

MILWAUKIE CITY COUNCIL  
WORK SESSION  
SEPTEMBER 16, 2002

The work session came to order at 5:30 p.m. in the City Hall Council Chambers.

City Council present: Mayor Bernard and Councilors King, Lancaster, Marshall, and Newman.

Staff present: Director of Community Development and Public Works Alice Rouyer.

### Information Sharing

The group discussed restoration of an antique fire truck currently stored at the 40<sup>th</sup> & Harvey facility and suggested publishing a call for project volunteers in the City newsletter.

**Councilor Marshall** commented on political signs in the public right-of-way.

**Councilor Newman** discussed the Springwater Corridor Three Bridges Project and proposed incorporating a gateway or public art element. City Council supported his suggestion.

**Councilor King** discussed a seminar on ethics and civil liberties she attended the previous week.

**Rouyer** updated the City Council on the Waldorf School opening. Observations of the site indicate decentralized leadership and a volunteer workforce. The project fell behind on its timelines, so the school opening was postponed. City staff will work closely with school officials on daily basis to ensure student safety prior to issuing a temporary certificate of occupancy. Generally, communications are improving, and Waldorf's pressure on staff has been reduced. She added that no member of Council or the City Manager had directed staff to put a hold on the job.

**Councilor Lancaster** said Waldorf's failure to plan should not create a staff emergency. Although he appreciates staff's desire to accommodate the project, Waldorf failed to plan, and staff abuse is unacceptable. He feels staff should be able to recoup some of the costs related to expediting the process.

**Rouyer** believes staff has code authority to add fees. Inspectors are monitoring Waldorf's fire alarm and ADA plans, and the problem with the school's using non-licensed workers has been corrected.

**Councilor Marshall** said the job should have been shut down if workers were not licensed, bonded, and insured. It is not the City's function to help Waldorf through its project.

**Rouyer** updated the City Council on the vacant house stored on 21<sup>st</sup> Avenue. Following City Council direction, the Planning Director sent a letter to the owner of the house, Rich Peterson, which stated the structure must be removed by September 19 or a bond submitted. If Peterson takes no action, the City will begin enforcement. The City Council can probably expect some citizen comments.

**Mayor Bernard** spoke with George Van Bergen, previous owner of the structure, who indicated the railroad, which owns the land the house is sitting on, would probably have it moved in a day. He asked how much time Peterson would have if he submitted a bond.

**Rouyer** responded Peterson would probably be allowed 90 days if he submits a bond. His long-term goal is to place the house on that site, and, in order to do so, he would have to apply for a minor land partition. Although he has made some progress with the railroad, follow through has been difficult. Granting a minor land partition would have no long-term effect on the downtown plan.

### **Open Public Forum**

No participants.

#### **Briefing on Amendments to the Intergovernmental Agreement with Happy Valley for Building Official and Engineering Services**

**Rouyer** said the City has chosen to change its inspection services provider and is currently working with a third party. She believes it is time for the City to bring inspection services in house, and, to accomplish this, the current agreement with the City of Happy Valley must be amended. Milwaukie agreed to pay Happy Valley 85% of the fees collected, and she believes the City would at least break even by hiring its own building official. It is important for the building department to be self-supporting through fees rather than general fund subsidy.

**Councilor Lancaster** feels Happy Valley was given sufficient notice of the customer service issues.

**Councilor Marshall** added, even if the program does not break even, simply the accountability is worth the money. Referring to the Waldorf School discussion, he expressed appreciation for the work staff has done in holding the line.

**Rouyer** will begin the position recruitment later in September and retain an overflow service for times when the building official is on vacation or ill.

#### **Briefing on Intergovernmental Agreement with Clackamas County to Cover City's Share of Capital construction Costs at Kellogg Treatment Plant**

The group discussed its general disappointment with the County's odor control efforts.

**Rouyer** discussed the 10-year payback agreement with Clackamas County for treatment plant capital improvements. In addition to the \$1 million annual treatment costs, Milwaukie also pays its share of improvement projects that amounts to about \$1.1 million. The City agreed to the most recent capital project through a community service overlay.

**Councilor Marshall** recalled Clackamas County received a grant for odor control, and **Councilor Lancaster** recollected Milwaukie's share was estimated to be about \$300,000.

**Rouyer** will research Councilors' comments. The Clackamas County Commissioners were concerned about the impact on Milwaukie ratepayers, so they agreed to spread the payments over 10 years with 2% interest. She understands most of the capital projects are completed. Milwaukie is giving up money for its own sewer-related capital projects; however, the operations supervisor feels comfortable with the arrangement. It will probably take about 6 months to negotiate a new treatment agreement.

