

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION SEPTEMBER 7, 2004

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

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson, City Attorney Gary Firestone, Finance Director Stewart Taylor, Community Development and Public Works Director Alice Rouyer, Community Services Director JoAnn Herrigel, Planning Director John Gessner, Engineering Director Paul Shirey.

#### Revise Home Occupation Application Process

**Mr. Gessner** indicated the proposed measure would reduce administrative costs and the burden to the applicant associated with the annual home occupation renewals. The municipal code requires that home occupations be renewed annually, and he understood the intent of doing that was to diminish the negative neighborhood impacts. The Planning Commission was supportive of this proposal. The intent is not to change the regulations but to eliminate the annual renewal process. He characterized the review process as one of paper handling that adds no real value to the process. Code Compliance problems are relatively low with home occupations. He recommended revising the code to eliminate the annual renewal process. There have been concerns about the application process being the informational reminder for the business owners' as to what they may and may not do under home occupation regulations. He suggested providing annual information to the business operators about these regulations in the form of an insert with the business registration renewal.

**Councilor Stone** thought it was great that there were not a lot of code violations. Were the three cases in two years discovered via the application renewal process or some other way?

**Mr. Gessner** replied they were discovered via complaints and staff observations.

**Councilor Stone** understood there would be some cost involved if the City continued to distribute information on the regulations. It appeared it would be a wash in terms of staff time and recouping the costs.

**Mr. Gessner** identified several options in the staff report. The next step would be to look at how those options work practically and recommend a process to the City Council. One option would be to have a one-time application, but the question is would staff be able to administer that and still maintain good record keeping. The business owner would continue to pay the business registration fee.

**Councilor Lancaster** suggested streamlining the process by sending out e-mail notices to determine if people are still in business.

### **Mandatory Recycling Ordinance**

**Ms. Herrigel** updated the City Council on solid waste issues. She noted the City has seven franchised haulers with whom staff is negotiating new agreements as they expire October 2004. Ms. Herrigel discussed the 2002 survey that indicated a 93% satisfaction rate among residential customers and 97% for commercial customers. Upcoming issues include extension of existing franchises to complete negotiations, mandatory recycling, and rate increases requested by the haulers.

**Ms. Herrigel** recommended that mandatory recycling be reviewed in a general sense from a long-term perspective. How do we maximize recovery in the City and Metro region? Milwaukie haulers currently provide garbage, recycling, and yard debris collection for commercial and residential customers. The haulers are required to provide the opportunity to recycle to all customers. Customers are not required to participate.

She discussed her participation on a regional group called the Contingency Plan Work Group (CPWG) that considered ways to increase recovery in three areas – commercial generators, commercial organic generators, and construction and demolition debris generators. Of the recommendations that came out of the group, the one that impacted Milwaukie the most was the concept of implementing mandatory recycling. One alternative that was discussed at some length was a landfill ban on certain materials. The word “mandatory” and the program itself have generated a lot of consternation over the years. Ms. Herrigel hoped the City Council would allow her to pursue a system similar to the one developed in the City of Portland at least on a research level. She believed that we all have to do something to increase the recovery levels in the region to meet the identified goals. Mandatory recycling does have some merit, and she believed it could be implemented in a way similar to Milwaukie’s code compliance program. In the City of Portland, businesses are required to comply by recycling 50% of their material. It is also the case that they do not have enough staff to ensure that 50% is recycled on a regular basis. In a sense it is voluntary compliance, and only under certain circumstances are there enforcement mechanisms.

**Ms Herrigel** proposed that she be allowed to pursue a research project in which she would look at Portland’s program, determine how mandatory recycling has worked in other jurisdictions in the country, its effectiveness, and feasibility of instituting a program in Milwaukie. The CPWG went through a concerted, deliberate process, and she felt it was worth researching on the local level.

**Mayor Bernard** thought it would be very difficult to police this type of program.

**Councilor Lancaster** observed it was similar to code enforcement. He was not opposed to Ms. Herrigel's looking at what has and has not worked. It is always more beneficial to incentivise or do something on a volunteer basis versus putting the word "mandatory" out there. He was not in favor of that at least on the surface.

**Councilor Stone** was certainly in favor of the businesses recycling as much as they could. She agreed with Councilor Lancaster in terms of terminology. She thought some kind of incentive would be good. She supported Ms. Herrigel's looking at how other jurisdictions have implemented this kind of program.

**Councilor Barnes** suggested looking at businesses in Milwaukie that already do a good job of recycling and finding out what prompts them to want to participate. Instead of being top down, it could be business to business. She did not like using the word "mandatory."

**Mayor Bernard** agreed. He felt the City should look at it, but recycling costs money and takes commitment. He could not imagine policing such a program. He suggested shrinking the size of the garbage cans, enlarging the recycling bins, and letting people figure out what to do.

**Ms. Herrigel** said the first issue she would consider is how a small community like Milwaukie could staff the program, fund the expense, and help businesses find the space for the additional recycling. Education is the tool that gets the most compliance in this type of program. She understood the Council reacted to using the word "mandatory" and authorized her looking into incentives, education, and researching other jurisdictions on their practices.

**Mayor Bernard** discussed waste oil recycling program incentives.

### **Stormwater Master Plan and Rate Discussion**

**Mr. Shirey** and **Ms. Bennett** were the staff members present, and they turned the discussion over to Krista Reininga, URS Corporation, and John Ghilarducci, Financial Consulting Solutions Group, Inc. (FCSG).

**Ms. Reininga** reported a Stormwater Master Plan was done in 1997 for Milwaukie. It was an appendage to one that was done in Clackamas County and used as a basis although it was rough. The new Plan contains current information on the City's stormwater system. Most of the storm water runs through pipes to Kellogg and Johnson Creeks, the Willamette River, and various drywells that go directly into the ground. There are two main objectives for doing the Plan. The first was to identify where flooding could be expected to happen under a 25-year storm and determine capital projects to address those flooding issues. The second objective was water quality. There are three regulatory requirements relating to water quality, two of which are under the Clean Water Act. The first addresses stormwater management, good housekeeping practices, and capital projects that address water quality. The second is focused on the

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receiving water bodies and measures to meet water quality standards. The third regulation is under the Safe Drinking Water Act and is associated with stormwater going directly into the ground. Drywells located in a two-year time of travel from drinking water wells must be eliminated through capital projects. Focus was on those projects relating to regulatory issues, and 15 capital projects totaling about \$10 million were identified. This list covered flood control for the 25-year storm and compliance with regulatory issues. If any of these projects were eliminated, the City would be out of compliance or could expect flooding problems at these locations. The list was prioritized. Getting rid of the drywells came to \$2 - \$3 million and should be done as soon as possible. Decommissioning the drywells is in a 10-year time frame. The capital projects are scheduled over a 21-year period.

**Mr. Ghilarducci** said the consultants' role was to provide information on impacts on rates and system development charges (SDC). He talked briefly about utility basics, the current status of the stormwater utility, key assumptions, and preliminary results.

He indicated it was important to remember that utilities are intended to be self-sufficient business enterprises. Rates and charges must be based on the cost of the service provided. One must then carefully distinguish between operating and capital costs. SDC fees may only be spent on capital projects. Rates are for operations and capital. The point is that general city resources should not subsidize utility activities with the idea being the stormwater utility is a self-sufficient business enterprise. The cost of service through rates and charges are capital costs, operating costs, and policy requirements such as minimum reserve balances. For operating costs, the primary and almost only source of revenue is the rates. Capital costs are funded by rates that may fund debt service; SDCs collected at the time of development to help recover the cost of capital and pay for capacity increases in capital; and other options such as grants and developer contributions.

The current stormwater rate is \$6 per equivalent service unit (ESU) and applies to every single-family residence. Commercial customer charges are based on the amount of impervious surface on their parcels. The current SDC is \$473 per ESU. The current stormwater rate of \$6 is expected to generate less than \$1 million in the current budget year against operating expenses of about \$1 million. It is anticipated the fund balance will be drawn down in order to make ends meet in FY 2004 – 2005 for operations. SDC revenues are anticipated to be less than \$20,000 in FY 2004 – 2005 because there is little growth in the City. SDCs are a way to ensure that growth pays its fair share and are not considered a significant way to pay for capital improvements.

**Mr. Ghilarducci** reviewed the assumptions. These included the addition of 2 FTEs in 2007 and 2009 for a total of \$150,000. Maintenance costs for capital projects will occur after the projects are completed. Growth in the customer base is a little over 1% per year. Potential costs not reflected in the numbers have to do with regulatory requirements for the drywells. He reviewed some potential costs having to do with regulatory requirements for the drywells. The annual cost could be about \$100,000

beginning in the next budget year. This would work out to be an additional \$.60 on the rate per ESU in all scenarios in order to meet the additional \$100,000 needed.

