state revenue sharing monies.

The Budget Committee took action on May 17, 2006 approving an annual budget of \$41,150,370. He provided a comparison with other years. The 2005 – 2006 budget was \$44,117,195 that included photo radar that was not authorized by the legislature. The actual budget for 2004 – 2005 was \$43,002,835, and 2003 – 2004 was \$41,064,232. There has been very little growth. The City did have a number of new programs including Code Red, which was an emergency notification system to contact residents of impending disasters or issues. The City was also looking at instituting a security system for library materials. This was a hold-the-line budget, but the City seemed to be able to squeeze more out of each year. Staff was one of the reasons why the City was able to get things like McLoughlin Boulevard, North Main, and the Riverfront Park moving even when funds were static. In terms of the amount of the levy, there were two areas where property taxes were directed. One was the general fund, and that levy was proposed to be \$3.9898 per thousand assessed value. The authorized permanent was \$6.5379 per thousand assessed value. However, the City did commit upon annexation to the Fire District that it would lower the levy of its permanent rate and reduce it by the amount of the District's permanent rate of \$2.4012. There was an additional decrease in the levy of the permanent rate in order to meet the commitment the City made to the taxpayers that there would be no net tax increase from the annexation, so the City made a further reduction of \$.1469 per thousand assessed value.

The process started at the beginning of the year to prepare budgets, and a number of months were spent with the Budget Committee that was made up of five citizen members plus the Council members. He noted that Budget Committee Chair David Aschenbrenner and member Mike Miller were present. The citizen members met with staff during the year to both monitor what was going on with the budget and also to discuss issues that came up. He expressed his appreciation to Finance Director Stewart Taylor who did most of the work on the budget preparation.

Correspondence: None.

Audience Testimony: None.

Additional Staff Comments: **Mr. Swanson** added that he would have an amendment before the Council related to Transportation System Plan (TSP) update.

Questions of Clarification: None.

Mayor Bernard closed the public testimony portion of the hearing at 8:04 p.m.

It was moved by **Councilor Loomis** and seconded by **Councilor Barnes** to adopt the resolution declaring the City's election to receive state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 29-2006:

A RESOLUTION DECLARING THE CITY OF MILWAUKIE'S ELECTION TO RECEIVE STATE REVENUE SHARING.

It was moved by **Councilor Collette** and seconded by **Councilor Barnes** to adopt the resolution certifying services for state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO.30-2006:

A RESOLUTION CERTIFYING SERVICES FOR STATE REVENUE SHARING.

It was moved by **Councilor Barnes** and seconded by **Councilor Stone** to adopt the resolution adopting the 2006 – 2007 Budget and 2007 – 2011 Capital Improvement Plan, making appropriations, and declaring the ad valorem tax. Motion passed unanimously. [5:0]

RESOLUTION NO. 31-2006:

A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING APPROPRIATIONS, AND DECLARING AND CATEGORIZING TAXES FOR FISCAL YEAR 2006 - 2007

B. Amendments to the Milwaukie Municipal code and Comprehensive Plan that address Community Service Uses and the Kellogg Creek Wastewater Treatment Plant – files ZA-06-01 & CPA-06-01

Mayor Bernard called the public hearing on ZA-06-01 and CPA-06-012, legislative amendments to the Comprehensive Plan and Zoning Ordinance initiated by the City to order at 8:07 p.m.

The purpose of this hearing was to consider an ordinance to adopt proposed amendments to the Comprehensive Plan and Zoning Ordinance that include revisions to Comprehensive Plan provisions related to water resources, land use and public facilities and Zoning Ordinance revisions relating to community service uses.

This was a legislative decision by the Council and would be based on the following standards: The statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan policies; and applicable provisions of implementing ordinances.

The City Council decision would be the final decision of the City. Failure to address a criterion or raise any issue with sufficient detail precludes an appeal based on that criterion or issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board.

Persons with standing are those who submit written comments or testify and sign the City Council Attendance sign-up sheet on the information table in the hall.

Conflicts of Interest: No member of Council declared potential or actual conflicts of interest as defined in ORS 244.

No member of the audience challenged any Council member's ability to participate in this decision.

Conduct of Hearing

Mayor Bernard reviewed the conduct of the hearing. Because the staff report and applicant presentation is combined, the applicant may have 30 minutes. Representatives of groups may have 10 minutes, and individuals will be limited to 5 minutes.

Staff Report/Applicant Presentation: **Ms. Mangle** said there were two requests before the Council. The first was approval to amend the Milwaukie Municipal Code (MMC) 19.321 – Community Service Overlay. These amendments would change the name of the section, clarify the procedures and standards used to approve such uses, and modernize the language. The second action was (a) to amend the Comprehensive Plan in parts of Chapters 3, 4, and 5, and (b) to amend MMC 19.321.7 and 19.321.3, the community service overlay section. The amendments in section 2 would clearly state the City's policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek Wastewater Treatment Plant, make the Plant a nonconforming use, and set a deadline for the removal of such nonconforming community services (CSO) uses.

The community service overlay seemed unique to Milwaukie and worked well. It was an overlay zone for types of uses such as schools, religious institutions, parks and transit facilities. These were all permitted in Milwaukie under the community service overlay. Anything falling into this category was allowed in any zone including residential zones throughout the City. They did, however, have to meet more stringent requirements by meeting the design requirements for the underlying zone such as height and setbacks. One key criterion was that it must meet the public benefits test meaning that any impacts associated with the use must be counterbalanced by the public benefit of having the facility at that location.

Mayor Bernard commented on cell tower height.

Ms. Mangle said many categories in the CSO including schools, churches, and cell towers had specific design standards that applied to those categories. There was an entire section that addressed cell towers and height because if it were over 35-feet it would not be allowed in a residential zone. Any kinds of design aspects that were specific to those types of uses were addressed in the specific subsection in the CSO. That allowed a little more flexibility.

Mayor Bernard would like to look at the one for cell towers.

Ms. Mangle said Action 1 was the proposed housekeeping measures that modernized the language and cleaned up some of the CSO in the way it was communicated and practiced. Some of the key proposed changes included changing the title, which would be the Community Service Use (CSU). This and several other things would focus on this being a conditional use and less of a zone change. This has confused applicants, and the amendment would clarify the fundamental meaning of the zone. The amendments also neutralized gender and religious references. Right now there was a term regarding fraternal institutions that would be substituted with the term civic institutions. Churches would be more generalized by using the term religious institutions. The applicants, staff, and Planning Commission would be helped by the clarification of the standards and procedures for reviewing a CSU and make the criteria

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approval more clear. One of the changes she wanted to point out was that in the effort to neutralize religious references and apply the same standards to religious, private, and public institutions one of the changes would be that right now churches were allowed to be 35-feet high plus a spire. Public and private institutions were allowed to be 50-feet high. If the same standards were applied then religious institutions would also be allowed to be 50-feet high. Years ago churches were considered to be conditional uses and could be 50-feet high. It was not a huge policy change but rather a correction. They also more tightly defined the term 'spire' which was not currently defined in the code at this time. It would be 50-feet high with a more tight definition of the term 'spire' and that was what would apply to religious institutions.

Action 2 was the amendments that addressed the Kellogg Creek Wastewater Treatment Plant. The intent of the amendments was to strengthen existing City policy, to direct the City to actively seek alternatives to the continued use of the Kellogg Treatment Plant, limit expansion of the Plant, and eliminate the Plant's social, environmental, and economic impacts. It directed the City to plan for relocation of the sewage treatment to a more modern plant as part of a regional system to benefit the North Clackamas County community.

In 2005 the City and Clackamas County Service District #1 (CCSD) agreed to a regionalized wastewater treatment plan known as the Clearwater Plan that provided improved quality and service at ultimately lower rates. In June 2005 representatives from CCSD1 enthusiastically presented the draft plan at a Council work session. She had the minutes of that meeting for reference. The Plan included closing the Kellogg Treatment Plant as a viable option and a better solution for sewage treatment service for the County. That Plan remained a viable and better option for wastewater treatment than the continued use of the Kellogg Plant.

The proposed amendment made it clear that the City was to work with Clackamas County and CCSD1 and other parties including Metro to develop an alternate site for sewage treatment in a regionalized system. Ms. Mangle provided a map of the current site of the Plant and the current zoning which was Downtown Office (DO) and Downtown Open Space (DO). Those zones would not be affected by the proposed amendments.

Mayor Bernard understood Action 1 made a sewage treatment plant anywhere else under the CSU nonconforming.

Ms. Mangle replied Action 1 was just housekeeping amendments. Pump stations were already legal and would be processed through the community service overlay process. Pump stations were not the same as the Kellogg Treatment Plant, which was what was being termed as a major utility facility. That was not now addressed in any way in the code. Action 2 was two parts: (a) being the Comprehensive Plan amendments related to the Kellogg Creek Treatment plant. These amendments were focused on three parts of the Comprehensive Plan Chapters 3, 4, and 5. The City's policy was already to investigate options for closing the Kellogg Treatment Plant. These amendments directed City policy more clearly to actively pursue closing the Kellogg Treatment Plant. Key changes were in Chapter 4 instead of partnering with the County to investigate alternatives the language would be, "the City would use the best efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assured property sewage treatment for Milwaukie citizens while effectuating a transition of treatment at another location. The changes to Chapter 5 talked about cooperation with other agencies. It also required future planning efforts undertaken by the City to consider a regionalized sewer system in a facility other than the Kellogg Creek Plant.

Action 2(b) was the zoning code amendments related to the Kellogg Creek Treatment Plant. These were the changes to the zoning code that implemented the policy changes she described. The Comprehensive Plan was the policy direction, and the zoning code implemented the Comprehensive Plan with regards to land use. More specifically, they would specify that major utility facilities such as the Kellogg Treatment Plant were generally not permitted community service uses. She said generally because they may allow for the possibility there may be a major utility facility that had no impacts. It may be underground or something like that which if possible would be allowed. It was based on impacts. The code amendments included language that prohibited expansion, upgrades, or remodeling of the use except as required to abate nuisances or comply with federal or state statutes including the Clean Water Act. Further it established a fee for nonconforming major utilities that remained in use after January 1, 2016 with a fee set by the City Council at that time.

Amending the Comprehensive Plan and zoning code was a legislative process that required approval by both the Planning Commission and the City Council. At its May 23 meeting, the Planning Commission unanimously found that the amendments met the approval criteria including complying with local, state, and regional plans and policies. The Planning Commission recommended that the Council approve all the amendments with revisions that addressed CCSD1's concerns. The Planning Commission asked staff to consider some of the comments that were made at the hearing and make revisions in an attempt to address those. At the Planning Commission meeting Tom Sponsler and others testified against the amendments on behalf of the County and the Cities of Gladstone and Happy Valley. While the City did not agree with all the comments, some were reasonable, and in the spirit of continued cooperation staff tried to make adjustments to the amendments in order to address some of their concerns. She pointed out the revisions. One of the main complaints Mr. Sponsler included in his comments was that the amendments did not support or promote cooperation among the agencies and therefore did not meet statewide planning goals. Staff argued against that and included a revision to further clarify that it was a City policy to continue coordinating with Clackamas and CCSD1 in planning for the closing of the plant. Another revision stated the City would allow CCSD1 to make adjustments to the plan as needed to comply with federal or state statutes, regulations, or permits. The understandable concern was to keep the plant operating in the near term in a safe and environmentally sound way.

Ms. Mangle requested that the Council approve Actions 1 and 2 to amend the zoning code section and Comprehensive Plan Chapters 3, 4 and 5. Council had alternatives. It could chose not to approve the amendments; approve Action 1, the housekeeping amendments to section 19.321 that did not address the Kellogg Treatment Plant; or approve Action 2(a) the Comprehensive Plan amendments which were the policy changes related to the Kellogg Treatment Plant and action 2(b) the zoning code amendments related to the Kellogg Wastewater Treatment Plant.

Mr. Firestone added the Council may approve almost any combination of 1, 2(a), and 2(b). The only thing the Council could not really do was to approve 2(b) without approving 2(a).

Mr. Swanson made a recommendation that was not wholly consistent with Planning Commission's recommendation. One might ask if Ms. Mangle and Mr. Swanson talk and why did the recommendations differ. What he was going to suggest was not before the Planning Commission on the night it made its recommendation. Therefore, the Planning Commission as a separate body to literally protect its integrity it was important that what they did be presented as it happened. This was being done to protect the integrity of the Planning Commission. This was a fluid issue – he was talking specifically about wastewater treatment and CCSD1. He provided a brief history.

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Clearwater was adopted September 2005, and in January 2006 the Board of County Commissioners (BOC) cancelled the Clearwater Project and appointed a Citizens Advisory Council (CAC). The CAC was to develop a wastewater strategic plan for CCSD1. He introduced Eugene Schoenheit an original member of the CAC and Mike Kinsey who was the new director at Water Environment Services (WES). In January the CAC as part of its organizational efforts set out a process to arrive at a recommendation due by September 30, 2006. That was a quick turnaround considering work began in February. The CAC had gone through a number of steps that it set out to accomplish in February and March culminating last night in a lively discussion leading to the identification of four specific alternatives that would be the alternatives the engineering consultant will actually now go into an in-depth study. They created criteria and principles by which they would be measured. The CAC also adopted service projections, capacity assessment, and the four alternatives. He and Mr. Shirey had attended most of the CAC meetings, and WES staff has provided volumes of information that has been developed. The service projection and capacity assessment identified the future need as being 16.6, so as he gave the Council numbers those would somehow add up to 16.6 for each of the alternatives.

The four alternatives that were adopted were to retain Kellogg upgrading nitrification and route surplus to Tri-City meaning that Kellogg would handle 4.8 million gallons per day (mgd), and Tri-City would handle 11.8. The second alternative was again retaining Kellogg and would actually result in the construction of a new plant operated by CCSD1. The numbers for Kellogg would be 4.8 and 11.8 in the new plant. There was also an alternative that would be studied that would basically look at a 12.5 mgd at Kellogg, and 4.1 diverted to Tri-City. The fourth alternative was broken down into two sub-options which were to abandon Kellogg and diverting the 16.6 mgd flow to Tri-City, and the other was to divert the 16.6 mgd to a new plant to be constructed and operated by CCSD1. Those were the four options that would go forward and be studied in-depth.

There was good news and bad news from Milwaukie's standpoint. One of the pieces of good news was that none of the options looked at the full 16.6 being treated at Kellogg. The other good news was that none of the options anticipated an expansion of the footprint. Another piece of good news was the option of abandoning Kellogg was one of the four options. The not so good news was that there were three options that still placed some load on Kellogg and retained Kellogg. He thought it was a fair listing of options that would go forward. It was not an easy process, and there were times he had been frustrated with the CAC. There were probably times the CAC was frustrated with him, so it all balanced out.

Mr. Swanson believed it was still important for Milwaukie to participate in the process and cooperate in the process. One of the actions being proposed tonight put up a roadblock to moving forward in good faith. That was the amendment of MMC 19.321.7 and 19.321.3 the dealt specifically with the nonconforming use status and the required closure of the Plant on December 31, 2015. He recommended that the Council follow the Planning Commission recommendation with respect to the amendment of MMC 19.321, which was the section Ms. Mangle referred to as housekeeping. That needed to go forward and did not deal with this issue. He further recommended the Council follow the Planning Commission's recommendation with regard to the Comprehensive Plan changes in Chapters 4 and 5? However, he was further recommending delaying any action on the amendments to MMC 19.321.7 and 19.321.3. He suggested the Council do that until its first meeting in August. He would probably come back because September 30 was the date the CAC had to have its report, and he would hopefully be back on that date recommending a delay because he thought it would take four weeks for the engineering firm HDR to develop the cost figures. He suggested the Council adopt the Planning Commission recommendation on the housekeeping and

Comprehensive Plan amendments, but delay and set for a date certain the action on MMC 19.321.7 and 19.321.3 to limit the effect of putting that in the mix as the CAC went forward with its deliberations.

Mayor Bernard understood the current plant was a nonconforming use under the current CSO standards. There was a significant difference between a pump station and a treatment plant.

Ms. Mangle replied the code was silent and it was not listed. The last time the Planning Commission approved a minor modification of the CSO in 1999, the Commission was troubled by that and felt it had to continue making approvals for increasing the capacity of a plant that did not fit with the code and did not fit in the community. The plant was built with a conditional use permit in 1970, and that was how it was originally permitted. It has gone through several land use applications since then. The City had found a way to manage it.

Mr. Firestone added it did have a CSO approval as an amendment. The action was taken. He did not think the issue was directly addressed as whether a utility other than those listed under the general heading of utilities could be permitted as a CSO.

Mayor Bernard would like to see the CSU amended so that it would not allow sewage treatment plants to be built within the community from here on out. One of the comments made by a former director of that group was would Milwaukie rather have it built in its industrial area, and the answer was of course not. His concern was that there was a plant here now and the City needed to deal with it. What are we going to do in the future?

Mr. Swanson was not an engineer, but he understood – he wanted to make it clear he was not advocating that it be located in the City – but the construction of wastewater treatment facilities was a different animal nowadays. The technology was much different. He was not advocating that it be located in Milwaukie, but he also was not advocating limiting the options the CAC had. The City and CAC may find they are at odds on September 30, but he thought it was a better idea to be at odds on September 30 than it was during the process. There were still some options he thought would be well within Milwaukie's interests and satisfy them. There were other issues that could be discussed regarding mitigation. He did not believe the City would lose regulatory capabilities by saying let's give them a chance to do their work.

Mayor Bernard thought everyone would agree on that point. He understood sewage treatment plants were not what they used to be and that some utilities could be built underground. People might not know it even existed, and that might be a possibility next to the river.

Ms. Mangle said right now major utility facility was not listed as an approved community use. There was a category for other similar facilities as determined by the Planning Commission. She thought the Planning Commission and staff would be comfortable for a new facility not to listed as a use applicable for a CSO.

Additional Correspondence: None.

Testimony in Support of the Application

- **Gary Klein, 10795 SE Riverway Lane.**

Mr. Klein was in complete agreement with Mr. Swanson's recommendation and thought it was a great idea to work with the CAC. He understood the Kellogg Creek Sewage Treatment Plant had an advisory board, but Milwaukie did not have a seat on the board. He recommended that until Kellogg was gone that Milwaukie should propose having a member on the board. It seemed unusual that Milwaukie used 30% - 40% of the

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APPROVED MINUTES

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capacity but had no one on the board and had now say in the planning. He thought Milwaukie should have someone on the board, so the City can have an inside view of what was going on. The Plant was in Milwaukie's city limits and treated the City's sewage, so he thought that should be corrected.

Mr. Swanson explained during the creation of the CAC that was an issue he talked to the BOC and County Administrator about. The CAC was actually an advisory board to CCSD1. Once the board finished this task, it would continue as an advisory board. The City was not part of CCSD1; it was a wholesale customer. One of the issues that had to be discussed in the CAC process eventually was the City's status. He did not believe that would be changed today. This process was open – sometimes excruciatingly so – and he believed Milwaukie knew what was going on. That was an issue down the road that would have to be considered. He did not see Milwaukie getting a member now because the group was about half way through the process. Milwaukie would continue to weigh in.

Mayor Bernard added people were advised of the meetings and did sit in.

Neutral Presentations – None.

Presentations from those opposed to the proposal

- **Tom Sponsler, 1750 SW Harbor Way, Portland**

Mr. Sponsler was an attorney representing CCSD1 and Cities of Gladstone and Happy Valley. He appeared in the room on May 23 and presented a long letter raising many legal issues and concerns about an earlier iteration of the zoning and Comprehensive Plan amendments. Staff had done yeoman's work in the intervening time and made some substantial changes almost all of which were substantial improvements. The letter he wrote dated June 19 was much shorter than the one submitted on May 23. Some of the legal issues in his arsenal had been taken away, and that was a good thing. He commended staff and the City Manager who had worked hard to broker and mediate and to try to get people who at times had been unreasonable to be more reasonable in addressing issues of common concern and regional issues. The Planning Director did an outstanding job. His observation was that the staff report the Council received was a much improved version from the Planning Commission's. The issues were sharpened a bit partially due to his participation. Even the City Attorney had been reasonable. The City Manager's comments in large measure made his job more difficult. On the other hand he did not have to raise the legal concerns with quite as much force as he would have if the City Manager had not recommended this compromise position. On the other hand he still needed to raise those issues, and he needed to differ with Mr. Swanson's recommendation again. A lot of issues raised before the Planning Commission had been addressed, and the language changes to the planning amendments were all improvements. The zoning code amendments were also substantially improved from his clients' perspective. The zoning code amendments were also substantially improved from his perspective because it would have been impossible to continue to operate the Plant. As he pointed out the Planning Commission CCSD1 needed to comply with federal and state law. As every city attorney knew city law did not prevail over state and federal law. They were permitted to operate the Plant under DEQ under state and federal law. The city attorney had made changes to the proposed amendments to the zoning code that recognized that. That took care of probably the most significant legal arguments that were raised.

Mr. Sponsler had no objections whatever to what was presented as Action 1 – the housekeeping amendments to 19.321 – that was fine. He had not raised any objections before and had none now. As a drafter he saw a marked improvement to consistency and clarity. He was still concerned about Action 2(a). As welcome as the City

Manager's comments were regarding Action 2(b) he still had concerns. He addressed the Comprehensive Plan amendments. He still believed there were Goal 11 issues. It had not been called to the Council's attention but it might be aware there was a Sewer Master Plan from 1994. That was premised upon treatment continuing at the Kellogg Plant. There was nothing before the Council whether it was postponed or not to amend that Plan. If the Council did approve the Comprehensive Plan amendments, then it would be bringing an inconsistency between the Sewer Master Plan and the Comprehensive Plan, which violated state law. There was a two-part issue about Goal 2. One was the inconsistency violated Goal 2, and as the Planning Director pointed out there was a coordination issue that required that a regional plan would require the City to work with other cities, CCSD1, and the County who were also using the treatment plant and had needs for a replacement plant if Kellogg were to be decommissioned. The heart of the Goal 11 objection to the Comprehensive Plan amendments was that Goal 11 required the City to do more than to say it was working on a replacement. There needed to be a feasible alternative to the existing sewage treatment in the City of Milwaukie. Failure to do that could be a violation of Goal 11.

Mr. Sponsler said in summary he still objected to the adoption of the Comprehensive Plan amendments and urged the Council to add those to 2(b) and postpone the decision to August 1 in order to explore other options. He said he would shorten his comments on the zoning amendments because it was his read of the Council that it was willing to go along with the City Manager's recommendation which Mr. Sponsler endorsed. There were still the same legal objections related to statewide Goals 11 and 2. There were additional legal objections because if the City made the Plant go away, then that would constitute a taking of that Plant and a reverse condemnation, which the City could not do without compensation to CCSD1. He did not think the Council by its own fiat could close that District-owned Plant. Those were not necessarily land use issues but were legal issues if the City tried to require abandonment of the Plant. Those issues were all set forth in his letter.

Mr. Sponsler's final comments had to do with fiscal impacts. The staff report stated there were no fiscal impacts, but he had a different view. There were two parts. There were significant fiscal impacts and there may be argument upon whom that impact fell. First the City of Milwaukie had a series of intergovernmental agreements (IGA) with the District that required the District to take the sewage. As the City Manager pointed out, the City was not within the District unlike the Cities of Happy Valley and Gladstone. Those cities had a different relationship with CCSD1. Milwaukie had a contract in a series of IGAs. One of the salient provisions provided for the pass through of costs. If the Council's action required the District to expend significant sums of money to replace the Plant those costs would under the contract be passed through to the customers in the City of Milwaukie. His rough and quick estimate could amount up to \$83 per customer per month. The second part was that if the Council required the termination of the Kellogg Plant, then it would have to figure out another way – if the IGA went away – the City might decide to build its own plant or go elsewhere all of those would have significant costs as well. In conclusion Mr. Sponsler urged the Council to add to the City Manager's recommendation and postpone taking action on 2(a) and 2(b) and to allow more time to work through some of the issues and to continue to allow the CAC to do its work because while some may disagree with what the odds were – and he was not going to pull out a Powerball and predict the results of that – there was at least a chance that the recommendation of the CAC would be to do away with the Kellogg Plant. Legally the District cannot accept the City's requiring that by taking legal action in the Comprehensive Plan.

Staff Rebuttal:

Mr. Firestone addressed some of the comments. The City did not believe there was any Goal violation. There was continued cooperation with the District as called for in the Plan. As to planning for facilities this was planning for facilities. The City was party to an IGA that provided for an improved wastewater treatment system. The City cannot ignore the fact that there was a plant out there that was better than the current plant, and that needed to be recognized in the City's planning. As to the taking issue there was no taking. This would be a regulatory taking if any, and the County can still use the Plant. The County could also use the same property for office and other uses. There were a wide range of uses allowed in the DO zone. Under regulatory taking there was a taking only if the District was deprived of all legitimate use, and the City was not doing that. The fiscal impact issue was primarily one outside of his area, but generally speaking the City had already planned for the ultimate transition from the use of the Kellogg Treatment Plant to a regionalized system. To that extent the fiscal impacts did not come from these plan amendments and code changes. With all that being stated he was not advocating that the Council go along the lines as recommended by the Planning Commission, and he certainly supported the position taken by the City Manager. Was the other legally defensible? Yes.

Mayor Bernard addressed Goal 11. There was already an alternative that everyone adopted. An IGA was written and signed, and the County Commissioners accepted it. Failure to meet Goal 11 was not true if one took Clearwater into account. That was why he felt it was important to adopt the Comprehensive Plan amendments. He agreed with Mr. Swanson in terms of delaying the second portion.

Mr. Firestone stated the changes that would meet Council direction if it followed the City Manager's recommendation which was to go with Actions 1 and 2(a) but not 2(b). The changes he would recommend were to change the ordinance itself that had been distributed. The last 'whereas' would need to be amended to read, "Whereas the City Council has held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities and has decided to alter some of the language and add additional language for clarity and consistency." That would be the one change to the body of the ordinance. There would be a couple of changes to Exhibit 1 that was circulated. That was the exhibit that included the Comprehensive Plan amendments. One of the changes would be to change Comprehensive Plan Chapter 4 – Recreational Needs Element, Objective 7, Policy 5 to amend the second to last sentence to read "reasonable efforts may include (rather than shall include) revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use of that site." Another change to the Comprehensive Plan would be to Chapter 5 – Public Facilities and Surfaces Element, Objective 5, Policy 5. Amend the last sentence to read, "future sewage and wastewater facility plans and related planning efforts shall take into account and plan for a regional sewage system and facility other than the current Kellogg Treatment Plant to allow the option of putting a better plant rather than the existing plant." The code amendments that would need to be made would be to change the hearing on section 19.321.2B from specified utilities to just utilities, which would leave the current ambiguity.

Mayor Bernard was concerned no one would remember all of that when it came time to make a motion because the hearing had to been closed.

Mr. Firestone advised the Council could move to adopt the ordinance with the amendments as stated by the City Attorney. He would also have copies of the amended version for the Council to look at during a break. There were three other

small changes. They were all deletions. One was section 19.321.2B10, 19.321.3 that would be kept for future use, and 19.321.7 that would be kept for future use. If the Council decided to follow that recommendation, it might want to reschedule further action on the same matter to some date certain.

Mayor Bernard closed the public testimony portion of the hearing at 9:07 p.m.

Council Discussion

Councilor Loomis supported the City Manager's recommendation.

Council Decision

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and adoption of an ordinance amending provision of the Milwaukie Comprehensive Plan relating to water resources, land uses and public facilities and amending Section 19.321 of the Municipal Code relating to community service uses, with the amendments as read by the City Manager. Councilor Barnes seconded the motion. Motion passed unanimously. [5:0]

Mr. Swanson read the ordinance two times by title only with the changes. The body of the ordinance in the last 'whereas' clause was amended to read, "Whereas the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities, and has decided to alter some of the language and add additional language for clarity and consistency. Exhibit 1 – Comprehensive Plan Chapter 4, Recreational Needs element, Objective 7 Policy 5. The second to last sentence is amended to read, "Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modifications of the sewage treatment use at that site." Exhibit 1 – Comprehensive Plan Chapter 5, Public Facilities and Services Element, Objective 5, Policy 5. The last sentence is amended to read, "Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek Plant." Exhibit 2 – Code amendments. The hearing for Section 19.321.2B is changed from "specified utilities" to "utilities." The proposed 19.321.2B10 is deleted. The proposed 19.321.3 is deleted, but the number is reserved for future use. The proposed 19.321.7 is deleted, but the number is reserved for future use.