**Councilor Lancaster** discussed rate stability and the strategy for building a new facility. He is concerned about impacting Milwaukie ratepayers or sacrificing City infrastructure to cover County Commissioners' decisions.

**Rouyer** replied, in the long term, Milwaukie needs a new agreement. In the short term, the City needs to sit down with County representatives to go over capital plans and find out what is anticipated.

The group agreed to remove authorization to sign the intergovernmental agreement from the regular session Council agenda. They further authorized the Mayor to sign a letter on Council's behalf expressing concerns about continuing to put money into treatment plant capital improvements when the City wishes it to be decommissioned.

#### Joint Session with Planning Commission

Planning Commission members present: Chair Donald Hammang, Teresa Bresaw, Rosemary Crites, and Mike Miller.

**Rouyer** briefly summarized the 2001 – 2002 completed projects as well as proposed projects slated for 2002 – 2003.

**Hammang** discussed the importance of pursuing the North Industrial Land Use Study to eventually enhance the City's tax base. He would also prioritize code revision projects to support more efficient and cost effective staff work and to keep the process saner for customers.

**Miller's** first concern is vegetated buffer regulations to curtail the loss of what is left of the City's natural areas. His other interest is tree preservation and establishing some sort of balance on private property. He commented that the grove of trees on the Palm property was cut within the past week. The

application to develop a subdivision on the Palm property was withdrawn but will probably be resubmitted.

**Councilor Marshall** agreed the City Council would have to do something about tree preservation.

**Councilor Lancaster** thought building a community will to purchase and preserve property with stands of trees was preferable.

**Councilor Marshall** hoped the City would get to the point of using the Neighborhood District Associations for feedback and perhaps distribute a form for responses on important topics.

**Miller** agreed a community's success is built on its neighborhoods, not the City Council or the Planning Commission.

**Hammang** noted those development goals which had been achieved through neighborhood involvement. He further urged that Milwaukie participate in the Johnson Creek Improvement Plan and development of storm water standards. Through this type of involvement, Milwaukie may be able to create a desirable development site in the north industrial area.

**Councilor Newman** noted the Planning Commission divides its time between developing long-term processes and responding to development applications. He asked the commissioners to comment on recent applications.

The Commissioners agreed there was little development going on at this time. **Crites** urged actions to stimulate the City's economy to increase tax dollars and to enhance the neighborhoods. Milwaukie must send a strong message to the development community. She is opposed to any additional low cost housing or apartment development in the community and supports home ownership.

**Hammang** felt the most salient point is quality of life in the neighborhoods and the struggle over small land use actions during the past 10 years.

**Councilor King** is looking forward to the North Main Project being a mix of uses including ownership and perhaps some other housing types.

**Crites** said the City needs a balance of housing, retail, and commercial. The community is already 60% renters.

**Councilor Lancaster** commented there are renters in this community who are very involved. He asked if the Planning Commissioners had any issues that might be handicapping its activities.

**Hammang** said the only impediment he has noticed is availability of staff time. He finds no process-related impediments. He has frequently noticed developments do not match the plans submitted and understands this is something being addressed by the City Council and Community Development

Director. He would like to see priority given to the North Industrial Land Use Study.

**Miller** recommended prioritizing code amendments so developers, Planning Commission, and staff can communicate using a clear set of rules.

**Councilor Newman** suggested adding the civic land overlay zone to the candidate project list. City Council had discussed rezoning school properties to protect community needs in the event sites are declared surplus and sold.

The group discussed the feasibility of the Council's reviewing Planning Commission decisions and agreed to ask the City Manager to look into the issue. Attendees discussed the appeal process and the role of the neighborhood associations.

**Hammang** feels it is desirable to meet with the City Council more frequently than once a year.

**Councilor Marshall** suggested looking into the practicability of establishing a quota on the number of multifamily dwellings in the City. The group discussed the feasibility of collecting business taxes on rental homes.

**Councilor King** thought language referring to heritage trees should added to the tree preservation project.

The group discussed the general feelings related to the City Council's reversing Planning Commission decisions. **Hammang** accepts this as part of the bicameral process. **Miller** agreed, since the City Council may look at an appeal from a different perspective. **Councilor Marshall** added every Council member respects the Planning Commissioners and the deliberations supporting their decisions.

The work session adjourned at 7:25 p.m.