He discussed two basic scenarios implementing the capital plan. One of them was a 12-year implementation that assumed about \$1 million of capital construction. This was run with no debt, and the other assumed the City issues debt every couple of years to spread costs over a longer period of time. Scenarios 3 and 4 looked at doing the mandatory projects within 10 years and spreading the remaining projects over 21 years for about \$500,000. Again, this was run with and without debt.

In scenario 1, the City would undertake the capital plan in 12 years without the use of debt. The rate would more than double by 2006 – 2007, but at the end of those 12 years, all of the costs would have been incurred so the rate would go back down. In scenario 2, when the City gets to the end of the 12-year period, it would still be paying on the accumulation of debt on the projects financed along the way. The rate impacts, however, are much more palatable. Scenario 3 was a 21-year implementation with no debt, and rates just about double by 2008 – 2009. Scenario 4 was 21-years with debt, the rate stays under \$10 by the end of the planning period. In the no-debt scenarios, the rates would theoretically go back down at the end of the implementation periods. The debt scenarios would take longer to go back down because the City would be paying on the debt on the projects.

**Councilor Barnes** asked for examples of operating expenses.

**Mr. Ghilarducci** replied operating expenses are ongoing maintenance, administration, field operations, and routine repair and replacement of the system.

**Councilor Barnes** noted the \$1 million that created the shortfall in 2004 – 2005. What makes up that \$1 million?

**Mr. Ghilarducci** responded these are budgeted operating expenses, the bulk of which are personnel costs.

**Ms. Reininga** added the regulatory requirement for cleaning up stormwater has been in place for since 1993. The program requires street sweeping, catch basin cleaning, and other similar activities that are covered in operating costs.

**Ms. Rouyer** added there is funding for neighborhood projects to correct flooding areas.

**Mr. Ghilarducci** continued. SDCs are made up two pieces – the reimbursement fee, which is a buy-in to the existing system, and the improvement fee, which buys into capacity-increasing projects yet to be built. The reimbursement fee is calculated on the stormwater assets already in the ground, which in Milwaukie is about \$5.3 million. A little more than 10% of that could be looked at as capacity available for growth and recoverable as part of the SDC. The future piece is about \$10 million as previously discussed. First, existing deficiencies are considered and how much of it is capacity-

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increasing to meet the needs of growth. The total SDC per ESU of \$1,177 is legally defensible and is more than two times what the City is currently charging. Additionally, it would be one of the higher SDCs in the Portland metropolitan area. Mr. Ghilarducci provided a chart comparing SDCs and rates of selected cities in Oregon. He discussed regulatory requirements.

**Mr. Swanson** believed Clackamas County originally established the stormwater program in the early 1990's. Milwaukie's rate began at \$4 per month, and the program has generally been carried out on the cheap. These issues probably account for the largest number of complaints the City gets when it starts raining. Responding to Councilor Barnes's question, Mr. Swanson explained the current fiscal year budget is \$1.8 million of which \$268,000 is for salaries. The City has assumed a lot of responsibility for maintaining stormwater structures that had been laying fallow for many years. Although stormwater issues have historically generated a lot of complaints, the program has been supported on the low side.

**Ms. Rouyer** added the City is currently analyzing its SDCs, but none have been increased.

**Mr. Shirey** added staff is scheduled to return to the City Council with separate recommendations for stormwater, water, and sanitary sewer later in the year. Council will be asked to consider rate increases in early October.

**Mr. Shirey** provided an historical context. If all the City had to worry about was flooding, the job would be relatively simple and less costly. A great deal of progress has been made since Milwaukie put its stormwater program in place. The regulatory requirements in the past 15 years have forced all communities to worry about not only flooding and quantity, but also quality. In the 1950's and 1960's, it was sanitary sewers, and a lot of money went into building treatment plants. Now, the same thing is happening with stormwater, and it needs to be managed. DEQ through the EPA is requiring more stringent monitoring, testing, and reporting that adds to operating costs. Compliance with the Clean Drinking Water Act affects what goes into the ground. The quality side of the picture is an unfunded mandate, and Milwaukie is not alone. This is what drives the need for a fairly substantial increase by one means or another.

**Mr. Shirey** summarized the Citizens Utility Advisory Board (CUAB) recommendation, which was the 21-year, no-debt approach. He thought it might be appropriate to consider debt to keep the rates a little more manageable. One may argue putting it on a debt basis, then those who participate in the future can also participate in the costs.

**Mayor Bernard** asked if most jurisdictions were financing these plans.

**Mr. Ghilarducci** responded there are still some who work on a pay as you go basis, but because they are facing capital projects of some magnitude, some have been turning to debt financing for capital projects. That is becoming more and more common.

**Councilor Lancaster** thought the 21-year no-debt scenario was a good recommendation. The CUAB has historically given the City Council good advice in terms of representing what citizens want or will tolerate. The City has \$10 million worth of projects just to meet regulations. If we are trying to get business into Milwaukie, the City needs to be able to demonstrate it has reasonable rates with stability over time.

**Councilor Barnes** understood that position; however her only concern was this is just one piece of the overall utility puzzle. The ratepayers continue to see increases, and she would go with the debt to spread it out. A smaller amount would be better for the average ratepayer when taking their annual income into account.

**Councilor Stone** did not like the idea of another rate increase. It seemed like just another rate increase for the citizens. She understood there were capital improvement costs, and the City needs to pay attention to its infrastructure. If the City goes with the rate increase, she would be in favor of the no-debt option. She saw, as Councilor Lancaster mentioned, that the rates will not go down, but they surely will not go up for a while.

**Councilor Loomis** favored the debt scenario.

**Mayor Bernard** supported the no debt scenario and to pay as you go. The CUAB works hard on these recommendations, so he supported it.

The work session was recessed at 6:25 p.m. to reconvene after the regular session to discuss the outstanding agenda item.

*Pat DuVal*

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Pat DuVal, Recorder



# AGENDA

## MILWAUKIE CITY COUNCIL WORK SESSION SEPTEMBER 7, 2004

### MILWAUKIE CITY HALL

Second Floor Conference Room  
10722 SE Main Street

### **WORK SESSION – 5:30 p.m.**

A light dinner will be served.

### Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Mandatory Recycling Ordinance	JoAnn Herrigel
2.	5:40 p.m.	Revise Home Occupation Application Process	John Gessner
3.	5:50 p.m.	Stormwater Master Plan & Rate Discussion	Ruthanne Bennett/ Paul Shirey
4.	6:10 p.m.	Town Center Annexation Issues	Mike Swanson
5.	6:25 p.m.	Adjourn	

### 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 preceding items.
- 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.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Mandatory Recycling Ordinance

Date: August 16, 2004

Action Requested

Provide staff with input on the development of a mandatory recycling ordinance for businesses in the City.

Background

**Metro area Recycling Goal**

A regional recycling goal of 62% by 2005 was officially set in 2001 when the Oregon Legislature passed HB 3744 and Governor Kitzhaber signed the measure. An original goal of 56% was adopted by Metro in 1995 as part of its Regional Solid Waste Management Plan (RSWMP). The original goal represented the solid waste tonnage that would need to be recycled or recovered in order for the region to avoid having to build new transfer stations. In adopting HB 3744, the state accepted Metro's original 56% goal and added 6% to reflect percentage points granted by DEQ for waste prevention programs such as home composting and material re-use.

At the end of 2002, the region's recycling rate was 54%, fueled by steady improvement in the 1990s. While the region can take pride in having one of the highest recycling levels in the nation, progress toward our goal has slowed in recent years. If the 62% goal is not achieved by 2005, under state law, DEQ and Metro would review program investments and implementation schedules to determine if they are realistic and achievable. Ultimately, DEQ could determine if the goal itself needs to be re-examined and modified.

In anticipation of the 2005 deadline, in the winter of 2003/04 Metro convened a group of representatives from public agencies, private businesses, citizens and the solid waste and recycling industry to identify strategies for increasing recovery. This group was called the Contingency Plan Work Group (CPWG). JoAnn Herrigel

represented the City on this work group. The CPWP evaluated 12 potential strategies to increase recovery in three sectors: construction, business and commercially generated organics. Following were the recommendations developed by the work group:

1. Require all construction and demolition loads of waste to be processed for recycling.
2. Require local governments to adopt mandatory business recycling ordinances for specific materials; expand business recycling assistance and outreach.
3. Require all dry-waste loads (non-food waste) to be processed for recycling before being sent to the landfill.
4. Evaluate in one year whether current strategies for recovering organics are effective.

The work group was faced with a very basic question: What feasible, yet effective, steps can the Metro region take to meet the 2005 goal? Having already reached all the low hanging fruit on the recycling tree, this question is very difficult to answer. The strategies, therefore may be viewed by some to be “too heavy” or drastic measures. Sometimes it takes drastic measures to achieve tough goals.

