

## MINUTES

## MILWAUKIE CITY COUNCIL WORK SESSION

December 5, 2006

**Mayor Bernard** called the work session to order at 5:32 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, and Kenny Asher, Community Development/Public Works Director.

**Appointed Advisory Board Interviews**

The Mayor and Council interviewed Robert Biswas-Diener, Kay Sweetland Bower, and Colleen Schacht for vacant positions on the Library Board; Paulette Qutub for the Planning Commission; and Greg Seagler for the Riverfront Board.

**Mr. Asher** introduced **Gary Parkin** who was recently hired as the City's Engineering Director.

**South Downtown Project Update**

**Ms. Herrigel** discussed the parks and trails projects at the south end of downtown. The intent of this discussion was to pull back and look at the inter-related efforts. Scott Churchill, Planning Commissioner, donated renderings for Robert Kronberg Park that were a compilation of what several people thought they would like to see in the future. The group discussed the Oregon Department of Transportation (ODOT) preservation project from the Park south to Roethe Road, the impact of the Kellogg Lake dam removal project, Trolley Trail access, and the Riverfront Park design. Mr. Churchill pulled back from Robert Kronberg Park and provided overlays showing how these projects were inter-related.

David Evans Associates (DEA) was hired to develop the riverfront plan, and project manager Gill Williams met with the Riverfront Board twice. There are plans for an open house the second week of January. Ms. Herrigel anticipated that the design would be completed March/April 2007, and she intended to apply for grants in spring 2007. One of the proposals was to close Jefferson Street and enter the Park at Washington Street that would force some issues about the entrance to the Kellogg Treatment Plant.

The City applied for Metropolitan Transportation Improvement Project (MTIP) funds in the 2008/2010 cycle to design and engineer the removal of the dam and bridge at 99E. This phase would be design only with some revegetation. Staff will know by February 2007 if the funds were granted, and the money would be available in 2008. Additionally, the City applied for MTIP funds for a sidewalk on the west side of 17<sup>th</sup> Avenue and bike lanes on both sides that would connect to the trails to the north. This project was submitted for the 2008/2010 funding cycle. The design for the 6.5 mile pedestrian and bike Trolley Trail from the Jefferson Street boat ramp south to Gladstone should be concluded in August or September 2007. The construction bid would go out in March 2008 with construction May/June 2008. The actual length constructed would be about three miles. Ms. Herrigel had been working with the neighborhood on the Robert

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Approved Minutes

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Kronberg Park concept plan that would eventually go through a land use process like master planning or community service overlay. That process will likely be on hold until the City finds out how it did with the MTIP applications.

There were other projects being tracked included the Kellogg Treatment Plant removal, the Cash Spot purchase, South Corridor Phase 2 alignment, the Town Center Project, and the Farmers' Market relocation. When the City deals with any of the projects, it deals with all of the projects because they are all inter-related.

**Councilor Stone** asked about the timing of the MTIP funds and why it took so long to get the money disbursed.

**Ms. Herrigel** understood it had a lot to do with the contracting.

**Mayor Bernard** added it also had to do with the federal process.

**Ms. Herrigel** said the funding did not go away unless the project went away. The Trolley Trail, for example, would be using funds from the last cycle.

**Mayor Bernard** was concerned about Spring Park, Riverfront Park, and Robert Kronberg Park competing for the same dollars. If Robert Kronberg Park and the Riverfront Park could be the same request then he was fine with that. There was only so much money available which was one of the reasons it took so long to fund Lewelling.

**Councilor Stone** thought in retrospect there were so many inter-related projects that they could help each other more than hindering.

**Ms. Herrigel** observed they were all a little bit off in their development. Robert Kronberg Park was a little behind Spring Park and Riverfront Park. There were grant criteria, and each park had a different type of personality. She has not had to decide about doing one project over another since they were sequentially developing. If it did get to that point she would have to come back to the Council and/or community to determine priorities. The Park and Recreation Board discussed the recently passed Metro bond measure, and the priority list would come before Council in July. The City was slated to get about \$650,000 for acquisition and enhancement. There was a local share fund and a grant program that required a match.

**Councilor Stone** asked if the City would proceed with the Robert Kronberg Park master plan if MTIP funds were not awarded.

**Ms. Herrigel** said that could be done. She clarified that the MTIP application was for the dam and not for Robert Kronberg Park although they did impact each other.