---

Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL WORK SESSION AGENDA  
SEPTEMBER 16, 2002**

**MILWAUKIE CITY HALL**

Second Floor Conference Room  
10722 SE Main Street

***WORK SESSION – 5:30 p.m.***

**Discussion Items:**

|    | <u>Time</u> | <u>Topic</u>   | <u>Presenter</u> |
|----|-------------|--|------------------|
| 1. | 5:30 p.m.   | Dinner and Information Sharing   | Group            |
| 2. | 6:00 p.m.   | Open Public Forum  |                  |
| 3. | 6:30 p.m.   | Joint Session with Planning Commission<br>2002 – 2003 Work Program   |                  |
| 4. | 7:15 p.m.   | Update on Title 3 Vegetated Corridors  | Gessner          |
| 5. | 7:30 p.m.   | Briefing on Amendments to the<br>Intergovernmental Agreement with Happy<br>Valley for Building Official and Engineering<br>Services                  | Rouyer           |
| 6. | 7:45 p.m.   | Briefing on Intergovernmental Agreement<br>with Clackamas County to cover City's<br>Share of Capital Construction Costs at<br>Kellogg Treatment Plan | Rouyer           |
| 7. | 8:00 p.m.   | Adjourn  |                  |

***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.***

*At the end of the work session, the Council may hold an Executive Session under the  
authority of Oregon Revised Statutes 192.660 as needed.  
For assistance/service per the Americans with Disabilities Act (ADA)  
dial TDD 786-7555.*

|   |
|---|
| <b><i>The Council requests that all pagers and cell phones be either set on silent mode<br/>or turned off during the meeting.</i></b> |
|---|



**To:** Mayor and City Council

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

**From:** John Gessner, Planning Director *JG*

**Date:** September 16, 2002

**Subject:** Planning Commission Joint Work Session  
 2002-2003 Work Program

---

**Action Requested**

Review work program and feedback to the Commission.

**Background**

Each year appointed boards are required to meet with the City Council to review the Board's work plan for the coming year. The Planning Commission is scheduled to meet with the Council on September 16, 2002.

The following is a summary of work undertaken in 2001-2002.

| FY 2001-2002 Projects                        |  |
|--|--|
| Transportation Impact Analysis Code          | Erosion Control and Flood Management Regulations |
| Downtown Design Guidelines                   | North Industrial Land Use Study                  |
| Flag Lot & Other Code Improvements           | Cell Tower Code                                  |
| Limited Uses in the Business Industrial Zone | Urban Forestry Ad Hoc Committee                  |

The following is a summary of the possible work program items that were reviewed by the Planning Commission. The Commission has expressed interest

in prioritizing code improvement projects that help improve the quality of development.

| <b>FY 2002-2003 Candidate Projects</b>   |   |
|--|---|
| <b>Project</b>   | <b>Description</b>  |
| Complete North Industrial Land Use Study   | State funded economic and transportation project. (Year long project)   |
| Complete New Cell Tower Regulations  | (Adoption is scheduled for fall)  |
| Complete Vegetated Buffer Regulations  | (Adoption is scheduled for fall)  |
| Complete Downtown Design Guidelines  | (Adoption is scheduled for fall)  |
| Tree Preservation  | Per Council direction, look at ways to provide incentives for tree preservation and protect trees on public properties.   |
| Revise the following code sections: Variance, Nonconforming Situation, Rezoning Criteria, and Conditional Use Criteria. Develop parking rates for uses that do not now have rates. | Improve codes to correct the inadequacies or deficiencies. Parts of the existing code are difficult to apply or do not meet expectations for quality development.   |
| Environmental Standards for Stormwater Management  | Look at ways to improve the quality of runoff from buildings and parking lots.  |
| Improve Code Compliance  | Develop new code that limits the granting of approvals when violations have not been resolved.  |
| Johnson Creek Watershed Action Plan  | Participate in the development and review of the Johnson Creek Watershed Council's new project that focuses on implementation of watershed improvement projects.    |
| Real Estate Sign Code Revisions  | Evaluate the Portland Metropolitan Association of Realtors' request for allowing real estate signs in public rights-of-way and make recommendations to the Council. |



WS. 4 |

**To:** Mayor and City Council

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

**From:** John Gessner, Planning Director *JG*

**Date:** September 16, 2002

**Subject:** Title 3 Vegetated Corridors

---

**Action Requested**

Review the draft code that adopts vegetated corridor requirements and provide direction to staff.

**Background**

This project has been undertaken to meet Metro Urban Growth Management Functional Plan Title 3, which includes long-term protections for the City's water resources. Key questions about the project are presented below. *(See Exhibit 2 for draft code.)*

General background on the proposal follows. Discussion of the Planning Commission's August 27, 2002 work session is included at the end of this section.