The City Recorder polled the Council: Mayor Bernard and Councilors Barnes, Collette, Loomis, and Stone voting 'aye.' [5:0]

ORDINANCE 1962:

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

It was moved by Mayor Bernard and seconded by Councilor Collette to continue unresolved portions of the proposed amendments to a date certain of August 15, 2006. Motion passed unanimously. [5:0]

Council Reports

Mr. Swanson said the first meeting in July would be on July 6 because of the July 4th holiday.

Mayor Bernard reported that Metro Councilor Brian Newman, developer Tom Kemper, and he were interviewed by the *Business Journal* regarding the downtown.

Councilor Barnes worked at the Sunday Farmers' Market Community booth, and all visitors with one exception were very positive about the changes occurring in the downtown area. She would attend the Clackamas Cities monthly dinner meeting. The Sabin-Schellenberg Center wrote a grant for the Library Board to produce its television programming, and she would meet with the Board on Monday.

Councilor Loomis attended his son's graduation ceremony from Oregon State University, and his son got his first teaching job.

Councilor Collette attended a luncheon of the Clackamas Community College Blue Ribbon Committee that selected the health care facility site at Harmony Campus. Those involved expressed their appreciation for the cooperative nature of the City of Milwaukie. She also attended Clackamas Community College's GED graduation ceremony, and as a Board member she got to hand out diplomas.

Mayor Bernard announced the City of Milwaukie had been selected as a tour city for the League of Oregon Cities conference in September, and he would send letters to all the downtown businesses to encourage them to beautify the areas in front of their stores. The grand opening of McLoughlin Boulevard would be on June 28, and Chief Norm Whiteley's retirement reception is on June 29.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 9:28 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL JUNE 20, 2006

MILWAUKIE CITY HALL
10722 SE Main Street

1984th MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance

2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. Recognize Karen Martin for Service to the Community on the Public Safety Advisory Committee
 - B. Meritorious Service Award
 - C. Crime Stoppers, Inc. Award
 - D. Recognize Retired Sgt. Terry Marthaller for Volunteer Service
 - E. Nature in the Neighborhoods Grants (Metro Councilor Brian Newman)

3. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes**
 1. Work Session Minutes of May 2, 2006
 2. Regular Session Minutes of May 2, 2006
 - B. Right-of-Way Agreement Extension with Oregon Department of Transportation (ODOT) for McLoughlin Blvd Project
 - C. OLCC Application, ABC Kitchen, 10880 SE McLoughlin Boulevard, Change of Ownership
 - D. OLCC Application, Sunny Corner Market, 5020 SE Monroe Street, Change of Ownership
 - E. 2006 – 2007 Fee Schedule – Resolution
 - F. 2006 – 2007 Purchase Orders – Resolution
 - G. Transfer Appropriations – Resolution
 - H. Endorse 2010/2011 MTIP Regional Flexible Funds Applications -- Resolutions

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. **2006 – 2007 Budget Hearing**
 1. **Resolutions Regarding State Revenue Sharing**
 2. **Resolution Adopting the Budget, Adopting the 2007 – 2011 Capital Improvement Plan, Making Appropriations, and Declaring the Ad Valorem Tax**
 - B. **Amendments to the Milwaukie Municipal Code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)**

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

Council Reports

7. **INFORMATION**
 - A. **Public Safety Advisory Committee Minutes, May 25, 2006**
 - B. **Park and Recreation Board Minutes, April 28, 2006**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

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

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

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

May 2, 2006

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

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson, City Attorney Gary Firestone, Community Services Director JoAnn Herrigel, Development/Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, Engineering Director Paul Shirey, and Planning Director Katie Mangle.

Mr. Swanson announced the Clackamas County Board of Commissioners (BOC) considered the urban renewal district (URD) on April 27, 2006 and deferred the matter for 30 days. He understood some people expressed concerns about annexing to Milwaukie.

The legislature passed a house bill related to payday loans, and he would review that in comparison to the Gresham and Portland ordinances.

Mayor Bernard asked about the status of the Texaco parking lot, and Mr. Swanson said he would talk with Phil Selinger at Metro.

Advisory Board Interviews

The Council interviewed Scott Churchill for a vacant position on the Planning Commission; Devin Graham for a vacant position on the Cable Access Board; and Jane Hanno for reappointment to the Center/Community Advisory Board as a City representative.

Park and Recreation Board Annual Work Plan

Ms. Herrigel introduced Park and Recreation Board (PARB) chair Mart Hughes members Kate McCready, Sonny Newson, and Sherri Dow. She reviewed the tasks and accomplishments for 2005 – 2006. These included a parks tour, a detailed review of the 1992 intergovernmental agreement (IGA) with the North Clackamas Parks and Recreation District (NCPRD) to bring it up to 2006 standards, input and participation in development of Metro's Natural Areas 2006 bond measure, parks rules enforcement, completion of Mr. Newson's "Parks Book", monitoring of the Aquatics Park Task Force, and input on the North Clackamas Park ball field master plan.

The main goals for 2006 – 2007 were to provide guidance and input on the Parks District/City of Milwaukie IGA, monitor and comment on the master plan for the northern part of North Clackamas Park, provide input on maintenance and development of City-owned parks including the Lewelling Neighborhood and Homewood Parks, and stay apprised of Metro's 2006 bond measure.

Mr. Hughes thought work on the IGA was important because it was sorely out of date. Renewing the IGA was really an exercise in communication so the City could express its quantitative and qualitative expectations of the District and get its park projects in the master plan. He discussed the ball field development and commented that he did not believe there had been enough advance work with the City. He saw the IGA as a channel for clearer communication making that process an important undertaking.

Ms. Dow observed that the IGA was over 10 years old, so it was becoming outdated.

Councilor Loomis recommended checking with the neighborhoods about their expectations for maintenance of the parks they had developed.

Mr. Hughes was sensitive to that and understood the neighborhoods' points. Milwaukie may want to continue to focus on those neighborhood parks, but he thought it might be more appropriate for the District to provide services to the standard concept parks.

Ms. Dow said PARB would like direction from Council to staff on moving forward with work on the IGA. She did not believe the Board could have a better staff person than Ms. Herrigel.

It was Council consensus that staff and PARB move forward with the review.

Councilor Loomis added at the Budget Committee he brought up a proposal that PARB have a \$30,000 fund with the intent of the Board's awarding \$5,000 annually to neighborhood projects. The Board would recommend larger project amounts to Council for a decision. He hoped PARB would support his proposal by either preparing a letter or speaking at the next Budget Committee meeting. He believed his recommendation had a good chance of passing. Some of the other recommendations had to do with Library funding and roads. Roads would always be here, but parklands would be gone.

Mr. Hughes thought that was very positive proposal and would like to support neighborhood projects. Those undertaking the Kellogg Lake project, for example, had a huge challenge and needed support. This type of proposal opened that door as did the neighborhood grants.

Councilor Stone asked where Kronberg Park fell on PARB's radar screen.

Mr. Hughes met with residents who had been doing some work and approached it from a certain perspective. He commended them for taking it on. Once the blackberries were down, it proved to be a severe site with a lot of large pieces of concrete. He felt there could be some restoration in the other area. There was a lot of stormwater going onto the site from 99E and a lot of litter. He thought there was an excellent opportunity for creek side restoration on the land currently owned by the City. He was not sure how the changes to the Lake and Creek would work out, but he felt that if people focused on moving that process forward then there could be a tremendous opportunity. He felt the City needed to support those efforts.

Councilor Collette asked Ms. Herrigel to describe the master planning process and noted Kronberg Park was not on the list of projects for this year.

Ms. Herrigel replied it was an issue of staff time, and there were several parks ahead of Kronberg in the process. In the next couple of months she would suggest a brainstorming group to discuss Kellogg Lake and Kronberg Park.

Councilor Collette hoped the energy would not be dissipated while heading in the direction of a master plan. She noted the Park could eventually be 15 acres.

Ms. Herrigel said there were a number of parcels, and it was important to plan these as a chain of parks. She understood people were frustrated that things were not moving forward more quickly.

Councilor Collette commented that keeping the area cleaned up was a big step. She asked how PARB worked with the Riverfront Board in terms of reviewing the concept plan.

Ms. Herrigel replied to the extent possible she channeled the information.

Mr. Hughes believed the riverfront concept was going in a good direction, and he did not see any major conflicts developing.

Mayor Bernard thought the Council needed to pick a priority and go with it. The Riverfront Board had worked for many years, and at some point the project needed to begin. People commented this was the most beautiful waterfront on the Willamette, so he felt the City

should stick with it and get it done. The Lewelling Neighborhood Park was a good example of focusing on developing a park. He would appreciate any PARB help in focusing on the riverfront. Once the concept plan got through Council, Mayor Bernard intended to make it his fundraising focus.

Kellogg Treatment Plant Comprehensive Plan and Zoning Amendments

Ms. Mangle discussed amendments to the Community Service Overlay and the section that applied to the TriMet park-and-ride. In a lot of communities churches, schools, parks, and utilities were conditional uses of the underlying zone. In Milwaukie they were not allowed outright in any zone but were a conditional use. Most of the proposed amendments were code maintenance to make it more legible and easier for applicants and staff to implement. One major change would be from “community service overlay” to “community service use” as the intent was not a zone change. Most of the proposed amendments were not policy changes but rather clarifications.

There were two new sections. One addressed the major utility facilities that were currently not addressed in the CSO. The proposed amendment would make it a prohibited use and added consequences for nonconforming uses still in place in 2015. The Kellogg Wastewater Treatment Plant was the only thing that would fall under the definition of a major utility facility in the City. Another type of facility might be a power plant. The intent was to have time to work with the County and Service District to find alternatives and decommission the plant in an orderly fashion.

Ms. Mangle reported the changes to the Comprehensive Plan were more policy clarifications. The City had envisioned the decommissioning of the Plant for some time. The Comprehensive Plan as well as the Downtown Land Use Framework Plan addressed finding a better use for the site. The proposed Comprehensive Plan language would say more directly that that was the goal and would set out ways to achieve that goal. The zoning code changes set out the best methods to make that happen. The Planning Commission considered the proposed amendment in a work session, and the draft before Council at this session indicated the Commission’s comments and suggested revisions none of which were substantive.

Councilor Stone referred to 19.321.7 and asked how staff determined the fine amount.

Mr. Asher replied the \$90,000 amount was the pro rata apportionment of the cost to the District for use of the Plant. The City wanted to be in a break-even, neutral position if the noncompliance continued. He believed the \$10,000 per day was a reasonable penalty.

Councilor Collette asked how regulatory changes, such as ammonia discharge, would be dealt with.

Mr. Firestone replied that would be applicable after 2015. In the interim upgrading or enlarging facility was a violation unless the City said it was necessary to abate a nuisance.

Mr. Asher added that a regulatory requirement from the feds or anyone placed on the District would not enable it to modify. The City Code may not prevail in every challenge, and there might be a situation where the City was forced to take some action. Until that situation arose the decision-making would be in the City’s hands.

Councilor Stone pointed out a section where “may” was changed to “shall.” If the approval standards were met then was the Commission not obliged to approve the designation?

Mr. Firestone discussed designated protected features including open space and wetlands.

Councilor Loomis asked if this amendment would hold up.

Mr. Firestone replied if these amendments did come to Council, it would have to make its decision based on land use standards that included statewide land use planning goals and

Metro standards. If the Council decided based on the evidence and seriously considered all the standards, then it could be successfully defended if challenged. The basic thing to be aware of was the statewide planning goals related to facilities and planning. Protecting the natural resources on the waterfront would have to be balanced with the need to have a planned adequate sewer system that met all standards.

Councilor Loomis asked what the effect of Measure 37 would be.

Mr. Firestone replied that Measure 37 spoke specifically to private property. Some may argue that it could include public property if it was held in some proprietary fashion rather than a public area for example.

Mayor Bernard understood the original approval was for a pumping station and not a treatment plant.

Mr. Firestone said about five years ago there was a CSO approval for an amended plant.

Ms. Mangle added it was not the original land use mechanism.

Mr. Firestone said at that time it was accepted as a CSO, but he did not believe this was the type of facility contemplated in the CSO regulations. If one looked at the examples of utility facilities there was nothing this big. The biggest thing listed was a pump station.

Ms. Mangle said the Planning Commission was scheduled for a hearing on May 23 and would provide a recommendation to the Council for a June 20 hearing. Both Clackamas County and the Service District received copies of the proposed amendments and were notified of the proposed schedule.

Mr. Asher said the Citizens Advisory Council (CAC) was starting to put out technical memos, and there was reference to this action.

Councilor Loomis attended the CAC meeting, and while the facilitator was concerned, the proposed amendments were noted but accepted.

Mr. Asher noted that Mr. Swanson had made comments that the City would protect its interests, and this process was transparent. The notice went to the other entities on April 18.

Mr. Firestone added the County knew for some time this concept was coming along, and he had talked about it with the Water Environment District (WES) counsel.

Councilor Collette requested information on all the relevant standards and codes with which this had to pass muster.

Mr. Firestone said when this came before Council the staff report would contain all of the applicable standards.

Mayor Bernard adjourned the work session at 6:51 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 2, 2006**

CALL TO ORDER

Mayor Bernard called the 1981st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Gary Firestone, City Attorney	Beth Ragel, Program Coordinator
Kenny Asher, Community Development/Public Works Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Councilor Stone read a proclamation naming May 10, 2006 as *Workplace Safety Awareness Day* and the week of May 8 – 14, 2006 as *Building Safety Week* in the City of Milwaukie.

Mayor Bernard announced that John C. Smith of Milwaukie had received the Eagle Scout Award.

Mayor Bernard announced, with the concurrence of Council, the appointments of Scott Churchill to the Planning Commission and Bob Cooper, Mart Hughes, and Sonny Newson to the Milwaukie Park and Recreation Board.

Mayor Bernard announced Down to Earth Day on May 6, 2006.

CONSENT AGENDA

It was moved by **Councilor Barnes** and seconded by **Councilor Collette** to approve the City Council minutes of April 4, 2006. Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION – None.

PUBLIC HEARING – None.

OTHER BUSINESS

A. Temporary Event Code Language Amendment – Ordinance

Ms. Ragel reported that the City had a temporary event application and review process; however the current municipal code language did not support the process. Staff had been working to upgrade the language that would regulate all types of temporary events. The proposed language clarified and defined temporary events and gave the City formal authority to issue permits for those events.

Mayor Bernard asked if banners would be included.

Mr. Firestone responded there was a provision that said all event signs shall comply with the Milwaukie sign code, and a banner was considered a sign.

Ms. Ragel added that event permit applicants were told they could not have signage that blocked streets or sidewalks.

Mayor Bernard commented on the permits required for the Farmers' Market banner over McLoughlin Boulevard and noted signs were often placed high on utility poles in the downtown area.

Mr. Firestone said signs in the right-of-way were prohibited unless placed there by the City.

Councilor Loomis asked if Mayor Bernard was concerned that he had been filling out paperwork while others had not. Was there a process for putting a banner over McLoughlin Boulevard?

Mayor Bernard said he applied annually for a permit, but he suggested there might be a permitting process for the downtown area and McLoughlin Boulevard.

Mr. Firestone added banners were expressly addressed in the sign code and were permitted for up to 30 days assuming they were on private property.

It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second reading and adoption of an ordinance repealing Title 10.28 Article 1 and adopting Title 11 – Miscellaneous Permits. Motion passed unanimously. [5:0]

The City Attorney read the ordinance two times by title only.

The City Recorder polled the Council: Councilors Barnes, Stone, Loomis, and Collette and Mayor Bernard voting 'aye.' [5:0]

ORDINANCE 1960:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, REPEALING TITLE 10.28 ARTICLE 1 "PARADES" OF THE MILWAUKIE MUNICIPAL CODE AND ADOPTING TITLE 11 "MISCELLANEOUS PERMITS" TO DEFINE AND REGULATE TEMPORARY EVENTS.

B. Council Reports

Councilor Collette discussed the plans for Milwaukie's hosting the Artrain.

Mr. Asher felt community development was about bringing people together. This idea came to him via e-mail, and he was struck by the notion that the Artrain did bring world-class art into communities that did not have a museum. The organization, based in Michigan, had been doing these rail tours for many years, and Councilor Collette agreed to champion the effort. He was seeking Council approval to host the exhibit and encourage community participation. The high quality collection would attract the art community, the Native American community, and regional educators.

Councilor Collette met with the steering committee that included Vicki Chambers of the North Clackamas School District, Jennifer Wells of the Waldorf School, the Tribes of the Grande Ronde, Bill Mercer of the Portland Art Museum, Ronn Palmer of the Ardenwald Neighborhood who would work on fundraising, and Alisha Hamilton of the Island Station Neighborhood and formerly with Wyden + Kennedy who was working on promotional element. The Artrain featured top Native American artists, and the educational opportunity was an important element. There was a spur behind the Crystal Lake Apartments off Harrison Street and 26th Avenue where the five-car vintage train could stop for four or five days. There was on-street parking, and the committee was working on getting parking in the industrial area. The site was a short walking distance from the TriMet bus #75.

Councilor Stone asked how much this would cost and if the City would need to make a financial contribution.

Councilor Collette said bringing the Artrain to town would cost \$10,000 to \$15,000, and the committee was working on getting donations. She understood Mr. Asher had \$1,000 in community development funds to put toward the event. The real contribution was hosting and participating in the opening ceremony. The train would arrive on May 18, and the reception would be that evening. The tour was free although donations would be accepted.

Councilors Loomis and **Stone** indicated their full support.

Councilor Barnes thought it was a great idea but before the doors were opened for such a major attraction she would have liked to feel more organized. This was an opportunity to bring people in from the outside and likened it to inviting people over for dinner before the kitchen was finished. She had some concerns about traffic in the Historic Neighborhood and the availability of the police department for traffic and security. Next time, she would like more Council input at the beginning and expressed some concern about detracting from Riverfest.

Councilor Collette said Dion Shepard from the Historic Neighborhood was coordinating volunteers, and she had discussed the proposed event with Ed Zumwalt. She understood there were potential funding conflicts, but the sources did not overlap with the possible exception of Providence. Police security would be an important role, and Artrain had a person onboard at all times.

Mr. Asher felt Councilor Barnes' remarks were appropriate, and a logistics plan would be provided. Resources would be stretched, but it would show that Milwaukie was capable of carrying something like this off when it decided to pull together.

Councilor Stone suggested putting up "pardon our mess" signs and to showcase what was going on in Milwaukie.

The group discussed the feasibility of a shuttle between the Sunday Farmers' Market and Artrain to help solve any parking problems.

Councilor Collette announced the Ardenwald summer concerts. Reggie Houston and other New Orleans musicians who had relocated to the Pacific Northwest were scheduled for August 31, and Outback Steakhouse will provide a feast for the occasion.

Councilor Loomis organized a walk for Memorial Day weekend to Pioneer Cemetery.

Councilor Stone announced the 2nd Ardenwald Secret Garden Tour on May 20.

Councilor Barnes announced the Library Plant Sale on May 13.

ADJOURNMENT

It was moved by Councilor Collette and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0] Mayor Bernard adjourned the regular session at 7:48 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

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

From: Paul Shirey, Engineering Director

Subject: Right-of-Way Agreement Extension with ODOT for the McLoughlin Boulevard Project

Date: June 6, 2006 for June 20, 2006 Council Action

Action Requested

Authorize the Mayor to execute a one-year extension to the right-of-way services agreement between the City and ODOT.

Background

The City executed a right-of-way services agreement with ODOT in 2004. Under the terms of the agreement, ODOT provides appraisal, acquisition, relocation and related services to the City for the right-of-way needed to construct improvements to McLoughlin Blvd. The agreement was amended once in May 2005 to increase the budgeted authorization from \$900,000 to \$1.15 million with an expiration date of June 30, 2006. The City is reimbursed 89 cents of every dollar spent on project right-of-way expenses up to the budget authorization (\$1.15 million).

The right-of-way needed for the McLoughlin project has been acquired with one exception. The Cash Spot (10100 SE McLoughlin) rejected the state's offer of \$37,000 in May 2005. The offer was based on an appraised value of \$16 per square foot (s.f.) for 1,020 s.f. of property needed to increase the radius of the corner at Washington and McLoughlin. In order to proceed with construction of the roadway, the property was condemned and \$37,000 was deposited with the Circuit Court in June 2005 to pay for the property plus a three-year temporary easement and the value of a sign to be removed.

In the meantime, the McLoughlin Blvd. project has been constructed and is expected to be complete by June 15, 2006. Over the past ten months the City and ODOT have been working to come to terms with the owners of the Cash Spot. In late May, just prior to the trial date, at the request of the City and owners, the Court agreed to postpone the trial pending further settlement negotiations.

Due to the ongoing negotiations between ODOT and the Cash Spot, the right-of-way services agreement must be extended beyond the June 30, 2006 termination date.

Concurrence

The Finance Director, City Attorney, and ODOT Right-of-Way Manager concur with this action.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

None. ODOT is the project right-of-way agent and the State Attorney General's office is providing legal assistance. Failure to amend the contract would violate the City's project agreement with the State and jeopardize the federal reimbursement for the remainder of the construction contract.

Attachments

Proposed Right-of-Way services agreement amendment with ODOT.

Agreement No. 21,196
Name of Agency: City of Milwaukie

Misc. Contracts and Agreements
No. 21,196
Amendment No. 2

AMENDMENT NO. 2

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as ODOT, and the City of Milwaukie, hereinafter referred to as "Agency", entered into an Agreement on November 21, 2003. Said agreement covers terms and conditions for right-of-way services in respect of the McLoughlin Blvd. Improvements (SE Harrison Street to Kellogg Creek) project.

It has now been determined by ODOT and the Agency that the agreement referenced above, although remaining in full force and effect, shall be amended by this agreement to extend the date of project completion from June 30, 2006 to **June 30, 2007** due to the time required for an on-going litigation

Paragraph 2 of Terms of Agreement, Page 1, which reads:

"2. The work shall begin on the date all required signatures are obtained and shall be completed no later than June 30, 2006, on which date this Agreement automatically terminates unless extended by a fully executed amendment."

Shall be amended to read:

"2. The work shall begin on the date all required signatures are obtained and shall be completed no later than **June 30, 2007** on which date this Agreement automatically terminates unless extended by a fully executed amendment."

Shall be amended to read:

IN WITNESS WHEREOF, the parties hereto have set their hands and their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

Agreement No. 21,196
Name of Agency: City of Milwaukie

On January 31, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways, Executive Deputy Director for Central Services, Deputy Director for OTIA, and the Chief of Staff to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission such as the Traffic Safety Performance Plan, or in a line item in the approved biennial budget.

CITY OF MILWAUKIE, BY AND THROUGH ITS CITY COUNCIL

**STATE OF OREGON,
BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION**

BY: _____
MAYOR

BY: _____
DEOLINDA G. JONES
RIGHT OF WAY MANAGER

DATE: _____

DATE: _____

BY: _____
CITY RECORDER

DEPARTMENT OF JUSTICE APPROVAL AS TO LEGAL SUFFICIENCY REQUIRED WHEN AMOUNT OF FUNDS PAID TO OR FROM STATE AGENCY >\$100,000. AMOUNT PAID BETWEEN STATE AGENCIES IS NOT SUBJECT TO THIS REQUIREMENT.

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO LEGAL SUFFICIENCY (REQ'RD AS NOTED ABOVE)

CITY ATTORNEY
CITY OF MILWAUKIE

ASSISTANT ATTORNEY GENERAL

DATE: _____

DATE: _____



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: June 6, 2006
Subject: **O.L.C.C. Application – ABC Kitchen – 10880 SE McLoughlin Blvd.**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from ABC Kitchen – 10880 S.E. McLoughlin Boulevard.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: June 6, 2006
Subject: **O.L.C.C. Application – Sunny Corner Market – 5010 S.E. Monroe St.**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Sunny Corner Market – 5010 S.E. Monroe Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Stewart Taylor, Finance Director
Date: June 7, 2006 for June 20, 2006 City Council Meeting
Subject: 2006-2007 Fee Schedule

Action Requested

Approve the resolution adopting the fiscal year 2006-2007 fee schedule.

Background

Prior to the beginning of each fiscal year, City department managers review the schedule of fees and charges and recommend changes to reflect actual costs. The attached resolution implements changes in fees ranging from Planning Land Use Applications to Business Registration Lists for fiscal year 2006-2007.

Concurrence

The City Manager and Department Directors concur with the proposed resolution.

Fiscal Impact

No appreciable impacts to budgeted expenditures and revenues are expected.

Work Load Impacts

Minimal work is required to update the fee schedule.

Alternatives

1. Accept the proposed changes.
2. Accept the changes but with modifications.
3. Reject the proposed changes.
4. Take no action.

Attachment

Proposed Resolution and Fee Schedule

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING FEES FOR SERVICES; CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

WHEREAS, The City completed a formal Cost of Services Study and User Fee Analysis in Fiscal Year 1994 – 1995 and updated the Study in Fiscal Year 1995- 1996; and

WHEREAS, The City Council reviewed all costs of services and user fee structures; and

WHEREAS, Affected departments annually review labor costs as well as compare fees with other local jurisdictions and adjust accordingly; and

WHEREAS, The fees set forth in the attached "Fees and Charges" are set at a level to cover the costs of providing the services for which the fees are charged but to not generate any excess income for the City; and

WHEREAS, Fees are set by City Council resolution;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon; determines that the fees, herewith attached as "Fees & Charges", are effective July 1, 2006, and:

Section 1. The attached document entitled "Fees and Charges" is adopted as the official fee schedule of the City of Milwaukie.

Section 2. The fees imposed by this Resolution are not taxes subject the property limitations of Article XI. Section 11(b) of the Oregon Constitution.

Section 3. Any previously adopted fee for which a fee or charge is stated in the attached "Fees and Charges" is amended to conform to the amount stated in the "Fees and Charges". Any previously adopted fee for which a fee or charge is not stated in the attached "Fees and Charges" shall remain at its present amount.

Introduced and adopted by the City Council on June 20, 2006.

This resolution is effective on July 1, 2006.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



CITY HALL
10722 SE Main
MILWAUKIE, OREGON 97222

PHONE: (503) 786-7555
FAX: (503) 652-4433

Fees & Charges

Adopted June 20, 2006—Resolution #??-2006 (except as noted)
Effective July 1, 2006

PLANNING FEES & CHARGES

Land Use Applications:

Accessory Dwelling Unit (Type I)	\$860
Accessory Dwelling Unit (Type II)	\$1,770
Annexation/Initial Zoning/Comp. Plan land use or Other Boundary Change	\$100
Annexation (Expedited)	\$100
Appeal to City Planning Commission/City Council	\$505
Community Service Use	\$1,500 or Actual Cost of Review*
Community Service Use—Wireless Communication Facility (Minor Quasi-Judicial)	Actual Cost of Review*
Reserve deposit	\$1,000
Community Service Use—Wireless Communication Facility (Type II)	\$750
Community Shopping Commercial	\$1,500
Comprehensive Plan/Map Amendment	\$3,210
Conditional Use	\$1,500
Exception, Use	\$1,500
Expedited Land Division	\$4,125
Extension of Planning Commission Approval	\$40
Historic Resource Alteration (Minor Quasi-Judicial)	\$1,500
Historic Resource Alteration (Type I)	\$500
Historic Resource Deletion	\$2,035
Historic Resource Demolition	\$2,035
Historic Resource Designation	\$0
Home Improvement Exceptions	\$800
Lot Consolidation (nonrefundable base fee)	\$250
Additional reserve deposit	\$250
Minor Alteration Review	\$1,500
Minor Land Partition (nonrefundable base fee)	\$750
Additional reserve deposit	\$1,000
Mixed Use Overlay Review	\$1,500
Nonconforming Use/Structure (Minor Quasi-Judicial)	\$1,500
Nonconforming Use/Structure (Type II)	\$800
Partition (Final Plat)	\$150
Partition Replat (nonrefundable base fee)	\$500
Additional reserve deposit	\$500
Planned Development (Final)	\$3,245
Planned Development (Preliminary)	\$2,615
Preapplication Conference	\$125
Preapplication Conference with Transportation Review	\$200
Property Line Adjustment	\$640
Right-of-Way Usage for Wireless Communication Facility	\$250/month per antenna per utility pole
Street or Plat Vacation	\$1,905
Subdivision (Preliminary Plat)	\$2,630
Subdivision (Final Plat)	\$150
Subdivision Replat (nonrefundable base fee)	\$500
Additional reserve deposit	\$1,000
Technical Report Review (Traffic, Wetlands, Geotechnical, Hydrology, etc):	
• Scope	Actual Cost of Scope*
• Reserve deposit:	\$1,000
• Review	Actual Cost of Review*
• Reserve deposit:	
• Traffic	\$2,500
• All others	\$1,000
Temporary Structure (Type I)	\$50
Temporary Structure (Minor Quasi-Judicial)	\$1,010
Transition Area Plan Review	\$1,500
Transportation Plan Review (Minor Quasi-Judicial)	\$1,160
Transportation Plan Review (Type II)	\$565
Transportation Plan Review (Adjustment or Exception) (nonrefundable base fee)	\$750
Additional reserve deposit	\$750
Tree Permit	\$35

City of Milwaukie Fees & Charges

Adopted June 20, 2006/Effective July 1, 2006—Resolution #??-2006 (except as noted)

Page 2

Variance (Minor Quasi-Judicial).....	\$1,500
Variance (Type II) (nonrefundable base fee)	\$800
Additional reserve deposit.....	\$700
Variance (Sign)	\$1,500
Variance (Subdivision)	\$2,080
Water Quality Resource (nonrefundable base fee).....	\$750
Additional reserve deposit.....	\$750
Willamette Greenway Review	\$1,500
Zoning Map Amendment (aka "Zone Change")	\$3,210
Zoning Ordinance Amendment	\$3,210
Zoning Ordinance Amendment Measure 56 Notice (nonrefundable base fee).....	Actual Cost*
Reserve deposit	\$1 per affected property, \$35 minimum

*Actual cost to be determined by Planning Director or Engineering Director

Discounts for Land Use Applications:

Two or more applications*.....	100% for most expensive application/50% discount for all others
Senior citizens and low income citizens**	25% discount (50% for appeals)
NDA-sponsored land use applications related to parks	Fees waived

* Applies to applications which relate to the same parcel of land and which will be considered at the same Planning Commission meeting.
 ** Seniors must be at least 62 years of age. Low-income citizens may qualify for reduced fees by filing an application similar to the form used to apply for reduced sewer and water rates.