**Mr. Asher** commented this was not just about the parks. Although there were a lot of parks projects, but he did not think one talk about Robert Kronberg Park without talking about Riverfront Park and all of the parks in the downtown. The bridge replacement and dam removal were even more critical than people might think. The entire area would be green through a series of trails and mini-parks to create a downtown park experience. In addition there would be a connection under McLoughlin Boulevard to the riverfront which was something people had talked about for many years. This was the character that Milwaukie loved – the green, natural outside experience. The grid pattern of blocks and hardscape was also important. He was working on the Milwaukie Town Center Project (MTCP), and there was a concern about losing some of the trees on the site to construct a building. The Committee has struggle with that, and it was a concession.

However, the experience of trees in the downtown would not go away. He pointed out the Main Street terminus and the powerful relationship between the natural greenspace character on the south side and the link to the downtown. It was dangerous to compare Milwaukie with Portland, but he would do it in this one regard. Flying over Portland at night one saw the lights of downtown next to the huge unlighted area of Forest Park. Portland was popular because of that amenity. On a much smaller scale it was entirely possible that the natural and urban experiences in Milwaukie could support each other. The opportunity was there, and the Cash Spot was right in the middle at the bridge. There were people who had ideas about what should be done with the property because it was a connection between the two sides of McLoughlin Boulevard. The Farmers' Market will need to be relocated. There was no plan for the south side of downtown, but the City may want to have one. This was an amenity that in 50 years' time could be the greatest thing about Milwaukie.

**Review Milwaukie Municipal Code Section 8.04.200 (C) of the Nuisance Chapter Related to Assessment of Costs**

**Mr. Swanson** responded to a question at the last Council meeting related to a resolution authorizing a lien in the amount of City costs for abating a nuisance on real property on Regents Drive. Most of the answers were contained in footnote 3 of the staff report. First of all why would there be a lien against property if City employees were used in abating a nuisance? The first step in the process once a nuisance was identified was that code enforcement staff would try to secure compliance through letters and personal visits. Absent that the code provided that the city manager could determine that a nuisance existed. The property was posted and the owner or person in charge was notified that there was a nuisance. There were two courses of action: (1) abate the nuisance, or (2) file a challenge with the city recorder. The City Council must hear the challenge at its next available regular meeting. The policy reason for that speedy a turnaround was that the nuisances were often dangerous situations that needed to be resolved quickly. It was up to the Council to decide whether a nuisance was in fact present. If they chose to challenge it they must abate the nuisance within 10 days of the Council's deciding there was in fact a nuisance. If at the expiration of those 10 days the nuisance has not been abated, then the city manager may act to abate the nuisance. Often times that involves removing debris from the property or removing some offending problem. The code requires the city recorder to keep a record of actual costs incurred by the City for the abatement including administrative expenses, which are then forwarded to the owner. The owner or responsible party may either pay the charge or challenge it before the City Council to determine if the costs were valid. After 30 days if the charges are not challenged and/or the Council considers the costs valid, then it is entered into the city lien record. It would be satisfied as any lien.

Why were City employees used? If the situation were a minor clean up, then City employees would be used. The money collected from the lien was put back into the budget from which the salaries were taken. Employees are paid as if they were doing their normal function. If the City did not have a way to collect the costs of the cleanup, then people would have no incentive to maintain their property. People could simply wait for the City to clean up the property and bear the costs. The second reason was that abatement had to do with property that was in some way contrary to societal norms. For example if there were 1,000 properties and one was in violation of the nuisance code, then the other 999 who were following the law and maintaining their property in a safe and reasonable manner would have to pay for the one who did not. The abatement lien was

really placing the burden on the owner or the person in charge who was violating societal norms.

**Councilor Stone** was the one who had asked the question initially, but Mr. Swanson had not covered her question. She felt everyone understood about the abatement process and liens. Certainly the offending party needed to be held responsible and should be liable for whatever costs were incurred by the City. She had a question about the cost breakdown. There were actual costs with environmental assessment, materials, contractors, and all kinds of things that totaled about \$10,000. She wanted clarification of the almost \$2,782.51 for 79 hours of staff time from nine city employees. Was there a law that covered the City that said the City could bill for that time because the work was done on the clock? It was not overtime for those employees. What happens to the money and what pot does it go back into?

**Mr. Swanson** replied it was credited back to the fund from which the expense came. If street division employees were being used, then the money would go back to reimburse the road fund. The authority for doing so was in the nuisance chapter 8.04.19C where the city recorder was required to maintain a record of the actual costs to the City for performing the abatement including administrative expenses. In this case of the \$2,782 about \$1,200 was Mr. Salyers' time and \$60 for Ms. Herrigel's time.

**Councilor Stone** responded that it seemed like their jobs to do this, so she was trying to figure out what allowed the City to be able to do that and pass on an additional \$3,000 to anyone. She could understand if there was a contract for someone who was not a City employee and the City billed. That should be passed along. These people were on the clock and getting paid.