**What has been the policy direction on Title 3?**

Over the last two years the City Council and Planning Commission have supported the goals of Title 3. The Council has previously directed staff to proceed with code amendments to adopt vegetated corridor protections.

**What are "vegetated corridors"?**

Under the proposed regulations, a vegetated setback (corridor) is required along protected water resources including streams, seasonal drainages, and wetlands. The regulations would limit the removal of vegetation where existing vegetation is

in-place. The width of the corridor can range from 15 feet to 50 feet along adjoining lands with shallow slopes. For slopes steeper than 25%, the setback would increase depending on the length of the slope.

How are areas along resources affected that have already been developed?

Under the proposal, existing lawns and gardens within the setback area would be allowed to remain. The Planning Commission has asked staff to explore ways to help restore native vegetation along water resources where it has been removed for past development.

How does the Natural Resource Overlay Zone compare to the proposed regulations?

In the spring of this year Metro Council granted Milwaukie an extension of time in which to adopt water resource protection regulations as required by the Urban Growth Management Functional Plan. To qualify for the extension, Milwaukie conducted a review of the last ten years of Natural Resource applications to gauge how well the City's resource regulations have been performing. It was found that decisions made under city code were in almost all cases consistent with Title 3 standards. This is explained by the following:

1. The existing natural resource regulations applied to most of the lands that developed through the 1990s.
2. In a number of cases, the 100-year floodplain boundary protected against development in the flood boundary and also protected the resource area.
3. Lands along resource areas designated by the City were mostly already developed by the time city resource protection regulations were adopted.
4. The City's development standards closely match Title 3 development standards.

*(See Exhibit 1- Report to Metro on Natural Resource Overlay Zone performance.)*

To what properties does Title 3 apply, that the Natural Resource Overlay Zone does not?

Many properties that contain natural resources were not designated by the City as natural resource sites at the time the Natural Resource Overlay Zone was adopted in the early 1990s. City records are inconclusive as to why this happened. Under Title 3 all resources that meet the definition of protected water features including wetlands, stream courses, and drainages are protected. These resources are shown on Title 3 maps. Resources that are protected under Title 3 but not city Natural Resource regulations include the following:

1. Wetlands located on Rockvorst, Furnberg, and Willow Streets, Stanley Avenue, and Lake Road.
2. Open drainages and streams in the Milwaukie Market Place and Business Industrial Zone.

What activities are regulated and what are not?

Regulated activities are described by application-type as follows:

(See Exhibit 2, Section 322.4 and 322.5.)

1. Activities that are "permitted outright" do not require a permit or other approval.

*Activities that will not have an adverse impact on protected water features include resource enhancement, change of use, normal maintenance and repair, activities that are not located within the floodplain or vegetated area.*

2. Activities that may be approved by staff.

*This includes activities that do not disturb the vegetated corridor, removal of non-native vegetation, removal of dangerous trees, and placement of stormwater facilities that are designed in accordance with city standards, partitions, and modification to non-conforming structures.*

3. Activities that require Planning Commission approval.

*Activities that may have an impact on protected water features including all activities not covered above, new roads and accessways, new public facility construction, any increase in the footprint of structures located in vegetated corridor, subdivisions, and variance requests.*

4. Prohibited activities include new development in resource areas.

Outstanding Title 3 Compliance Issues

Title 3 includes a prohibition against "areas of uncontained storage of hazardous materials" below the elevation of the base flood. The purpose of the provision is to help minimize contamination of waters due to an extreme flood event. Staff is concerned about the City's ability to enforce this provision as follows:

1. There are few opportunities for applying regulations that govern building occupancy and use through the zoning code.
2. Once occupancy for a building is approved, the building may be used for several years before additional improvements are made. However, internal uses that do not require permits may change at any time.
3. Staff believes the Fire District is more adequately suited to implement this prohibition since the Fire Marshall conducts biannual inspections for fire safety compliance. In addition, the Fire Marshal has greater competency in identifying and managing hazardous materials.

Staff has discussed this matter with the District Chief, who has also spoken with the Portland Fire District on the matter. Staff and the Fire Chief have not yet resolved the best way to address the Title 3 requirement. Notwithstanding, staff suggests that the matter may not have an easy solution. Additional discussion will be forthcoming.

Outstanding Issues

At the July 23, 2002 Commission work session the Commission recommended staff explore options for creating a mitigation fund to assist restoration of degraded sites and incentives for restoration of disturbed buffers. Additional work is needed on these items. The Commission also expressed concern about the use of density transfers and clustering as tools to minimize the economic impact of protecting water features. Additional work is needed on this item as well. Lastly, additional staff analysis is required prior to making recommendations for variance procedures. These matters will be addressed in future work sessions.