There are some jurisdictions in the Metro area that will refuse to pursue “mandatory” recycling, on principle. Milwaukie staff requests that Council agree to at least investigate options for implementation of mandatory recycling for businesses in the City. Staff would review the existing program in place in Portland and other areas of the US and report back to Council on potential program elements for a similar system for Milwaukie. It is hoped that some type of new program that increases commercial business recycling can be implemented by the beginning of next year.

#### Fiscal Impact

Some funds from the Community Services budget may be needed to implement the program. The research for the program will have no fiscal impact.

#### Work Load Impacts

City staff will work with Metro and City of Portland staff to develop options for Council’s consideration.

#### Alternatives

Direct staff to pursue a different method of increasing commercial business recycling in the City.



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Alice Rouyer, Community Development & Public Works Director**

**From: John Gessner, Planning Director**

**Subject: Simplify Home Occupation Application Process**

**Date: August 27, 2004 for the September 7, 2004 Council Meeting**

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**Action Requested**

**Provide feedback on the staff proposal to simplify the annual home occupation application process.**

**Background**

Staff proposes to eliminate the annual renewal process for home occupation applications. This proposal was first presented to the Council during the FY 2004-2005 budget process as a means to reduce cost and workload. City code requires annual renewal of all home occupations applications. Consequently, each year the City processes approximately 325 to 350 home occupation applications within a two to three month period starting in December. The purpose of the home occupation renewal process is to provide annual oversight of home businesses to protect against neighborhood impacts. The proposal would not affect how the home occupation regulations are applied; it would only affect only how they are administered.

Based on experience over the last five years staff believes that the application process can be eliminated or significantly modified without risk of neighborhood impacts. Milwaukie experiences a very low rate of home occupation complaints. In the last two years the City took action on only three enforcement cases. Two cases involved two separate florists that started on-site retail operations, which is prohibited by home occupation regulations. The other case involved the keeping of commercial vehicles at the home where a contractor's office was maintained, which is also prohibited.

Administration of home occupation applications also involves the Finance Department due to needed coordination between annual business registration renewals and home occupation renewals. Therefore, staff is seeking alternatives that will reduce the cost of administering the home occupation program for both Planning and Finance.

The Planning Commission considered this matter at its August 24, 2004 meeting and provided the following feedback. The Commission supports simplifying the home occupation application process but suggested there be some form of public information provided to applications so they understand the "do's and don'ts" of the zoning ordinance and consider some means of ensuring applicant accountability.

### **Key Issues**

1. Home occupations are subject to performance standards that reduce the potential for neighborhood impact. Site inspections are rarely needed prior to staff approval and applications are almost never denied.
2. In the Planning Department, the estimated average minimum processing time per application is 15 to 25 minutes, resulting in a minimum of 81 to 146 hours dedicated to processing annual renewals. Time estimates for work associated with the Finance Department's processing of home occupations are minimal.
3. There are two types of cost associated with the renewal program as follows:
  - a. Direct costs of materials, postage, and staff time.
  - b. Opportunity costs. Each hour spent on the renewal process keeps staff from other work that needs to be done.
4. A sample of home occupations shows the following distribution:<sup>1</sup>

a.	Professional or Business Office	33%
b.	Contractor's Office	23%
c.	Child and Adult Day Care	17%
d.	Manufacturing & Production	12%
e.	Miscellaneous Other	15%
5. Alternatives for reforming administration of home occupation applications include the following:
  - Eliminate the application and renewal requirements for all home occupations.

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<sup>1</sup> 180 records from 2003 and 2004 were inspected.

- Eliminate the application and renewal requirements for certain classes of home occupations.
- Keep the application process for new home occupations but eliminate the renewal process.

### **Concurrence**

Planning is coordinating with Code Compliance and Finance Department, both of which agree to the proposal in concept. Details of “how” the process will be improved are subject to Council direction on the overall idea and involved staff determining the best way to implement that direction.

### **Fiscal Impact**

The effect of related revenues and expenses determines the fiscal impact of a proposal. Staff believes the proposal will have a net benefit by elimination of actual and opportunity costs, which together exceed revenues collected.

The application fee for home occupations is \$25, which means that the City collects approximately \$8,125 to \$8,750 per year.<sup>2</sup> The proposal would significantly reduce these receipts. The estimated cost of processing annual home occupation renewal is \$6,500 to \$8,500 for materials, postage, and staff time. This estimate does not include costs of records maintenance and code compliance for home occupation violations.<sup>3</sup>

### **Work Load Impacts**

The code adoption process needed to implement the change will require approximately 10 to 15 hours of staff time. Estimated workload savings are 81 to 146 hours per year.

### **Alternatives**

The Council has the following decision-making options:

1. Accept the proposal and direct staff to proceed.
2. Modify the proposal and direct staff to proceed.
3. Reject the proposal.
4. Take no action.

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<sup>2</sup> Based on estimated 325 to 350 applications per year.

<sup>3</sup> Records maintenance includes file folders, handling, and digital scanning. Code compliance for a single violation can involve many hours of staff time and attorney fees.



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Alice Rouyer, Community Development and Public Works Director**  
**Paul Shirey, Engineering Director**

**From: Ruthanne Bennett, Civil Engineer**

**Subject: Stormwater Master Plan and Rate Discussion**

**Date: August 27, 2004 for September 7, 2004 City Council Meeting**

### **Action Requested**

The City Council is requested to:

- Review the conclusions of the Proposed Stormwater Master Plan; and
- Provide feedback to staff on the proposed 21-year financing strategy for improvements to the system.

### **Background**

In June 2003, City Council authorized a contract with URS Corporation for services to update the current Surface Water Master Plan that was completed, but not adopted, in 1997. The 1997 plan evaluated and documented the condition of the storm system and recommended projects for the Capital Improvement Plan (CIP). The highest priority projects proposed in the 1997 plan have been completed.

The city retained URS Corporation and a sub-consultant Financial Consulting Solutions Group in June 2003 to provide the technical assistance needed to prepare a new master plan. The proposed master plan addresses the following items:

1. Model Milwaukie's storm system.  
A computer model was created and rainfall events were simulated to determine where local flooding is likely to occur in the future. The results were compared with observations made during flood events in the past.
2. Evaluate the storm water system to identify undersized pipes.  
When the capacity of existing pipes is exceeded, resulting in discharges to public roadways and private property, CIP projects are proposed to improve public safety and help prevent property damage.

3. Recommend CIP improvements for the next 10 years.
4. Estimate individual project costs.  
 The attached Executive Summary lists 15 CIP projects with a total cost of \$10,289,600.
5. Determine compliance with current State and Federal water quality regulations.  
 During the next 10 years, it will be necessary to decommission 15 drywells for stormwater that are near city wells in order to protect our groundwater near those wells and meet DEQ requirements.
6. Review Federal Endangered Species Act requirements.  
 Spring Creek is highly visible to residents, school children and visitors to Scott Park creating a potential for public involvement and watershed stewardship education in addition to benefits to fish.
7. Assess the fiscal health of the storm water utility.  
 During the current fiscal year total operating expenses are expected to exceed total Storm Fund revenues by about \$43,000. The ending fund balance from the previous year will be used to cover this deficit and the cost of CIPs built this year.

**Recommendations**

The goal of the Master Plan update is to implement the storm water program as outlined in the Master Plan and determine how to fund the cost of the program with least impact on ratepayers. Estimated costs of the proposed CIPs were evaluated in light of the current fiscal condition of the utility. Given the current program’s income shortfall, the effect of the new capital program on rates was evaluated using four different term and debt assumptions. First, a twelve-year term with no debt (pay-as-you-go) was evaluated and the impact to rates was significant. Therefore, three additional scenarios were evaluated including: implementation of the plan in twelve years with debt, implementation of the plan in 21 years without debt and implementation of the plan in 21 years with debt. The results were as follows:

Estimated Stormwater Monthly Utility Rates

<b>Scenario</b>	<b>03/04</b>	<b>04/05</b>	<b>05/06</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09</b>
12-year no debt	\$6.00	\$8.57	\$13.15	\$16.99	\$16.99	\$16.99
12-year with debt	\$6.00	\$7.13	\$7.39	\$9.57	\$9.74	\$11.34
21-year no debt	\$6.00	\$6.43	\$8.11	\$11.22	\$11.39	\$12.21
21-year with debt	\$6.00	\$6.43	\$7.06	\$8.00	\$8.46	\$9.07

Based on the rather significant impact to rates, the staff and Citizen’s Utility Advisory Board (CUAB) recommendation is to proceed with one of the 21-year scenarios. The CIPs that must be implemented within a 10-year period (i.e., those associated with drywell decommissioning) could be completed within 10 years. Nine of the ten most

highly ranked CIPs would still be completed within 12 years. Staff will be prepared to discuss the pros and cons of the debt and no-debt options.