**Councilor Barnes** said that was above and beyond their normal duties.

**Councilor Stone** said it was Mr. Salyers' duty.

**Mayor Bernard** replied the work was being done for one individual and not the community at large.

**Councilor Stone** said to her they were still on the clock and not on overtime.

**Mayor Bernard** agreed it was on regular time but it was time taken away from the rest of the community. They had to focus their time on cleaning up someone's mess. Why should the other taxpayers be responsible for paying to clean up someone else's problem?

**Councilor Stone** replied that the taxpayers were already paying for that employee, and they were not doing anything outside the scope of eight hours of work.

**Mr. Swanson** explained in this instance the subject property was a burned down building that had not been cleaned up. If it were the City's building, then it would have cleaned it up. Utility workers from the wastewater division were being diverted from their functions to clean up the remains of this burned building. It was a matter of reimbursing the community for something out of the ordinary. A road worker or wastewater worker might have to go in and help clean up after 40 dogs and were being taken away from their normal functions and were not getting any additional money. The taxpayers were being reimbursed for the money they spent in cleaning up the situation.

**Councilor Stone** asked what law said the City could do this? What was on the books?

**Mr. Firestone** replied the cities were allowed to do anything that was not illegal.

**Councilor Stone** understood there was nothing on the books, but this was not an illegal activity.

**Mr. Swanson** explained it was authorized in the municipal code. Mr. Salyers' time was charged when there was an abatement.

**Councilor Loomis** understood then there was a decision that someone had crossed the line. Not every taxpayer has the code guy knocking on his door. The only time this policy was implemented was when it went to abatement.

**Mr. Swanson** added that if the property owner or person in charge had cleaned it up, then Mr. Salyers' time would not be charged back. Staff was clear about the process and the options. Oftentimes it was likely absentee owners who were not that concerned about the property.

### **Social Gaming**

**Mr. Swanson** understood the Council requested additional information at its November 9 meeting. Mr. Hanson spoke to the Council about his desire to authorize social gaming in Milwaukie. Mr. Firestone provided a memo regarding the matter. He also talked with Chief Kanzler who had some concerns about social gaming. The Council could allow social gaming fairly easily by adopting an ordinance. The Chief had been through it when Portland authorized social gaming. It was not something Mr. Swanson recommended at this time because of the volume of other City matters. Chief Kanzler indicated he would probably have to hire an additional officer or at least assign a portion of an officer's time to enforcement. If he had the money to hire an additional officer it would not be for this purpose. He did not believe the City would generate \$100,000 in fees to hire a new officer.

**Mayor Bernard** recalled this was before the City Council about three years ago. Non-profits such as the Rotary can do it for fundraising. He was opposed to gambling and would not support adopting an ordinance.

**Mr. Firestone** added that a limited amount of gambling was allowed in people's homes as long as there was no take. A commercial place would be allowed only if the City authorized it.

**Councilor Loomis** asked what other issues there were other than hiring an officer.

**Mr. Swanson** replied Chief Kanzler did mention that although social gaming was meant to have no profit to the house in his experience gambling had always evolved into an activity where one could find a way to make money. Chief Kanzler dealt with it in Portland and they were constantly investigating different institutions. Unfortunately this came up at a time when Chief Kanzler was on vacation, so Council may wish to set a time to discuss his experiences.

**Councilor Stone** would not mind getting some printed information from Chief Kanzler on his experiences and how social gaming impacted the police force in general.

**Councilor Collette** would prefer to hear from the Chief was well. It seemed funny that one would want social gaming if they were limited to only spending \$1 in a game.

**Councilor Loomis** thought the money was made on food and alcohol. Gambling paid for Lewelling Park, so there was good and bad.

**Mr. Firestone** announced the Council would meet in executive session 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.

**Mayor Bernard** adjourned the work session at 6:45 p.m.

  
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Pat DuVal, Recorder

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# AGENDA

## WORK SESSION MILWAUKIE CITY COUNCIL

DECEMBER 5, 2006

### MILWAUKIE CITY HALL

Second Floor Conference Room  
10722 SE Main Street

A light dinner will be served.