Other Reviews & Inspections:

Building Permit Review (Major).....	\$130
Building Permit Review (Minor).....	\$95
Building Permit Review (Short)	\$25
Nonconforming Situation Determination	\$50
Planning Director Interpretation	\$100
Planning Inspection Fee.....	\$50
Property Value Reduction Claims (Measure 37).....	\$1,515
(Additional deposit may be required, to cover contract attorney or appraiser costs, as determined by City Manager.)	
Sign Permit Review.....	\$95

Materials:

Zoning Ordinance.....	\$15
Comprehensive Plan.....	\$18
Comprehensive Plan or Zoning Ordinance Map:	
• 11x17 Xerox handout (Black & White/Color)	No charge/\$2
• GIS maps (e.g., Zoning Map).....	Full sheet \$43; see Engineering fees for other sizes
• Bluelines (e.g., Zoning Map)	All sizes \$5
Comprehensive Plan ancillary documents:	
• Ardenwald Park Master Plan	\$2
• Downtown and Riverfront Land Use Framework Plan	\$18
• Elk Rock Island Natural Area Management Plan.....	\$7.50
• Furnberg Park Master Plan.....	\$5
• Johnson Creek Resources Management Plan	\$15
• Lake Road Multimodal Plan	\$7.50
• North Clackamas PFP	\$25
• Regional Center Master Plan.....	\$15
• Scott Park Master Plan	\$2
• Springwater Corridor Master Plan.....	\$7.50
• Transportation System Plan.....	\$32
• Water Tower Park Master Plan.....	\$2
• Wichita Park Master Plan.....	\$2
• Vision Statement (one page)	No charge
Sign Ordinance	\$5
Land Division Ordinance.....	\$5
Downtown Design Guidelines (Black & White/Color).....	\$10/\$25
Downtown and Riverfront Public Area Requirements.....	\$23
Transportation Design Manual	\$5
Other informational handouts (10 pages or less)	No charge
Other informational handouts (over 10 pages).....	At cost

BUILDING FEES & CHARGES

Section I. Residential Building Permits

A. Structural Permits—Valuation shall be calculated using the most current ICBO Building Valuation Data Table for “good construction” and without the Oregon modifier. The square footage of a dwelling or addition shall be determined from outside exterior wall to outside exterior wall for each level. The square footage of garages, carports, covered porches or patios, and decks shall be calculated separately at the corresponding values from the most current ICBO Building Valuation Data Table. Permit fees for remodels and alterations shall be calculated using the valuation determined by the fair market value as determined by the Building Official.

1. Permit Fee

Permit fees from calculation of total valuation from the square footage of the improvement

\$1-\$500.....	\$18.75
\$501-\$2,000.....	\$18.75 plus \$2.89 per \$C over \$5C to \$2K
\$2,001-\$25,000.....	\$62.10 plus \$11.54 per \$K over \$2K to \$25K
\$25,001-\$50,000.....	\$327.52 plus \$8.58 per \$K over \$25K to \$50K
\$50,001-\$100,000.....	\$542.02 plus \$5.77 per \$K over \$50K to \$100K
\$100,001 and up.....	\$830.52 plus \$4.88 per \$K over \$100K
Minimum permit fee.....	\$75.00

2. Initial Plan Review Fees 65% of the permit fee

3. Plan Review Fees Required/Requested by Changes, Additions, Revisions.....\$70.00/hr. (min. charge 1 hr.)

4. Third Party Plan Review Fee (for transfer of plan review to a third party)..... 10% of the permit fee (\$65.00 min.)

B. Mechanical Permits—Fees per current Mechanical Permit application

Minimum Permit Fee \$60.00

1. HVAC

For the installation of:

a. Air handling unit including ducts:	
Up to 10,000 cfm.....	\$23.00
Over 10,000 cfm.....	\$26.00
b. Air conditioning/heat pump (site plan required).....	\$40.00
c. Alteration of existing HVAC system.....	\$18.50
d. Boiler/compressor.....	\$18.50
e. Install/relocate/replace furnace/burner including ductwork and vent:	
Up to 100,000 BTU/H.....	\$18.50
Over 100,000 BTU/H.....	\$22.00
f. Install/relocate/replace heaters (room, suspended, wall- or floor-mounted).....	\$18.50
g. Vent for other than furnace.....	\$18.50

2. Environmental Exhaust and Ventilation

For the installation of:

a. Appliance vent.....	\$15.00
b. Dryer exhaust.....	\$12.00
c. Each hood that is served by a mechanical exhaust or air conditioning.....	\$10.00
d. Exhaust system with single duct (bath fan) each.....	\$8.50
e. Exhaust system apart from heating or air conditioning.....	\$12.00

3. Fuel Piping and Distribution

a. LPG-NG-Oil fuel piping:	
Up to 4 outlets (includes gas tag).....	\$22.00
Each additional outlet over 4.....	\$2.00

- 4. Other Listed Application or Equipment**
 - a. Decorative fireplace or insert \$35.00
 - b. Woodstove/pellet stove.....\$47.00
 - c. For each appliance or piece of equipment regulated by the code but not classed in other appliance categories, for which no other fee is listed in this code, or for which there is an alteration or extension of an existing mechanical system.....\$18.50

- 5. Stand-alone Fire Suppression Systems (requires a backflow device installed by licensed plumbing contractor or persons exempt from licensing)**
 - 0 sq. ft. to 2,000 sq. ft. \$90.00
 - 2,001 sq. ft. to 3,600 sq. ft. \$135.00
 - 3,601 sq. ft. to 7,200 sq. ft. \$169.00
 - \$7,201 sq. ft. and greater \$315.00

C. Plumbing Permits—Fees per current Plumbing Permit application

- 1. Total Bathrooms Per Dwelling**
 - 1 bath dwelling (includes 1 kitchen)\$335.00
 - 2 bath dwelling (includes 1 kitchen)\$370.00
 - 3 bath dwelling (includes 1 kitchen) \$440.00
 - Additional bathroom/kitchen \$175.00

Includes the first 100 ft. of water piping, sanitary and storm sewer lines, hose bibs, icemakers, underfloor low point drains, and rain drain packages that include the piping, gutters, downspouts, and perimeter system.

- 2. Additions, Alterations, and Repairs..... \$16.75/fixture**

- 3. Building Sewer Connection..... \$57.00**

- 4. Multipurpose or Continuous Loop Fire Suppression Systems**
 - 0 sq. ft. to 2,000 sq. ft. \$90.00
 - 2,001 sq. ft. to 3,600 sq. ft. \$135.00
 - 3,601 sq. ft. to 7,200 sq. ft. \$169.00
 - \$7,201 sq. ft. and greater \$315.00

- 5. Minimum permit fee..... \$60.00**

D. Other Inspections and Fees

- 1. Inspections outside of normal business hours \$98.00/hr. (min. charge 2 hrs.)**
 (Must be preapproved by applicant)

- 2. Inspections for which no fee is specifically indicated\$68.00/hr.**
 (Must be preapproved by applicant)

- 3. Reinspection fee\$58.00/hr.**

- 4. Replacement sheets \$23.00/sheet**

- 5. The minimum fee shall be..... \$50.00**

- 6. Investigation feeAmount of subject permit fee**

- 7. Temporary Certificate of Completion \$50.00**

E. **Manufactured Dwelling and Cabana Installation Permits**— All jurisdictions in the Tri-County area shall charge a single fee for the installation and set-up of manufactured homes. This single fee shall include the concrete slab, runners, or foundations when they comply with the prescriptive requirements of the Oregon Manufactured Dwelling standard, electrical feeder and plumbing connections, and all cross-over connections.

- 1. **Installation permit**\$445.00
- 2. **Earthquake-resistant bracing**..... \$135.00
- 3. **Reinspection**\$135.00
- 4. **Statewide code development, training and monitoring fee** (in addition to all other manufactured dwelling fees and charges)..... \$30.00

Section II. Commercial/Industrial Building Permits

A. **Structural Permits**—Valuation shall be calculated using the most current ICBO Building Valuation Data Table, using the occupancy and construction type as determined by the Building Official, with no Oregon modifier, multiplied by the square footage of the structure to determine the valuation, or value as stated by the applicant, whichever is greater. When the construction or occupancy type does not fit the ICBO Building Valuation Data Table, the valuation shall be determined by the Building Official with input from the applicant.

- 1. **Permit Fee**
Permit fees from calculation of total valuation from the square footage of the improvement
 - \$1-\$500.....\$18.75
 - \$501-\$2,000..... \$18.75 plus \$2.89 per \$C over \$5C to \$2K
 - \$2,001-\$25,000..... \$62.10 plus \$11.54 per \$K over \$2K to \$25K
 - \$25,001-\$50,000..... \$327.52 plus \$8.58 per \$K over \$25K to \$50K
 - \$50,001-\$100,000..... \$542.02 plus \$5.77 per \$K over \$50K to \$100K
 - \$100,001 and up.....\$830.52 plus \$4.88 per \$K over \$100K
 - Minimum permit fee\$75.00
- 2. **Initial Plan Review Fees** 65% of the permit fee
- 3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions**.....\$70.00/hr. (min. charge 1 hr.)
- 4. **Fire and Life Safety Plan Review Fee** (commercial only)40% of structural permit fee
(Based on valuation of total improvements or \$50.00/hr. to review a Fire and Life Safety Master Plan)
(Hourly charge must be approved by Applicant)
- 5. **Seismic Site Hazard Report Review** 1% of total structural and mechanical fees

B. **Mechanical Permits**—Valuation shall be calculated on the value of the equipment and installation costs.

- 1. **Use this section for commercial installation, replacement or relocation of nonportable mechanical equipment or mechanical work not covered previously. Indicate the value of all mechanical labor, materials, and equipment.**
Permit Fee:
 - \$1 to \$5,000.....\$60.00
 - \$5,001 to \$10,000.....\$60.00 plus \$1.71 per \$C over \$5K
 - \$10,001 to \$100,000.....\$145.50 plus \$10.50 per \$K over \$10K
 - \$100,001 and up.....\$1,090.50 plus \$7.25 per \$K over \$100K
 - Minimum permit fee\$60.00
- 2. **Plan review fee**..... 25% of mechanical permit fee
- 3. **Plan Review Fees Required/Requested by Changes, Additions, Revisions**.....\$70.00/hr. (min. charge 1 hr.)

C. Plumbing Permits

- 1. **Each fixture**\$16.75
- 2. **Utilities per 100 feet**.....\$62.00
 - a. Catch basin\$27.00
 - b. Drywells each.....\$27.00
 - c. Footing drain (per 100 lin. ft.).....\$53.00
 - d. Rain drain connector.....\$27.00
 - e. Manholes each.....\$53.00
- 3. **Piping (per 100 lin. ft.)**\$62.00
- 4. **Building Sewers (per 100 lin. ft.)**.....\$62.00
- 5. **Initial Plan Review Fees** 30% of the Plumbing permit fees
- 6. **Plan Review Fees Required/requested by Changes, Additions, or Revisions**\$70.00/hr. for commercial
- 7. **Minimum permit fee**.....\$60.00
- 8. **Medical Gas Permits:** Valuation shall be calculated on the value of the equipment and installation costs.

Medical Gas Permit Fees:

- \$1-\$5,000.....\$60.00
- \$5,001-\$10,000.....\$60.00 plus \$1.71 per \$C over \$5K
- \$10,001-\$100,000.....\$145.50 plus \$10.50 per \$K over \$10K
- \$100,001 and up.....\$1,090.50 plus \$7.25 per \$K over \$100K
- Minimum permit fee\$60.00

D. Other Inspections and Fees

- 1. **Inspections outside of normal business hours** \$98.00/hr. (min. charge 2 hrs.)
 (Must be preapproved by applicant)
- 2. **Inspections for which no fee is specifically indicated**\$68.00/hr.
 (Must be preapproved by applicant)
- 3. **Reinspection fee**.....\$58.00/hr.
- 4. **Replacement sheets**.....\$23.00/sheet
- 5. **The minimum fee shall be**.....\$50.00
- 6. **Investigation fee**Amount of subject permit fee
- 7. **Temporary Certificate of Occupancy**\$180.00
- 8. **Change of use/occupancy**.....\$300.00

E. Deferred Submittal Fee (in addition to project plan review fee)
 (OAR 918-050-0170).....\$250.00 + 10% of deferred item permit fee
 per deferred submittal (minimum \$300.00)

F. Phased Permit Fee (in addition to project plan review fee)
 (OAR 918-050-0160).....\$250.00 + 10% of total project permit fee per phase
 (minimum \$300.00, not to exceed \$1,500 per phase)

Section III. Permit Related Fees

- A. A State surcharge shall be collected in an amount as required by State law.
- B. Electrical permit fees shall be as adopted in Resolution 19-2003, adopted by the City Council on May 6, 2003 (effective July 1, 2003) with the following exceptions:
 - 1. The state surcharge shall be the amount required by State law as noted in Section III.A of this resolution.
 - 2. The Minor Labels program will be deleted as required by SB 512 and SB 587.
- C. **House Moving/Demolition Permits**
 - 2,000 sq. ft. or less \$78.00
 - Each additional 1,000 sq. ft. \$38.00
 - Plan Review Fee 65% of the permit fee
- D. **Prefabricated Structures**(Per current permit fees)
- E. **Temporary Structures**.....(Per current permit fees)
- F. **Manufactured Dwelling Parks and Mobile Home Parks**..... Per current State of Oregon permit fee (OAR.Division 650.Table 1) plus 30%
- G. **Recreational Parks and Organizational Camps** Per current State of Oregon permit fee (OAR.Division 650.Table 1) plus 30%
- H. **Miscellaneous Building Valuations**
 - 1. **Retaining Walls**
 - To 8 ft. high, including footing..... \$254.00/lin. ft.
 - Over 8 ft. high \$276.00/lin. ft.
 - 2. **Fences**
 - Over 6 ft. to 8 ft. high \$15.00/lin. ft.
 - 3. **Concrete Slabs on Grade Foundations**—For house moves, modular buildings, pole buildings, etc.
 - Plain concrete:
 - 4-in. slab \$3.00/sq. ft.
 - 5-in. slab \$3.10/sq. ft.
 - 6-in. slab \$3.25/sq. ft.
 - Reinforced concrete Add \$1.15/sq. ft.
 - 4. **Crawl Space Foundations**
 - For house moves, modular, etc. \$7.50/sq. ft.
 - 5. **Accessory Buildings**
 - With floor slab \$55.00/sq. ft.
 - Without floor slab \$28.00/sq. ft.
 - 6. **Pole Buildings**
 - Up to and including 14-ft. eave height..... \$32.00/sq. ft.
 - Over 14-ft. eave height \$45.00/sq. ft.
 - For insulation:
 - Roof—add \$.35/sq. ft.
 - Slab—add \$.35/sq. ft.
 - Wall—add..... \$.35/sq. ft.
 - For slabs on grade..... see Section III.H.3 for fees
 - 7. **Swimming Pools** (pool only/deck extra)
 - Concrete or gunite \$70.00/sq. ft.
 - Plastic below ground \$45.00/sq. ft.

Section IV. In-Fill and Grading

A. In-Fill and Grading Permit Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards	\$35.00
101 to 1,000 cubic yards	\$45.00
1,001 to 10,000 cubic yards	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

B. In-Fill and Grading Plan Review Fees

50 cubic yards or less.....	No charge
51 to 100 cubic yards	\$35.00
101 to 1,000 cubic yards	\$45.00
1,001 to 10,000 cubic yards	\$65.00
10,001 cubic yards or more.....	Total hourly cost*

*Cost to include supervision, overhead, equipment, hourly wages, and benefits of employees involved

C. Other Inspections and Fees

1. Inspections outside normal business hours..... \$75.00/hr. (min. charge 2 hrs.)
2. Reinspection fee.....\$75.00/hr.
3. Inspections for which no fee is specifically indicated.....\$75.00/hr.

ENGINEERING FEES & CHARGES

Inspections:

Right-of-Way Permit Inspection.....	\$135
Subdivision Const. Inspect. (Street/Sewer/Water/Storm Sewer).....	5.5% of Total Const. Cost (min. \$500)
Public Impvts. Const. Inspection (Comml./Ind./Misc. Dev.).....	5.5% of Total Const. Cost (min. \$500)
Street Opening Inspection Fee.....	\$85
Right-of-way/Street Opening Reinspection (beyond standard of 2 for R-O-W and 1 for st opening).....	\$85
Street Opening Deposit.....	\$1,000*

*Performance bond amount at discretion of City Engineer

Aerial Maps (Engineering):

All sizes.....	\$5
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Aerial Maps (GIS):

Full Sheet.....	\$50
1/2 Sheet.....	\$40
1/4 Sheet.....	\$30
1/8 Sheet.....	\$20

GIS Maps (standard—no special request):

Full Sheet.....	\$45
1/2 Sheet.....	\$35
1/4 Sheet.....	\$25
1/8 Sheet.....	\$15

GIS Maps (special request ADD \$50/hr over 1 hour):

Full Sheet.....	\$95
1/2 Sheet.....	\$85
1/4 Sheet.....	\$75
1/8 Sheet.....	\$65

Bluelines:

All sizes.....	\$5
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Microfilm:

All sizes.....	\$5
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Electronic Drawings:

Paper—all sizes.....	\$5-\$45/hr. for additional work
Other format.....	\$7
Reproduction charges.....	\$1 for first page/\$.10 each additional page

Miscellaneous:

Sewer Inspection (residential).....	\$57
Sewer Dye Test.....	\$57
Moving Buildings.....	\$200 + \$65/hr. staff time + \$1,000 deposit
Sewer TV Inspection Tape.....	\$25

Erosion Control:

Technical Guidance Handbook.....	No charge
Minimum Charge for Clearing/Construction**.....	\$75
Minimum charge applies if:	
• Over 500 sq. ft. of disturbed soil	
• Not in or around a sensitive area (NR Zone, wetlands, conservancies, and streams)	
• Value of structure/remodel doesn't exceed \$20,000	
Clearing/Construction for Single-Family Residential.....	\$380
Rate if certified in erosion control***.....	\$225
Clearing/Construction for Multifamily Residential.....	\$490
Rate if certified in erosion control***.....	\$335
	(additional \$40 per ½ acre over 1 acre)
Clearing/Construction for Subdivision/Commercial/Industrial.....	\$623
Rate if certified in erosion control***.....	\$467
	(additional \$40 per ½ acre over 1 acre)
Additional Site Visit (due to code enforcement).....	\$65

**Erosion control certification discount does not apply

***Certification requires 4 hours of training in erosion control every 2 years

WATER FEES & CHARGES

Service and Equipment:

Connect Service 5/8" or 3/4" Residential Service.....	\$2,460
Connect Service 1".....	\$2,547
Connect Service 1 1/2".....	\$2,923
Connect Service 2".....	\$3,067

Equipment:

3/4" Meter.....	\$208
1" Meter.....	\$301
1 1/2" Meter.....	\$510
2" Meter.....	\$625
Hydrant Meter Deposit	\$579

Miscellaneous:

Delinquent Account—Past Due Notice*	\$10
Delinquent Account—Notice of Termination*	\$30
Failed Arrangement Shut-off	\$30
After-hours Restoration of Service*	\$80
(Monday-Friday 5:00-8:00 p.m.; Saturday and Sunday 8:00 a.m.-5:00 p.m.)	
Accounts remaining delinquent more than 3 months*	10 percent/year added to outstanding balance (to pay City's interest and collection costs)
Information Research	\$44/hr.
Reimbursement District Fee	To be determined by scope of project

POLICE FEES & CHARGES

Permits/Licenses:

Adult Business	\$372
Alarm Permit—Residential (seniors 60+ exempt from fee requirement).....	\$15
Alarm Permit—Business	\$21
Gun Background Check	\$21
Liquor License (Original Application)	\$108
Liquor License (Name or other change)	\$83
Liquor License (Renewal Application)	\$36
Liquor License (Temporary License)	\$10

Police Reports:

Dispatch Tape Copy	\$26
Video Tape Copy.....	\$31
Police Report.....	\$15
Copy of Field Contact Report (FCR card)	\$5

Police Services:

False Alarm Response (first three).....	No charge
False Alarm Response (each alarm after third)	\$160
Vehicle Impound.....	\$50
Fingerprinting	\$10
Loud Party Response—first response.....	Warning
Loud Party Response—second response and/or <u>each</u> subsequent response in 24-hr. period	\$50

LIBRARY FEES & CHARGES

Charges:

Microfilm Copies..... \$0.10

Fines:

Overdue Fine (all materials)\$0.25/day (\$3 max.)
Missing Barcode..... \$1
Missing Book Jacket..... \$2
Missing Barcode and Book Jacket \$3
Books on Tape Cassette \$7
Juvenile or Adult Books on Tape—Vinyl Case \$5
Juvenile Kit—Plastic Bag \$2
CD Case..... \$1
Video Box..... \$3
Missing Pages..... Refer to Librarian
Lost Book Actual Retail Cost
Damaged Material Replacement Cost
Lost Library Card..... \$1
Public Computer Printing..... First 5 free then \$0.10 per page

RECYCLING FEES & CHARGES

Down to Earth Day:

Automobile Load	\$2
Station Wagon.....	\$2
Small Pickup	\$5
Standard Pickup.....	\$6
Large Truck	\$8
Small Trailer	\$5
Large Trailer.....	\$6
Unmounted Tires (each).....	\$1.50
Residual Solid Waste Permit Registration.....	\$100
Residual Solid Waste Tonnage Fee	\$2.80/ton

TELECOMMUNICATIONS FEES & CHARGES

Registration fee	\$36
Franchise review deposit.....	\$5,000

MISCELLANEOUS FEES & CHARGES

Photocopier:

Photocopier—Staff Assisted Research Required	\$0.30
Photocopier—Unassisted	\$0.05

Other Copying/Service:

Audio tape	\$10
Video tape	\$20
Transcription (per hour)	\$20

Photographs:

Photo CD	\$5 per disc
Color photos on photo quality paper	\$3 per page
Color photos on standard copy paper	\$1 per page

Financial Reports:

Comprehensive Annual Financial Report	\$10
Annual Adopted Budget	\$10

Miscellaneous:

Sidewalk Bench annual fee	\$74
Sidewalk Use—Vendor Fee	\$10
Major Community Event	Actual Direct Cost
Block Party—Misc. Event	Actual Direct Cost
Returned Check Charge	\$30
Lien Search	\$25
Postage and Handling	\$2

BILLABLE RATES

Community Development and Public Works Administration:

Community Development and Public Works Director	\$60
Resource and Economic Development Specialist	\$35
Office Supervisor	\$35
Administrative Specialist III	\$35
Administrative Specialist II	\$30

Engineering:

Engineering Director	\$60
Civil Engineer	\$50
Associate Engineer	\$45

Planning:

Planning Director	\$60
Associate Planner	\$40
Assistant Planner	\$35

Building:

Building Official	\$50
Building Inspector	\$40
Permit Technician	\$35

Operations:

Operations Director	\$60
Operations Supervisor	\$50
Fleet Supervisor	\$45
Facilities Maintenance Coordinator	\$40
Water Quality Coordinator	\$40
Utility Specialist II	\$40
Mechanic	\$35
Utility Worker II	\$35
Utility Specialist I	\$30
Utility Worker I	\$30

Code Compliance:

Code Compliance Coordinator	\$35
Code Compliance Assistant	\$30

BUSINESS REGISTRATION FEES & CHARGES

Standard base fee	\$100
Reduced standard base fee*	\$40
New business commencing between July 1 and December 31.....	\$50
Change in business ownership fee.....	\$10
Fee for each FTE	\$3
Penalty	\$10% of base fee each calendar month and fraction thereof delinquent
Temporary Business (2 weeks or less)	\$25
Business registration list.....	\$30
Duplicate receipt.....	\$10

*The purpose of the reduced standard base fee is to provide a cost benefit for small businesses already registered with the city. First time applicants and start-up businesses are not eligible. To qualify, a registered business must submit acceptable documentation showing annual gross income (receipts) from the business of less than \$10,000.00 in a calendar year. The only acceptable documentation is the one or two year’s previous IRS Form 1040 together with a copy of Schedule C (home-based businesses) or Schedule E (rental properties). If the documents are presented in person, the city will not retain a copy. If the documents are mailed, the copies will be reviewed and shredded.

The reduced fee is only available to qualified businesses through January 31st of each renewal year. All renewals submitted after January 31st must pay the full standard base fee.

PARKING FEES & CHARGES

Monthly Permit	\$25
6-month prepay permit	\$125
Parking without a permit.....	\$25
Overtime parking	\$15
Parking in disabled space	\$250 min./\$600 max.



CITY HALL
10722 SE Main
MILWAUKIE, OREGON 97222

PHONE: (503) 786-7555
FAX: (503) 652-4433

Fees & Charges

Adopted June 20, 2006—Resolution #??-2006 (except as noted)
Effective July 1, 2006

PLANNING FEES & CHARGES

Land Use Applications:

Accessory Dwelling Unit (Type I)	\$860
Accessory Dwelling Unit (Type II)	\$1,770
Annexation/Initial Zoning/Comp. Plan land use or Other Boundary Change	\$3,210 \$100
Annexation (Expedited)	\$1,175 \$100
Appeal to City Planning Commission/City Council	\$505
Community Service Overlay Use	\$1,500 or Actual Cost of Review*
Community Service Use—Wireless Communication Facility Review (Minor Quasi-Judicial)	Actual Cost of Review*
Reserve deposit	\$1,000
Community Service Overlay Use —Wireless Communication Facility (Type II)	\$750
Community Shopping Commercial	\$1,500
Comprehensive Plan/Map Amendment	\$3,210
Conditional Use	\$1,500
Exception, Use	\$1,500
Expedited Land Division	\$4,125
Extension of Planning Commission Approval	\$40
Historic Resource Alteration (Minor Quasi-Judicial)	\$1,500
Historic Resource Alteration (Type I)	\$500
Historic Resource Deletion	\$2,035
Historic Resource Demolition	\$2,035
Historic Resource Designation	\$0
Home Occupation Application	\$25/yr
Home Improvement Exceptions	\$800
Lot Consolidation (nonrefundable base fee)	\$250
Additional reserve deposit	\$250
Minor Alteration Review	\$1,500
Minor Land Partition (nonrefundable base fee)	\$750
Additional reserve deposit	\$1,000
Mixed Use Overlay Review	\$1,500
Nonconforming Use/Structure (Minor Quasi-Judicial)	\$1,500
Nonconforming Use/Structure (Type II)	\$800
Partition (Final Plat)	\$150
Partition Replat (nonrefundable base fee)	\$500
Additional reserve deposit	\$500
Planned Development (Final)	\$3,245
Planned Development (Preliminary)	\$2,615
Preapplication Conference	\$75 \$125
Preapplication Conference with Transportation Review	\$150 \$200
Property Line Adjustment	\$640
Right-of-Way Usage for Wireless Communication Facility	\$250/month per antenna per utility pole
Street or Plat Vacation	\$1,905
Subdivision (Preliminary Plat)	\$2,630
Subdivision (Final Plat)	\$150
Subdivision Replat (nonrefundable base fee)	\$500
Additional reserve deposit	\$1,000
Technical Report Review (Traffic, Wetlands, Geotechnical, Hydrology, etc):	
• Scope	Actual Cost of Scope*
• Reserve deposit:	\$1,000
• Review	Actual Cost of Review*
• Reserve deposit:	
• Traffic	\$2,500
• All others	\$1,000
Temporary Structure (Type I)	\$50
Temporary Structure (Minor Quasi-Judicial)	\$1,010
Transition Area Plan Review	\$1,500
Transportation Plan Review (Minor Quasi-Judicial)	\$1,160
Transportation Plan Review (Type II)	\$565
Transportation Plan Review (Adjustment or Exception) (nonrefundable base fee)	\$750
Additional reserve deposit	\$750
Tree Permit	\$35

City of Milwaukie Fees & Charges
 Adopted June 20, 2006/Effective July 1, 2006—Resolution #??-2006 (except as noted)
 Page 2

Variance (Minor Quasi-Judicial).....	\$1,500
Variance (Type II) (nonrefundable base fee)	\$800
Additional reserve deposit.....	\$700
Variance (Sign)	\$1,500
Variance (Subdivision)	\$2,080
Water Quality Resource (nonrefundable base fee).....	\$750
Additional reserve deposit.....	\$750
Willamette Greenway Review	\$1,500
Zoning Map Amendment (aka "Zone Change")	\$3,210
Zoning Ordinance Amendment	\$3,210
Zoning Ordinance Amendment Measure 56 Notice (nonrefundable base fee).....	Actual Cost*
Reserve deposit	\$1 per affected property, \$35 minimum

***Actual cost to be determined by Planning Director or Engineering Director**

Discounts for Land Use Applications:

Two or more applications*.....	100% for most expensive application/50% discount for all others
Senior citizens and low income citizens**	25% discount (50% for appeals)
NDA-sponsored land use applications related to parks	Fees waived

* Applies to applications which relate to the same parcel of land and which will be considered at the same Planning Commission meeting.
 ** Seniors must be at least 62 years of age. Low-income citizens may qualify for reduced fees by filing an application similar to the form used to apply for reduced sewer and water rates.