**Concurrence**

In May 2004, the consultant provided a briefing for the Citizens Utility Advisory Board on the findings of the Stormwater Master Plan. In June 2004, the consultant presented options for future stormwater rates to the Citizen Utility Advisory Board. Engineering staff coordinated with the Community Development and Public Works Director and with Public Works Operations staff on this project.

**Fiscal Impact**

City Council must consider a rate increase in order to finance this program.

**Work Load Impacts**

This project is part of the Engineering and Storm Division's annual work program.

**Attachment**

Stormwater Master Plan Executive Summary

July 30, 2004

## INTRODUCTION/BACKGROUND

In June of 2003, the City of Milwaukie initiated a project to develop a stormwater master plan to replace the previous master plan developed in 1997. The previous master plan was a part of the Kellogg-Mt. Scott Creeks Watershed Surface Water Master Plan developed for Clackamas County. It covered only the portion of the City draining into Kellogg Creek and it was based on roughly estimated data regarding the existing storm sewer system. For areas in the City other than those in the Kellogg Creek subbasins, the storm system CIP projects have been developed based on flooding problems that have been observed in the field and an overall hydrologic/hydraulic analysis and/or master plan has not been developed. In addition, the previous master plan did not address potential compliance issues associated with the Clean Water Act, the Safe Drinking Water Act (i.e., Underground Injection Control requirements for stormwater), and the Endangered Species Act. Therefore, the objectives of this 2003 plan were as follows:

- Compile and evaluate physical data regarding the existing storm system.
- Develop a City-wide plan that enables the City to meet its flood protection needs.
- Address stormwater quality and hence support compliance with associated regulatory requirements associated with both surface and subsurface discharges of stormwater runoff.
- Evaluate the existence of barriers to fish passage and the potential for removal of these barriers to address Endangered Species Act issues for threatened and endangered anadromous salmonids.

## STUDY AREA CHARACTERISTICS

The majority of the City's stormwater runoff drains through a piped system and discharges through outfalls into several water bodies including the Willamette River, Johnson Creek, Kellogg Creek, and Mt. Scott Creek (a tributary of Kellogg Creek). Storm drainage pipes of 15" diameter and greater were included in the evaluation for this plan. In addition to the piped system, stormwater runoff from the central and eastern portion of the City discharges to the subsurface through 188 city-owned drywells.

With respect to water quality, the Willamette River, Johnson Creek and Kellogg Creek are all listed on the States's 303(d) list indicating that water quality standards for specific pollutants in these streams are currently being exceeded. As a result, the State will develop total maximum daily loads for these water bodies to allocate allowable loads of specified pollutants to each of the dischargers.

With respect to fish issues, upper Willamette River Chinook and Steelhead have both been listed as threatened under the Endangered Species Act. When a species is listed as threatened, it means that it is likely to become endangered within the foreseeable future throughout a significant portion of its range. As a result, the National Marine Fisheries Service is required to develop what is known as a 4(d) Rule to define what is and is not permitted with respect to "takings" of a fish.

## STUDY METHODS

To evaluate the capacity of the piped storm system, a hydrologic/hydraulic model (XP-SWMM) was used to simulate existing conditions. The system was evaluated for the 10-, 25-, 50- and 100-year rainfall events. When flows were shown to come out of the piped system and onto the roadways during the 25-year event, capital projects were proposed. For the drywell system, flooding problems were identified based on field observations by maintenance staff.

With respect to water quality, the focus in the piped system was on identifying the best opportunities for including water quality facilities in the capital projects proposed for flood control. For the drywell system, a separate and parallel study was conducted to evaluate compliance with underground injection control (UIC) requirements. This evaluation identified 15 drywells requiring decommissioning based on their proximity to drinking water wells.

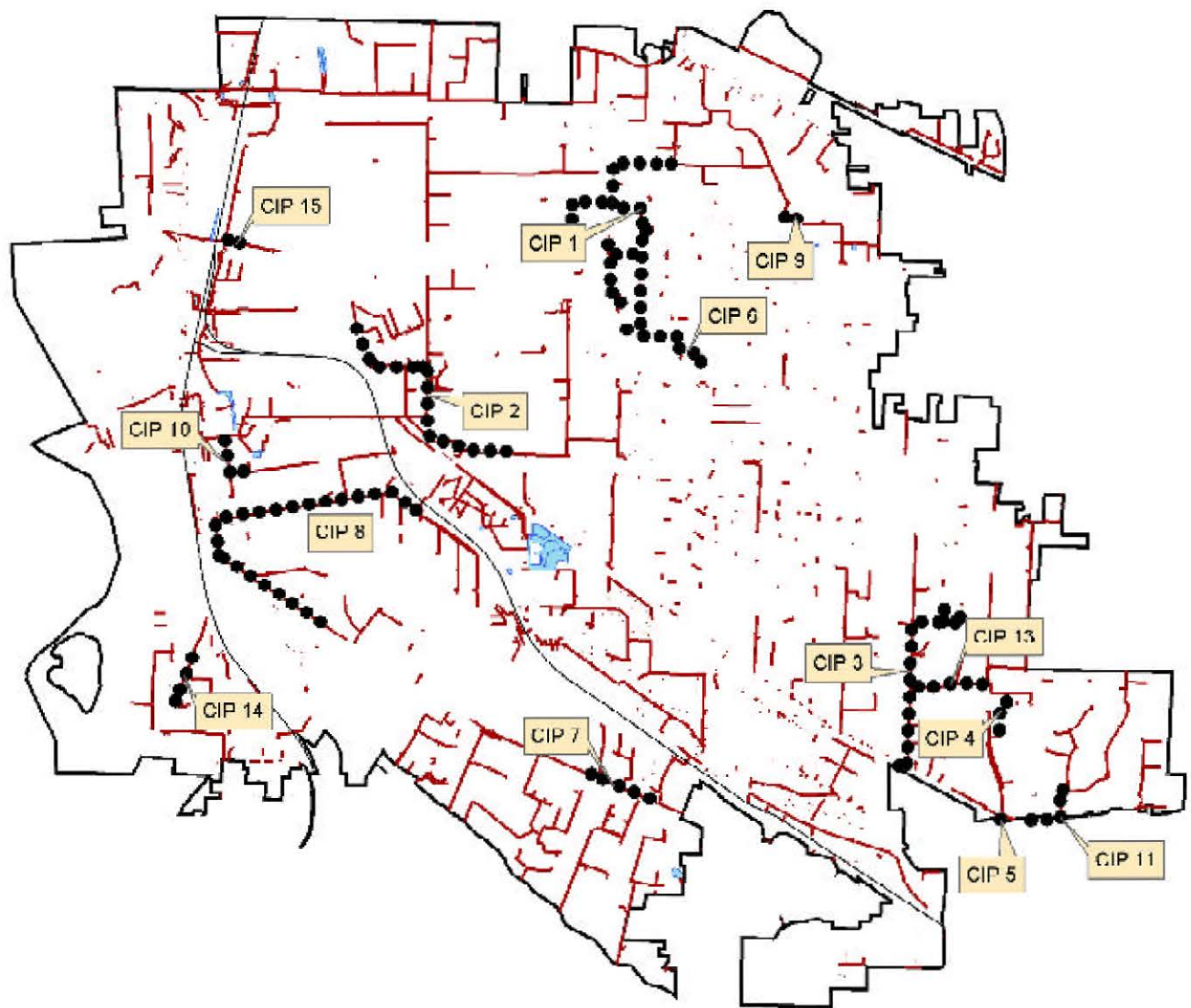
For fish passage issues, this study was focused on Spring Creek as it is located wholly within the City and thus provides an opportunity to affect change throughout a system. In addition, the stream is highly visible to residents, school children and visitors to Scott Park creating a potential for public involvement and watershed stewardship education in addition to benefits to fish. The study method included a field survey of the creek in addition to conducting interviews and searching local records regarding fish use of the Creek.

## STUDY RESULTS

As summarized below, a total of fifteen capital improvement projects (CIPs) were developed for consideration as follows:

- Eight CIPs address observed and/or predicted flooding issues in the piped system (CIP-4, CIP-6, CIP-7, CIP-9, CIP-10, CIP-11, CIP-14, CIP-15). Water quality elements will be included in these CIPs during the design phase.
- Two CIPs were developed to address drywell decommissioning requirements (CIP-1, and CIP-3). These CIPs also address observed flooding issues.
- Two CIPs are located at outfalls and they address flooding issues and water quality issues through the use of underground structural treatment facilities (CIP-5 and CIP-8).
- One CIP addresses flooding issues and it will address water quality through the use of a surface water facility (CIP-2).
- One CIP addresses flooding issues and it has significant potential to address water quality through the use of a surface water quality facility (CIP-13). The feasibility of using the adjacent open space will be evaluated during the design phase.
- One CIP provides funding to address water quality issues at two additional outfall locations based on anticipated future TMDL requirements for the Willamette River and Johnson Creek (CIP-12).