**WORK SESSION – 5:30 p.m.**

### Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Appointed Advisory Board Interviews <ul style="list-style-type: none"><li>• Library Board – Robert Biswas-Diener, Kay Sweetland Bower, Colleen Schacht</li><li>• Parks &amp; Rec. Board - Paulette Qutuk</li><li>• Riverfront Board – Gregory Seagler, Val Hubbard</li></ul>	Mayor and Council
2.	6:00 p.m.	South Downtown Project Update	JoAnn Herrigel
3.	6:20 p.m.	Review Milwaukie Municipal Code Section 8.04.200(C) of the Nuisance Chapter Related to Assessment of Costs	Mike Swanson
4.	6:30 p.m.	Social Gaming	Mike Swanson
5.	6:45 p.m.	Adjourn Work Session	

### Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- Executive Session: The Milwaukie City Council may go into Executive Session pursuant to ORS 192.660. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Update on Southern Downtown Projects

Date: December 5, 2007

**Action Requested**

None. This is for Council information only.

**Background**

Staff is involved in several projects in the southern downtown area. In order to keep Council up to speed on the progress of each of these projects, staff will attend the December 5 work session to discuss each project and to share drawings recently completed by Scott Churchill that show the location of each of the projects. Following is a summary of some of the projects staff will discuss:

**Milwaukie Riverfront Park Design**

In October, the City signed a contract with David Evans and Associates (DEA) for the final design for Milwaukie Riverfront Park. Gill Williams, the project manager for DEA on this project, has met with the Riverfront Board twice since October to establish exactly which park elements will be included in the final design. DEA will attend the December 12 Riverfront Board meeting to finalize the elements before launching into design mode. An open house is planned for late December at which the public may view the concept for the final design. There will be another open house later in the project to share the design as it progresses. DEA's design work will be completed in April of 2007.

**Kellogg Lake Dam Removal MTIP Application**

The City submitted an application for 2008-2010 MTIP funds for design of a dam and bridge removal project at Kellogg Creek and 99E. The project has received a technical score of 100% and is supported by many people around the lake and by several environmental advocacy groups from the city and the county. Staff expects to have a final decision on the MTIP funds in February of 2007. Staff

has agreed to meet with the abutters of Kellogg Lake and other interested parties as soon as further word on Kellogg design funds is available. Neighbors and interested parties will be integrated into the design process as much as possible.

### **Kronberg Park Concept Development**

Staff has coordinated three meetings with Kronberg Park neighbors and interested parties to discuss a concept plan for this site. These meetings have focused on the Kronberg properties as well as those City-owned properties to the north and south. A list of park elements was developed and then applied to maps in the form of two concept plans completed by meeting attendees. These two concept plans were then merged by Scott Churchill into one concept that interested parties reviewed at their last meeting on November 2. Staff has requested that design work on Kronberg Park be tabled until the City receives word of the MTIP award for the Kellogg Project. It is generally agreed that the designs for the Kellogg and Kronberg projects are integrally linked.

### **Trolley Trail**

During the spring and summer of 2006, county engineers have been gathering data and developing preliminary designs for the Trolley Trail, a 6.5-mile pedestrian/bike trail from Milwaukie to Gladstone. The North Clackamas Parks District held an open house on October 18 to display the status of this design. The District hopes to conclude all design work during the winter of 2007. If all goes well, the District would hire a contractor to begin construction of the first and second segments of the trail which begin at Washington Street in Milwaukie and run south to Park Avenue.

## Milwaukie Municipal Code

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Title 8 HEALTH AND SAFETY

**Chapter 8.04 NUISANCES**

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**8.04.010 Definitions.**

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Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following definitions shall apply:

- A. "City" means the city of Milwaukie.
- B. "City manager" means the city manager or person authorized by the city manager.
- C. "Council" means the governing body of the city.
- D. "Person" means a natural person, firm, partnership, association or corporation.
- E. "Person in charge of property" means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of the property.
- F. "Public place" means a building, place or accommodation, whether publicly or privately owned, open and available to the general public. (Ord. 1028 § 1, 1964)

**8.04.020 Declared generally.**

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The acts, conditions or objects specifically enumerated and defined in Sections 8.04.030 through 8.04.160 of this chapter are declared to be public nuisances and such acts, conditions or objects may be abated by any of the procedures set forth in Sections 8.04.170 through 8.04.210 of this chapter. (Ord. 1028 § 17, 1964)

**8.04.030 Communicable diseases in animals.**

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No person may permit an animal or bird owned or controlled by him to be at large within the city if the animal or bird is afflicted with a communicable disease. (Ord. 1028 § 2, 1964)

**8.04.040 Dangerous animals.**

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No person may permit a wild or domesticated dangerous animal to run at large. (Ord. 1028 § 3, 1964)

**8.04.050 Livestock and poultry.**

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A. No person may maintain a pigsty, slaughterhouse or tannery or permit livestock or poultry owned by him to run at large within the city.