Other Reviews & Inspections:

Building Permit Review (Major).....	\$130
Building Permit Review (Minor).....	\$95
Building Permit Review (Short)	\$25
Nonconforming Situation Determination	\$50
Planning Director Interpretation	\$50 \$100
Planning Inspection Fee.....	\$50
Property Value Reduction Claims (Measure 37)	\$1,515
(Additional deposit may be required, to cover contract attorney or appraiser costs, as determined by City Manager.)	
Sign Permit Review.....	\$95

Materials:

Zoning Ordinance.....	\$15
Comprehensive Plan.....	\$18
Comprehensive Plan or Zoning Ordinance Map:	
• 11x17 Xerox handout (Black & White/Color)	No charge/\$2
• GIS maps (e.g., Zoning Map).....	Full sheet \$43; see Engineering fees for other sizes
• Bluelines (e.g., Zoning Map).....	All sizes \$5
Comprehensive Plan ancillary documents:	
• Ardenwald Park Master Plan	\$2
• Downtown and Riverfront Land Use Framework Plan	\$18
• Elk Rock Island Natural Area Management Plan	\$7.50
• Furnberg Park Master Plan.....	\$5
• Johnson Creek Resources Management Plan	\$15
• Lake Road Multimodal Plan	\$7.50
• North Clackamas PFP	\$25
• Regional Center Master Plan	\$15
• Scott Park Master Plan	\$2
• Springwater Corridor Master Plan.....	\$7.50
• Transportation System Plan.....	\$32
• Water Tower Park Master Plan.....	\$2
• Wichita Park Master Plan.....	\$2
• Vision Statement (one page)	No charge
Sign Ordinance	\$5
Land Division Ordinance	\$5
Downtown Design Guidelines (Black & White/Color).....	\$10/\$25
Downtown and Riverfront Public Area Requirements	\$23
Transportation Design Manual.....	\$5
Other informational handouts (10 pages or less)	No charge
Other informational handouts (over 10 pages).....	At cost

ENGINEERING FEES & CHARGES

Inspections:

Right-of-Way Permit Inspection.....	\$135
Subdivision Const. Inspect. (Street/Sewer/Water/Storm Sewer)	5.5% of Total Const. Cost (min. \$500)
Public Impvts. Const. Inspection (Comml./Ind./Misc. Dev.)	5.5% of Total Const. Cost (min. \$500)
Street Opening Inspection Fee.....	\$85
Right-of-way/Street Opening Reinspection (beyond standard of 2 for R-O-W and 1 for st opening)	\$85
Street Opening Deposit.....	\$1,000*

*Performance bond amount at discretion of City Engineer

Aerial Maps (Engineering):

All sizes.....	\$5
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Aerial Maps (GIS):

Full Sheet.....	\$43 \$50
1/2 Sheet.....	\$33 \$40
1/4 Sheet.....	\$23 \$30
1/8 Sheet.....	\$12 \$20

GIS Maps (standard—no special request):

Full Sheet.....	\$43 \$45
1/2 Sheet.....	\$33 \$35
1/4 Sheet.....	\$23 \$25
1/8 Sheet.....	\$12 \$15

GIS Maps (special request ADD \$45 \$50/hr over 1 hour):

Full Sheet.....	\$95
1/2 Sheet.....	\$84 \$85
1/4 Sheet.....	\$74 \$75
1/8 Sheet.....	\$64 \$65

Bluelines:

All sizes.....	\$5
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Microfilm:

All sizes.....	\$5
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Electronic Drawings:

Paper—all sizes	\$5-\$45/hr. for additional work
Other format.....	\$7
Reproduction charges	\$1 for first page/\$.10 each additional page

Miscellaneous:

Sewer Inspection (residential)	\$57
Sewer Dye Test.....	\$57
Moving Buildings	\$200 + \$65/hr. staff time + \$1,000 deposit
Sewer TV Inspection Tape	\$25

Erosion Control:

Technical Guidance Handbook	No charge
Minimum Charge for Clearing/Construction**	\$75
Minimum charge applies if:	
• Over 500 sq. ft. of disturbed soil	
• Not in or around a sensitive area (NR Zone, wetlands, conservancies, and streams)	
• Value of structure/remodel doesn't exceed \$20,000	
Clearing/Construction for Single-Family Residential.....	\$380
Rate if certified in erosion control***	\$225
Clearing/Construction for Multifamily Residential	\$490
Rate if certified in erosion control***	\$335
	(additional \$40 per ½ acre over 1 acre)
Clearing/Construction for Subdivision/Commercial/Industrial	\$623
Rate if certified in erosion control***	\$467
	(additional \$40 per ½ acre over 1 acre)
Additional Site Visit (due to code enforcement).....	\$65

**Erosion control certification discount does not apply

***Certification requires 4 hours of training in erosion control every 2 years

LIBRARY FEES & CHARGES

Charges:

Microfilm Copies..... \$0.10

Fines:

Overdue Fine (all materials)\$0.25/day (\$3 max.)
Missing Barcode..... \$1
Missing Book Jacket..... \$2
Missing Barcode and Book Jacket \$3
Books on Tape Cassette \$7
Juvenile or Adult Books on Tape—Vinyl Case \$5
Juvenile Kit—Plastic Bag \$2
CD Case..... \$1
Video Box..... \$3
Missing Pages..... Refer to Librarian
Lost Book Actual Retail Cost
Damaged Material Replacement Cost
Lost Library Card..... ~~\$2~~ **\$1**
Public Computer Printing..... First 5 free then \$0.10 per page

WATER FEES & CHARGES

Service and Equipment:

Connect Service 5/8" or 3/4" Residential Service.....	\$2,460
Connect Service 1".....	\$2,547
Connect Service 1 1/2".....	\$2,923
Connect Service 2".....	\$3,067

Equipment:

3/4" Meter.....	\$208
1" Meter.....	\$301
1 1/2" Meter.....	\$510
2" Meter.....	\$625
Hydrant Meter Deposit	\$579

Miscellaneous:

Delinquent Account—Past Due Notice*	\$5 \$10
Delinquent Account—Notice of Termination*	\$25 \$30
Failed Arrangement Shut-off.....	\$30
After-hours Restoration of Service*	\$80
(Monday-Friday 5:00-8:00 p.m.; Saturday and Sunday 8:00 a.m.-5:00 p.m.)	
Accounts remaining delinquent more than 3 months*	10 percent/year added to outstanding balance (to pay City's interest and collection costs)
Information Research	\$44/hr.
Reimbursement District Fee	To be determined by scope of project

BILLABLE RATES

Community Development and Public Works Administration:	
Community Development and Public Works Director	\$60
Project Manager	\$40
Resource and Economic Development Specialist	\$35
Office Supervisor	\$35
Administrative Specialist III	\$35
Office Assistant Administrative Specialist II	\$30 \$30
 Engineering:	
Engineering Director	\$55 \$60
Civil Engineer	\$45 \$50
Associate Engineer	\$40 \$45
 Planning:	
Planning Director	\$50 \$60
Associate Planner	\$40
Assistant Planner	\$35
 Building:	
Building Official	\$50
Building Inspector	\$40
Permit Specialist Technician	\$35
 Fleet and Facilities:	
Public Works Operations:	
Fleet/Facilities Manager Operations Director	\$45 \$60
Operations Supervisor	\$50
Fleet Supervisor	\$45
Facilities Maintenance Worker Coordinator	\$35 \$40
Water Quality Coordinator	\$40
Utility Specialist II	\$40
Mechanic	\$35
Utility Worker II	\$35
Utility Specialist I	\$35 \$30
Utility Worker I	\$30
 Code Compliance:	
Code Compliance Coordinator	\$30 \$35
Code Compliance Assistant	\$25 \$30

BUSINESS REGISTRATION FEES & CHARGES

Standard base fee	\$100
Reduced standard base fee*	\$40
New business commencing between July 1 and December 31	\$50
Change in business ownership fee.....	\$5 \$10
Fee for each FTE	\$3
Penalty	\$10% of base fee each calendar month and fraction thereof delinquent
Temporary Business (2 weeks or less)	\$25
Business registration list.....	\$20 \$30
<u>Duplicate Receipt.....</u>	<u>\$10</u>

~~*If the applicant's annual gross income from the subject activity is less than \$10,000. Evidence of an applicant's gross income shall be presented at the time application is made. Acceptable documentation will be the most recently filed IRS form 1040, including Schedule C, Profit & Loss From Business. If this information is presented in person, no copy will be made. If documentation is mailed, the copy will be shredded after verification.~~

*The purpose of the reduced standard base fee is to provide a cost benefit for small businesses already registered with the city. First time applicants and start-up businesses are not eligible. To qualify, a registered business must submit acceptable documentation showing annual gross income (receipts) from the business of less than \$10,000.00 in a calendar year. The only acceptable documentation is the one or two year's previous IRS Form 1040 together with a copy of Schedule C (home-based businesses) or Schedule E (rental properties). If the documents are presented in person, the city will not retain a copy. If the documents are mailed, the copies will be reviewed and shredded.

The reduced fee is only available to qualified businesses through January 31st of each renewal year. All renewals submitted after January 31st must pay the standard base fee.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Stewart Taylor, Finance Director

Date: June 7, 2006 for June 20, 2006 City Council Meeting

Subject: 2006-2007 Purchase Orders

Action Requested

Approve the resolution authorizing fiscal year 2006-2007 purchase orders.

Background

City resolution number 9-2005 sets forth public contracting rules for the City of Milwaukie. The rules provide for the City Council, acting as the local contract review board, to approve contracts for certain goods and services that have projected annual expenditures greater than \$25,000.

Prior to the beginning of each fiscal year, city departments review recurring purchase orders and recommend changes to reflect updates in vendors and projected costs. The attached resolution includes a table that sets forth purchase orders for fiscal year 2006-2007.

Concurrence

The City Manager and Department Directors concur with the proposed resolution.

Fiscal Impact

The resolution establishes purchasing authority and spending limits for specific vendors and specific goods and services.

Work Load Impacts

Approval of the resolution facilitates operations by granting purchasing authority.

Alternatives

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN CONTRACTS FOR FISCAL YEAR 2006 - 2007.

WHEREAS, the City of Milwaukie, by adopting Resolution 9-2005, has put into place public contracting rules; and

WHEREAS, the rules require City Council review of contracts for certain goods and services that have projected annual expenditures greater than \$25,000; and

WHEREAS, the City Council has reviewed the listed goods and services and the projected annual expenditures; and

WHEREAS, the City Council finds such goods and services needed and vital to the operations of the City of Milwaukie;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, as follows:

Section 1. The City Council authorizes the City Manager to execute purchase orders for the following goods and services.

Vendor	Services Provided	\$ Amount
American LaFrance	Parts and Services-Fire Trucks	30,000
ASAP Software	Computer Software	40,000
City County Insurance Services	Insurance Premiums	228,130
City of Lake Oswego	Dispatch Services – LOCOM IGA	300,553
City of Portland	Sewage Treatment Charges	300,000
City of Portland	Yearly Access Fees	17,852
City of Portland	800 KHz Repair & Maintenance	30,000
City of Portland	PPDS Access Fees	38,000
Clackamas Cable Access Board	Operation of Public Access Studio	30,000
Clackamas County Service District #1/WES	Sewer Treatment Charges	1,300,000
Clackamas County	Signal Repair & Street Striping	50,000
Clackamas River Water	Water Use per IGA	77,000
Craftsman Home Remodeling	Carpentry Work and Repairs	41,000
Craftsman Painting	Painting Services	40,000
Diversified Abilities (D & A Janitorial)	Janitorial Services	110,000
D.M. Excavation Inc	Wastewater	25,000
D.M. Excavation Inc	Stormwater	25,000
Don Thomas Petroleum	Unleaded & Diesel Fuel & Oil Products	175,000
Dryer Electric	Electrical Repairs and Services	50,000
E.W. Consulting	HVAC Maintenance & Services	10,000
E.W. Consulting	Mechanical Engineering Consulting	35,000
Goodyear Commercial Tire	Tires & Tire Repair	25,000
Grove, Mueller & Swank, P.C.	Audit Services	31,000
Harper, Houf, Peterson, Ragellis, Inc.	Engineering Services	51,000
Interactive Computer Designs	Incode Annual Software Maintenance	37,500
Joel Kay and Joyce St Arnaud	Installment Payments for 2215 SE Harrison	34,516
Les Schwab Tire Center	Tire Purchases for Fire Trucks & City Vehicles	35,000
Liberty Northwest Company	Worker's Compensation Insurance Premiums	155,574
Marsh USA Inc	Insurance Agent of Record	25,000
Metro Area Communication Com	Comcast Franchise Administration	45,000
NW Natural	Gas for City Facilities	40,000

Office Depot	Office Supplies	7,000
Office Depot	Office Supplies	8,000
Office Depot	Copier Paper JCB, PSB, & City Hall	4,200
Office Depot	Office Supplies for RIM & NST	5,000
Office Depot	Office Supplies	10,000
Portland General Electric	Electricity for City Facilities	625,000
Printing Today	PILOT Printer	26,800
Qwest	Telephone Service	80,000
Ramis, Crew, Corrigan, LLP	City Attorney Services	160,000
Ramis, Crew, Corrigan, LLP	Stanley Works Litigation	100,000
Rowe Bros	Body and Frame Repair	25,000
Selectron	Security Monitoring, Service & Installation	150,000
Shiels, Oblatz, Johnsen	Development Services	40,000
State of Oregon	Small Energy Loan Program #L-499	35,292
State of Oregon	Small Energy Loan Program #L-499B	7,140
State of Oregon	Small Energy Loan Program #L-602	15,480
US Postal Service	Postage for Utility Billing	16,200
US Postal Service	General postage	12,500
US Postal Service	Postage for PILOT, Other Permit #30 Mailings	25,000
Xerox Corporation	Rents & Leases for all Copiers	44,345
Xerox Corporation	Per Copy & Supplies Cost	14,500

Section 2. The effective date of this resolution is July 1, 2006.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on June 20, 2006.

Mayor James Bernard

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan, LLP



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Stewart Taylor, Finance Director

Subject: Resolution Transferring Appropriation Authority

Date: June 8, 2006 for June 20, 2006 City Council Meeting

Action Requested

Approve the resolution transferring appropriation authority.

Background

Oregon Local Budget Law (ORS 294.450(1)&(3)) allows a governing body by ordinance or resolution to transfer appropriation authority between programs and categories for expenditures that were unforeseen at the time the budget was adopted. A transfer of appropriation authority does not increase or decrease total appropriations.

Legal Services. Several economic development projects have required legal services that were not anticipated when the budget was adopted. Appropriation authority exists in the General Government Program of the Administrative Services Fund that can be made available to provide for the additional legal services.

Capital Outlay. Appropriation authority for expenditures related to projects in the Capital Outlay category of the Water Capital and Reserve Fund that were not anticipated when the budget was adopted can be made available from the Transfer category.

Engineering Services. A vacancy in the Personal Services category of the Engineering Fund has created appropriation authority that can be made available

to fund expenditures in the Materials and Services category that were not anticipated when the budget was adopted.

Transfers. For the past few years, the Wastewater Fund has been making systematic transfers to the Wastewater Capital and Reserve Fund for future capital projects. The transfers have exceeded the operating revenues needed in the Wastewater Fund. Appropriation authority exists in the Contingency category of the Wastewater Capital and Reserve Fund that can be made available to transfer back to the Wastewater Fund.

Concurrence

The Public Works and Community Development Director and the Engineering Director concur with the resolution.

Fiscal Impact

The resolution transfers existing appropriation authority between categories in several funds. It does not increase or decrease appropriation authority.

Work Load Impacts

There are no workload impacts.

Alternatives

1. Approve the resolution as proposed.
2. Modify the resolution.
3. Take no action.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPROVING A TRANSFER OF APPROPRIATIONS**

WHEREAS, certain legal expenditures for economic development projects were not anticipated when the 2005-2006 fiscal year budget was adopted; and

WHEREAS, the General Government Program of the Administrative Services Fund has appropriation authority that can be made available for the expenditures; and

WHEREAS, expenditures in the Capital Outlay category of the Water Capital and Reserve Fund were not anticipated when the budget was adopted and appropriation authority can be made available from the Contingency and Reserve category; and

WHEREAS, the Personal Services category of the Engineering Fund has appropriation authority that can be made available for expenditures in the Materials and Services category that were not anticipated when the budget was adopted; and

WHEREAS, the Wastewater Fund has been making systematic transfers to the Wastewater Capital and Reserve Fund over the past few years to fund future capital projects; and

WHEREAS, the transfers have exceeded operating revenues in the Wastewater Fund; and

WHEREAS, appropriation authority exists in the Contingency category of the Wastewater Capital and Reserve Fund that can be made available to transfer funds back to the Wastewater Fund; and

WHEREAS, Oregon Local Budget Law allows a governing body to transfer appropriation authority by passing a resolution or ordinance (ORS 294.450(1&(3)).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie:

The transfer of appropriations is hereby approved as follows:

From:
Administrative Services Fund
General Government
\$100,000.00

To:
Legal Services
\$100,000.00

Water Capital and Reserve Fund
Contingency and Reserve
\$110,000

Capital Outlay
\$110,000

Engineering Fund
Personal Services
\$90,000

Materials and Services
\$90,000

Wastewater Capital and Reserve Fund
Contingency
\$60,000.00

Transfers
\$60,000.00

Introduced and adopted by the City Council on June 20, 2006. This resolution is effective upon passage.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Kenny Asher, Public Works & Community Development Director

From: Alex Campbell, Resource and Economic Development Specialist

Subject: Resolutions Endorsing 2010/2011 Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Funds Applications

Date: June 6, 2006 for June 20, 2006

Action Requested

Adopt resolutions endorsing Metropolitan Transportation Improvement Program (MTIP) Regional Flexible Funds applications for the Kellogg Lake Dam Removal and 17th Avenue Bike/Ped Connector projects. MTIP Applications are being accepted by Metro for fiscal years 2010 and 2011.

Background

As staff reported at the June 6th Work Session, the Clackamas County Technical Advisory Committee on Transportation (TAC) met to develop a consensus list of projects for which jurisdictions will seek MTIP Regional Flexible Funds. Milwaukie is represented on this committee by Kenny Asher, Community Development and Public Works Director. Metro will consider applications for up to 200% of Clackamas County's proportionate share of flexible funds, approximately \$16 million. Included in the TAC's 200% list are the City of Milwaukie's proposed 17th Avenue and Kellogg Lake projects. This clears the way for the City of Milwaukie to submit applications on these two projects, due June 30, 2006.

The 17th Avenue Bike/Ped Connector project would provide consistent sidewalk and bike lane connections along 17th Avenue between Lava Drive and Ochoco Street, providing connectivity between downtown, the Trolley Trail, and the Springwater Corridor. This project will also be submitted, per Council approval, for consideration for the ODOT-administered Transportation Enhancement (TE) program. This project competes with other Bike/Pedestrian projects in the region through the MTIP process.

The Army Corps of Engineers has been studying the restoration of Kellogg Creek since September 2002. The Corps is nearing completion of a thorough analysis of the environmental benefits of creek restoration and has found very substantial benefits. However, due to a very challenging budgetary environment, the Corps is unlikely to do significant further work on the project in the foreseeable future. In fact, Corps staff was pessimistic about even being able to expend the full \$200,000 earmark arranged by Rep. Blumenauer in 2004.

An MTIP application to support Kellogg Lake Dam Removal would continue the project by seeking funds for preliminary engineering and design work for removal of the current McLoughlin Avenue Bridge and existing dam, and for engineering and design work for construction of a new bridge that would allow the free passage of the creek. Benefits include the restoration/improvement of a significant stretch of habitat for endangered fish species, improved bike/pedestrian infrastructure over the bridge, and the possibility of building a below-grade pedestrian connection between downtown and Riverfront Park. Metro staff has advised staff that the City might add to the list of work elements for this project the identification of those habitat restoration elements which would be eligible for federal funding. This would be a way to begin work on habitat restoration design for the Kellogg Lake area.

This project competes with other culvert/dam removal projects in the region (there are no others in Clackamas County). Metro rated this project very highly on their internal assessment of possible applicants for this program.

Concurrence

CC TAC has reviewed the proposed projects and consented to their submission. Metro reviewed and provided positive comments on project pre-applications. Planning, Engineering, Streets and Community Services have been consulted and have provided input on the proposed projects. Community Services Director, JoAnn Herrigel, is working closely with Community Development on these two project applications. JoAnn has been the project staff for the Corps' Kellogg Lake study. She has also been actively participating in the Three Bridges and Trolley Trail projects, the users of which will benefit greatly from the proposed 17th Avenue improvements. Letters of support will be sought from concerned parties.

Fiscal Impact

Minimum project match is 10.27%. Staff anticipates pursuing approximately \$2.5 million in total funding, which would require \$257,000 in City matching funds in FY 2010 and 2011. Likely sources for matching funds for Kellogg Creek restoration are state and federal environmental and fishery agencies. Some payments in lieu of SDCs are available which could cover one-third of the 17th

Avenue Connector match. An in-kind contribution from the City of Portland will be pursued for the 17th Avenue connector projects.

Work Load Impacts

Applications would be completed as part of regular Community Development and Engineering staff duties. Applications are due June 30, but final formal approval would not be made until mid-2007. The 200% list is trimmed to 150% and then 100% over the next eight months through a process that involves Metro staff, regional transportation committees, and public involvement.

Alternatives

Given the current stage of consultations with other Clackamas County jurisdictions, pursuit of additional or replacement projects for this stream of funding is not feasible. Staff recommends moving forward with the 17th Avenue and Kellogg Dam projects given their strong possibility of attracting Federal funds and high potential benefit to the City.

Attachments

Resolutions

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING A REQUEST FOR FUNDS TO METRO UNDER THE METRO TRANSPORTATION IMPROVEMENT PROGRAM FOR REGIONAL FLEXIBLE FUNDS TO DESIGN A REPLACEMENT MCLOUGHLIN BOULEVARD BRIDGE OVER KELLOGG CREEK TO ALLOW REMOVAL OF THE DAM AND RESTORATION OF THE CREEK.

WHEREAS, The project will enhance the livability of downtown Milwaukie by creating a more attractive and natural environment in the current location of Kellogg Lake; and

WHEREAS, The restoration of Kellogg Creek is called for in the Downtown and Riverfront Land Use Framework Plan, an ancillary document to the Milwaukie Comprehensive Plan; and

WHEREAS, The project will provide significant habitat benefits to threatened and endangered fish species; and

WHEREAS, The project will provide the opportunity to improve pedestrian access to the Riverfront;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon:

Endorses the "Kellogg Lake Dam Removal" application for 2010-2011 MTIP Regional Flexible Funds, authorizing staff to submit the application and provide a City match of at least 10.27% to the project if awarded.

Introduced and adopted by the City Council on June 20, 2006.

This resolution is effective on June 21, 2006.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING A REQUEST FOR FUNDS TO METRO UNDER THE METRO TRANSPORTATION IMPROVEMENT PROGRAM FOR REGIONAL FLEXIBLE FUNDS TO BUILD SIDEWALK AND BIKE LANE IMPROVEMENTS ALONG 17TH AVENUE BETWEEN LAVA DRIVE AND OCHOCO STREET.

WHEREAS, The project will improve and enhance local and regional pedestrian and bicycle routes and fill a key gap in the regional bicycle network; and

WHEREAS, The project is identified in the City of Milwaukie Transportation System Plan, the Regional Transportation Plan and recommended by the North Industrial Areas Land Use/Transportation Plan (NILUS); and

WHEREAS, The project will enhance the livability of downtown Milwaukie; and

WHEREAS, The project will improve regional access to the Milwaukie riverfront;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie, Oregon:

Endorses the “17th Avenue Bike/Ped Connector” application for 2010-2011 MTIP Regional Flexible Funds, authorizing staff to submit the application and provide a City match of at least 10.27% to the project if awarded.

Introduced and adopted by the City Council on June 20, 2006.

This resolution is effective on June 21, 2006.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Stewart Taylor, Finance Director
Subject: Resolutions Regarding State Revenue Sharing
Date: May 24, 2006 for June 20, 2006 City Council Meeting

Action Requested

Consider testimony received during the public hearing and approve the resolutions declaring the City's election and qualification to receive State Revenue Sharing.

Background

In order for the City of Milwaukie to receive a share of state revenues apportioned and distributed to the cities of the state during fiscal year 2006-2007 as provided in ORS 221.770, the City Council must enact an ordinance or resolution expressing that election and file the same with the Oregon Department of Administrative Services no later than July 31.

The City Council can show eligibility of the City of Milwaukie to receive State Revenue Sharing by adopting a resolution that certifies that the City offers four or more of the required municipal services.

Concurrence

The City Manager acting as the Budget Officer and the Finance Director concur with the proposed resolutions.

Fiscal Impact

The resolutions declare the City's election and qualification to receive State Revenue Sharing in fiscal year 2006-2007.

RESOLUTION NO. _____

**A RESOLUTION DECLARING THE CITY OF MILWAUKIE'S ELECTION
TO RECEIVE STATE REVENUE SHARING**

WHEREAS, the City of Milwaukie desires to receive a share of state revenues apportioned and distributed to the cities of the state during fiscal year 2006-2007 as provided in ORS 221.770; and

WHEREAS, ORS 221.770(1)(a) requires that any city electing to receive a distribution must enact an ordinance or resolution expressing that election and file the same with the Oregon Department of Administrative Services no later than July 31; and

WHEREAS, ORS 221.770 (1)(b) requires that any city electing to receive a distribution must hold at least one public hearing at which citizens have the opportunity to provide written or oral comment on the possible uses of the distributions; and

WHEREAS, the City must certify its compliance with the statutory provisions to the Oregon Department of Administrative Services before July 31.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon as follows:

Section 1. The City of Milwaukie hereby elects to receive distributions of state revenues during fiscal year 2006-2007 pursuant to ORS 221.770(1)(a).

Section 2. The City Council hereby certifies that it conducted a public hearing, after giving public notice, on June 20, 2006 and called for written and oral comment on the possible uses of the distributions and that the hearing complied with ORS 221.770(1)(b) and (c).

Section 3. The City Recorder is directed to certify compliance with the public hearing requirements with the Oregon Department of Administrative Services by July 31, 2006.

Section 4. This resolution shall be effective immediately upon its passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on June 20, 2006.