August 27, 2002 Planning Commission Review

The Planning Commission reviewed the proposal at its August 27, 2002, work session. The Commission supported the approach but recommended the following changes based on citizen testimony at the work session:

1. The requested changes have been incorporated into the draft code.  
A number of persons who testified expressed concern that they would be required to restore their properties to natural conditions or make other improvements. The Commission directed staff to clarify that the proposed regulations do not require property owners to change existing site conditions. This has been done by including new language in the purpose section and by revising Section 322.4(A)(6).  
In addition, staff was directed to ensure that decisions made under the Type I application procedure can be appealed.
2. The Commission gave preliminary approval on the following key elements of the code.
  - The proposed application requirements for activities in and around resource areas are acceptable. The Commission has previously advised staff that the application process should be proportionate to the likelihood of actual impacts. Under this approach, the Commission would review activities that may have an impact to resources. Staff would review activities with little chance of affecting the resource area. No permits would be required for activities that will not affect the resource area.
  - The proposed development standards are acceptable: the standards guide how work within the vegetated buffer will be conducted. This includes avoidance of impacts, minimizing the impacts, and providing mitigation.

What process will be used for public information and outreach?

The outreach and involvement process includes the following:

1. Mailings of staff reports to persons and organizations who have asked to be kept informed.
2. Planning Commission and City Council work sessions.
3. Articles in the City's newsletter, *The Pilot*.
4. Individual mailed notice to affected property owners.
5. Legal advertisements.
6. Discussion at the September 4, 2002, NDA leadership meeting.

Next Steps

September 23, 2002, Legal notice to affected property owners.

October 8, 2002, Planning Commission Work Session.

October 14, 2002 City Council Work Session.

October 22, 2002, Commission Adoption Hearing.

November 4, 2002, City Council Work Session.

November 19, 2002, Council Adoption Hearing.

Concurrence

The City Attorney will review the final draft for legal issues prior to adoption. Metro will review the final code for consistency with Title 3.

Fiscal Impact

No fiscal impacts are expected since application fees cover the cost of application review.

Work Load Impacts

The following changes to work load are expected, however, staff believes there will be an overall decrease in workload:

1. Likely decrease in the number applications reviewed due to proposed changes in application requirements.
2. Possible increase in applications due to new areas being subject to resource regulation that are not presently regulated. An increase in activity would largely be related to additional development in the Business Industrial Zone where the majority of resources subject to regulation are being added.

## WS. 4 6

### **Alternatives**

The Council may accept, reject, or modify, the draft proposal.

### **Exhibits**

1. Proposed Code
2. NR Zone Performance, Letter to Metro, October 24,

**WORKING DRAFT****8/20/02****WATER QUALITY RESOURCE OVERLAY ZONE**  
**REPLACES SEC. 322 NATURAL RESOURCE OVERLAY ZONE****Note to Readers**

***This documents a work in progress. It may change for editing purposes or to meet requests of the Planning Commission and City Council.***

**322.1 Purpose, General Policies, and Declarations.**

- A. Many of the City's original wetland and riparian resources have been adversely affected by historical development. These regulations seek to minimize additional adverse impacts and achieve resource restoration and improvement where possible while balancing property rights and development needs of the City.
- B. It is the intent of this chapter to ensure protection of the functions and values of Water Quality Resource Areas at the time of development.
- C. It is not the intent of this chapter to:
  - 1. Impose any obligation on property owners for the restoration of existing developed sites to pre-development or other natural condition.
  - 2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions.
- D. This Chapter provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5. *{Note: Amend Comprehensive Plan As necessary.}*
- E. This Chapter establishes the Water Quality Resource Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area map incorporated by reference as part of this Chapter.
- F. The Water Quality Resource Area Overlay zone allows development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.
- G. Implementation of this Chapter is in addition to and shall be coordinated with Milwaukie Municipal Code Title 19 Zoning Ordinance, Title 18 Flood Hazard Regulations and Chapter 16.28 Erosion Control.
- H. Conditions legally existing as of {date of adoption} that are inconsistent with this Chapter are declared legal non-conforming situations.
- I. Evidence of physical conditions for sites existing at the time this Chapter was adopted shall consist of city, county, and Metro records, aerial photography, and other information that may be available.

**322.2 Coordination with the Willamette Greenway Overlay**

- A. For properties along the Willamette River, nothing in this chapter shall prohibit the maintenance of view windows authorized under the Milwaukie Zoning Ordinance 320 Willamette Greenway Zone.