B. Livestock or poultry or other animals or fowls running at large in the city may be taken up and impounded by a police officer and disposed of in accordance with proper procedures. (Ord. 1028 § 4, 1964)

**8.04.060 Removal of animal carcasses.**

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No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass. (Ord. 1028 § 5, 1964)

**8.04.070 Nuisances affecting public health.**

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No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

A. Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the State Board of Health regulations;

- B. Debris on Private Property. Accumulations of debris, rubbish, manure, and junk, junk machinery or junk vehicles of any kind, and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;
- C. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests;
- D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water;
- E. Food. Decayed or unwholesome food which is offered for human consumption;
- F. Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition;
- G. Surface Drainage. Drainage of liquid wastes from private premises;
- H. Smoke, Etc. Dense smoke, noxious fumes, gas soot or cinders in unreasonable quantities;
- I. Harborage for Rats. It is unlawful for any person who owns and/or is in charge or property to allow the accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for rats.
- J. Properties Declared "Unfit for Use." Property placed on the Oregon Health Division "unfit for use list" because it has been used for the manufacture of illegal drugs and that has not been issued a "Certificate of Fitness" by the Oregon Health Division. (Ord. 1959 § 1, 2006; Ord. 1377 § 1, 1977; Ord. 1028 § 6, 1964)

#### **8.04.080 Abandoned refrigerators.**

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No person may leave in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or similar container which has a door with a snap lock or

lock or other mechanism which may not be released for opening from the inside, without first removing such lock or door from such icebox, refrigerator or similar container. (Ord. 1028 § 1, 1964)

#### **8.04.090 Nuisances attractive to children.**

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A. No owner or person in charge of property may permit:

1. Unguarded machinery, equipment or other devices on such property which are attractive, dangerous and accessible to children;
2. Lumber, logs or pilings placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;
3. An open pit, quarry, cistern or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children.

B. This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children. (Ord. 1028 § 8, 1964)

#### **8.04.100 Snow and ice removal.**

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No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk may permit:

- A. Snow to remain on the sidewalk for a period longer than the first four hours of daylight after the snow has fallen;
- B. Ice to cover or remain on a sidewalk, after the first four hours of daylight after the ice has formed. Such person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes or other suitable material to assure safe travel. (Ord. 1028 § 9, 1964)

#### **8.04.110 Weeds and noxious growth— Dead or decaying trees or tree limbs.**

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The following things, practices or conditions on any real property are nuisances. For purpose of this section, "real property" includes any portion of a right-of-way adjacent to the real property.

A. Grass, thistles cockleburs, brambles, wild blackberry bushes, weeds or other noxious vegetation greater than eight inches in height, that have gone to seed or that are a fire hazard.

B. Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement costs pursuant to subsection C of Section 8.04.200 of this chapter, the council may, in its sole discretion, determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree; and/or

2. Assist a low-income resident of the city who is responsible for paying the cost of removal and whose income level shall meet the low-income eligibility requirement of Chapter 13.20 of this code. In making this determination the council shall consider using other alternatives such as deferred and partial payments to minimize the adverse impact on income. (Ord. 1929, 2003; Ord. 1028 § 10, 1964)

#### **8.04.120 Scattering rubbish and composting.**

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A. No person may throw, dump or deposit upon public or private property any injurious or offensive substance or any kind of rubbish, trash, debris or refuse which would mar the appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

B. No person may compost materials which either cause offensive odors, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies or other vectors. (Ord. 1758 § 7, 1994; Ord. 1028 § 11, 1964)

#### **8.04.130 Fences.**

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A. No person may construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence along a sidewalk or public way, unless such wire is placed not less than six inches above the top of a board or picket fence which is not less than seven feet high.

B. No person may install, maintain or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person. (Ord. 1028 § 12, 1964)

#### **8.04.135 Compliance with zoning regulations.**

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No owner of real property may permit such property, or any improvement thereon, to be used in a manner inconsistent with all state, county, or city land use and zoning regulations and decisions pertaining to the property. (Ord. 1758 § 8, 1994)

#### **8.04.140 Surfacewaters and drainage.**

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A. No owner or person in charge of any building or structure may suffer or permit rainwater, ice or snow to fall from such building or structure onto a street or public sidewalk or to flow across such sidewalk.

B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drain pipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk.