James Bernard, Mayor

Date

Attest:

Pat DuVal, City Recorder

Approved as to form
RAMIS, CREW, CORRIGAN, LLP

City Attorney

RESOLUTION NO. _____

**A RESOLUTION CERTIFYING SERVICES
FOR STATE REVENUE SHARING**

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

- (1) Police protection
- (2) Fire protection
- (3) Street construction, maintenance, and lighting
- (4) Sanitary sewer
- (5) Storm sewers
- (6) Planning, zoning, and subdivision control
- (7) One or more utility services

and

WHEREAS, city officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:

- Police protection
- Street construction, maintenance, and lighting
- Sanitary sewer
- Storm sewers
- Planning, zoning, and subdivision control
- One or more utility services

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on June 20, 2006.

This resolution shall be effective immediately upon its passage.

James Bernard, Mayor

Dated

Attest:

Pat DuVal, City Recorder

Approved as to form
RAMIS, CREW, CORRIGAN LLP

City Attorney

CITY OF MILWAUKIE

CERTIFICATION

I certify that a public hearing before the Budget Committee was held on April 13, 2006 and a public hearing before the City Council was held June 20, 2006 giving citizens opportunity to comment on the use of State Revenue Sharing.

Pat DuVal, City Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Stewart Taylor, Finance Director
Subject: Resolution adopting the FY 2006-2007 Annual Budget
Date: May 24, 2006 for June 20, 2006 City Council Meeting

Action Requested

Consider testimony received during the public hearing and approve the resolution adopting the budget and capital improvements plan, making appropriations, and declaring and categorizing taxes for fiscal year 2006-2007.

Background

The Budget Committee of the City of Milwaukie met and approved the Proposed Budget on May 17, 2006. A financial summary of the approved budget and a notice of budget hearing before the City Council were published in the "Clackamas Review" on Wednesday, May 31, 2006 according to the requirements of Oregon Local Budget Law (ORS 294.416). The City Council may take action to adopt the budget once the budget hearing has been held and testimony has been heard and considered.

Concurrence

The City Manager acting as the Budget Officer and the Finance Director concur with the proposed resolution.

Fiscal Impact

The resolution adopts the fiscal year 2006-2007 annual budget of \$41,150,370.

RESOLUTION NO. -2006

**A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING
APPROPRIATIONS, AND DECLARING AND CATEGORIZING
TAXES FOR FISCAL YEAR 2006-2007**

WHEREAS, the Budget Committee of the City of Milwaukie met and approved the Proposed Budget on May 17, 2006; and

WHEREAS, the Notice of Budget Hearing and Financial Summary were published in the "Clackamas Review" on May 31, 2006 as required by ORS 294.416; and

WHEREAS, a public hearing was held on June 20, 2006.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon as follows:

Section 1. The City Council of the City of Milwaukie hereby adopts the budget for fiscal year 2006-2007 in the sum of \$41,150,370. A copy of the budget document is now on file at City Hall, 10722 SE Main Street, Milwaukie, Oregon.

Section 2. The amounts for the fiscal year beginning July 1, 2006 and for the purposes shown below are hereby appropriated as follows:

General Fund		Neighborhood Grants	
Library Services	1,750,301	Capital Outlay	85,048
Community Services	723,399		
Code Enforcement	213,646	Public Safety Facility Debt Service	
Public Access Studio	120,000	Materials and Services	459,605
Police Administration	377,316	Contingency	<u>248,894</u>
Police Field Services	5,444,133	Total	708,499
Police Support Services	456,069		
Planning	587,643	Pension Debt Service	
Municipal Court	36,591	Materials and Services	212,096
Intergovernmental/Interfund	<u>1,743,722</u>		
Total	11,452,820	Building Inspections	
		Personal Services	184,589
Administrative Services		Materials and Services	92,132
City Council	46,403	Transfers	48,585
City Manager	289,023	Contingency	<u>131,945</u>
City Attorney	160,000	Total	457,251
Human Resources	283,278		
General Government	302,666	Streets/State Gas Tax	
Finance	446,778	Personal Services	459,469
Records and Information Mgt	576,808	Materials and Services	898,045
Information and Technology	785,435	Capital Outlay	1,213,630
Photocopies	<u>53,821</u>	Transfers	315,508
Total	2,944,212	Contingency	<u>327,277</u>
		Total	3,213,929
Computer Reserve			
Capital Outlay	175,000	Transportation SDC	
Contingency	<u>38,850</u>	Capital Outlay	409,880
Total	213,850	Contingency	<u>132,694</u>
		Total	542,574

Bike Path
Contingency 40,522

Water
Personal Services 518,215
Materials and Services 1,371,545
Capital Outlay 17,000
Transfers 596,781
Contingency 157,478
Total 2,661,019

Water SDC
Capital Outlay 176,000
Contingency 361,654
Total 537,654

Water Capital and Reserve
Capital Outlay 544,500
Contingency 506,390
Total 1,050,890

Wastewater
Personal Services 342,736
Materials and Services 2,412,570
Capital Outlay 15,000
Transfers 327,872
Contingency 229,607
Total 3,327,785

Wastewater SDC
Contingency 1,171,410

Wastewater Capital and Reserve
Capital Outlay 394,000
Contingency 2,658,462
Total 3,052,462

Stormwater
Personal Services 337,376
Materials and Services 698,442
Capital Outlay 15,000
Transfers 578,189
Contingency 86,316
Total 1,715,323

Stormwater SDC
Capital Outlay 120,000
Contingency 113,043
Total 233,043

Stormwater Capital and Reserve
Contingency 178,000
Contingency 224,345
Total 402,345

Community Development Administration
Personal Services 569,051
Materials and Services 402,529
Total 971,580

Engineering
Personal Services 512,433
Materials and Services 263,666
Capital Outlay 6,000
Total 782,099

Fleet Services
Personal Services 484,827
Materials and Services 741,758
Capital Outlay 20,000
Transfers 132,504
Contingency 130,772
Total 1,509,861

Fleet Services Capital and Reserve
Capital Outlay 389,000
Contingency 1,706,062
Total 2,095,062

Facilities Management
Personal Services 172,642
Materials and Services 775,324
Capital Outlay 315,000
Transfers 44,168
Total 1,307,134

Knutson Cemetery Trust
Materials and Services 3,000
Contingency 34,864
Total 37,864

Forfeiture Trust
Capital Outlay 10,247

Total Appropriations 40,736,579

Unappropriated Reserve
General Fund 413,791

Total Budget 41,150,370

Section 3. The City Council of the City of Milwaukie hereby imposes the taxes provided for in the adopted budget at the rate of \$3.9898 per \$1,000 of assessed value for operations and in the aggregate amount of \$238,358 for bonds. These taxes are hereby imposed and categorized for tax year 2006-2007 upon the assessed value of all taxable property within the City.

	General Government	Excluded from Limitation
General Fund	\$3.9898/\$1,000	
Public Safety Debt Service		\$238,358

Section 4. The City Council of the City of Milwaukie hereby adopts the City of Milwaukie 2007-2011 Capital Improvement Program (CIP) for fiscal year 2006-2007. A copy of the CIP document is now on file in City Hall, 10722 SE Main Street, Milwaukie, Oregon.

Section 5. The City Council of the City of Milwaukie hereby adopts the pay table for fiscal year 2006-2007 and includes it as part of the adopted budget.

Introduced and adopted by the City Council on June 20, 2006.

This resolution takes effect immediately upon adoption.

James Bernard, Mayor

Dated: _____

Attest:

Pat DuVal, City Recorder

Approved as to form:
Ramis, Crew, Corrigan, LLP

City Attorney

State of Oregon
County of Clackamas

I certify that this is a true and correct copy of a document in the possession of the City of Milwaukie.

Dated: June 20, 2006

Notary Public – State of Oregon

My commission expires: _____



To: Mayor and City Council

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

From: Katie Mangle, Planning Director

Subject: Amendments to the Milwaukie Municipal Code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)

Date: June 13, 2006 for June 20, 2006 Hearing

Actions Requested

1. **Approval to amend the *Milwaukie Municipal Code Section 19.321 – Community Service Overlay*.** Amendments would change the name to “Community Service Use,” clarify the procedures and standards for approving such a use and modernize the language in the code.
2. **Approval to amend the *Comprehensive Plan Chapter 4 - Recreational Needs Element; Chapter 5 - Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element; and Milwaukie Municipal Code subsections 19.321.7 and 19.321.3.*** These amendments would clearly state the City’s policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek wastewater treatment plant, make the plant a Nonconforming Use, and set a deadline for removing Nonconforming Community Service Uses.

On May 23, 2006, the Planning Commission held a public hearing on the amendments and unanimously recommended that City Council approve the amendments with revisions as required to ensure flexibility to meet state and federal mandates. The amendments meet the approval criteria set forth in the Milwaukie Municipal Code and Comprehensive Plan. This includes consistency with unamended portions of the Comprehensive Plan, Oregon statewide planning goals, and regional policies (see Attachment 6, Summary of Policy Compliance.

Background on Action 1 – Housekeeping amendments to Community Service Overlay

The Community Service Overlay (CSO) is a land use tool that allows the City to manage the development of uses that provide public benefit. Certain uses, including public and religious institutions, schools, and parks, are allowed in most zoning districts when they meet the

standards for a CSO. CSO approvals are site specific and subject to the development standards of the underlying zone.

The proposed amendments to Milwaukie Municipal Ordinance section 19.321 (see Attachment 2) modify the title, text and structure of the section to improve comprehensibility and clarify standards and procedures for approving Community Service Uses. Most of these revisions fall under the category of “code maintenance,” and are not intended to change the policy nor intent of the code. The proposed amendments to Milwaukie Municipal Code Section 19.321 include many revisions to the text. Key changes are intended to accomplish the following:

- Clarify the meaning of the CSO by deleting “Zone” from the section title, and stating that approval of a CSO does not change the underlying zoning of the property.
- Neutralize gender and religious references by substituting “religious institutions” for “Churches”, and deleting “fraternal organizations” from the provision allowing a “private club, fraternal organization, lodge, grange.”
- Clarify the standards and procedures for reviewing a Community Service Use.
- Clarify the definition of a “minor modification” to an approved Community Service Use, as well as the criteria for approval.
- Apply the same development standards to public, private, and religious institutions, with two exceptions. Religious institutions will still have the ability to include a spire that exceeds height limitations, and will continue to be held to a lower landscaping standard. Applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000.

Background on Action 2 – Amendments to Address the Kellogg Creek Treatment Plant

The City of Milwaukie has long envisioned improvements to the Willamette riverfront that maximize the use and benefits of this city resource. This vision is reflected in the goals of the *Downtown and Riverfront Land Use Framework Plan*, the *Comprehensive Plan*, and was also referenced in the City’s August 2005 Intergovernmental Agreement with the Clackamas County Service District #1 to implement the Clearwater Plan.

The Kellogg Creek wastewater treatment plant is located on the riverfront, and the City’s long-term goals, as expressed in the *Comprehensive Plan* (Chapter 5, Objective 5, Policy 5), have been to decommission the plant. The *Downtown Land Use Framework Plan* envisions redevelopment of the Kellogg site with uses that are more supportive of downtown and nearby neighborhoods. Thus far, the City’s *Comprehensive Plan* policies have not been effective in achieving the goal of eliminating the social, economic and environmental impacts of the plant.

The proposed amendments are intended to strengthen the City’s policy to actively seek alternatives to continued use of the Kellogg Creek plant, limit expansion of the plant, and eliminate the plant’s social, economic and environmental impacts.

Comprehensive Plan Amendments

The proposed *Comprehensive Plan* amendments (see attachment 4) would strengthen the City’s policy to “make reasonable efforts to bring about” the decommissioning of the Kellogg Creek Wastewater Treatment Plant. The *Comprehensive Plan* amendments clearly state the policy to pursue decommissioning of the Kellogg Creek plant while responsibly providing

wastewater treatment service for Milwaukie residents and businesses and continuing to cooperate with the County and other agencies in examining feasible alternatives. In summary, the amendments achieve the following:

- The policy relating to the Kellogg Creek plant site will be revised to state that the City's policy is to "*make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location.*"
- The policy relating to contracting with CCSD1 will be revised to refer to "the Kellogg Creek Treatment Plant *or other plant or plants.*"
- The policy relating to examination of alternatives for decommissioning the Kellogg Creek plant will be revised to state that the City will "*use best efforts to decommission*" the plant while cooperating with other affected agencies. It requires future City planning efforts to consider a "*regional sewage system and facility other than the Kellogg Creek plant.*"

Zoning Code Amendments

The proposed zoning amendments related to major utility facilities (see Attachment 2) implement the policies set forth in the Comprehensive Plan. They are intended to achieve the following:

- Specify that major utility facilities, including sewage treatment plants, are generally not a permitted Community Service Use unless all impacts of such a facility are reduced to that of an allowed CSU (such as a pump station).
- Address Nonconforming Community Service Uses in a new section. This section will allow nonconforming uses to remain in use through 2015. It prohibits expansion, upgrades, or remodeling of the use, except as required to abate nuisances declared by the City or comply with federal or state statutes, regulations or permits.
- Establish a nonconforming major utility fee for nonconforming major utilities that remain in use after December 31, 2015.
- Address the community's desire and the City's goal to decommission the Kellogg Creek plant, cooperate with regional partners, plan for proper sewage treatment service, and maintain public access to the riverfront.

Response to Comments in Opposition

At the May 23, 2006, Planning Commission hearing on the proposed amendments, testimony was submitted for and against the proposal. Mr. Tom Sponsler submitted comments against the amendments on behalf of Clackamas County Sewer District No. 1 (CCSD1) and the cities of Happy Valley and Gladstone. In summary, the comments raised the following points:

Comment: *The amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments.*

Response: The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater

Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.

Comment : *CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan.*

Response: The City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6.

Comment: *The City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City.*

Response: The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that the wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment, and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.

Comment: *Deletion of the provision regarding public use of the CCSD1 site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan.*

Response: The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.

Comment: *The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg.*

Response: The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility.

Comment: *Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment.*

Response: The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. Such a plan was adopted and then rescinded by CCSD1 in 2005. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment, and the City has participated in these analyses.

Comment: *The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system."*

Response: To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant *or other plant or plants*. The Comprehensive Plan provisions continue to require compliance with federal

and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.

Comment: *The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7.*

Response: The following sets out the City's analysis of each of these criteria:

- *Conformance with the Comprehensive Plan, its goals, policies and spirit.*
The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.
- *Public need for the change.*
The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 require a treatment plant that does not need substantial changes every few years due to old design and old components.
- *Public need is best satisfied by this particular change.*
The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescission of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.
- *The change will not adversely affect the health, safety and welfare of the community.*
The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.
- *The change is in conformance with applicable Statewide Planning Goals.*
The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.
- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning

Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

An additional regional policy with which the City must comply is the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

Comment: *The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment.*

Response: The City knows of no such violation, and these have not been specified by the opponents of the amendments.

Comment: *The proposed amendments would result in a violation of Federal law.*

Response: The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.

Comment: *The proposed amendment is inconsistent with the adopted City public facilities plan.*

Response: The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent

Comment: *The City does not have authority to control plant operations.*

Response: The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.

Comment: *The city has no authority to impose a civil penalty on CCSD1.*

Response: If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.

Comment: *The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax.*

Response: The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.

Comment: *The proposed nonconforming use fee would take effect immediately, rather than in 2016.*

Response: The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.

Recommendation

Amending the Zoning Ordinance and the Comprehensive Plan is a legislative action, which requires the City Council to conduct a hearing and make a decision. Staff recommends that the Council approve the amendments and adopt the findings as outlined in Attachment 1.

Concurrence

The Planning Commission unanimously recommended that the Council approve the amendments. The amendments have been reviewed and approved by the City Manager, City Attorney, Community Development and Public Works Director, and Engineering Director.

Fiscal Impact

None resulting from the proposed amendments. Indirect fiscal impacts may result from the long-term closure or maintenance of the treatment plant. Such impacts include changes to the contracted rates charged for CCSD1 service; fees collected due to nuisances or continued nonconformance of the Kellogg Creek plant past 2015; increases to the value of properties surrounding the plant site. A 2002 study estimated that closure of the plant would nearly double the value of projected new investment in downtown Milwaukie (\$103 million with the closure, versus up to \$53 million without).¹

Work Load Impacts

The amendments will reduce workload slightly, as they clarify several procedural and land use issues in the Code. For example, the City currently applies different development standards to religious and non-religious institutions. This often creates confusion on the part of the applicant, and requires more staff time to explain and defend. The amendments will apply the same standards to all non-educational institutions. In addition, applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

Alternatives

1. Do not approve the amendments. If the Council does not approve the amendments, the MMC section 19.321 will continue to function as it has in the past; the Kellogg Treatment Plant will not be explicitly addressed in the Code; the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.

¹ Johnson Gardner, LLC. Memorandum Regarding Decommissioning of Kellogg Treatment Facility. January 22, 2002.

2. Approve only one of the two actions - Action 1, the housekeeping amendments to MMC section 19.321. Only approving Action 1 will make the Community Service Use code more effective, but the Kellogg Treatment Plant will not be explicitly addressed in the Code and the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.
3. Approve only one of the two actions - Action 2, zoning code and Comprehensive Plan amendments that address the Kellogg Creek Wastewater Treatment Plant. Only approving Action 2 would leave the title and remaining sections of the code language unchanged

Attachments

1. Findings in Support of Approval
2. Strikeout version of revisions to zoning ordinance 19.321 Community Service Overlay.
3. Clean version of revisions to zoning ordinance 19.321 Community Service Overlay.
4. Strikeout version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
5. Clean version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
6. Summary of Policy Compliance
7. Minutes from the Planning Commission hearing on May 23, 2006
8. Comments from Metro
9. Comments from CCSD

ATTACHMENT 1
Findings in Support of Approval

1. The City of Milwaukie Planning Commission recommended that the City Council adopt the proposed amendments, with revisions to address the need to comply with clean water regulations.
2. Public notice has been provided and a public hearing has been conducted in accordance with the Milwaukie Zoning Ordinance and the Comprehensive Plan. The City provided written notice of the hearing and a copy of the proposed amendments to both the Clackamas County Administrator and to Clackamas County Service District No. 1.
3. The proposed Zoning Code amendments fulfill the approval criteria found in 19.904.1 and 19.905.1. They are consistent with the Comprehensive Plan, the Metro Urban Growth Management Functional Plan, Regional Waste Water Management Plan, and Oregon Statewide Planning Goals.
4. The proposed Comprehensive Plan amendments fulfill the approval criteria found in Comprehensive Plan Chapter 2 - Amendments and Review Process. They are consistent with all unamended portions of the Comprehensive Plan, the Metro Urban Growth Management Functional Plan, Regional Waste Water Management Plan, and the Oregon Statewide Planning Goals.

FINDINGS IN RESPONSE TO COMMENTS BY TOM SPONSLER OF BEERY, ELSNER & HAMMOND ON BEHALF OF Clackamas County Sewer District No.1 (CCSD1), HAPPY VALLEY AND GLADSTONE

5. Clackamas County Sewer District No.1 and the Cities of Happy Valley and Gladstone jointly submitted comments objecting to the proposed amendments. Those comments will be referred to in these findings as the "CCSD1 comments."
6. **Comment:** The proposed amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments. **Response:** The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.
7. **Comment:** CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan. **Response:** To ensure that there is no misunderstanding that water quality is protected, the City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6. The code amendment is not inconsistent and in no way prevents the City from participating in the

regional planning process. The policy also provides for continued cooperation between the City and CCSD1 relating to collection and treatment of sanitary sewage, and the code amendments do not prevent continued cooperation. The City expects that it will continue to work with CCSD1 on sewage issues.

8. **Comment:** The City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City. **Response:** The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that this wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.
9. **Comment:** Deletion of the provision regarding public use of the CCSD site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan. **Response:** The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.
10. **Comment:** The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg. **Response:** The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility. The plan amendments as a whole still address cooperation in examining feasible alternatives that will allow the transition from Kellogg to another treatment facility. These provisions are not inconsistent with any Comprehensive Plan Goal.
11. **Comment:** Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment. **Response:** The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment.
12. **Comment:** The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system." **Response:** To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant or other plant or plants. The Comprehensive Plan provisions continue to require compliance with federal and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.
13. **Comment:** The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7. **Response:** The following sets out the City's analysis of each of these criteria:
 - *Conformance with the Comprehensive Plan, its goals, policies and spirit.*

The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.

- *Public need for the change.*
The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant, especially a regionalized treatment system and plant, would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 need a treatment plant that does not require substantial changes every few years due to old design and old components.
- *Public need is best satisfied by this particular change.*
The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescission of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.
- *The change will not adversely affect the health, safety and welfare of the community.*
The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.
- *The change is in conformance with applicable Statewide Planning Goals.*
The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.
- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

14. **Comment:** The proposed amendments violate the Metro Code. **Response:** As discussed in Finding Number 13 above, the amendments are consistent with applicable Metro provisions. CCSD1's comments refer to a Regional Wastewater Management Plan. The original findings did not include an analysis of consistency with the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The

RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

15. **Comment:** The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment. **Response:** The City knows of no such violation, and these have not been specified by the opponents of the amendments. The language for Code Section 19.321.7 will allow amendments to the Kellogg Plant as needed to comply with applicable regulations. CCSD1's comments relating to the pretreatment program are irrelevant because these amendments in no way affect the City's pretreatment program, which remains in effect.
16. **Comment:** The proposed amendments would result in a violation of Federal law. **Response:** The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.
17. **Comment:** The proposed amendment is inconsistent with the adopted City public facilities plan. **Response:** The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent
18. **Comment:** The City does not have authority to control plant operations. **Response:** The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.
19. **Comment:** The city has no authority to impose a civil penalty on CCSD1. **Response:** If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.
20. **Comment:** The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax. **Response:** The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.
21. **Comment:** The proposed nonconforming use fee would take effect immediately, rather than in 2016. **Response:** The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.

Attachment 2
Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance

Underlined text is to be inserted

Strikeout ~~text~~ is to be deleted

**Text in blue was changed following the Planning Commission hearing on
May 23, 2006.**

SECTION 19.321 COMMUNITY SERVICE OVERLAY USE:

19.321 Community Service Overlay Zone Use CSOU:

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

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

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

1. Schools, public or private, and their accompanying sports facilities, daycare centers, private kindergartens;

2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station-correctional facilities, or other similar buildings;

3. Hospital;

4. Cemetery;

5. Nursing or convalescent home;

6. Churches Religious institutions;
7. Community meeting building;
8. Temporary or transitional facility;
9. Other similar uses as determined by the planning commission.

B. Specified Utilities.

1. Sewage pumping stations;
2. Water wells, pump stations, reservoirs, and related any other facilities used for production, treatment, and distribution of the municipal water supply;
3. Electrical power substations;
4. Repealed by Ord. 1910;
5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
6. Repealed by Ord. 1910;
7. Repealed by Ord. 1910;
8. Public transit facilities;
9. Passenger terminal;
10. Facilities that would otherwise be considered major utility facilities but that employ innovative design and/or technology to minimize their impacts on the City or the neighborhood. Notwithstanding the prohibition on major utility facilities in Section 19.321.3, innovative technologies and designs which reduce the impacts of major utility facilities so they are no more extensive than other utility facilities may be allowed. A facility that would otherwise be considered a major utility facility may be classified as a utility facility and may be approved as a community service use through a major quasi-judicial review process. A facility that would otherwise be classified as a major utility facility may be approved as a regular utility facility only if the Council determines that the facility uses innovative technologies or design so that the impact of the facility is no more than the impacts of utility facilities allowed under this Section. Examples of facilities that may be approved under this subsection include, but are not limited to:

a. Sewage treatment plants that suppress or contain all odors and are either 1) placed underground or covered in such a way that they appear to be part of the natural topography of the site, or 2) incorporated with other uses so that the site does not appear to be a sewage treatment plant when viewed from any angle, including from above. A visible entrance, minor outbuildings, or visible outflow would not preclude approval.

Any such facility must meet all applicable standards of this chapter. This section applies to new facilities and to modifications of existing facilities. No modifications

to a use approved under this subsection may be permitted unless the City determines that the modifications will not increase the impacts of the facility on the neighborhood, environment or the City.

11. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

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

D. Communication Facilities.

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

19.321.3. Unpermitted uses

The following uses may not be permitted as community service uses and are prohibited in all zones:

- A. Major utility facilities, including wastewater treatment plants and thermal (coal, gas, or oil) power generating plants, other than cogeneration facilities sited with an industrial use. A generator supplying on-site power is not a thermal power generating plant for purposes of this section.

19.321.34 Notice Requirements. Except as provided in Section 19.321.45C and 19.321.4214 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection 1104.319.1011.3-Minor Quasi-Judicial Review, Community Service Overlay Use.

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

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

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

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

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

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

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

19.321.6 Procedures for Reviewing a Community Service Use

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

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

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

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

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

4. Designating the size, number, location, and design of vehicle access points;

5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;

6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or

7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

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

1. Does not increase the intensity of any use, ~~or the density of residential use;~~

2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the ~~specific standards of Title 19;~~

3. Does not result in ~~significantly affect adjacent property or uses, will not cause any deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties~~ ~~nor significantly affect any public facility;~~ and

4. Does not ~~affect~~ alter or contravene any conditions specifically placed on the development by the planning commission or city council.; and

5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

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

19.321.7 Nonconforming Community Service Uses

Any use prohibited by Section 19.321.3 that was approved prior to the adoption of Section 19.321.3 may remain in use through December 31, 2015, but may not be enlarged, upgraded, remodeled, or altered in any way, except as needed to abate nuisances declared by the City [or as needed to comply with applicable federal or state statutes, regulations or permits](#). No changes in such nonconforming uses are permitted, except as needed to abate City-declared nuisances [or as needed to comply with applicable federal or state statutes, regulations or permits](#). Violation of this subsection shall be prosecuted under Chapter 1.08 and the civil penalty for violation of this section shall be \$10,000 per day of violation. During the period when any such nonconforming use remains in effect [after December 31, 2015](#), the owner of the property and the operator of the use are jointly liable to the City for payment of a nonconforming major utility fee

in an amount to be set by resolution of the City Council to recover costs and impacts on the City resulting from the presence of the nonconforming major utility. This section does not apply to a use that has been approved under Section 19.321.2B.

Renumber subsequent subsections as follows:

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

19.321.9 Specific Standards for Churches, Convents and Related Facilities.

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

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

C. (Repealed by Ord. 1893)

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

E. Off-street parking as per Chapter 19.500.

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

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

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

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

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

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

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

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

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

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

Renumber subsequent subsections as follows:

- **19.321.4413**
- **19.321.4214, including self-references and Table within this subsection**

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

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

Attachment 3
Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance

SECTION 19.321 COMMUNITY SERVICE USE:

19.321 Community Service Use CSU:

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

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

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

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

B. Specified Utilities.

1. Sewage pumping stations;

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

10. Facilities that would otherwise be considered major utility facilities but that employ innovative design and/or technology to minimize their impacts on the City or the neighborhood. Notwithstanding the prohibition on major utility facilities in Section 19.321.3, innovative technologies and designs which reduce the impacts of major utility facilities so they are no more extensive than other utility facilities may be allowed. A facility that would otherwise be considered a major utility facility may be classified as a utility facility and may be approved as a community service use through a major quasi-judicial review process. A facility that would otherwise be classified as a major utility facility may be approved as a regular utility facility only if the Council determines that the facility uses innovative technologies or design so that the impact of the facility is no more than the impacts of utility facilities allowed under this Section. Examples of facilities that may be approved under this subsection include, but are not limited to:

- a. Sewage treatment plants that suppress or contain all odors and are either 1) placed underground or covered in such a way that they appear to be part of the natural topography of the site, or 2) incorporated with other uses so that the site does not appear to be a sewage treatment plant when viewed from any angle, including from above. A visible entrance, minor outbuildings, or visible outflow would not preclude approval.

Any such facility must meet all applicable standards of this chapter. This section applies to new facilities and to modifications of existing facilities. No modifications to a use approved under this subsection may be permitted unless the City determines that the modifications will not increase the impacts of the facility on the neighborhood, environment or the City.

11. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, lodge, grange;

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

D. Communication Facilities.

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

19.321.3. Unpermitted uses

The following uses may not be permitted as community service uses and are prohibited in all zones:

A. Major utility facilities, including wastewater treatment plants and thermal (coal, gas, or oil) power generating plants, other than cogeneration facilities sited with an industrial use. A generator supplying on-site power is not a thermal power generating plant for purposes of this section.

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

19.321.5 Standards for Community Service Uses.

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

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

2. Specific standards for the proposed uses as found in subsections 19.321.10-19.321.14 are met;

3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses;

4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and
5. The location is appropriate for the type of use proposed.