## City of Milwaukee Capital Improvement Projects

### Legend

- Capital Improvement Projects
- City Storm System
- ▭ Milwaukee City Limits
- ▭ Ponds



## PROPOSED CIP LIST

<b>CIP ID</b>	<b>CIP Name</b>	<b>Estimated Cost</b>
CIP-1	Brookside Storm Improvements	\$1,465,400
CIP-2	Meek St. & 32 <sup>nd</sup> Ave. Pipe Improvements	\$1,856,900
CIP-3	SE Stanley Ave. Pipe Replacement	\$973,700
CIP-4	Plum & Apple Storm Improvements	\$131,100
CIP-5	Outfall to Mt. Scott Creek	\$345,900
CIP-6	SE King	\$273,900
CIP-7	SE Lake Rd. Pipe Replacement	\$344,500
CIP-8	Washington St. & SE Lake Rd. Pipe Replacements	\$2,563,700
CIP-9	Winsor Dr. Pipe Replacement	\$61,900
CIP-10	21 <sup>st</sup> Ave. & SE Monroe St. Pipe Replacement	\$309,700
CIP-11	Hemlock St. to Harmony Rd. Pipe Replacements	\$397,200
CIP-12	Lump Sum Water Quality Facilities	\$627,800
CIP-13	Funberg St. Pipe Replacement	\$439,500
CIP-14	18 <sup>th</sup> Avenue Pipe Replacement	\$365,400
CIP-15	SE Milport Rd. Pipe Replacement	\$133,000
		<b>Total: \$10,289,600</b>

## FINANCIAL EVALUATION

A financial evaluation of the City's stormwater management program was conducted in conjunction with this study. The estimated costs of the proposed CIPs were evaluated to determine the potential impact on stormwater rates. The initial rates were estimated based on implementation of the plan over a twelve year period without debt. The estimated impact to rates was significant. Therefore, three additional scenarios were evaluated including: implementation of the plan in twelve years with debt, implementation of the plan in 21 years without debt and implementation of the plan in 21 years with debt. The results were as follows:

### Estimated Stormwater Monthly Utility Rates

<b>Scenario</b>	<b>03/04</b>	<b>04/05</b>	<b>05/06</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09</b>
12-year no debt	\$6.00	\$8.57	\$13.15	\$16.99	\$16.99	\$16.99
12-year with debt	\$6.00	\$7.13	\$7.39	\$9.57	\$9.74	\$11.34
21-year no debt	\$6.00	\$6.43	\$8.11	\$11.22	\$11.39	\$12.21
21-year with debt	\$6.00	\$6.43	\$7.06	\$8.00	\$8.46	\$9.07

Based on the significant impact to rates, the staff and Citizen's Utility Advisory Board (CUAB) recommendation was to proceed with one of the 21-year scenarios based on the following rationale:

- The CIPs that are required to be implemented within a 10-year period (i.e., those associated with drywell decommissioning) could be shifted in the implementation schedule to ensure compliance.
- Nine of some of the most highly ranked CIPs (i.e., CIPs 1-7, 9 and 10) would still be addressed within a 12 year period.
- Based on the margin of error in the modeling and field observations, two of the CIPs (i.e., CIPs 14 and 15) are included on the list as locations to observe over time and confirm whether CIPs are needed. Therefore, deferring these out several years does not seem critical.



TO: Mayor and City Council

FROM: Mike Swanson, City Manager

DATE: August 29, 2004

RE: Town Center Annexation Issues

### **ACTION REQUESTED**

The action that is requested is a general discussion of the issues contained in this memo and direction to staff to proceed with the analysis of an extension of services to the Town Center and, if appropriate, initiation of annexation processes.

### **BACKGROUND**

Two weeks ago the Mayor Gene Grant of Happy Valley raised the possibility of his city annexing into Milwaukie's urban growth management area. (See Attachment A--*Oregonian* article by Dennis McCarthy and Sarah Hunsberger dated August 19, 2004.) Early last week his position was the subject of an excellent article by the *Oregonian's* Andy Parker. (See Attachment B--*Oregonian* article by Andy Parker dated August 23, 2004.)

Grant's idea apparently first publicly emerged in a meeting with the Board of County Commissioners regarding the city and various issues (e.g. North Clackamas Regional Park District). Shortly before the first article above was run he decided to formally notify Milwaukie via a last minute e-mail. (Someone more cynical than I might see this as proof that the communications problem often defined as being between the cities on the one hand and Clackamas County on the other may have other elements.)

As Grant was calling for the possibility of this incursion, steps were being taken within Milwaukie to plan for the eventual annexation of the Town Center—again, an area that is within the City's recognized urban growth management area. Our

approach is made more difficult by the fact that we were looking to annexation to achieve two goals.

Annexation is often used by cities to achieve financial stability. High value and/or high growth areas are annexed to add to the City's value. However, any city using that as its sole motivation is looking only at the interests of its current residents<sup>1</sup>. In order to meet both their interests as well as those of the annexed properties, a city must view annexation as the opportunity to provide services to those who are annexed and not as an opportunity to solve its or one developer's financial challenges.<sup>2</sup>

## **ANNEXATION REQUIREMENTS**

As we begin to seriously consider annexation, a brief review of the lay of the land is appropriate.

### **CITY OF MILWAUKIE ANNEXATION PROVISIONS<sup>3</sup>**

Section 1500, Milwaukie Municipal Code, governs the City's annexation procedures<sup>4</sup> It provides that the annexation process be by petition or pursuant to the health hazard annexation process.<sup>5</sup> Various annexation scenarios are available as follows:

- Consent of all landowners and "not less than 50 percent of the electors;"
- Triple majority consent petition "when a majority of the landowners in the territory to be annexed consent," and the "land owned by the consenting landowners must total over half the area of the land in the territory to be annexed and must have an assessed value totaling more than half of the assessed value of the land in the territory to be annexed;"
- Double majority consent petition "[w]hen a majority of the electors registered in the territory to be annexed" and "the owners of more than half of the land in the territory" consent to the annexation.

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<sup>1</sup> As presented in the August 19, 2004 *Oregonian* article, Grant's proposal appears to be focused on capturing Town Center value to support others. Moreover, Happy Valley's \$.76/\$1,000 permanent tax rate struggles to provide a very minimum level of services now. Happy Valley was created to prevent the extension of services, and that original intention still haunts them. This is about service excellent service provision; it is not about saving any of us from past bad decisions.

<sup>2</sup> In addition, any city seeking to annex must be prepared to take the good with the bad. Any city that limits its vision of annexation to just the high value properties is again ignoring the responsibility to provide services.

<sup>3</sup> I have also attached two memos for further background. Attachment C, which is entitled "Annexation Requirements," is a revision of a memo I did five years ago for the Council as it prepared to adopt City annexation procedures. It is will provide some background on State and Metro annexation requirements and processes. Attachment D, which is entitled "Annexation to Milwaukie," summarizes the resulting City process.

<sup>4</sup> Since 1999, Metro Code Chapter 3.09 plays a major role in local annexations.

<sup>5</sup> The petition may be initiated by "a property owner(s) of the area to be annexed" or by the "City Council on its own motion."

Section 1500 further provides that a petition for an annexation also “include a request for Comprehensive Plan and zoning designations.” In addition, the review of the petition is subject to review both by the Planning Commission and City Council.

Section 1502.3, Milwaukie Municipal Code, outlines the criteria for approval of the proposed annexation. Section 1502.3(A) requires that the “subject site must be located within the City of Milwaukie Urban Growth Boundary,” and Section 1502.3(B) requires that it “be contiguous to the existing City limits.” Section 1502.3(D) requires that it be “consistent with Milwaukie Comprehensive Plan policies.” Section 1502.3(E) further requires that it “comply with the criteria of Metro Code Sections 3.09.050(d) and, if applicable, (e).”