C. Stormwater facilities to be managed by the owner or person in charge of property include but are not limited to:

1. A stormwater facility not located on city-owned property, city right-of-way, or city easement;
2. A private parking lot storm drain;
3. Any roof, footing or area drain;
4. A stormwater facility not designed and constructed for use by the general public;
5. An open drainageway;

6. Access drive culverts in the public right-of-way or on private property;
  7. A detention or retention system, in the construction of which the city did not financially participate.
- D. Any owner or person in charge of property shall keep open drainageways on property which they possess or control cleared of debris and vegetation.
- E. Any owner or person in charge of property shall maintain nonpublic stormwater facilities on property which they possess or control so as to prevent flooding or damage to other property not possessed or controlled by the owner or person in charge of property and to prevent injury to any other person.
- F. The failure of any owner or person in charge of property to comply with the obligations stated in this section is a violation.
- G. The conditions on private property which may result in situations proscribed by subsection A, B, D or E of this section are declared to be a danger to public health and safety and therefore are a nuisance to be abated as provided in this chapter. (Ord. 1755 § 5, 1994; Ord. 1028 § 13, 1964)

#### **8.04.150 Radio and television interference.**

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- A. No person may operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.
- B. This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission. (Ord. 1028 § 14, 1964)

#### **8.04.155 Graffiti.**

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- A. It is every property owner's duty to remove graffiti promptly from their property in a manner acceptable to the city. When graffiti is located upon private property, the city shall cause written notice to be posted on the property and served upon the owner of the property or person in charge of the property requiring removal of the graffiti. The notice shall include a statement of what action(s) are necessary to bring the property into compliance with this section. Unless additional time is granted by the city manager, due to a hardship in complying, the property owner or person in charge of the property shall have ten days after the date of the posting and service of the notice to remove the graffiti.
- B. "Graffiti" means any unauthorized painting, writing, drawing, carving or inscription which can be seen from any public right-of-way, sidewalk, alley or park and which damages, defaces or destroys any real or personal property through the use of paint, spray paint, indelible marker, ink, knives or any similar method, regardless of the content of the message delivered or nature of the material used in the commission of the act. (Ord. 1722 § 1, 1992)

#### **8.04.160 Notices and advertisements.**

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- A. No person may affix or cause to be distributed any placard, bill, advertisement or poster upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs and advertising.
- B. No person, either as principal or agent, may scatter, distribute or cause to be scattered or distributed on public or private property any placards or advertisements or other similar material.
- C. This section does not prohibit the distribution of advertising material during a parade or approved public gathering. (Ord. 1028 § 16, 1964)

#### **8.04.170 Abatement—Notice.**

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- A. Upon determination by the city manager that a nuisance as defined in this or any other ordinance of the city exists, the city manager shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.
- B. At the time of posting, the city recorder shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner or person in charge of the property at the last known address of such owner or other person.

C. The notice to abate shall contain:

1. A description of the real property, by street address or otherwise on which such nuisance exists;
2. A direction to abate the nuisance within ten days from the date of the notice;
3. A description of the nuisance;
4. A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property;
5. A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the city recorder within ten days from the date of the notice.

D. Upon completion of the posting and mailing the person posting and mailing the notice shall execute and file a certificate stating the time and place of such mailing and posting.

E. An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or the person shall not make the notice void and in such a case the posted notice shall be sufficient. (Ord. 1028 § 18, 1964)

#### **8.04.180 Abatement—By owner.**

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A. Within ten days after the posting and mailing of the notice as provided in Section 8.04.170, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

B. The owner or person in charge protesting that no nuisance exists shall file with the city recorder a written statement which shall specify the basis for so protesting.

C. The statement shall be referred to the council as a part of the council's regular agenda at the next succeeding meeting. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the council and the council shall thereupon determine whether or not a nuisance in fact exists and such determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where a written statement has been filed as provided.

D. If the council determines that a nuisance does in fact exist, the owner or other person shall within ten days after such council determination abate such nuisance. (Ord. 1028 § 19, 1964)

#### **8.04.190 Abatement—By city.**

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A. If, within the time allowed, the nuisance has not been abated by the owner or person in charge of the property, the city manager may cause the nuisance to be abated.

B. No abatement shall occur under this section unless preceded by issuance of a judicial warrant authorizing entry, search, seizure and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property.

C. The city recorder shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses. (Ord. 1722 § 2, 1992; Ord. 1028 § 20, 1964)

#### **8.04.200 Assessment of costs.**

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A. The city recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

1. The total cost of abatement including the administrative overhead;
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty days from the date of the notice;
3. That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the city recorder not more than ten days from the date of the notice.

B. Upon the expiration of ten days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed.

C. If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city

liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of six percent per annum. Such interest shall commence to run from date of entry of the lien in the lien docket.

E. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 1028 § 21, 1964)

#### **8.04.210 Abatement—Summary.**

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The procedure provided by this chapter is not exclusive, but is in addition to procedure provided by other ordinances, and the health officer, the chief of fire department and chief of police may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property. (Ord. 1028 § 22, 1964)

#### **8.04.220 Violation—Penalty.**

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A person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed five hundred dollars (Ord. 1503 § 1 (part), 1981; Ord. 1028 § 23, 1964)

#### **8.04.230 Violation—Each deemed separate.**

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A. Each day's violation of a provision of this chapter constitutes a separate offense.

B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance. (Ord. 1028 § 24, 1964)



**TO: MAYOR AND CITY COUNCIL**  
**FROM: MIKE SWANSON, CITY MANAGER**  
**DATE: 11.27.06 FOR 12.05.06 COUNCIL WORK SESSION**  
**RE: SOCIAL GAMING**

### **BACKGROUND**

At Council's November 9, 2006 meeting Mr. Bart Hanson submitted an outline of an ordinance authorizing social gambling within the City of Milwaukie, and he requested that the City Council adopt it. Council requested additional information for consideration at a future meeting.

A memorandum from Gary Firestone, City Attorney, dated November 10, 2006 has been attached. It describes the state law and requirements for authorization of social gaming within a city.

### **RECOMMENDATION**

While the requirements of State law appear to be minimal, I do not recommend adoption of a social gaming ordinance at this time. We can outline the process for authorization of social gaming, but there is less good information available relating to enforcement. I suspect that additional police resources will be necessary both to monitor compliance as well as to respond to problems that might arise at individual sites. If I had resources to hire an additional officer(s), social gaming enforcement would not be a high priority.

This is a matter of priorities, and this issue is simply not a priority for this organization at this time. I would have to identify additional, underutilized resources to take this on, and I simply do not have them.

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ATTORNEYS AT LAW

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## MEMORANDUM

TO: Mike Swanson, City Manager, City of Milwaukie  
Larry Kanzler, Chief of Police  
Kenny Asher, Community Development Director  
Katie Mangle, Planning Director

FROM: Gary Firestone, City Attorney

DATE: November 10, 2006

RE: Request for Authorization of Social Gaming

At the November 9, 2006, City Council meeting, Bart Hanson requested that the Council adopt an ordinance authorizing social gaming in a private business, private club or place of public accommodation. The Council has asked that the City Attorney and City staff report to Council regarding Mr. Hanson's request. This memorandum discusses the legal issues relating to Mr. Hanson's request.

ORS 167.108 through 167.167 regulate gambling. Under the statutes, gambling is illegal unless specifically authorized by the statutes. ORS 167.117(24). Social gaming is always permitted in a private home but is permitted in certain other places (private businesses, private clubs, and places of public accommodation) only if authorized by a county or city. ORS 167.117(21), ORS 167.121. Social gaming is the playing of a game involving some type of betting other than a lottery where there is no house player, house odds, house bank, or house income from the operation of the social game. The "house" can charge for other things, such as food and drink, but cannot impose charges that are directly related to the operation of the game.

The City has not authorized social gaming outside of private homes, so social gaming outside of private homes in Milwaukie remains illegal. Participation in unlawful gambling as a player is a Class A misdemeanor, but promoting or profiting from illegal gambling is a Class C felony.

Whether to allow social gaming is a policy matter ultimately to be decided by the City Council, but a recommendation (or recommendations) from the City Manager and management staff who might be affected by the regulations could assist the Council in making the decision.

While most regulation of social gaming by local government appears to be simply the adoption of an ordinance under the statute, I believe that there are or could be land use aspects to the decision.

Memorandum re: Request for Authorization of Social Gaming

November 10, 2006

Page 2

I am not certain that gambling has been a customary accessory use in private businesses, private clubs, or public places of accommodation in Milwaukie, given that it has been illegal for some time. It is not clear to me how gambling would be classified as a land use. The assumption in other jurisdictions appears to have been that if it is specifically authorized in one section of the code, then it must be permitted anywhere so long as it complies with the specifically applicable provisions. That is one approach, but not the only approach. Another approach would be to treat social gaming as a land use issue and allow it only in certain zones.

As I see it, the City has three basic options:

1. Continue the current situation and do not authorize social gaming outside private homes.
2. Allow social gaming outside private homes as a non-land use matter, and assume that it would be allowed in any zone so long as the applicable ordinance is complied with.
3. Allow social gaming, but only in certain zones. If this approach is followed, the ordinance authorizing social gaming would have to be processed as a zoning code amendment, with the additional procedures (notice to DLCD and a Planning Commission hearing) applicable to a zoning code amendment. This would also result in potentially more citizen involvement.

There may be some way of implementing the second option and still limiting location, such as a requirement that it only be permitted in certain types of establishments or structures.