19.321.6 Procedures for Reviewing a Community Service Use

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

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

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

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

1. Does not increase the intensity of any use;
2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19;
3. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties;

4. Does not alter or contravene any conditions specifically placed on the development by the planning commission or city council; and
5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

19.321.7 Nonconforming Community Service Uses

Any use prohibited by Section 19.321.3 that was approved prior to the adoption of Section 19.321.3 may remain in use through December 31, 2015, but may not be enlarged, upgraded, remodeled, or altered in any way, except as needed to abate nuisances declared by the City or as needed to comply with applicable federal or state statutes, regulations or permits. No changes in such nonconforming uses are permitted, except as needed to abate City-declared nuisances or as needed to comply with applicable federal or state statutes, regulations or permits. Violation of this subsection shall be prosecuted under Chapter 1.08 and the civil penalty for violation of this section shall be \$10,000 per day of violation. During the period when any such nonconforming use remains in effect after December 31, 2015, the owner of the property and the operator of the use are jointly liable to the City for payment of a nonconforming major utility fee in an amount to be set by resolution of the City Council to recover costs and impacts on the City resulting from the presence of the nonconforming major utility. This section does not apply to a use that has been approved under Section 19.321.2B.

Renumber subsequent subsections as follows:

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

19.321 is deleted.

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

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

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the

use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B.

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

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

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

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

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

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

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

Re-number subsequent subsections as follows:

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

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

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

Attachment 4 Amendments to Milwaukie Comprehensive Plan

Underlined text is to be inserted

Strikeout ~~text~~ is to be deleted

Blue text has been changed following the Planning Commission hearing
5/23/2006.

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

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

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

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

~~The City will cooperate with Clackamas Sewer District #1 to encourage the continued public use of portions of the Kellogg Sewage Treatment Plant site.~~
The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant this site in the future. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access ~~recreation~~ will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

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

Public Facilities and Services Element, Objective 5, Policy 5

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

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

Attachment 5

Amendments to Milwaukie Comprehensive Plan

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

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

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

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant site. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

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

Public Facilities and Services Element, Objective 5, Policy 5

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

Attachment 6

Summary of Policy Compliance for the Proposed Amendments

The proposed Zoning Code and Comprehensive Plan text amendments are legislative actions that must demonstrate compliance with applicable criteria. On May 23, 2006, the Planning Commission recommended that the City Council approve amendments ZA-06-01 and CPA-06-01, finding that they meet the criteria. This summary outlines how:

1. the City followed the zoning code and Plan amendment process required by City, regional, and state policy;
2. the proposed amendments conform with existing City, regional, and state policy;
3. the proposed amendments to the zoning code and the Comprehensive Plan meet the applicable criteria for amendments.

Public Process

The Comprehensive Plan, Milwaukie Municipal Ordinance (MMO), Metro Functional Plan, and Statewide Planning Goals all include requirements for public involvement and public hearings for legislative actions. The City followed the process required by policy and best practices, including:

- Provided notice to DLCD, Metro, Clackamas County, WES, and to Clackamas County Service District No.1, and all NDAs.
- Shared early drafts of the amendments with Clackamas County
- Conducted a public hearing, with published notice
- Shared staff report with interested parties

Requirements for Zoning Text Amendments

In addition, zoning amendments must conform to other plans and policies:

19.905.1 A. The proposed zoning text amendment must conform to applicable comprehensive plan goals, policies and objectives and be consistent with the provisions of city ordinances, Metro urban growth management functional plan and applicable regional policies.

19.905.1 C. The proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations.

The key regional, state or federal regulations include the Milwaukie Municipal Ordinance (MMO), Milwaukie Comprehensive Plan, Oregon Statewide Planning Goals, Metro Functional Plan, and Metro Code. The summary that follows addresses the City, state and regional goals and policies by topic. More detailed analysis can be found in Attachment 1 to the Planning Commission staff report for the May 23, 2006 hearing.

Policies that Address Coordination with Other Governments (State Goal 2)

The Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.

Policies that Address Protection of Natural Resources and Open Spaces (State Goal 5 and Comprehensive Plan Chapter 3 – Environmental and Natural Resources)

- The Kellogg Creek wastewater treatment plant is located on the riverfront, in the Willamette Greenway overlay, and the eastern edge of the site is in the Water Quality Resource area.
- Removal of the plant would decrease intensity of development on the site
- The zoning in place, a combination of Downtown Office and Downtown Open Space, ensures the future public access to the open space areas on the site or to the Willamette River.
- The amendment to the Comprehensive Plan Chapter 4 Recreational Needs Element, Objective 7, Policy 5 includes the statement, “Riverfront access will be maintained with any redevelopment of the treatment plant site.”

Policies that Address Planning for Air, Water and Land Resources Quality (State Goal 6, Metro Title 3 and Comprehensive Plan Chapter 3 - Environmental and Natural Resources)

The Kellogg Creek Wastewater Treatment Plant threatens the air and water quality of the adjacent Island Station neighborhood as well as Riverfront Park. Efforts to buffer this intense use from the neighborhood have proved to be unsuccessful. Separating this Major Utility Facility use from residential, park and downtown land uses will reduce conflicts. The City finds the current site of the plant to be unsuitable for such an intense, high-impact utility. The proposed amendments allow for modification to the plant to meet water quality regulations.

Policies that Address Recreational Needs (State Goal 8, Comprehensive Plan Chapter 4 – Land Use)

Milwaukie Municipal Code Section 19.321 – Community Service Overlay is the mechanism by which recreational facilities are permitted in the City of Milwaukie. The proposed amendment revises the list of facilities to which the section applies, adding 19.321.2.C.4: “Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associate facilities.” This allows the siting of recreation facilities by public and private entities subject to siting and quality standards that exist in Section 19.321.

Policies that Address Public Facilities and Services (Goal 11; Comprehensive Plan Chapter 4 – Land Use, Neighborhood Element; Comprehensive Plan Chapter 5 - Public Facilities and Services Element)

- *Amendments comply with the current Sewage Facilities Plan*
The City’s *Sewerage Facilities Plan* was adopted in 1994. The amendment to MMO 19.321 sets consequences for the continuation of Major Utility Facilities, such as the Kellogg Creek plant, past December 31, 2015. This date is beyond the planning horizon for the existing plan.
- *Ensure service for Milwaukie citizens and businesses*
The proposed amendment to Comprehensive Plan Chapter 4 states that the City will pursue decommissioning of the Kellogg Creek wastewater treatment plant in a manner that “assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location.” The Comprehensive Plan provisions continue to require compliance with federal and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits.

- *Plan for future service*
The proposed Comprehensive Plan amendments would clearly state City's policy to "make reasonable efforts to bring about" the decommissioning of the Kellogg Creek wastewater treatment plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens..." The revision to Chapter 5, Public Facilities and Services Element, Objective 5, Policy 5 states that the City will "cooperate with the County, county service districts, and other parties in examining feasible alternatives for sewage disposal..." The proposed amendments comply with this policy.
- *Cooperate with the County and other providers*
The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or other parties to develop an alternate site for sewage treatment and a regionalized system.
- *Need to update the Facility Plan*
The City was in the process of updating the Sanitary Sewer Master Plan, but put this effort on hold in 2004 pending the completion and adoption of the Clackamas County Clearwater Project plan. The Clearwater plan included among other regional improvements the eventual elimination of the Kellogg Creek plant. The City is currently scheduled to complete its update of the *Sanitary Sewer Master Plan* in 2007. The proposed amendment to Comprehensive Plan Public Facilities and Services Element, Objective 5, Policy 5 adds a statement that "Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the Kellogg Creek plant."

Policies that Address the Willamette River Greenway (State Goal 15, Comprehensive Plan Chapter 4)

- *Removal will decrease intensity of development in the Greenway*
The Kellogg Creek Wastewater Treatment Plant is located on the riverfront, within the City's Willamette Greenway overlay zone. The City of Milwaukie has long envisioned improvements to the Willamette riverfront that maximize the use and benefits of this valuable resource. The amendments to the Zoning Code support this Comprehensive Plan policy by encouraging the future redevelopment of the Kellogg Creek wastewater treatment plant site.
- *Public access will be maintained*
The site is zoned for Downtown Office and Downtown Open Space, and is planned to remain in urban use.

Policies that Address Industrial and Other Employment Zones (Metro Title 4)

Revisions to MMO section 19.321 do not significantly change the list of uses that could be approved as a Community Service Use, and thereby does not change the City's regulatory capacity to protect the capacity and efficiency of its Regionally Significant Industrial and Employment Areas.

Policies that Address Town Centers (Metro Title 6)

The presence of the Kellogg Creek treatment plant impacts Milwaukie's downtown socially and economically. The proposed amendments include changes that implement the City's strategy to enhance downtown Milwaukie, which is a designated Town Center. The *Downtown and*

Riverfront Land Use Framework Plan envisions redevelopment of the Kellogg Creek wastewater treatment plant site with uses that are more supportive of downtown and nearby neighborhoods.

Policies that Address Non-discrimination

Revisions to section 19.321 pertaining to religious facilities comply with the Religious Land Use and Institutionalized Persons Act of 2000.

Criteria for Amending the Comprehensive Plan

Specific criteria apply to the comprehensive Plan amendments (Comprehensive Plan Chapter 2 – Amending the Plan):

- *conformance with the Comprehensive Plan, its goals, policies, and spirit,*

- The Plan already includes policy to decommission and redevelop the plant site.

The City of Milwaukie’s goal to decommission the sewage treatment plant is reflected in *Comprehensive Plan* Chapter 5, Objective 5, Policy 5, which states that “The City will participate in examining feasible alternatives for decommissioning the Kellogg Creek Treatment Plant.” The amendments expressly require continued coordination, consistent with other plan policies.

- The amendment strengthens the language, giving the policy higher priority.

The proposed Comprehensive Plan amendments would strengthen this policy to state that the City “will use best efforts to decommission the Kellogg Sewage Treatment Plant.” The existing language speaks to the long-term goal for decommissioning the plant, but the amendments set the policy to achieve this goal.

- The amendments reflect the Plan’s spirit of promoting orderly service provision and partnership with regional partners. The amendment to Public Facilities and Services Element, Objective 5, Policy 5 states that the City “will cooperate with the County, county service districts, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other sewage treatment facility.” The policies are consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant.

- *public need for the change,*

- Existing policy has not been sufficient to achieve the community’s long-standing goal to decommission the plant.

The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie’s revitalizing downtown. Existing plans express the community’s vision for establishing more environmentally and community friendly uses on this site. The continued presence of the plant impacts the adjacent neighborhood, and downtown socially, environmentally, and economically. The proposed amendments are needed to more accurately reflect the long-term goals for the community, and establish a course of action to achieve the goals.

The Planning Commission's Findings of Approval of the 1999 CSO application to modify the plant demonstrates the need for this change. In the findings, the Commission recognized the community's "interest in the long-term removal of the plant in consideration of building a stronger downtown business district, preserving property values and supporting residential neighborhoods." And found "...there is concern that plant improvements in general may extend the economic life of the plant. Such extension may be contrary to the long-term interest in removal of the plant." This was 7 years ago, and the need for this change is still present.

- *public need is best satisfied by this particular change,*

The existing language has not achieved the goal of decommissioning the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The purpose of updating the Plan to reflect the City's policy on decommissioning the Kellogg Creek wastewater treatment plant is best satisfied by the proposed amendments, which address the community's desire and the City's need to decommission the plant, cooperate with regional partners, plan for proper sewage treatment service, and maintain public access to the riverfront.

- Sets clear policy to be implemented
- Maintains public access to the river
- Calls for responsible planning and cooperation with other agencies

- *the change will not adversely affect the health, safety, and welfare of the community,*

The proposed amendment states that the City will pursue decommissioning of the Kellogg Creek Wastewater Treatment Plant in a manner that "assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location." The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system. The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community.

- *the change is in conformance with applicable Statewide Planning Goals,*

The amendments are in conformance with applicable statewide planning goals, even enhancing the City's ability to achieve several of the goals, as described in the previous section.

- *the change is consistent with Metro Growth Management Functional Plan and applicable regional policies.*

The amendments are consistent with applicable provisions of the Metro Growth Management Functional Plan, as described in the previous section.

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, May 23, 2006

COMMISSIONERS PRESENT

Donald Hammang, Chair
Jeff Klein, Vice Chair
Lisa Batey
Teresa Bresaw
Catherine Brinkman
Dick Newman
Scott Churchill

STAFF PRESENT

Katie Mangle,
Planning Director
Brett Kelter,
Assistant Planner
Gary Firestone,
Legal Counsel
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

None

1.0 CALL TO ORDER

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

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA

3.1 Planning Commission Minutes -- April 11, 2006

Commissioner Newman moved to approve the minutes of April 11, 2006 as revised. Commissioner Batey seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Newman, Hammang

Nays: None

Abstentions: Scott

The motion carried 6-0 with one abstention. Scott Churchill was not at that meeting.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT -- None.

6.0 Public Hearings
6.1 Initiation of Legislative Amendments

Applicant: City of Milwaukie
Proposal: Text amendment to 19.321, Community Service Overlay
and Comprehensive Plan
File Numbers: ZA-06-01/CPA-06-01
NDA: All

Chair Hammang opened the hearing on Zoning Ordinance Amendment ZA-06-01 and Comprehensive Plan Amendment CPA-06-01 to consider a recommendation to the City Council in support of amending the Milwaukie Municipal Ordinance Section 19.321 and Comprehensive Plan Chapter 4, Recreational Needs Element and Chapter 5, Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? Commissioner Batey stated that she is recusing herself from this issue because of the potential for bias; she has been advocating and supporting the Clear Water Project and attending meetings of the Citizens Advisory Council regarding this matter. She left to sit in the audience.

There were no other conflicts of interest or ex-parte contacts declared.

Chair Hammang recessed the hearing at 6:41 p.m. as the code provides that text amendments are to be initiated by the either the Planning Commission or City Council.

Commissioner Brinkman moved to initiate the proposed text amendments to the Milwaukie Municipal Ordinance and the Comprehensive Plan. Commissioner Bresaw seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Newman, Scott, Hammang

Nays: None

The motion carried 7-0.

The hearing reconvened at 6:45 p.m.

STAFF REPORT

Katie Mangle reviewed the staff report with the Commission. The comprehensive plan amendments clearly state the City's policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek Waste Water Treatment Plant. The amendments to the comprehensive plan set policy to achieve the goal of removing the wastewater treatment plant.

The text amendment to Section 19.321, now Community Service Overlay, accomplishes the following:

- Rename the section to Community Service Use
- Improve legibility and applicability of the standards for approving that use
- Apply same development standards to public, private and religious institutions
- Specify that major utility facilities including sewerage treatment plants are not a permitted community service use

Nonconforming community service uses are addressed in a new section in the amendments and will allow nonconforming uses to remain in use until 2015. Until 2015 expansion, upgrades, and remodeling are not permitted except where required to abate nuisances. These amendments will establish a major utility fee for nonconforming use after 2015.

The Community Service Overlay (CSO) is an important part of how Milwaukie manages land use. Every church, building, park, etc. has gone through a process for any modifications. The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway Zone north of the Island Station neighborhood and adjacent to Milwaukie's revitalizing downtown; sewerage is treated at this plant by Clackamas Service District (CSD) #1. It was originally built and permitted under a conditional use permit in 1970 and have since gone through several CSO modification permits.

The amendments to the community service use are a goal to make this a better or more effective tool for residents, staff and the city. It states the City's current policy to pursue the decommissioning of Kellogg Creek Plant for the future and define the plant which is currently not addressed in the code, as a nonconforming use and permitted extension. The City envisions redevelopment of that site and for environmental, economical and social reasons and development of the waterfront will maximize the use of that site. It has been documented in many plans that have been adopted as policy of the City (Downtown Riverfront and Land Use Framework Plan, Comprehensive Plan, August 2005 Intergovernmental Agreement (IGA) with CSD#1). In 1999, the last time the Kellogg Plant was here for modification to the CSO, the staff report and Planning Commission both acknowledged that permitting small improvements may be contrary to the community's long term goals. The community was concerned about the longevity of the plant at that time and uncomfortable about making small changes that did not fit with the long-range goals of the community.

The present zoning and comprehensive plan policies have not been effective in achieving the city's goals and staff is looking for more effective ways of doing that.

There are criteria that apply to legislative actions; code amendments, comprehensive plan amendments, etc. The requirements deal with holding public hearings, providing notice to the public and other agencies, and submitting applications. The approval criteria focuses on making sure that the amendments conform to the Comprehensive Plan, Metro Urban Growth Management Functional Plan, and the State Planning Goals.

The criteria that apply to the Comprehensive Plan Amendments deal with the conformance to the Comprehensive Plan, public need for the change, public need satisfied by this particular change, the change does not adversely affect the health of the community, compliance with the State Planning Goals and consistency with the Metro Functional Plan.

Attachment I of the staff report identifies how the amendments meet the goals. The staff report has been shared with all the neighborhood district associations in the city, proper notice has been given to Clackamas County property owners and Clackamas County Service District and other interested parties.

Section 19.905.1A outlines the requirements for approving the new text amendments. The staff report outlines in detail these requirements.

These amendments meet all the applicable criteria and fulfill the policies to bring the City into compliance in regards to natural resources, Willamette Greenway and Town Centers.

The key issues addressed are:

1. Do the proposed zoning code and Comprehensive Plan amendments meet the approval criteria?
2. Do the proposed Code amendments affirm and clarify existing policy regarding community service uses, making the use of this zoning tool more effective?
3. The City of Milwaukie Community Development Department proposes Zoning Code and Comprehensive Plan amendments that would result in decommissioning the Kellogg Sewerage Treatment Plant over the long term.

In response to key issue #1, as shown in Attachment 1, Zoning and Comprehensive Plan Amendment Criteria Checklist, the proposed amendments meet the approval criteria for text amendments to the Zoning Code and Comprehensive Plan amendments.

Key issue #2 applies to the housekeeping points of the amendments, Section 19.321. These amendments clarify the intent of the CSO for changing the title from Community Service Overlay to Community Service Use, clarifies that this is not a zone change; it is something that is a part of a conditional use. The

amendments also clarify how the minor modifications to the CSO are approved and what the criteria are. The public benefits test was in the code, but it was not labeled as a criterion; adding this will help the applicants to remember to include the public benefits test and help the Planning Commission to be able to apply it in their decision making process.

The amendments modernize the language; for example substituting religious institutions for churches. A new provision is included that specifies that minor modifications cannot cause any public facility to fail to meet standards for transportation, safety, wastewater, sewerage, etc. Additional language in Section 19.321 addresses the major utility facilities and implements the proposed comprehensive plan amendment.

Issue #3 addresses the City's desire to decommission the sewerage treatment plant and cooperate with regional partners for the proper sewerage treatment service, maintain public access to the riverfront and emphasizing the regional approach to wastewater treatment while protecting the environment; and protecting and enhancing the downtown neighborhoods around it. These amendments reflect the comprehensive spirit of promoting orderly service and partnership with regional partners. The amendment to the public facilities and service element, Objective 5, Policy 5 states that the City "...will cooperate with the County, county service districts and other parties in examining feasible alternatives for sewerage disposal in the transition from the Kellogg Plant to some other sewerage treatment facility."

The Zoning Code amendments that are related to major utility facilities are intended to specify that major utility facilities (including sewerage treatment plants) are not a permitted community service use. They address nonconforming community service uses in a new section. This new section will allow nonconforming uses to remain in use through 2015 to prohibit expansion, upgrade, remodeling except as required to abate nuisances. These amendments establish a major utility fee for nonconforming utilities after December 31, 2015.

Staff believes the proposed amendments are consistent with policy direction provided by the Planning Commission with regards to application of the Community Service Use and the long-term desire to decommission the Kellogg Creek wastewater treatment plant. The amendments are consistent with applicable provisions of the Zoning Ordinance, Comprehensive Plan, the Statewide Planning Goals and Metro Functional Plan. Staff recommends that the Commission recommend that the City Council approve the amendments.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked if the CSD#1 services more than Milwaukie? **Gary Firestone** stated that a large portion of Clackamas County is served by

CSD#1, as well as Milwaukie. The city is not within the service district; the treatment plant is operated by the service district and the city contracts with the service district for disposal of sewerage. Sewerage treatment plants are typically located near rivers at water levels; the systems operate largely on gravity making them economical to operate.

Scott Churchill asked how staff arrived at the date of December 31, 2015 for major utility fees? **Mr. Firestone** stated that there was an agreement with the county regarding regionalized sewerage treatment plans being completed by this date; however, the county changed it's mind because they need more time. The city's agreement with the district is currently a continuation from the previous negotiations; it is a month-to-month contract at this point.

Chair Hammang asked if the Commission has the authority to enforce these amendments as proposed? **Mr. Firestone** stated that he feels the commission does have the authority. The amendments do not change the zone and do not have to meet zoning change requirements. As to the provisions related to major utilities, there is an issue with the existing code. The examples of utilities that are given in the existing code indicate pumping stations, lines in the street, etc. and do not expressly address major utility facilities. These amendments are a clarification that major utility facilities are not allowed. A recent memo from Beery, Elsner and Hammond challenges the city's authority to do this. It is Mr. Firestone's opinion that the City does have the authority. He suggests fine-tuning some of the provisions to make sure of consistency with applicable goals. These amendments would also protect the city from other major utilities locating in the city.

Commissioner Churchill asked if there is historic precedent that other jurisdictions don't allow major utility facilities? **Mr. Firestone** stated that there are jurisdictions that don't allow major utility facilities, however, he is not aware of any jurisdictions that have attempted to address the issue when they already have one.

TESTIMONY IN FAVOR

Dave Ashenbrenner, 11505 SE Home Avenue, Milwaukie

Mr. Ashenbrenner stated that he feels overall this is the right direction for the city. The changes to the Community Service Overlay zone is something that needs to be done. This will clarify that special uses are not zone changes.

The major utility facility type issues also need to be addressed and worked out. Staff has done a good job on covering the basis on this issue. For years there have been plans and directions for this city regarding green spaces and open spaces. Overall staff has done a good job and he would be interested in the comments that

will come up tonight and he would like the opportunity to comment later on what he hears tonight.

His major concerns have been financial; he is willing to work with people in the region to solve some of the issues and concerns regarding utility facilities. The City of Milwaukie will continue to work with the community at large, the region and residents to solve regional issues on a regional basis.

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS OR COMMENTS FROM THE AUDIENCE -- None.

TESTIMONY IN OPPOSITION

Speaking: Jim Knapp, 4401 SE Risely Avenue, Milwaukie

Mr. Knapp stated that he is not a resident of the City of Milwaukie; he has lived in the unincorporated area of Clackamas County at his present residence for 11 years and has been a resident of Clackamas County for 53 years. He is a ratepayer, customer, and taxpayer of CSD#1 which provides sanitary service to him, his neighbors, and the City of Milwaukie. The Kellogg Sewerage Treatment Plant is an asset to the District, and is paid for by the ratepayers of CSD#1. Actions that attempt to restrict or abolish the Plant affect his rates, taxes, parts of the Clackamas County Comprehensive Use plan of CSD#1 and his health and the health of his neighbors.

Mr. Knapp informed the Commission that he is here tonight in opposition to the proposed amendment to the zoning ordinance. He feels this is an attempt to use the state law to condemn the Kellogg Sewerage Treatment Plant by prohibiting the improvement of the Plant to meet future health and clean water regulations and to levy a tax on the Plant and residents of CSD#1 under the name of nonconforming use fee. The proposed amendment violates Sanitary Sewer Objective Number 5 of the Public Facilities portion of the City of Milwaukie Comprehensive Land Use Plan. He would like the City to identify what it will do over the planning period to deal with the waste that it generates. He suggests a moratorium on building a new economic activity until it has a concrete plan for waste treatment and the facilities to deal with the waste treatment in place. Understanding Milwaukie's desire to reclaim its waterfront and redevelop it for private enterprise, he asked that the Commission consider whether the desire for economic gain should outweigh an adequate and affordable provision for public health, safety, and welfare.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Klein noted that by not controlling the sewerage treatment plant's growth, the City of Milwaukie would be causing harm to the City from residential property revenue sources. **Mr. Knapp** stated that he is on the Citizen's Advisory Council for Clackamas County and they have reviewed these issues. He encouraged a city representative to come to the meetings and look at what information they have. When this plant was built in 1974 it was designed for 20 million gallons a day (MGD) and today it is only utilizing 20 MGD. It was always the intention to have a working relationship with Milwaukie. He found a manual written in 1980 and revised in 1986 regarding the design and location of the plant and that it was favorable with the Milwaukie citizens to provide the sewer service for the area.

Speaking: Thomas Sponsler, 1750 SW Harper Way, Suite 380, Portland, OR 97301

Mr. Sponsler stated that he is here tonight as the lawyer representing CSD#1 as well as the cities of Happy Valley and Gladstone. He apologized for just getting in his response to this issue today; however, he was retained only 10 days ago to represent these three clients. He feels it is a mistake for Milwaukie to undertake these amendments without further study and consideration. The proposed amendments in the Comprehensive Plan and the Zoning Code do not meet the criteria because they are not consistent with State Planning Goals or un-amended portions of Milwaukie Comprehensive Plan.

His memo divides his considered legal problems into seven parts: (1) Proposed amendments violate statewide planning goals 2, 6 & 11; (2) Proposed amendments violate Milwaukie Comprehensive Plan; (3) Proposed amendments violate Metro code; (4) Proposed amendments violate Intergovernmental Agreements; (5) Proposed amendments violate Federal Law; (6) Proposed amendments violate State Law and (7) City does not have legal authority to adopt proposed amendments.

Goal 2 deals with coordination. Milwaukie is not within the Sanitary Sewer District; the only way Milwaukie gets sewer service is because it is contracted. There have been 12 IGA's between the CSD and Milwaukie:

- The first agreement was made in 1969 before the plant was built
- There is an agreement that is still in effect from 1970 which forms the way the rates are calculated and has a 180 day termination provision which was repeated in subsequent IGA's and still in effect today
- An agreement entered into in December, 2000 which repeated the 180 day termination provision
- A July 2002 agreement wherein the City of Milwaukie convinces itself to have a pre-treatment program enforced by ordinance and therefore taking on the obligation of making sure that the plant complies with Federal Clean Water Standards and DEQ permit.

Approximately 40% of the capacity of the plant is used by the City of Milwaukie; 60% is outside the City. The cities that he represents tonight are within the district; they have a different relationship to the District. The residents of the City of Happy Valley and 20% of the residents of Gladstone are within the District and therefore direct customers. The District has a direct obligation to provide them with sanitary sewer services. The City of Milwaukie has the obligation to provide the collection system and treat the sewerage through a contract. The proposed amendments would make it illegal to have a sewerage treatment plant within the city, not just Milwaukie, but in any city. If the agreement was terminated by the District or the City, where would the City get its sanitary service? The cost of that service would be considerably higher than the current agreement. Some of the proposed amendments to the Comprehensive Plan are inconsistent with other portions of plan that are not proposed for amendments.

Goal 6 addresses water quality. One of the major problems of this amendment is that it precludes altering the use or operations of the plant. This will result in legal problems with Federal and State law as well. Proposed Section 19.321.7, states "...prohibited by another section but allowed to remain as a nonconforming use but may not be enlarged, upgraded, remodeled or altered in any way..." No changes in the operation, such nonconforming uses are permitted. This means that changes in the operation of the plant cannot be made under city law in order to comply with the DEQ permit. Currently there is an enforcement action pending against the plant regarding ammonia. If this ordinance were in effect, it would prevent that plant from changing its processes and operations to comply with DEQ. This is a water quality issue and a violation to Goal 6.

The City of Milwaukie Sewerage Facilities Plan dated 1994 is premised on the wastewater treatment being provided by the Kellogg Plant. This plan provides for the needs and facilities to serve Milwaukie to 2010. It assumes that wastewater treatment will continue being provided through the District and anticipates the expansion of the Kellogg Plant.

He agrees that the City can amend their Comprehensive Plan, however he does feel it has to be done in a different way than with these amendments and probably in a different order. There is a new sewerage treatment plant under consideration and may be done by 2007, but he doesn't feel the City can at the same time propose amendments that strike out some of the provisions of the Plan or chose to ignore them. This is the basis of the City's compliance with Goal 11, Public Facilities.

There are no amendments to the existing Comprehensive Plan that would make the proposed amendments consistent with the Comprehensive Plan.

These proposed amendments also are inconsistent with City Comprehensive Plan Chapter 3, Objective 4, Policy 1, which states that Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with the Clackamas County Service District #1 for the collection and treatment of sanitary sewerage. There are no findings about this proposal. This inconsistency is a separate violation of State Goal 2 that requires coordination with all agencies (including DEQ) for the treatment of city sewage at Kellogg.