Chapter 6 of the City’s Comprehensive Plan addresses “City Growth and Governmental relationships.” Among the issues discussed are policies governing annexation of territory within the City’s Urban Growth Management Boundary. Among the policies are the following:

- “The City will only support annexation requests from properties within the City’s Urban Growth Management Boundary;”
- “The City will deliver services in this area when:
  - The City is able to provide an adequate supply of needed services;
  - A majority of residents and property owners within an area to be served desire City services”
- The City will require annexation in order to receive or utilize a City service;”

Other relevant Comprehensive Plan objectives are the following:

- “The cost of providing services will be borne by those who require and use them;” (Objective #6-Cost of Services)
- “City services will be extended when the City is assured of recapturing its service investments;” (Objective #6-Cost of Services)
- “The City will examine and adjust its financial plans and programs to minimize any initial financial burden resulting from the expansion or delivery of services into growth areas;” (Objective #7-Extension of Services)
- “The City will accept a subsidy to growth areas in the short term if there is a long term gain to the City;” (Objective #7-Extension of Services)
- “Service extensions will be made only where the City can provide the service without diminishing its ability to serve existing City residents and businesses;” (Objective #7-Extension of Services)
- “The City will accept annexations that result in efficient extension of City services, promote a logical City boundary, diminish any service subsidies to unincorporated areas, and promote the City’s fiscal health.” (Objective #5-Economic Balance in Land Use and Service Demand)

## CLACKAMAS COUNTY ANNEXATION ISSUES

Clackamas County provides general government services, including land use and transportation planning, road construction and maintenance, and law enforcement. In addition, the Board of County Commissioners (“Board”) is the governing body of two special districts (North Clackamas Parks and Recreation District and Clackamas County Enhanced Law Enforcement Service District) providing direct service to the Subject Property. The Board also serves as the governing body of Clackamas County Service District 1, AKA Water Environment Services (“WES”), a district providing wastewater and surface water services to much of north Clackamas County.

The above mentioned UGMA, at paragraph B.1, provides that the “CITY shall assume a lead role in providing urbanizing services, whenever possible and according to adopted capital improvement programs, in the Dual Interest Area A” (“Area A”). Area A includes the Subject Property. The UGMA, at paragraph B.2, further provides that the “COUNTY will not oppose CITY programs and projects which accomplish service provision within Dual Interest Area A.” It also provides that each party provide notification to the other “at least thirty (30) days in advance of the first public hearing on all proposed quasi-judicial or legislative changes...”

Finally, the UGMA, at paragraph C.6, makes provision for transfer of jurisdiction over roads:

“If an annexation to the CITY occurs, the CITY shall assume jurisdiction of County roads and local access roads that are within or abutting the area annexed. As a condition of jurisdiction transfer for roads not built to the CITY street standards, on the date of the final decision on the annexation, the COUNTY shall either reimburse the CITY for the actual cost of the overlay or the COUNTY shall install the overlay itself over the width of the then-existing pavement. However, if the width of pavement is less than twenty (20) feet, the sum shall be calculated for an overlay twenty (20) feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of the CITY and COUNTY. Arterial roads shall be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads shall be negotiated and agreed to by both jurisdictions.”

## CLACKAMAS FIRE DISTRICT NO. 1 ANNEXATION ISSUES<sup>6</sup>

In December 1999 the City and District entered into an agreement for fire protection and emergency medical services that transferred provision of the

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<sup>6</sup> This section assumes the present state of affairs. That is, the City is a contract agency of the District. The September 21, 2004 vote on annexation to the District would change this arrangement.

services to the District. Paragraph 7.C governs annexations:

“The DISTRICT and CITY agree to jointly review future annexations or the expansion of either party. The CITY and DISTRICT may jointly prepare an annexation/service plan. If any annexation or expansion affects the cost allocation of this Agreement, then the parties will immediately renegotiate the financial terms of the agreement for the remainder of the fiscal year involved.

“The City and District agree that the intent of this agreement is to maintain fire service levels to the citizens of Milwaukie and the DISTRICT, and that future expansion of the DISTRICT through mergers, consolidations, and annexations will further stabilize fire and life safety for the North Clackamas region.

“All proposals for annexation initiated by the City, District, or property owners shall be reviewed by the joint oversight committee to determine the effects of service levels and cost allocation.

“During the term of this agreement the City and District may explore the feasibility of annexation of the City to the District in an effort to provide even greater economic benefit to the citizens, and security of fire protection service to the region.”

### CLACKAMAS RIVER WATER ANNEXATION ISSUES<sup>7</sup>

In July 1998 the City and District entered into a water supply agreement. Paragraph 2 governs annexations:

“The provisions of this section are applicable until the parties enter into an urban services agreement for water service pursuant to ORS 195. Thereafter, the urban services agreement will prevail. If Milwaukie annexes territory within CRW, the parties agree that CRW will continue to provide water to the newly annexed area, and Milwaukie may elect to perform meter reading, customer billing and customer service activities, or the parties may negotiate alternative arrangements for the most effective service delivery in these newly annexed areas.”

## **CONCLUSION**

In any event, I believe that Milwaukie has the necessary organizational culture to expand its services beyond its present boundaries. Over the past three years we have worked hard to create an organization that focuses on superior service delivery. For example, we cancelled our building inspection services contract with Happy Valley because we were displeased with an organizational culture that did not respect its customers. Our departments and our people understand what it means to deliver high quality services at the least possible cost.

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<sup>7</sup> This section is also in flux as we seek to clarify the District’s proposed annexation to Rockwood.

I want to stress that I have come to this position independent of the *sturm und drang* surrounding the recent Happy Valley proposal. I think we should pursue it without a great deal of attention to that quarter. Milwaukie is a City that was created in response to a need for services. I would be happy to compare all of our departments and personnel against any other entity. Our mission is to provide excellent services to present and future citizens.

The next step would be an analysis of the financial implications and a specific annexation proposal should we be able to provide services in a manner that is consistent with our standards.

ATTACHMENT A**OregonLive.com**

Everything Oregon

**City wants to annex Town Center land****The proposed annexation would include land west of I-205 and south to the Clackamas River**

Thursday, August 19, 2004

**DENNIS McCARTHY**

and SARAH HUNSBERGER

HAPPY VALLEY – New long-range annexation plans call for Happy Valley to stretch west of Interstate 205, all the way to Southeast 82nd Avenue, and include Clackamas Town Center.

City councilors decided Tuesday to ask voters to give the city permission to annex property west of I-205 and south to the Clackamas River. The Nov. 2 ballot issue would authorize annexation in that area for a period of 10 years, without the usual requirement of putting each annexation to a vote.

Only Happy Valley residents, not those in the target annexation area, could vote on the proposal. Actual annexations would require separate votes or petitions by those in the target areas.

At the same time, the council agreed to drop plans to ask voters to consider a \$20.5 million bond issue to finance road and sidewalk improvements, parkland purchases and construction of a civic center, possibly at the new Eagle Landing development on the slope of Mount Scott.

Mayor Eugene Grant said the city of about 6,000 will wait until 2006 to consider a bond measure, which he said gives the city two years to work with Clackamas County and Eagle Landing developer Neil Nedelisky on a public-private partnership for financing some of the improvements.

"We're looking at some creative funding sources, such as tax-increment financing and grants, so we won't have to raise our tax rate," said Grant. He said county officials and Nedelisky convinced the city that annexation would be far less attractive if the city's tax rate doubled or tripled with passage of a bond measure.

The city's current tax rate is 76 cents per \$1,000 property value, or \$266 a year in taxes for the owner of a \$350,000 home. The bond measure could have increased that rate to \$1.50 or even \$2.25 per \$1,000, Grant said.

"The majority of the area we want to annex is nonresidential," he said. "It would generate a substantial income to service the residential area."

Grant said the assessed value of the Clackamas Town Center alone, which he estimated at \$209 million, would have a huge effect on Happy Valley, although the effect could be reduced or deferred by the terms of the Town Center's development as an urban renewal district.

The mayor said approval of the 10-year annexation waiver in November would not guarantee that the city would double its size and add thousands of residents. Residents and businesses in the target areas would have to ask for annexation either through a separate election or petitions, Grant said.

"We're not trying to force anyone to annex," he said.

Nedelisky, the developer, approached the City Council in early summer, suggesting the city consider locating a new City Hall at Eagle Landing, along with a community center and a Clackamas County library branch. He said he met Aug. 13 with Paul De Marco, general manager of Clackamas Town Center, to discuss the possibility of the mall joining Happy Valley.

If Happy Valley annexed land all the way to Southeast 82nd Avenue, the city would take in a large chunk of the county's Clackamas Town Center urban renewal district.

Gary Cook, director of the county's urban renewal agency, said the urban renewal district would be able to continue collecting revenue and spend it on its own projects.

Clackamas Town Center has asked the county for \$20 million in urban renewal money to help build a parking structure as part of a plan to expand the mall. The county plans to commit about \$36 million in urban renewal money toward the I-205 light-rail line, which will include a station at the Town Center.

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ATTACHMENT B**OregonLive.com**

Everything Oregon

**County's idle as Happy Valley plots a tax grab**

Monday, August 23, 2004

I want to be the first to welcome you to Happy Valley County.

You hadn't heard? Let me explain what happened while our county commissioners napped.

Once upon a time in the tiny village of Happy Valley, there was a man who would be king. His name was Eugene Grant. He was elected mayor of the village and set out to make it the "premier city" in all of Clackamas County.

But King Gene had a little problem. Kingdom-building takes king-size money. His tiny village had the pockets of a pauper — a property tax rate locked in by Measure 50 at only 67 cents per \$1,000 of assessed value. He needed a scheme to finance his dream.