- B. Except as provided for in section 322.2(A), provisions of this chapter shall apply where the Planning Commission Staff Report y are more restrictive than Chapter 19.320 Willamette Greenway Zone.

**322.3 Applicability**

The Water Quality Resource Area Overlay Zone applies to all properties that contain Flood Management Areas and Water Quality Resource Areas as shown on the adopted Water Quality and Flood Management Areas map. Application for development activity for shall be made in accordance with this Title 19, this Chapter and Sections 322.6 Application Requirements and 322.7 Development Standards.

**322. 4 (A) Activities Permitted Outright**

The following activities are permitted outright and therefore do not require approval under the provisions of this Chapter.

1. Stream, wetland, riparian and upland enhancement or restoration projects and development in compliance with an approved natural resource management plan or mitigation plan.
2. Farming practices as defined in ORS 30.930 and farm uses, excluding buildings and structures, as defined in ORS 215.203.
3. Change of use where there are no exterior alterations to buildings or structures, or increases in floor area, impervious surfaces or storage areas.
4. The normal maintenance and repair of existing structures, utilities, access, streets, driveways, and parking improvements including asphalt overlays.
5. Temporary emergency procedures necessary for the safety or protection of property.
6. The normal maintenance of yard conditions in existence *{at the time of adoption.}*
7. Placement of a structure not located within the Water Quality Resource Area that does not require a building permit or flood hazard permit.
8. Maintenance of public and private storm drainage facilities in accordance with a management plan approved by the Planning Commission;
9. New construction, and modification of existing structures and other site improvements when not located within the Flood Management Area or Water Quality Resource Area.
10. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this Chapter and which have also been found to have no appreciable impact to the water quality resource area.
11. Removal of invasive or non-native plant species specified in the Milwaukie Native Plant List.

**322. 4(B) Activities Permitted Under Type I Application Review**

The following activities are allowed under 19.1011.1 Type I application review subject to the conditions specified below.

1. Replacement or improvement of existing public and private utility facilities where:

- a. The disturbed portion of the Water Quality Resource Area is restored; and
- b. Non-native vegetation is removed from the Water Quality Resource Area and replaced with vegetation from the Milwaukie Native Plant List.
2. Measures to remove or abate nuisances, or any other violation of State statute, administrative agency rule or city or county ordinance subject to a mitigation plan to be approved by the Planning Director prior to the abatement activity.
3. Tree removal as necessary to eliminate an imminent hazard to person or property when sufficient evidence of the hazard is provided to the satisfaction of the Planning Director.
4. Stormwater discharges that are consistent with city adopted stormwater quality and control standards.

#### **322. 4(C) Activities Permitted Under Type II Review**

The following activities are allowed in the Water Quality Resource Area Overlay Zone subject to approval by the Planning Commission under section 19.1011.2 Type II review and compliance with Section 322.7 Development Standards.

1. Any activity allowed under 322.4 (A) that increases direct stormwater discharges to the Water Quality Resource Area when not consistent with adopted stormwater quality and control standards.
2. Modification to any nonconforming structure or feature subject to Type II review under Section 19.800 Nonconforming Situations.

#### **322. 4(D) Activities Permitted Under Type III Review**

The following activities are allowed in the Water Quality Resource Area Overlay Zone subject to approval by the Planning Commission under section 19.1011.3 Type III review and compliance with Section 322.7 Development Standards

1. Any activity allowed in the base zone, other than those listed in Sections 322.4 (A) through 322.4 (C).
2. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.
3. New public or private utility facility construction.
4. Walkways and bike paths
5. New stormwater detention, retention, or pre-treatment facilities.
6. Widening an existing road adjacent to or running parallel to a Water Quality Resource Area.
7. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint within the Water Quality Resource Area.
8. Natural Resource Management Plans and Stormwater Quality and Control Management Plans.
9. A request for a variance of any provision of this Chapter.
10. Partitions and subdivisions that contains any area located within the Water Quality Resource Area Overlay Zone.

**322.5 Prohibited Uses**

Following {date of adoption}, new structures, development, or activity other than those listed in subsection 322.4 are prohibited in the Water Quality Resource Area.