Chapter 5, Objective 5, Policy 1, which deals with sanitary sewer service states that the City will continue to cooperate with the CSD#1 in contracting for the full capacity of the Kellogg Treatment Plant. The City will comply with Federal and State clean water requirements in managing waste water collection. The decommissioning of the plant would be in violation of the rule and the proposed amendments are inconsistent.

Comprehensive Plan Chapter 2, Objective 1, Policy 7 requires that the amendments be consistent with the State wide goals and he believes that they are not. The zoning code requires that the proposed amendments comply with Comprehensive Plan goals, policies and objectives.

Mr. Sponsler stated that the e-mail goes on to talk about the violations that he feels exist with these proposed actions. He feels that Milwaukie has the authority to do some of what is proposed; however, he disagrees with much of what is proposed. He has no objection to the housekeeping amendments but he does strongly object to the Comprehensive Plan amendments to Chapter 7, Policy 5 which will make the existing facility a nonconforming use and restricting modifications of sewer treatment use. The proposed amendment to the zoning code goes well beyond that; it is an attempt to control operations and puts into place punitive financial obligations. If these amendments go into effect, the plant would become nonconforming and immediately be responsible for a \$90,000/mo. payment until December 31, 2015. These amendments are not only illegal, they are expensive because of the litigation that ensues. Any costs imposed by this plan would have to be borne by all the customers. These actions are counter productive and not in the best interest of the City of Milwaukie or his clients and they hope that other options will be pursued and successful.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Brinkman noted that Mr. Sponsler noted several times the concept that by making these amendments the City is not cooperating and working with other governments. CSD#1 excluded Milwaukie from the task force on relocating the plant. She stated that she would be interested in having some citizens from Happy Valley come and make comments on the treatment

plant. She asked where the treatment plant would get the 40% revenue that the City of Milwaukie brings in.

Commissioner Churchill asked what compliance upgrades have been done to the treatment plant since 1970?

Speaking: Ted Kyle, Planning and Engineering Manager, Water Environment Services, CCSD#1, 9101 SE Sunny Brook Blvd., Suite 441, Clackamas

Mr. Kyle stated that he did not bring a full list of the upgrades made to the treatment plant; if the Commission wants a full list he will get it to them. Some updates included:

- A modification to the process in 1995 to replace the chlorine system with ultra-violet lights.
- Upgraded the aeration basin in late 1990 to bring the discharge into compliance with permit requirements
- Added odor control in response to nearby neighbors in early 2000
- Digesters were built in 1985 to stop hauling raw sledge off the site

There have been a number of upgrades to the site; however, the capacity has never been enlarged.

Commissioner Churchill asked if pre-treatment before entering the City of Milwaukie has been considered? **Mr. Kyle** stated that they have explored nine separate studies on the topic of what to do with wastewater in the North Clackamas region. He participated in six of the nine studies. In early January of 2000, an action that was taken was a reduction of 10% of the loading from the North Clackamas area now being treating at a different location than Milwaukie. In addition they operate a pre-treatment program and require the industrial users to meet Federal and local limits on what they can discharge into the system.

The plant was originally designed to treat 10 MGD; today it is treating 20,000 lbs of suspended solvents and running about 8-1/2 MGD. People are using less water to flush the same waste as previously. The plant has successfully met permits for the last five years with the exception of the January issue. There are newer technologies that could be employed; if one was designing a new plant they would use much of the same technology, just employ it slightly differently.

Commissioner Bresaw asked if the footprint of the facility could be smaller because of state of the art technology? **Mr. Kyle** stated that there are new technologies that haven't been proven at this scale that would be a significantly smaller footprint.

Commissioner Klein asked what limitations would be imposed to the treatment plant if these amendments were adopted. **Mr. Kyle** stated that if they could not

change operation today, they would probably violate their permit. They just received a new permit from DEQ and there is a requirement to reduce ammonia emissions. Operations will have to be changed to reduce ammonia emissions and this amendment would prevent that. To bring the plant into compliance it may require them to build new tanks, new facilities, new concrete boxes, and may result in decommissioning and reducing the footprint. It may also require some processes that are not currently being used.

Commissioner Churchill asked if it was possible to do pre-treatment outside the City of Milwaukie? **Mr. Kyle** said no it is not possible to do pre-treatment outside of the city; the ammonia is coming in system-wide and the plant itself wouldn't be able to solve the problem.

Gary Firestone stated that the way the proposed amendments are currently written it would make the plant a nonconforming use. Any changes would have to come before the City for approval as a means of abatement. Staff has considered revising the amendments to allow for staff suggestions to allow needed changes for the purposes of meeting Federal and State requirements without allowing for expansion.

Mr. Sponsler stated that if the City's concerns are physical (the footprint will not be expanded, or height issues, etc.) there are some possibilities for compromise, but operations cannot be controlled by the City.

Commissioner Klein asked for clarification of the current capacity. **Mr. Kyle** stated that there is a little capacity left; they can continue to add users. They can make it through this summer but he is not certain about next summer. It is hard to determine the capacity or the reliability of the capacity. He is concerned about having a major violation.

Commissioner Klein voiced concern that it is being projected that 700,000 people will be moving into Clackamas County. Happy Valley is growing at an uncontrollable rate and Milwaukie is built out and the potential growth will be a lot less than what's coming in the County. He is concerned that the logical solution is to expand the plant. **Mr. Kyle** stated that there are a lot of groups working on this issue. He doesn't know if expansion is the best option. The County Commission had decided on an option and changed its mind. He hopes that everyone can come together and work out a solution that is to everyone's advantage.

Gary Firestone explained that Mr. Kyle is a representative of the Service District and can only speak as a representative.

Commissioner Churchill asked where the 10% diversion of waste was diverted to? **Mr. Kyle** said the Tri City Plant in Oregon City. The capacity of that plant is

18,000 lbs. and it is running about 18,000 lbs. There is 2,500 lbs in the 10% referred to. There are a number of places that capacity could be built that would address the proposed 10% increase in Clackamas County. Under current systems that are in place there is no available capacity existing.

Commissioner Churchill asked if inland facilities have been considered? **Mr. Kyle** stated that other locations have been considered in past plans. Consideration has been given to expanding Oak Lodge, the Tri City plant, adding a new plant, etc.

Recess was taken at 8:15 p.m. and the meeting reconvened at 8:26 p.m.

ADDITIONAL COMMENTS FROM STAFF

Katie Mangle reported that the City wants to do everything in its legal power to implement a better system and at the same time enhance the downtown and waterfront; that is the reason for these amendments. Coordination with the County Service District is included in the Comprehensive Plan amendments. The proposal is to continue to use the best efforts to decommission the plant while cooperating with the County Service Districts and other parties.

The Comprehensive Plan and Zoning Codes address planning for the future of the plant. If a deadline is not put on the plant, many of these changes will continue into perpetuity. The Facilities Plan was adopted in 1994; the planning horizon for this document is 2010. The deadline for closing non-conforming uses in the Zoning Code is 2015; beyond the horizon of the planning documents. The City is in the process of updating the Facilities Plan; it was put on hold with the discussion of the Clearwater Plan with the idea that it would be in compliance at the end of this document. This is about planning and looking towards the future.

The Comprehensive Plan amendment includes the statement that the decommissioning will be brought about in an expeditious and orderly fashion that insures proper sewerage treatment from Milwaukie citizens while actuating a transition to another location. Proper sewerage treatment is intended to meet federal regulations.

Mr. Firestone stated that it will be staff's recommendation that the Planning Commission forward a recommendation to the Council to approve the proposed amendments as amended and direct staff to address the issues that have been raised to determine additional recommendations to Council.

The City recognizes that it must coordinate regionalized codes and regulations. They can strengthen their existing provisions and put some teeth in them.

Gary Firestone reviewed the changes with the Commission; with the discussed revisions, Section 19.321.7, Nonconforming Community Service Uses should read:

“Any use prohibited by Section 19.321.3 that was approved prior to the adoption of Section 19.321.3 may remain in use through December 31, 2005, but may not be enlarged, upgraded, remodeled or altered in any way, except as needed to abate nuisances declared by the City or as needed to comply with applicable Federal or State Statutes, regulations or permits. No changes in such nonconforming uses are permitted except as needed to abate City-declared nuisances or as needed to comply with applicable Federal or State Statutes, regulations or permits. Violations of this subsection shall be prosecuted under Chapter 1.08 and the civil penalty for violation of this subsection shall be \$10,000 per day of violation. During the period when any such nonconforming use remains in effect, after December 31, 2015, the owner of the property and the operator of the use are jointly liable to the City for payment of a nonconforming major utility fee in the amount to be set by resolution of the City Council to recover costs and impacts on the City resulting from the presence of the nonconforming major utility.”

Staff recommendation is to recommend approval to the Council to those changes and to direct staff to consider the comments made and respond to them before Council.

Chair Hammang closed the public hearing portion of the meeting and opened it to discussion among the Commissioners.

Commissioner Newman asked if City Council could make changes to these amendments? **Mr. Firestone** stated that Council could amend the recommendation.

Commissioner Brinkman moved to recommend to the City Council approval of the proposed amendments to the Milwaukie Municipal Ordinance Section 19.321, ZA-06-01 and Comprehensive Plan Chapter 4, Recreational Needs Element and Chapter 5, Transportation/Public Facilities/Energy conservation, Public Facilities and Services Element, CPA-06-01 as amended tonight. **Commissioner Klein** seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Newman, Scott, Hammang

Nays: None

The motion carried 7-0.

Commissioner Brinkman moved to direct staff to address the issues raised by Service District and to make necessary recommendations to the council in response to the comments. **Commissioner Klein** seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Newman, Scott, Hammang

Nays: None

The motion carried 7-0.

Commissioner Batey returned to the podium

7.0 WORKSESSION ITEMS

Kenney Asher updated the commission on the Texaco site. Currently they are working the site to make it fit for parking and Sunday Market usage. He is preparing to address City Council on June 6th in a worksession to discuss one aspect of the process towards an RFP and selecting a developer for this site. Part of the process has to do with a formation of an advisory committee. The charge of the advisory committee has been talking about process. The process is important; an advisory group needs to be formed that would advise the Committee, address the Council, the Planning Commission, and Metro Council so that the decision makers have the confidence that this is a process that has been reviewed by staff, citizens, stakeholders, etc.

This site is co-owned by two governments, Milwaukie and Metro. Metro brings to the project goals that have to do with regional 2040 Framework Plan implementation, which has to do with mixed use and creating centers that can absorb some of the people that are moving in, and constantly expanding the urban growth boundary. In Milwaukie there are local goals to maintain a certain character of Main Street and reflect community values of how Milwaukie is viewed and its own growth. This process needs to set up equal representation from both Milwaukie and Metro.

Mr. Asher stated that he will propose a process where the Chair of the Planning Commission and the Mayor get to appoint four representatives from Milwaukie. In June the Commission will have the opportunity to forward names of people who they feel represent the interests of the downtown neighborhoods, City Council, and Metro will do the same thing.

Mr. Asher stated that he will be more comfortable working with people Council and the Commission believe in; the people they turn to when they want to make sure that they are in touch with the people in the community and what they want to see. It is hoped to have the committee together by July 4th, have a Request for Proposal (RFP) in late August and selection of a developer in the fall.

Ms. Mangle informed the Commissioners that she included information on Metro goals in their packets.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Election of Chair

Chair Hammang opened the meeting to election of officers. He entertained the nomination for Chair.

Commissioner Brinkman moved to nominate Commissioner Klein to the office of Chair of the Commission. Commissioner Bresaw seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Newman, Scott, Hammang

Nays: None

The motion carried 6-0.

Chair Hammang opened nominations for the office of Vice -hair.

Commissioner Batey moved to nominate Commissioner Newman to the office of Vice-Chair of the Commission. Commissioner Bresaw seconded the motion.

Ayes: Batey, Bresaw, Brinkman, Klein, Scott, Hammang

Nays: None

The motion carried 6-0.

10.2 Matters from the Planning Director

Ms. Mangle reported that the applicant for the Harmony Park Apartments appealed to the County because they do not like the condition of approval to annex to the City of Milwaukie to get required sewer service.

The Engineering Department has decided not to build the concrete islands which will address the emergency access concerns voiced by renters at the 42nd and King apartments. Discussion followed on ways to make that intersection safer for the pedestrians and drivers.

Gary Firestone commended Donald Hammang on the great job he did serving as Planning Commission Chair.

11.0 NEXT MEETING -- June 13, 2006

11.1 CU-06-02 conditional Use for 12015 SE 19th Avenue

CU-06-03/TPR-06-06/HIE-06-02 for 11921 SE19th Avenue

Commissioner Klein moved to adjourn the meeting of January 24, 2006.
Commissioner Bresaw seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:28 p.m.

Donald Hammang, Chair

Shirley Richardson, Hearings Reporter

ATTACHMENT 8

600 NORTHWEST GRAND AVENUE | PORTLAND, OREGON 97208-2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

June 1, 2006

Katie Mangle - Planning Director
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RECEIVED
JUN 06 2006
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Dear Ms. Mangle:

Your letter of transmittal and attachments, dated May 16, 2006, describes your recommendation to the Planning Commission in support of amendments to the Milwaukie Zoning Code and Comprehensive Plan. I understand that the proposed amendments essentially would make the Kellogg Creek Wastewater Treatment plant a non-conforming use and require its removal by 2015.

Your staff report contends that the proposed zoning and comprehensive plan amendments are consistent with Metro's Functional Plan, as Metro code requires. My staff has reviewed your analysis and agrees that the proposed changes are not in conflict with the Functional Plan.

I would like to bring another potential issue to your attention that your staff report did not identify. You may not be aware that Metro Code includes a Regional Waste Water Management Plan (RWWMP). The Plan, first adopted by Metro in 1980 and most recently updated in 1993, requires local jurisdictions to coordinate their plans with Metro and to comply with the RWWMP prior to the allocation of federal funds and state revolving loans for the construction or upgrading of any wastewater treatment facilities. Among other responsibilities, the plan identifies a role for Metro to determine necessary modifications to waste water treatment plans and to modify the RWWMP accordingly.

Milwaukie is included in the Regional Waste Water Management Plan. If the City wants to amend its land use regulations in a way that would modify the Kellogg Plant, Metro Code requires the City to determine whether the amendments are consistent with the RWWMP. If not, the city must request that the Metro Council amend the RWWMP prior to city action on the proposed amendments.

Because this Regional Waste Water Management Plan is included in Metro Code, and not in the Urban Growth Management Functional Plan, I can see how you could easily have overlooked it. Please enter this letter into the record to identify the need for the City to determine whether the changes proposed are consistent with the RWWMP.

My staff and Office of Metro Attorney would like to work with you on this to answer additional questions. Before the City takes action on the comprehensive plan and zoning code amendments, I encourage the City to review Metro's RWWMP.

Sincerely,

Michael Jordan
Chief Operating Officer

cc: Andy Cotugno
Robin McArthur

ATTACHMENT 9
BEERY, ELSNER & HAMMOND, LLP
ATTORNEYS AT LAW

PAMELA J. BEERY*
PAUL C. ELSNER
JOHN H. HAMMOND, JR.

1750 SW HARBOR WAY, SUITE 380 PORTLAND, OREGON 97201-5164
TELEPHONE (503) 226-7191 FACSIMILE (503) 226-2348
WWW.GOV-LAW.COM

THOMAS SPONGLER †
DAVID F. DOUGHMAN
MATTHEW J. MICHEL

* Also admitted
in Washington
† Of Counsel

May 23, 2006

VIA EMAIL AND HAND DELIVERY

Jeff Klein, Chair
Milwaukie Planning Commission
10722 SE Main Street
Milwaukie, OR 97222

Re: Comprehensive Plan Amendment CPA-06-01
Zoning Ordinance Amendment ZA-06-01

The Clackamas County Service District No. 1 (CCSD), the City of Happy Valley (Happy Valley), and the City of Gladstone (Gladstone) have concerns about the proposed amendments to the City of Milwaukie Comprehensive Plan and Zoning Code Community Service Overlay. If adopted these amendments would have immediate adverse impacts on sanitary sewer customers within the CCSD, Happy Valley and Gladstone, as well as sanitary sewer customers within the City of Milwaukie. They will adversely affect the health, safety, and welfare of the community.

The CCSD, Happy Valley and Gladstone jointly oppose the proposed amendments and raise the following legal objections to their adoption.

LAND USE LEGAL PROBLEMS

1. Proposed Amendments Violate Statewide Planning Goals 2, 6 & 11

The proposed amendment of Zoning Code section 19.321.3 A would prohibit sewage treatment plants in all zones within the City of Milwaukie (City). At the present time there is only one such plant within the city, the Kellogg Creek Wastewater Treatment Plant (Kellogg), owned and operated by the CCSD. The proposed new Zoning Code section 19.321.7 would make Kellogg a nonconforming community sewer use, and purports to allow Kellogg to remain in use only through December 31, 2015.

The clear intent of these proposed amendments is to do away with Kellogg. Whatever the desirability or merits of terminating the use of Kellogg, it violates statewide planning goals to attempt to do so directly and precipitously by the proposed City ordinance. State Goal 2, Coordination, requires the City to coordinate the closure of Kellogg and its replacement with alternative sewer treatment service with CCSD, Happy Valley and Gladstone. The City must also coordinate the provision of sanitary service with other districts and cities affected by the

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potential closure of Kellogg. The City has failed to coordinate its proposed adoption of these Zoning Code amendments and thus violated Goal 2.

State Goal 6 requires the City to protect water quality. To comply with Goal 6 the City has adopted Objective 4 – Water Quality as an Air, Water and Land Resources Quality Element in Chapter 3 of the Comprehensive Plan. Policy 1 of Objective 4 states:

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 for the collection and treatment of sanitary sewage.

The adoption of the proposed Zoning Code sections 19.321.3 A and 19.321.7 would violate Goal 6 because they would prevent the use and operation of Kellogg in a manner that protects water quality. The new sections would prohibit CCSD from operating, modifying and upgrading Kellogg processes or physical configuration as required to meet evolving federal water quality standards and thereby avoid enforcement actions under the Department of Environmental Quality (DEQ) discharge permit program.

These proposed amendments also are inconsistent with City Comprehensive Plan Chapter 3, Objective 4, Policy 1. This inconsistency is a separate violation of State Goal 2 that requires coordination with all agencies (including DEQ) for the treatment of city sewage at Kellogg.

State Goal 11, Public Facilities, requires the City to provide sanitary service for its residents. The City currently complies with this goal through intergovernmental agreements (IGAs) with CCSD. The City Comprehensive Plan has many provisions relating to this goal, sanitary service and the provision of sanitary service by the CCSD.

Some of these additional provisions include: the definitions in Chapter 6 where “public facilities” and “urban services” both include sanitary sewer; the introduction in Chapter 6 where “sewer systems” is included in the list of municipal services; Chapter 6, Objective 4, Policy 1 which relates to the 1990 Urban Growth Management Agreement with Clackamas County; Chapter 6, Objective 7, Policy 1 that provides the City will participate and cooperate with the County and affected service districts (CCSD) in planning and providing delivery of urban services including sanitary sewer; and Chapter 6, Objective 6, Policies 1 and 2 relating to service contracts and cost of services.

The City amendments may cause CCSD to consider termination of its wholesale agreement with the City which would leave city residents without cost effective sanitary service. Goal 11 requires that the City provide an alternative method for sanitary service before it terminates the existing sanitary service. The proposed amendments do not provide either a process or method for implementing alternative sanitary service. This failure violates various provisions of the City Comprehensive Plan as well as Goal 11.

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The proposed amendments include a rewording of both Chapter 4, Objective 7, Policy 5, to delete the City commitment to cooperate with CCSD to encourage public use of portions of the Kellogg site, and Chapter 5, Objective 5, Policy 5, to remove the City commitment to examine feasible alternatives for decommissioning Kellogg and a regional approach to assure adequate sewer service. These two proposed amendments each violate State Goals 2, 6 and 11, and are inconsistent with several other provisions of the City Comprehensive Plan.

In response to the requirements of Goals 6 and 11, the Criteria Checklist attached to the May 16, 2006 Planning Commission Staff Report quotes the phrase "assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location" from the proposed amendment to Chapter 4, Objective 7, Policy 5. That phrase is not a legally sufficient response to the Goals requirements. The report does not mention or analyze alternative methods for providing sanitary sewer treatment service. A commitment to decommission the only viable means of providing that service without a plan or method to implement an alternative for that service violates Goals 6 and 11. More than good intentions are required. The City must at a minimum have a realistic plan for providing wastewater treatment service in the event of termination of the City IGAs with CCSD or the decommissioning of Kellogg.

2. Proposed Amendments Violate Milwaukie Comprehensive Plan

The City Comprehensive Plan, Chapter 5, Objective 5, Policy 1 is the most important provision relating to compliance with State Goals 2, 6 and 11. It provides:

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

The proposed amendments do not amend this policy. Any amendment of the first sentence without provision for an alternative method of providing sanitary sewer service would violate state Goals. Any amendment of the second sentence would not alter the City obligation to comply with clean water legal requirements. The proposed City amendments are inconsistent with this Plan policy, and there is no way to "cure" that inconsistency by amending the Plan policy itself.

The proposed amendments are inconsistent with this Plan policy, and that inconsistency is another violation of Goal 2. In addition, the City may not amend its development regulations in a manner that renders those regulations inconsistent with the Comprehensive Plan. See ORS 197.005 *et seq.*, 197.015(6), 197.175(2), and *Baker v. City of Milwaukie*, 271 Or 500, 533 P 2d 772 (1975). It is questionable whether such an amendment would even be acknowledged by the Land Conservation and Development Commission (LCDC).

In addition, the City Comprehensive Plan at Chapter 2, Objective 1, Policy 7 and Zoning Code at section 19.905.1 A each require that Plan amendments comply with the Plan, its goals, policies and objectives. The proposed amendments fail to meet these requirements and criteria.

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Page 4

Policy 7 of Objective 1, Plan Chapter 2 contains six criteria. The proposed amendments fail to meet at least five of them. As discussed above, the amendments do not conform to other provisions of the Comprehensive Plan as required by the first criteria. The second criterion is public need for the change. Need is not the same as desire. Residents need sanitary sewer service. The proposed amendments could terminate that service without provision of an alternative method for meeting the public need. The third criterion is that public need is best satisfied by this change. The proposed change creates a new public need and does not satisfy an existing one. The fourth criterion is no adverse affect on the health, safety and welfare of the community. The proposed change will adversely affect public health because it seeks to terminate sanitary sewer service for a city of over 20,000 residents located on the Willamette River. As stated many times previously, the proposed change does not conform to Statewide Planning Goals and thus does not meet the fifth criterion.

The proposed amendments are also inconsistent with Plan Chapter 3, Objective 4 Policy 1. Again, any amendment of that policy without provision for an alternative method of providing sanitary sewer service violates Goals 2, 6 and 11. The inconsistency between the un-amended policy and the two amended policies also violates Goal 2 and the provisions identified above.

3. Proposed Amendments Violate Metro Code

Section 3.02.002 of the Metro Code provides for a Regional Wastewater Management Plan. The City Comprehensive Plan refers to that plan in Chapter 3, Objective 4, Policy 1. That policy provides that the City recognizes and assumes responsibility for operating, planning and regulating wastewater as designated in the Metro plan.

The proposed amendments do not amend this policy. The proposed amendments violate that policy and violate the Metro plan. Metro has authority to coordinate wastewater treatment plans under ORS 195.020 and 195.025. The City has a legal obligation to work with Metro to coordinate wastewater treatment with CCSD, Happy Valley and Gladstone.

The proposed amendments violate the Metro Urban Growth Management Functional Plan.

OTHER LEGAL PROBLEMS

4. Proposed Amendments Violate Intergovernmental Agreements

The City and CCSD have 12 IGAs relating to sanitary sewer service. The most recent is dated December 22, 2002. This 2002 agreement is attached as Exhibit A. The recent agreement refers to and incorporates the provisions of the November 25, 1970 agreement (the second agreement after the November 3, 1969 original agreement).

The November 25, 1970 agreement is also still in effect, and attached as Exhibit B. It provides that CCSD will accept, treat and dispose of domestic and industrial sewage collected and transmitted to Kellogg by the City during the term of the agreement, and that the City will pay

May 23, 2006
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for such services. This agreement and all other IGAs between CCSD and the City provide that either party may terminate the agreement upon 180 days written notice to the other.

Under the July 22, 2002 agreement, the agreement remains in force as long as CCSD provides wastewater treatment service or either party gives the other 180 days written notice to terminate. This 2002 agreement is attached as Exhibit C. It requires the City to "adopt and keep current an industrial pretreatment program ordinance meeting all federal and Oregon statutory and regulatory requirements (Milwaukie Pretreatment Program)." This City program must satisfy the provisions of 40 CFR Part 403, OAR Chapter 340, Division 41, and the National Pollutant Discharge Elimination System Permit issued to CCSD by the DEQ. The City is further required to amend its pretreatment program "as necessary to **ensure** compliance with all applicable federal and Oregon statutory and regulatory requirements." (emphasis added)

The proposed ordinance violates this agreement. Rather than an ordinance to ensure compliance with clean water requirements, the City is considering an ordinance which purports to prohibit CCSD from making an alteration to the plant or its operation that may be required for Kellogg to comply with its permit and other legal requirements.

Under the agreements, CCSD at any time may terminate its obligation to provide sanitary sewer service to the City. If necessary, CCSD would terminate all its obligations to the City rather than fail to alter Kellogg or operate the plant in compliance with clean water legal requirements.

5. Proposed Amendments Violate Federal Law

The proposed amendments could cause both the City and CCSD to violate the requirements of the Federal Water Pollution Control Act and federal regulations.

Proposed Zoning Code section 19.321.7 prohibits the current Kellogg use from being "enlarged, upgraded, remodeled, or altered in any way" and also prohibits any changes in operations. This would have the effect of prohibiting CCSD from operating the plant as required by federal and state law.

Specifically, the City could be civilly and criminally liable for violating the CCSD National Pollutant Discharge Elimination System Waste Discharge Permit (NPDES) permit issued and administered by DEQ under the federal Clean Water Act (CWA). The CWA imposes criminal liability on "[a]ny person who knowingly violates ... any permit condition or limitation implementing any of such sections [of the Act] in a permit issued under section 1342 of this title." 33 U.S.C. § 1319(c)(2)(A) (emphasis added); *see e.g., U.S. v. Cooper*, 173 F.3d 1192 (9th Cir. 1999) ("The phrase 'any person' is broad enough to cover permittees and non-permittees alike.). The term "person" includes a municipality. 33 U.S.C. § 1362(5). Thus, by adopting the proposed amendments, the City could be liable for violating the CCSD NPDES permit.

The NPDES permit for Kellogg, issued by DEQ on March 1, 2006 under state and federal law, requires the ammonia concentration in the discharge to be reduced below current levels during the months of May through October. Failure to meet this discharge limit will violate both state

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and federal clean water laws. The plant requires both physical modifications and operational changes to meet this newly-imposed limit. This proposed code amendment would prohibit these actions and cause the plant discharge to violate federal and state law. If the required changes are not made, DEQ may seek enforcement through both criminal and civil actions. The penalties may include prison sentences and fines of up to \$10,000 per day or \$300,000 per month. The Federal Clean Water Act also allows for third-party lawsuits to compel enforcement if DEQ or EPA do not take action. No employee or official of CCSD should be required to take this personal liability.

Ammonia is both toxic at high concentrations to certain aquatic life and presents an oxygen demand that can deplete oxygen in the river needed by fish to survive. As ammonia oxidizes, it is converted to nitrate that is a fertilizer. The nutrient value of this nitrogen fertilizer can cause algae to grow out of control causing a further water quality problem in the river. The failure to address this effluent requirement can affect water quality directly and indirectly, and violates Goal 6. The permit imposes an ammonia limit so that the discharge does not exceed the assimilative capacity of the Willamette River. This proposed ordinance prevents construction and subsequent operation of facilities needed to keep Kellogg discharge within water quality limits. When the discharge exceeds limits, it exceeds the carrying capacity of the river and may violate Goal 6.

6. Proposed Amendments Violate State Law

The proposed amendments are inconsistent with ORS 454.020. Under that section DEQ has legal authority to require each user of the treatment works of a municipality to comply with the requirements of the Federal Water Pollution Control Act and federal regulations. The proposed amendments could cause both the City and CCSD to violate that Act and regulations.

By declaring Kellogg a nonconforming use and then prohibiting its use, the City violates Article XI, section 4 of the Oregon Constitution. That section prohibits the City from taking Kellogg as the property of CCSD without compensation.