Last week he revealed his plan: Plunder the tax-rich commercial and industrial lowlands that extend west and south of Happy Valley. The city will ask voters if the city should pursue annexing property west to Southeast 82nd Avenue and south to the Clackamas River.

The king and his merry band didn't bother to ask their neighbors about the tax-grab scheme, though Happy Valley has long-standing agreements with Milwaukie and Gladstone ensuring them first dibs on annexing the Clackamas Town Center area and the Highway 212 industrial areas, respectively.

And what a great scheme it is: Ignore other cities and grab up commercial and industrial land that would bring in about \$1.5 million annually.

So, who is looking out for the interests of county residents?

Absolutely no one.

County Board of Commissioners Chairman Bill Kennemer, who's running for re-election against Milwaukie Mayor Jim Bernard, is not opposed to the plan: "The process of change is messy. I guess in my view this is the beginning of a process."

He's right — a process of taking opportunity from the poor and giving to the rich.

Commissioner Larry Sowa was equally eloquent, saying, "As long as they can work it out with the other cities, I don't have an opinion."

Commissioner Martha Schrader didn't return phone messages left Friday.

The people running Milwaukie and Gladstone have not been aggressive about developing annexation plans — something Grant enthusiastically points out. But Milwaukie's growth plan to expand to Interstate 205 has long been approved by the county. What's changed?

Metro Councilor Brian Newman said Happy Valley's annexation push amounts to a California-

style land grab, a "fiscalization" of our planning process.

Metro Chief Operating Officer Michael Jordan, a former Clackamas County commissioner, said it would be totally irresponsible for county commissioners to go along with Grant's plan without getting something of value in return for taxpayers. The whole idea of Milwaukie eventually annexing the mall was that it would also annex the impoverished Overland Park area, providing it with more services.

The new annexation proposal, which could easily result in a court battle, reminded me of land-use expert William Fulton's take on Oregon six years ago. Fulton, author of a book on the politics of sprawl in L.A., spoke at a growth management conference in Monterey, Calif.

California, he said, taught us how not to grow. There, Fulton said, local governments were unwilling to organize to tackle regionwide challenges such as transportation and urban blight.

Instead, in the aftermath of Proposition 13, California's 1978 tax-cut measure, cash-hungry municipalities focused all their attention not on planning growth but fueling it, battling among themselves to grab the land and new tax base needed to survive.

Oregon, he said, had the right idea. Regionwide planning offered at least the chance that growth would be influenced by regional goals instead of just those developers, cities and counties with the most money and clout.

But Oregon's highly acclaimed growth management plan, he cautioned, was in its infancy. It would take years to determine how well it actually works.

Welcome to Happy Valley, California.

*Andy Parker's columns appear Mondays and Wednesdays. Contact him at 503-294-5945 or at [daparker@news.oregonian.com](mailto:daparker@news.oregonian.com). His columns and those of other local columnists of The Oregonian can be found online at [www.oregonlive.com/columnists](http://www.oregonlive.com/columnists)*

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Attachment C

TO: Mayor and City Council  
 THROUGH: Dan Bartlett, City Manager  
 FROM: Mike Swanson  
 DATE: April 8, 1999  
 SUBJECT: Annexation Requirements

The purpose of this memo is to briefly summarize State and Regional annexation requirements and to outline the next steps in the development of a City process for annexations.

**CHAPTER 222**

ORS chapter 222 provides the statutory framework for city annexations. Following is a summary of those provisions:

SECTION	INITIATION - PROCESS	ELECTION REQUIREMENTS	NOTES
ORS 222 111(2)	By resolution of the city on its own motion or by petition of owners of real property in the territory to be annexed	Except for health hazard annexations, the proposal is submitted to the electors of the territory proposed to be annexed. Absent a charter requirement, there is no requirement to submit the question to city electors; however, notice and hearing requirements must be followed, and the ordinance effecting an annexation is subject to referendum.	The territory to be annexed must be "contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water."
ORS 222.125	By resolution of the city on its own motion or by petition of owners of real property in the territory to be annexed.	None, if all owners of land to be annexed and not less than 50% of the electors, if any, residing within the territory to be annexed consent and file a statement of that consent with the legislative body.	The territory to be annexed must be "contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water."

SECTION	INITIATION PROCESS	ELECTION REQUIREMENTS	NOTES
ORS 222.170(1) (Triple Majority)	By resolution of the city on its own motion or by petition of owners of real property in the territory to be annexed.	None, if more than half of the owners of real property in the territory to be annexed who own more than half of the land, which land represents more than half of the assessed value of all real property in the territory to be annexed, consent and file a statement of that consent with the legislative body.	The territory to be annexed must be 'contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water.'
ORS 222.170(2) (Double Majority)	By resolution of the city on its own motion or by petition of owners of real property in the territory to be annexed	None, if a majority of registered electors in the territory to be annexed and owners of more than half of the real property in the territory to be annexed consent and file a statement of their consent with the legislative body.	The territory to be annexed must be "contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water."
ORS 222.750 (Island Annexation)	By resolution of the city on its own motion or by petition of owners of real property in the territory to be annexed	To be used when the territory to be annexed is surrounded by the corporate boundaries of the city. The ordinance or resolution effecting the annexation is subject to referendum. No consent of the residents or property owners of the territory to be annexed is required.	The territory to be annexed must be "contiguous to the city or separated from it by a public right of way or a stream, bay, lake or other body of water."

SECTION	INITIATION PROCESS	ELECTION REQUIREMENTS	NOTES
ORS 222.840 <i>etseq</i>	City council	None. A hearing	The territory to be

(Health Hazard)	resolution containing a proposal for annexation of property within the urban growth boundary of the city and a finding that “a danger to public health exists because of conditions within the territory and that such conditions can be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities.” (Local board of health or 11 citizens may initiate proceedings.)	procedure before the State Department of Health is convened, The Assistant Director makes findings as to the health danger. If a finding is made, residents are afforded an opportunity to submit an alternate plan for abatement	annexed must be “contiguous to the city or separated from it by a public right of way or a stream, bay, lake or other body of water.”
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In addition to the above, ORS 195.205 *et seq* outlines the process for effecting an annexation pursuant to an annexation plan. Inasmuch as this process requires an annexation plan adopted pursuant to provisions of ORS chapter 195, it is not applicable to the City’s short term, and, therefore, it will not be considered in this Memorandum.

### **METRO CODE CHAPTER 3.09**

Effective January 1, 1998, the Metropolitan Service District (Metro) assumed a role in annexations within its boundaries. This was pursuant to SB 947, enacted during the 1997 session. SB 947 eliminated the Portland Metro Boundary Commission and required that Metro assume a role in boundary changes. SB 947 required that Metro establish the following for boundary changes, which are in addition to the requirements of ORS chapter 195 outlined above:

- “a uniform hearing and notification process;”
- “an expedited process for uncontested boundary changes;”
- “a three-person commission” to hear appeals of “contested case (which are defined a “a boundary change decision that is contested or otherwise challenged by a city, county or special district”);
- “clear and objective criteria... including, but not limited to, compliance with the adopted regional growth goals and objectives, functional plans, cooperative and urban service agreements adopted pursuant to ORS

chapter 195 and the regional framework plan of the district.”

To this end, MPAC established a subcommittee to develop an ordinance for adoption by the Council prior to December 31, 1998. After five months of work, the present ordinance was adopted by the Council over the objections of city representatives. The major problems were the absence of an acceptable expedited process and the criteria for annexation. It was agreed that the Subcommittee would continue to refine the ordinance during the first few months of 1999. At present the Subcommittee and MPAC have approved a revised ordinance, and it is anticipated that the Metro Council will adopt it in the near future.

The proposed ordinance allows for an expedited process at the discretion of the local jurisdiction. It also permits an expedited process that dispenses with the need for a public hearing and the 30-day notice requirement. It would apply only to “minor boundary changes where the petition initiating the minor boundary change is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the territory.”

Chapter 3.09 establishes uniform notice and hearing requirements and appeal procedures. The proposed ordinance establishes the following criteria for boundary changes:

- “Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;”
- Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;”
- Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;”
- Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;”
- Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;”
- Consistency with other applicable criteria for the boundary change in question under state and local law.”

In addition to the above, the proposed ordinance outlines additional considerations where there are no ORS 195 urban service agreements and

where a boundary change decision is contested by a necessary party (defined as “any county, city or district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory, Metro, and any other unit of local government ... that is a party to any agreement for provision of an urban service to the affected territory”). Those considerations are as follows:

- “The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;”
- The quality and quantity of the urban services at issue with the alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;”
- “Physical factors related to the provision of services by alternative providers;”
- “For proposals to create a new entity the feasibility of creating the new entity;”
- “The elimination or avoidance of unnecessary duplication of facilities;”
- “Economic, demographic and sociological trends and projections relevant to the provision of the urban services;”
- “Matching the recipients of tax supported urban services with the payers of the tax;”
- “The equitable allocation of costs to alternative urban service providers between new development and prior development;”
- “Economies of scale;”
- “Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria” immediately outlined above.