If the City does decide to allow social gaming, the draft ordinance proposed by Mr. Hanson appears mostly reasonable, but would have to be properly formatted. I do note that it is questionable whether blackjack/21 can be permitted, given that the "dealer wins in case of a tie" rule arguably is "house odds," even if the dealer can be any player and is not tied to the operator or promoter.

As City Attorney, I have no recommendation, only the comment that the decision is purely a policy decision and that any of the three options are legally possible. I do note that in the past the question has been raised and that no action was taken to authorize social gaming.

Hi Mike I'm leaving you  
these proposed ordinance  
for city council to discuss.

one of them is an ordinance  
that the city of Portland has already  
the other is that I would like  
the city of Milwaukee to consider.

I would like a date set  
for the city council to hear at  
meeting if you can set a date  
for a hearing I would appreciate it.

As you read the two  
I made slight changes from Portland's  
ordinance to what I would like  
Milwaukee to adopt.

ANY QUESTIONS  
CALL ME

BART HANSON  
503-652-8063

Leave message.

PORTLAND

being conducted.

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**14A.70.030 Unlawful Chain Letter or Pyramid Scheme.**

It is unlawful for any person, whether acting as principal, agent, servant or employee to establish, maintain, conduct, manage, profit from, or operate any chain letter or pyramid scheme; or to solicit or advertise any such scheme; or to list persons who have surrendered any sum of money or any other thing of value to any such scheme. It is unlawful for any person, firm, or corporation to let, lease, or rent any real property and allow any such scheme to be established, maintained, conducted, managed or operated therein or thereon.

X **14A.70.040 Social Games Authorization Limited.**

A social game between players in a private business, private club, or place of public accommodation is authorized only when each of the following conditions are met:

- A. No house player, house bank, or house odds exist; and
- B. There is no house income from the operation of a social game; and
- C. The game cannot be observed from a public right of way; and
- D. Persons under 18 years of age are not permitted in the room or enclosure where the social game takes place; and
- E. A valid permit issued pursuant to this Chapter is conspicuously displayed in the room or enclosure where the social game takes place; and
- F. The room or enclosure where the social game takes place is open to free and immediate access by any police officer. Doors leading into the social game room must remain unlocked during all hours of operation; and
- G. No player shall bet more than \$1 in money or other thing of value in any one game, and the amount awarded the winner of a game shall not exceed \$1 in money or other thing of value multiplied by the number of players in the game.

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**14A.70.050 Social Games Permit Required.**

A permit shall be required for any person to conduct or permit to be conducted in any private business, private club, or place of public accommodation any social game. Any violation of the conditions set forth in Section 14A.70.040 shall be considered grounds for suspension or revocation of such permit. Such permit is not subject to transfer or assignment, is not valid at any location other than the premises described therein, and shall be dated as of the first day of the month in which issued and shall expire 1 year from that date.

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**14A.70.060 Social Games Permit Application Process.**

A. The application for a permit to conduct any social game activity shall set forth all information deemed necessary by the Director of the Bureau of Licenses consistent with the regulations provided in this Chapter, including but not limited to a description of the premises subject to the permit, and the fingerprints of the owner(s), officers, principal managing employees, and all employees who are

# FOR MILWAUKEE.

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Proposed ordinance for social gaming: Poker, Poker Tournament, Blackjack includes Texas Hold'em, Stud Poker, Omaha, Blackjack -21

- 1) A social game between players in private business, private club or place of public accommodation is authorized only when each of the following conditions are met:
  - A. No House odds exist.
  - B. There is no house income from or directed off the social game or games being played at the tables.
  - C. Win and losses of real money will only be given to and from those who have paid into any tournament, or live cash game, resulting no house take or rake.
  - D. Persons under 18 years of age are not permitted in room or enclosure where social game takes place.
  - E. A valid permit issued pursuant to this chapter is conspicuously displayed in room or enclosed where social games take place.
  - F. The room or enclosure where the social games take place is open to free and immediate access by any police officer. Doors leading into the social game room must remain unlocked during all hours of operation. And the game can not be observed from public right of way.
  - G. Person, provider, or host may sell food and beverage to players and guest.
  - H. Person, provider or host may set limit to tournament "buy in" that must be disclosed before the start of game with a guarantee of 100% percent payout to the winners.
  - I. Person, provider or host may play in social game or tournament as permitted they pay with their own money. Not from other players "buy in".
  - J. Blackjack-21 may be deemed as social game resulting no house take or rake that any player may assume responsible for BANKER – DEALER and that they assume all responsible for all pay-outs.
  - K. Only chips or tokens must be used while playing social game at the table. "NO CASH" on the tables that is or has meaning for betting.