The proposed amendment is inconsistent with the adopted City public facilities plan (PFP). The City may not indirectly amend its PFP without going through the steps mandated by state law and State Goal 11. Also, as noted above, proposed amendments would make development regulations inconsistent with the City Comprehensive Plan and thus also violate state law.

7. City Does Not Have Legal Authority to Adopt Proposed Amendments

Proposed section 19.321.7 provides that no changes in the operation of the nonconforming uses (Kellogg) are permitted, except as needed to abate City declared nuisances. Whatever the extent of City legal authority over Kellogg as a sewage treatment plant land use, that authority does not extend to control over plant operations. CCSD must operate Kellogg in compliance with state and federal law; its operations need not comply with City law.

May 23, 2006
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Proposed section 19.321.7 purports to impose a \$10,000 per day civil penalty if Kellogg operations "violate" the new section. The City does not have legal authority to impose a "violation" on another government entity. Such authority is not included within City Home Rule under the Oregon Constitution. A city may only impose a penalty on another government entity if it has specific legislative authority. No such authority has been delegated by the Oregon Legislature to the City.

Proposed section 19.321.7 also purports to impose a "nonconforming major utility fee" of \$90,000 on the owner and operator of Kellogg (CCSD). It is surely only a coincidence that \$90,000 per month is about what the City is obligated to pay CCSD for sanitary sewer service under their IGAs. Whatever the amount or rationale, the City does not have legal authority to impose this tax, either at all or particularly on another government entity. Again, a city does not have Home Rule authority to impose a tax (calling a tax a fee does not make it so, a fee must be related to a service) on another government entity. In the absence of specific legislative authority, there is no legal basis for this tax, and it would be invalid.

The staff report assumes that the \$90,000 provision would only take effect after December 31, 2015. However, proposed Zoning Code section 19.321.3 makes Kellogg a nonconforming use. Proposed Zoning Code section 19.321.7 allows that use to continue through December 31, 2015. Under the current wording of 19.321.7, Kellogg is a nonconforming use, and CCSD must pay the City \$90,000 each month it operates Kellogg.

Conclusion

CCSD, Happy Valley and Gladstone understand that the City of Milwaukie desires to decommission Kellogg. They are willing to work with the City and other regional partners to plan for proper sewage treatment service. However, for all the foregoing reasons, the proposed amendments are counter productive and will not accomplish the results the City desires. We respectfully request that the Planning Commission forward to the City Council a recommendation for denial.

Sincerely,



Thomas Sponsler
Attorney for Clackamas County Service District No. 1,
City of Happy Valley and
City of Gladstone

encl.: three IGA agreements enclosed as Exhibits A, B & C
cc w/encl. via email:

All Clients
Gary Firestone, Milwaukie City Attorney
Dan Cooper, Metro Attorney

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 17th day of December 2002, by and between the City of Milwaukie, a municipal corporation ("City") and Clackamas County Service District No. 1, a county service district (District).

RECITALS

The City receives wastewater treatment services from the District pursuant to an Agreement between the parties dated November 25, 1970 and amended at various times, collectively referred to as the ("Agreement").

WHEREAS, the Agreement provides that the City shall pay an allocated share of operations, maintenance, repair, replacement and capital improvements on an annual basis.

WHEREAS, the District and the City entered into an Intergovernmental Agreement on August 21, 2001 obligating the City to pay an additional \$356,508 for various capital improvement projects at the Kellogg Creek Wastewater Treatment Plant over a five year period in five installments beginning June 1, 2002 and ending on June 2006.

WHEREAS, the City paid the first installment in the amount of \$110,826.60 in principal and \$9,172.50 in interest.

WHEREAS, the District and the City has constructed various capital improvement projects at the Kellogg Creek Wastewater Treatment Plant during Fiscal Year 2000-2001 which benefit the City and District and City representatives have reviewed the costs thereof for the period and agree that the City is obligated for an additional \$891,670.40 for capital improvement costs beginning on July 1, 2000 through June 30, 2001.

WHEREAS, the parties wish to amend the August 21, 2001 Intergovernmental Agreement to provide for payment of the balance of both amounts over a over a ten-year period and being fully advised, now therefore the parties agree as follows:


- 1. OBLIGATION OF THE CITY.** The City acknowledges and agrees that it currently owes the District \$1,137,351.80 for wastewater treatment services and capital improvements through the period ending June 30, 2001. The parties agree this amount is in addition to sums previously paid by the City and received by the District.
- 2. PAYMENT TERMS.** The parties agree that the City shall pay the District \$1,137,351.80. The remaining balance and accrued interest to the date of payment shall be payable in ten annual installments due on June 1, 2003 and on each succeeding June 1 until fully paid, but in no event after June 1, 2012. Interest shall be at the annual average rate paid by the Local Government


189 755

EXHIBIT A
PAGE 1 OF 3

CITY OF MILWAUKIE

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1, a county service district

By: 
Name: _____
Michael F. Swanson
Title: _____
City Manager

By: 
Name: _____
Larry Sowa
Title: _____
Chair

183 757

EXHIBIT A
PAGE 3 OF 3

A G R E E M E N T

THIS AGREEMENT made and entered into this 25th day of November, 1970, by and between the CITY OF MILWAUKIE, OREGON, a municipal corporation, hereinafter referred to as Milwaukie, and CLACKAMAS COUNTY, OREGON, a municipal corporation, acting for and in behalf of CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, hereinafter referred to as the District. This agreement supersedes the agreement of 3 November 1969, between the participants.

Recital:

Clackamas County Service District No. 1 is a service district organized under the provisions of Oregon Revised Statute 451.010 et seq for the purpose of constructing, operating and maintaining sanitary facilities. Milwaukie is a duly incorporated city within the State of Oregon adjacent to the area served by Clackamas County Service District No. 1. The District will construct and operate a sewage collection system and treatment plant; it will be known as Kellogg Creek Water Pollution Control Plant. In the first instance, the treatment plant will be constructed to receive an average flow of ten million gallons of liquid per day (10 mgd). Sewage flow is used herein to define the equivalent connected population, the basis being 100 gallons per capita per day. The design population equivalent of the initial Kellogg Creek Water Pollution Control Plant will be 100,000 persons. It is mutually agreeable and advantageous to the parties that Milwaukie use the sewage collection system and treatment plant of the District for disposal of domestic and industrial sewage waste collected by the city. The purpose of this agreement is to further the foregoing and provide for the disposition under the hereinafter described terms of domestic and industrial sewage waste from Milwaukie.

For the foregoing purposes, the parties agree as follows:

TERM:

The term of this agreement shall be for a period of ten years from the date hereof or until the treatment plant has been expanded and put into operation as

EXHIBIT 3

PAGE 1 OF 5

a 1.5 mgd plant or larger, whichever date first occurs. Either party, however, upon 180 days written notice to the other, may terminate the agreement. In the event a sewage treatment plant is not under construction by 1 January 1973, this agreement shall be automatically terminated.

The District agrees to accept, treat and dispose of domestic and industrial sewage collected by and transmitted to its Kellogg Creek Water Pollution Control Plant by Milwaukie during the term of the agreement and Milwaukie agrees to pay for said service at rates hereinafter prescribed.

PAYMENT:

The rates to be paid to the District by Milwaukie for the foregoing service shall be determined as follows:

A. ANNUAL LUMP SUM PAYMENT. Milwaukie shall pay annually on each anniversary of the effective date of this agreement and proportionately for any portion of a year less than a whole year, a sum to be known as the "annual lump sum" charge. Said annual lump sum charge is a proportionate amount of money necessary per year to retire the debt incurred to construct said sewage system and to be repaid in not less than 20 years or as mutually agreed by both parties. Milwaukie's proportionate share of the debt retirement shall be determined by the following formula: Initially said proportion is set at 40% of all costs incurred in constructing a 10 mgd treatment plant; 13.5% of all costs incurred in constructing the Lower Kellogg Creek Interceptor as shown in Figure 3 attached and 11.2% of all costs incurred in constructing the Mount Scott Creek Interceptor west of Linwood Avenue. "Costs" shall include but not be limited to all construction, engineering, right-of-way procurement, attorneys' fees and bond sale costs. The purpose of the annual lump sum is to defray Milwaukie's proportionate share of the cost of construction of the treatment plant and interceptor sewer.

The annual lump sum charge shall cover that portion of plant capital costs deemed applicable to Milwaukie for treatment of up to an average 4.00 million gallons per day (mgd) sewage flow from Milwaukie. Should the average yearly Milwaukie sewage flow to the District exceed 4.00 mgd, or the recomputed minimum as provided hereinafter, the annual lump sum payment shall increase proportionately to the increase in flow above 4.00 mgd, or the recomputed minimum, using the above

initial formula as a base, excluding cost of interceptor lines. The minimum annual Milwaukee lump sum charge shall be reduced in the event the District contracts with others outside the District to provide sewage treatment services at the Kellogg Creek plant. The adjustment in Milwaukee's minimum charge shall be based on reducing the 4.00 mgd capacity allowance by 40 per cent of the capacity allowance contracted to others outside the District. Should the average yearly sewage flow to the Kellogg Creek plant exceed 10 mgd less Milwaukee's minimum proportion, the annual Milwaukee lump sum payment shall be renegotiated with the payment being based on actual contribution by Milwaukee.

Should the District receive a State and/or Federal construction grant for any of the facilities jointly used by the parties, the annual lump sum charge shall be revised to a sum that will bear the same proportion of cost to capital expended to construct said facilities without the aid of Federal and/or State construction grants.

B. UNIT CHARGE. A charge to be known as a unit charge shall be made by the District to Milwaukee at the initial rate of \$85.00 per million gallons of sewage transmitted by Milwaukee to the District to be paid monthly by Milwaukee upon being billed therefor by the District as hereinafter set forth. The unit charge shall cover operation and maintenance consisting of direct supervision, labor, operating materials and supplies, maintenance, repair and replacement of plant machinery and equipment, and administration. In any future revision of the unit charge, the factor of administration shall be determined at the rate of 10% of labor cost. By "labor cost" is meant the total cost of labor, that is, base pay together with all increments and benefits furnished to or for the employee by the employer or District.

The unit charge of \$85.00 per million gallons shall be annually revised. The basis for a revised unit charge shall be the actual operating and maintenance cost for the preceding year divided by the total plant flow for that year. The operating and maintaining cost used shall be limited to those items outlined above. In no case shall Milwaukee's operation and maintenance charge exceed 65 per cent of the annual total operation and maintenance cost for the plant, provided Milwaukee's flow does not exceed 4.00 mgd.

The unit charge shall be paid monthly and within thirty days after being billed therefor by the District.

PLACE OF PAYMENT AND NOTICE:

Any notice to which Milwaukie shall be entitled under this agreement, shall be delivered or sent to City Hall, Milwaukie, Oregon. Place of payment and notice for District shall be at Clackamas County Courthouse, Oregon City, Oregon. Place for notices and payment may be changed by written notice from the party changing its address.

MISCELLANEOUS:

Composite samples of wastes from Milwaukie shall be collected by the District periodically. Should the average strength of Milwaukie's waste flow to the District plant exceed for a period of 15 days that of normal domestic sewage, a 5-day 20°C bio-chemical oxygen demand (BOD) or suspended solids (SS) concentration in excess of 240 milligrams per liter (mg/l), the District may upon ten days' written notice to Milwaukie bring about a renegotiation of the amount of the annual lump sum and unit charges then being paid by Milwaukie with the end in view of basing the adjusted annual lump sum amount and unit charges on flow, BOD and suspended solids as outlined in the District industrial waste ordinance.

Should another contractual participant have waste flows in excess of normal domestic sewage strengths, as defined above, their treatment charges shall be adjusted as described above for Milwaukie to determine justification for reducing annual lump sum charges for other contractual participants.

Flow measurement facilities shall be installed by Milwaukie, at its expense, at locations as agreed upon by the District and Milwaukie. Each measurement facility shall conform to the District industrial waste ordinance.

For connections to the District sewage system by Milwaukie where a flow measurement facility is impractical or unwarranted, the contributing flow shall be estimated by using the number of connections on the contributing line multiplied by an average sewage flow of 400 gallons per day per residential connection or upon justified other volumes of flow. Flows for commercial establishments shall be estimated using the average daily water use for the preceding year based on water meter records.

The City of Milwaukie and industrial waste contributors in Milwaukie whose sewage shall be treated at the District plant shall be subject to all Sections of the District industrial waste ordinance. In no event shall any industry discharge wastes to the District plant without the approval of the District and the City.

Milwaukie agrees to pass such laws or regulations and to enforce the same to the best of its ability to prevent excessive infiltration of storm water and groundwater into its sewer lines for delivery of sewage to the District plant.

In the event the parties are not able to agree upon the interpretation of any provision of this agreement, or are unable to resolve any negotiations, matter of disagreement arising out of this agreement, the matter shall be submitted to arbitration. That is, each of the parties shall select an arbitrator and the two arbitrators, in the event of inability to agree, shall select a third arbitrator, and the conclusion of a majority of the arbitrators, when made in writing to the parties shall be conclusive as between the parties. The parties shall share the costs of arbitration in equal proportions.

EFFECTIVE DATE:

The effective date of this agreement and from which all times and anniversary dates shall be measured shall be that upon which the District has facilities in operation to treat sewage and notified the City in writing.

IN WITNESS WHEREOF the parties have caused these presents to be executed by appropriate officers and pursuant to enabling resolutions the day and year first hereinabove set forth.

CITY OF MILWAUKIE, OREGON

Mayor Donald W. Gray

Recorder Ruth E. Dineen

BOARD OF COUNTY COMMISSIONERS FOR CLACKAMAS COUNTY, OREGON, acting for and in behalf of CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

Chairman Fred Stefani

Commissioner Thomas D. Telford

Commissioner [Signature]

INTERGOVERNMENTAL AGREEMENT

FOR INDUSTRIAL PRETREATMENT PROGRAM IMPLEMENTATION

This Intergovernmental Agreement For Industrial Pretreatment Program Implementation ("Agreement"), effective as of the 25th day of July, 2002, is made and entered by and between the City of Milwaukie ("Milwaukie"), a municipal corporation, and Clackamas County Service District No. 1 ("District"), a county service district formed pursuant to ORS Chapter 451.

RECITALS

WHEREAS, the District is a county service district organized and operating under ORS Chapter 451, with the power to provide sanitary sewer services within its service territory, and provides transmission, pumping and treatment of sanitary sewage for Milwaukie;

WHEREAS, Milwaukie is an Oregon municipal corporation organized pursuant to its Charter and presently provides sanitary sewer collection services within its boundary;

WHEREAS, the District and Milwaukie desire to provide for an integrated Industrial Pretreatment Program within the City of Milwaukie as required by the Oregon Department of Environmental Quality ("Oregon DEQ") and the United States Environmental Protection Agency ("EPA"); and

WHEREAS, the District and Milwaukie have the authority to enter into this Agreement pursuant to their respective Charters or Principal Acts and ORS Chapter 190.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Industrial Pretreatment Regulation

1.1 Within six months of the effective date of this agreement, Milwaukie shall adopt and keep current an industrial pretreatment program ordinance meeting all federal and Oregon statutory and regulatory requirements (the "Milwaukie Pretreatment Program"). The Milwaukie Pretreatment Program shall satisfy, among other requirements, the provisions of 40 CFR Part 403, OAR Chapter 340, Division 41, and the National Pollutant Discharge Elimination System Permit issued by the Oregon DEQ to the District.

1.2 Milwaukie shall ensure that the Milwaukie Pretreatment Program is at least as effective as the District's industrial pretreatment program rules and regulations, and provides to the District the authority to access Milwaukie's facilities and the facilities of non-domestic users

of the sanitary sewer system within Milwaukie for purposes of inspection, sampling and any other activity relating to implementation of the Milwaukie Pretreatment Program.

1.3 Milwaukie shall amend the Milwaukie Pretreatment Program from time to time as necessary to ensure compliance with all applicable federal and Oregon statutory and regulatory requirements.

2. Fees and Charges

2.1 Milwaukie shall establish by ordinance such fees and charges, including but not limited to permit fees, user fees and cost of service fees, as are necessary to compensate the District for the costs of administering and implementing the Program ("Fees and Charges"). Such Fees and Charges shall be not less than the fees and charges that the District may set in its rules and regulations. Milwaukie shall amend the Milwaukie Pretreatment Program from time to time to ensure that the Fees and Charges remain consistent with, and not less than, the fees and charges set by the District.

2.2 Milwaukie hereby delegates to the District, and the District hereby accepts, the authority to assess and collect the Fees and Charges within the City of Milwaukie. The parties agree that the District shall retain all Fees and Charges to compensate the District for administering and implementing the Milwaukie Pretreatment Program and for treating discharges regulated under the Program.

3. District Implementation of the Milwaukie Pretreatment Program

3.1 Except as otherwise provided in this Agreement, Milwaukie hereby delegates to the District, and the District hereby accepts, the authority to administer, implement and enforce the Milwaukie Pretreatment Program.

3.2 The District implementation of the Milwaukie Pretreatment Program shall include, but not be limited to, preparation, issuance and enforcement of industrial user permits, wastewater sampling and analysis, industrial user inspection, and record keeping and reporting as required to maintain compliance with federal and Oregon statutory and regulatory requirements.

3.3 Nothing in this Agreement shall be interpreted or construed as requiring the District to take any action whatsoever to operate, inspect, maintain, repair or replace any of the sewer lines or other sewer facilities owned or operated by Milwaukie.

4. Milwaukie Implementation of Pretreatment Program

4.1 Milwaukie shall provide notice to all new Milwaukie non-domestic users of the sanitary sewer (non-domestic users) of the requirements under the Milwaukie Pretreatment Program and of the District's implementation responsibilities. Milwaukie shall consult with the District in developing the notice and, at a minimum, the notice shall include:

4.1.1 Information describing the industrial user permitting process and requirements, the wastewater discharge prohibitions and limitations, and the enforcement response requirements;

4.1.2 The name, telephone numbers and addresses of appropriate District and City officials responsible for implementation of the Milwaukie Pretreatment Program.

4.2 Milwaukie shall develop and implement a process to ensure that new non-domestic users of the sanitary sewer system are identified and surveyed to obtain the information necessary to evaluate the need for an industrial wastewater discharge permit under the Milwaukie Pretreatment Program ("Industrial User Survey"). Milwaukie shall implement the Industrial User Survey as a part of its building permit and zoning programs.

4.2.1 Milwaukie shall notify each non-domestic user applying for connection to the sanitary sewer of the potential need to obtain an industrial wastewater discharge permit from the District, and shall ensure that each such non-domestic user completes and submits to Milwaukie a non-residential questionnaire prior to permitting the sanitary sewer connection;

4.2.2 Milwaukie shall, on or before the 10th day of each month, submit to the District a report listing the names and addresses of all non-domestic users applying for sanitary sewer connection in the preceding month, and copies of all non-residential questionnaires completed in the preceding month;

4.2.3 Milwaukie shall not permit a non-domestic user to discharge to the sanitary sewer system until after the District has either: (a) issued an industrial wastewater discharge permit to the non-domestic user, or (b) determined that the non-domestic user is not required to obtain an industrial wastewater discharge permit.

4.3 Milwaukie shall develop and implement an Emergency Spill Response Plan. The Plan shall establish the actions Milwaukie will take in the event of a spill of material that enters or threatens to enter the sanitary sewer system in an amount or concentration that may damage the treatment system, interfere with treatment processes, affect biosolids quality, cause a pass-through or create other unsafe conditions. Milwaukie shall consult with the District in developing the Emergency Spill Response Plan and, at a minimum, the Plan shall contain the procedures for providing spill control and containment, and for notifying the Kellogg Creek Water Pollution Control Plant and the District's Source Control Office.

4.4 Milwaukie shall provide the District with access to all records and other documents generated, compiled, assembled or obtained by Milwaukie and relating to the Milwaukie Pretreatment Program.

5. Reporting

The District shall, where appropriate, include the Milwaukie Pretreatment Program and the implementation of that Program in the District's reports required under the federal and Oregon statutory and regulatory requirements.

6. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

7. Non-Waiver

Failure by any party to require performance by the other party of any provision hereof shall in no way affect such party's rights to enforce the same, nor shall any waiver by any party of the breach hereof be held to be a waiver of the succeeding breach or a waiver of this non-waiver clause.

8. Binding Effect and Agreement

The covenants, conditions and terms of this Agreement shall extend to, be binding upon, and inure to the benefit of the representatives, successors and assigns of the parties hereto.

9. Merger

This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all previous agreements and understandings with respect to the matters addressed herein.

10. Term

This Agreement shall remain in full force and effect as long as the District provides wastewater treatment service or until either party provides 180 days advance written notice to terminate, whichever occurs earlier.

11. Notices

Any notice herein required or permitted to be given shall be given in writing and shall be effective when actually received and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

If to Milwaukie:

Director of Community
Development and Public Works
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

If to the District:

Source Control Coordinator
Water Environment Services
Clackamas County
15941 S. Agnes Ave., Bldg. B
Oregon City, OR 97045

12. Disputes

In the event that a dispute arises regarding this agreement that cannot be resolved by the staff members working on the matters, the parties agree that the dispute shall be submitted to the Milwaukie City Manager and to the Clackamas County Administrator and if the City Manager and County Administrator are unable to resolve the dispute, the parties agree that the dispute shall be resolved by arbitration in accordance with the then effective arbitration rules of the Arbitration Service of Portland or the American Arbitration Association, whichever organization is selected by the party that first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected. Nothing in this section shall preclude the parties from attempting to resolve disputes by mediation at any time.

IN WITNESS WHEREOF, the parties have, pursuant to official action that the respective governing bodies duly authorized in the same, caused their respective officers to execute this Agreement on their behalf.

Dated this 25th day of July, 2002.

CITY OF MILWAUKIE

CLACKAMAS COUNTY BOARD OF
COMMISSIONERS, acting on behalf of
Clackamas County Service District No. 1

By: 

By: 

Attest: Pat Dawal

Attest: 

Present:

Karen Martin, Chair – Campbell Neighborhood Association

Larry Kanzler, Chief of Police

Susanna Pai – Lake Road Neighborhood Association

Gene Covey – Lewellyn Neighborhood Association

Ray Bryan – Historic Milwaukie Neighborhood Association

Dolly Macken-Hambright – Linwood Neighborhood Association

Tom Traver – Member At Large Applicant

The meeting was called to order at 6:00 p.m.

The Chief talked about the recent bomb threat at Rowe Middle School. He wrote a letter to Ron Naso, Superintendent, regarding the liability involved if parents aren't notified. Copies were sent to all the Clackamas County law enforcement agencies and the schools inside the City.

Karen asked if everyone had reviewed the minutes from March's meeting. Dolly made a motion to accept the minutes. Susanna seconded the motion. Passed unanimously.

Karen thought we should have an official vote to elect Susanna as the new Chair. Dolly made a motion to accept Susanna as the new Chair. Ray seconded the motion. Passed unanimously. This will be Karen's last meeting. She requested someone from her neighborhood association attend in her stead.

Chief shared a letter from the RECIC (Regional Economic Crime Investigation Center) – regarding a bill going before Congress to support their efforts with federal money. The financial institutions and insurance companies are also supporting it. There will be an identity theft task force starting up July 1st – we will have a detective assigned to it. Milwaukie will be the only agency from Clackamas County represented.

There have been some complaints regarding a new business in the Wichita Town Center – Salon Acapulco Tropical. They rent out space for parties and have had problems with fights/alcohol. The PD will be looking into it.

The budget is ready to be adopted by the Council. Since the shift changes we've reduced the overtime by approximately 48%. We're going to be purchasing a new motorcycle after July 1st. The Chief wants to look into purchasing a hand-held automated citation system through an ODOT grant. He requested equipment/upgrades (interactive communications system) to improve the Community Meeting Room to be used as an Emergency Operations Center. We have to be ICS (Incident Command System) compliant in order to receive federal money/Homeland Security funds. The system will help keep track of equipment, wages, etc. for reimbursement.

Chief had a meeting with the Director of the Oregon Association Chiefs of Police recently. They agreed to sponsor Milwaukie PD in the photo radar project. The bill will go directly to the legislature.

Dolly – Citizen's Police Academy – we have six positions total – three are filled. If anyone has someone they know who is interested, let her know soon. The schedule and instructors are set.

One of the Council members asked the Chief to attend a work session and talk about the Police Department – goals, strengths, strategic plan, etc.

The committee presented Karen with a thank you card and gift.

The meeting was adjourned at 7:25 p.m.

Next meeting is scheduled for June 22nd.



Park & Recreation Board

PARB

Tuesday, April 25, 2006

6:00 PM to 8:00 PM

Regular Meeting

MINUTES

Attendees: Kate MacCready, Sherri Dow, Ray Harris, Sonny Newson, Mart Hughes

Absent: Rob Gabrish,

Staff: JoAnn Herrigel, Joan Young

Minutes: March minutes 4-0-1 (Hughes abstained due to absence).

Change of meeting time: Herrigel asked the group if they would be willing to meet on the same day each month but to switch the meeting time to 7:30 in the morning. They agreed. Dow motioned that the meetings be held the fourth Tuesday of the month from 7:30 am to 9 am. Harris seconded and motion passed 5-0. Herrigel said she would bring coffee.

2006-07 Work Plan: Herrigel went over a proposed work plan for the group for the next year. It was suggested that the work with the District on the intergovernmental agreement be moved up in the list to underscore its importance. Otherwise the group thought it looked fine. Dow suggested that it be forwarded to Council and Hughes agreed to speak for the PARB at the May 2 Work session.

Geo-caching in public parks: Herrigel said Hughes had asked her to look into how other jurisdictions dealt with geo-caching in their parks. Herrigel went through some information that Less Hall had compiled for the group. Hall had contacted Portland, Tualatin Park and Rec, Clackamas County and West Linn. Discussion highlights:

- Tualatin gets a list of caches regularly. Question: how are sites shown?
- Hughes: Mark Warrington of PDX has language that he plans to take to City Council. Should Milwaukie have similar language in our code?
- Dow: Maybe we say geocaching is allowed but only according to the rules
- Newson: Is there a (geocaching) web site we could put information on?
- Hughes: Our message should be: follow the rules, do it but do it right.
- Dow: prefer the informal approach to code language.

Mowing at North Clackamas Park : Herrigel said that she and Hughes had discussed a recent incident at North Clackamas Park in which mowing had been done very close to wetlands. Eric Shawn had called it to the attention of the City and the district. Herrigel said that she and Mike McLees had met with the Planning Director and the engineering staff to discuss mowing near wetlands. A letter from the Planning Director would be sent to Melees and copied to others very shortly. She noted that a 15 foot buffer was requested by the City around the wetland areas – for mowing, not a 50 foot one. Herrigel summarized that when questions are asked about how code applies to specific activities, the City will respond to the inquiry with code interpretation.

Hughes said that the intent is really to try to change maintenance regimes near sensitive areas (like those at NCP).

Young said that the mowing doesn't seem any different than it has been historically. She noted that they do go fast, though.

Newson: Can we convey that we see an improvement when we do?

Hughes: The District needs to buy into this. We have a desire in the community for stewardship in this area.

Dow: What training do mowers have in environmental sensitivity?

Hughes: Should we do a letter regarding taking on the master plan? Need to establish what we want to see happen. Seems that the master plan is the next step.

City Project Update

17th Avenue – Trans Enhancement app: The City submitted a grant application for \$1 million in Transportation Enhancement funds to build a sidewalk on the west side of 17th Avenue and to establish formal bike lanes on both sides.

Stewardship Committee: Herrigel is representing the City on the Stewardship committee for North Clackamas Park. She attended one meeting at which the group discussed their focus and their method of operation.

Homewood upgrade (Garrett side): Herrigel noted that plants had recently been installed on the west side of Homewood park and the turf had been re-installed.

Next steps on IGA: Herrigel said she hadn't convened the subgroup to discuss the IGA since the last meeting. Dow suggested that since the IGA was on the work plan, that the group wait until after the Work Session with Council to work on this further.

District Updates:

- Stringfield Property – 5 acre parcel off Naef Rd along the Trolley Trail. Had an open hearing last night regarding watershed restoration on the site. 20 people attended.
- Dan met with County Administrator re: budget and should have an answer soon
- May 3 is the NCP ball field bid opening
- May 16 is the Happy Valley election
- Kellogg Creek road construction tentatively set for May 11, 12, and 13. 11 and 12 – 20 minute delays. 13th – up to 1 hour delays

Newson suggested that we do a Parks video.....?

MacCready reported that the art project at NCP is expected within a few months. Interviews were expected soon.

Dow motioned to adjourn, MacCready seconded and motion passed 5-0.