### **MILWAUKIE ANNEXATION PROVISIONS**

The City speaks to annexation in both the Milwaukie Zoning Ordinance and Comprehensive Plan. Section 206, Milwaukie Zoning Ordinance addresses the zoning of annexed areas as follows:

Area to be annexed to the City shall be included within the Boundaries of zones established in this Ordinance and in Accordance with the appropriate Comprehensive Plan Map Designation. The Planning Commission shall recommend Appropriate zoning to the City Council which shall be Adopted by ordinance.

Chapter 6 of the Comprehensive Plan addresses “City Growth and

Governmental Relationships.” Among the issues discussed are policies governing annexation of territory within the “City’s Urban Growth Management Boundary.” The policies are as follows:

- “The City will only support annexation requests from properties within the City’s Urban Growth Management Boundary;”
- “The City will deliver services in this area when:
  - The City is able to provide an adequate supply of needed services;
  - A majority of residents and property owners within an area to be served desire City services”
- “The City will require annexation in order to receive or utilize a City service;”
- “All areas encircled (islanded) by City Limit lines will be annexed.”

Other objectives outline additional policies relating to annexation as follows:

- “The cost of providing services will be borne by those who require and use them;” (Objective #6-Cost of Services)
- “City services will be extended when the City is assured of recapturing its service investments;” (Objective #6-Cost of Services)
- “The City will examine and adjust its financial plans and programs to minimize any initial financial burden resulting from the expansion or delivery of services into growth areas;” (Objective #7-Extension of Services)
- “The City will accept a subsidy to growth areas in the short term if there is a long term gain to the City;” (Objective #7-Extension of Services)
- “Service extensions will be made only where the City can provide the service without diminishing its ability to serve existing City residents and businesses;” (Objective #7-Extension of Services)
- “The City will accept annexations that result in efficient extension of City services, promote a logical city boundary, diminish any service subsidies to unincorporated areas, and promote the City’s fiscal health.” (Objective #5-Economic Balance in Land Use and Service Demand).

## **RECOMMENDATION**

The City’s Zoning Ordinance and Comprehensive Plan contain a basic policy framework for annexations. In order to give effect to those standards, it is now necessary to develop an ordinance that establishes the process for annexations to the City. It is therefore recommended that the City Attorney be directed to develop an ordinance that governs annexation processes within the City of Milwaukie. In order to do so, direction on the following is required:

- Standards which the City desires to require. The material from the City's Zoning Ordinance and Comprehensive Plan contain standards that could be adopted in the ordinance. Annexation is not a matter of right; rather, it is within the discretion of the City. City specific standards are one way of recognizing that reality.
- Whether or not to allow an expedited process pursuant to Metro Code Chapter 3.09.
- Whether land use decisions can be run concurrently with boundary change proceedings or whether they require processing before action on the boundary change.

## ANNEXATION TO MILWAUKIE

Every city, including Milwaukie, has a legal boundary. Properties within this boundary receive city services such as water, sewer and fire protection. These properties are subject to City rules & regulations and pay user fees and taxes to the City for their services.

To obtain the City's services property must be put within the City's legal boundary. This is called annexation.

There are several ways to start an annexation of territory to Milwaukie. These are often referred to as the *methods of initiation*. Most methods of initiating an annexation require a petition. One kind of petition, often called the *double-majority petition*, requires the signatures of owners of more than half the land area in the territory to be annexed and signatures of more than half the registered voters in the area to be annexed. A second kind of petition requires the signatures of 100% of the owners and more than half of the registered voters in the territory to be annexed. This method is sometimes referred to as a *100% petition*.

An annexation can also be started by the city council itself. The council could pass a *resolution* stating their desire to annex some particular area.

Finally there are two additional but rarely used methods of initiating annexations. An *island annexation* can be started by a city council resolution when the area to be annexed is entirely surrounded by the city. A *health hazard annexation* is initiated by a resolution from the city council or a special district board alleging that a health hazard exists in a particular area. If confirmed by the local board of health, this is forwarded to the state Health Division which must confirm the problem before the annexation can proceed.

The first two methods of initiation are the most commonly used methods. The third method, city council resolution, is rarely utilized. The last two methods of initiation are so rare they will not be further discussed here.

### DOUBLE-MAJORITY PETITION

A property owner or a group of property owners petition the City for annexation. State statutes give the City the following choices to make about how to process the annexation:

1. Hold an election in the territory to be annexed and an election in the City
2. Hold an election in the territory to be annexed but no election in the City
3. Hold an election in the City but not in the territory to be annexed
4. Do not hold an election in the territory to be annexed or in the City

If the City chooses not to hold an election in the city, then it must hold a hearing on the annexation. Milwaukie has passed a set of rules on processing annexations — Section 1500, Milwaukie Municipal Code. Milwaukie’s Code generally requires a Planning Commission hearing and a City Council hearing and does not require an election on annexations.

If no elections are held, the City decides whether to approve or disapprove the annexation.

### 100% PETITION

When the city receives a petition of 100% of the property owners and more than 50% of the registered voters, state statutes do not require the City to hold any election[s] or hearing. While the City is not *required* to hold a hearing it may do so voluntarily. Milwaukie’s Municipal Code allows the City to skip the hearing on these types of proposals only under certain conditions. One of these conditions is that no change is being sought from the existing Plan and zoning designations. And finally, under the Metro Code the City would be obligated to hold a hearing if a necessary party<sup>1</sup> objects to a proposal prior to the date the City is scheduled to decide it without a hearing.

### CITY COUNCIL RESOLUTION

The City Council can pass a resolution initiating an annexation. If they do this, they must call an election in the territory to be annexed and in the City. Cities, including Milwaukie, are not likely to initiate an annexation of developed residential areas unless they have determined there is substantial support amongst the residents.

A hearing would be required on this type of proposal.

The annexation would need to pass at the election both in the City and in the territory to be annexed in order for an annexation of this type to be approved.

### PROCESSING AN ANNEXATION

The rules for processing a change in a city boundary are spelled out generally in state statute - ORS 222. For cities within the boundary of Metro, additional rules of processing apply. These rules are found in Metro Code 3.09. The City of Milwaukie has a special section of its Municipal Code which deals with boundary change rules and these apply in addition to the state statute and Metro Code.

The following outline describes the general annexation process dictated by state statute, the Metro Code and the Milwaukie Municipal Code.

1. Hearings - Even though hearings are not always required as noted above, the

Metro Code says certain parties called “necessary parties”<sup>1</sup> can force the city to hold a hearing.

2. Notice - The City must give extensive notice regardless of whether it is holding a hearing or simply making a decision on a proposed annexation. At a minimum this includes:
  - a. At least 4 notices posted in the City 45 days before the hearing.
  - b. Notice to “necessary parties” 45 days before the hearing.
  - c. Notice published each week for two successive weeks prior to the hearing.
  - d. Notice sent any appropriate neighborhood group and to all property owners within 400 feet of the area to be annexed at least 20 days prior to hearing.

An annexation where 100% of the property owners and 50% of the voters have petitioned may (at the City’s discretion) be “expedited.” Expedited decisions require notices to necessary parties, property owners within 400 feet and all members of the City Planning Commission at least 20 days prior to the decision date.

3. Staff Report - At least 15 days before a hearing date the city must make available a staff report which addresses a number of criteria laid out in the City Municipal Code and the Metro Code. These criteria include planning consistency and adequacy of services. For “expedited” proposals the staff report need only be available 7 days prior to the decision date.
4. Final Decision - The City’s decision on the annexation must be written and must contain findings and conclusions based on those findings.
5. Appeal - A necessary party who appeared at the City hearing can appeal a City decision to Metro’s Boundary Appeals. Any party other than a necessary party can appeal the City’s decision to the Land Use Board of Appeals (LUBA).

All Milwaukee annexations must include a request for Comprehensive Plan and zoning designations.

A prerequisite for filing an annexation petition with City is a preapplication conference.

## SUMMARY

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<sup>1</sup> A necessary party is a unit of government which provides or could provide an urban service to the territory to be annexed. An urban service includes sewer, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

Milwaukie can expand its boundary through the process of annexation. Annexations are usually instigated by property owners, not the City. Property owners request annexation to acquire one or more city services (sewer, water, police, fire protection, etc.). There are several ways to initiate an annexation. The most popular is by a petition of owners of a majority of the land area and a majority of the registered voters in the area proposed for annexation.

Some annexations may be voted on. Most annexations require hearings but some do not. Extensive notice is given even when no hearing is held. A written order is always adopted on annexations and annexation decisions can be appealed.