**322.6 Application Requirements**

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone must provide the following information in addition to the information required for the base zone:

- A. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.
- B. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps and outcroppings of rocks, or boulders within the Water Quality Resource Area.
- C. Location of Title 3 wetlands. Where Title 3 wetlands are identified, the applicant shall follow the Division of State Lands recommended wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist.
- D. An inventory and location of existing debris and noxious materials.
- E. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
- F. An inventory of vegetation, including percentage ground and canopy coverage.
- G. Alternatives analysis demonstrating that:
  - 1. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
  - 2. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
  - 3. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
  - 4. It will be consistent with a Water Quality Resource Area Mitigation Plan.
  - 5. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
- H. For applications seeking an alteration, addition, rehabilitation or replacement of existing structures located within the Water Quality Resource Area:
  - 1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
  - 2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and

3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
- I. A Water Quality Resource Area Mitigation Plan shall contain the following information:
  1. A description of adverse impacts that will be caused as a result of development.
  2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
  3. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
  4. A map showing where the specific mitigation activities will occur.
  5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.
- J. All information contained the application submission requirements and site plan checklist forms prescribed by the Planning Director.
- K. The application fee as adopted by the City Council.

### **322.7 Development Standards**

Applications for activity in the Water Quality Resource Area Overlay Zone shall satisfy the following standards:

- A. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
- B. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area.
- C. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- D. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this chapter. Such markings shall be maintained until construction is complete.
- E. Stormwater pre-treatment facilities:
  1. The stormwater pre-treatment facility may encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and
  2. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the property.
- F. Additions, alterations, rehabilitation and replacement of lawful structures.
  1. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the city.
  2. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected

Water Feature than the existing structures, roadways, driveways, accessory uses and development

G. Off-site Mitigation.

Offsite mitigation is prohibited under this Chapter.

H. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution or sedimentation to the adjacent water quality resource area.

I. Where practicable, the types, sizes and intensities of lights must be placed so that they do not shine directly into the natural resource locations.

J. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.

K. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water and cover for animals located within the water quality resource overlay.

L. Storm water flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.

M. Road crossings of major natural drainage courses will be minimized as much as possible.

N. The construction phase of the development must be done in such a manner to safeguard the portions of the site within the water quality resource overlay zone that have not been approved for development.

**322.8 Variances**

A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would unreasonably deprive an owner of economically viable use of land.

B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.

D. Development may occur on lots located completely within the Water Quality Resource Overlay Zone that are recorded with the county assessor's office on or before {adoption date}. In the case of lots of record being entirely within the Water Quality Resource Overlay Zone, development shall not disturb more than \_\_\_\_\_ square feet of the vegetated corridor, including access roads and driveways.

E. Lots Completely Within the Water Quality Resource Area

Variances to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;

2. The variance does not increase danger to life and property due to flooding;
3. The proposed use complies with the standards of the base zone.

F. **Buildable Lot Variance**

A variance to avoid the unreasonable loss of economically viable use of a lot that is partially inside the Water Quality Resource Overlay Zone is permitted. Development on such lots shall not disturb more than [REDACTED] square feet of the vegetated corridor, including access roads and driveways. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied reasonable economic use of the subject property. To meet this criterion, the applicant must show that:
  - a. The proposed use cannot meet the standards in Section 322.8(E).
  - b. No other application could result in permission for an economically viable use of the property.
2. The proposed variance is the minimum necessary to allow for the requested use;
3. The proposed use complies with the standards of the base zone.

G. **Variance Conditions**

The Planning Commission may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief. If a variance is granted, it shall be subject to the following conditions:

1. The minimum width of the vegetated corridor shall be 15 feet on each side of a Primary Protected Water Feature.
2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 30 feet in width on each side of the water feature; and
3. In either case, the average width of the Water Quality Resource Area shall be a minimum of 15 feet on each side for Secondary Protected Water Features, a minimum of 50 feet on each side for Primary Protected Water Features; or up to 200 feet on each side in areas with slopes greater than 25 percent. In no case shall outer boundary of the Water Quality Resource Area be less than 10 feet from the protected water feature.

**322.9 Map Administration**

- A. The purpose of this section is to provide a process for:
  1. Amending the Water Quality and Flood Management Areas map to add wetlands;
  2. Correct the location of Protected Water Features and the Water Quality Resource Areas.
- B. **Map Corrections**
  1. Within 90 days of receiving information establishing a possible error in the existence or location of a Protected Water Feature, or Water Quality Resource Area Overlay Zone, the city shall provide notice to interested parties of a public hearing at which the city will review the information.
  2. The city shall amend the Water Quality Area map if the information demonstrates:

- a. That a Primary or Secondary Protected Water Feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of this Chapter; or
- b. The boundaries of the Water Quality Resource Area Overlay Zone or Flood Management Area Overlay Zone have changed since adoption of the Water Quality and Flood Management Areas map.
- C. The Water Quality Resource Area includes both the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the Table One. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.
- D. Modification of the Water Quality Resource Area  
To modify the Water Quality Resource Area Overlay Zone, the applicant shall demonstrate that the modification will offer the same or better protection of the Protected Water Feature, Water Quality Resource Area and Flood Management Area by:
  1. Preserving a vegetated corridor that will separate the Protected Water Feature from proposed development; and
  2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent Protected Water Feature; and
  3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent Protected Water Feature; and
  4. Protecting the vegetated corridor sufficient to provide filtration, infiltration and natural water purification for the adjacent Protected Water Feature; and
  5. Stabilizing slopes adjacent to the Protected Water Feature.
- E. Adding Title 3 Wetlands
  1. Within 90 days of receiving evidence that wetland meets any of one of the criteria in D.2., the city shall provide notice to interested parties of a public hearing at which the city will review the evidence.
  2. A wetland shall be protected by the standards set forth in this ordinance if the wetland meets any one of the following criteria:
    - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size; or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
    - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet; or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

Table 1

| Protected Water Feature Type (see definitions)  | Slope Adjacent to Protected Water Feature | Starting Point for Measurements from Water Feature  | Width of Vegetated Corridor  |
|---|---|---|--|
| Primary Protected Water Features <sup>1</sup>   | < 25%                                     | <ul style="list-style-type: none"> <li>• Edge of bank full flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul> | 50 feet  |
| Primary Protected Water Features <sup>1</sup>   | > 25% for 150 feet or more <sup>5</sup>   | <ul style="list-style-type: none"> <li>• Edge of bankfull flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>  | 200 feet   |
| Primary Protected Water Features <sup>1</sup>   | > 25% for less than 150 feet <sup>5</sup> | <ul style="list-style-type: none"> <li>• Edge of bankfull flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>  | Distance from starting point of measurement to top of ravine (break in >25% slope) <sup>3</sup> , plus 50 feet. <sup>4</sup> |
| Secondary Protected Water Features <sup>2</sup> | < 25%                                     | <ul style="list-style-type: none"> <li>• Edge of bankfull flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>  | 15 feet  |
| Secondary Protected Water Features <sup>2</sup> | > 25% <sup>5</sup>                        | <ul style="list-style-type: none"> <li>• Edge of bankfull flow or 2-year storm level;</li> <li>• Delineated</li> </ul>                          | 50 feet  |

|  |  |                         |  |
|--|--|-------------------------|--|
|  |  | edge of Title 3 wetland |  |
|--|--|-------------------------|--|

<sup>1</sup>**Primary Protected Water Features** include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

<sup>2</sup>**Secondary Protected Water Features** include intermittent streams draining 50-100 acres.

<sup>3</sup>Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope (see slope measurement in Appendix).

<sup>4</sup>A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

<sup>5</sup>Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the *uphill* direction from the protected water feature.

Table 2

**WATER QUALITY RESOURCE AREA REQUIREMENTS**

| EXISTING CONDITION OF WATER QUALITY RESOURCE AREA   | REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS UNDISTURBED DURING CONSTRUCTION  | REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS DISTURBED DURING CONSTRUCTION   |
|---|--|--|
| <p>Good Existing Corridor: Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p> | <p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p> | <p>Prior to construction, a biologist or landscape architect shall prepare and submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including:<br/>                     sediments, temperature and nutrients<br/>                     sediment control<br/>                     temperature control<br/>                     or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</p> <p>Inventory and remove debris and noxious materials.</p> |

**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

| EXISTING CONDITION OF WATER QUALITY RESOURCE AREA   | REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS UNDISTURBED DURING CONSTRUCTION  | REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS DISTURBED DURING CONSTRUCTION   |
|---|--|--|
| <p>Marginal Existing Vegetated Corridor:<br/>Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p> | <p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p> | <p>Vegetate disturbed and bare areas with, non- nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a city approved plan developed to represent the vegetative composition that would naturally occur on the site. Seeding may be required prior to establishing plants for site stabilization.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> |

**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

| EXISTING CONDITION OF WATER QUALITY RESOURCE AREA   | REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS UNDISTURBED DURING CONSTRUCTION  | REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS DISTURBED DURING CONSTRUCTION  |
|---|--|---|
| <p>Degraded Existing Vegetated Corridor: Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p> | <p><i>Vegetate bare areas with plantings from approved Native Plant List.</i></p> <p><i>Remove non-native species and revegetate with plantings from approved Native Plants List.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p> | <p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non- nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> |

**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

**Definitions**

Beneficial water uses]

Routine Repair and Maintenance

Milwaukie Native Plant List

economically viable use

**Definitions.** Unless specifically defined below, words or phrases used in this section shall be interpreted to give them the same meaning as they have in common usage and to give this classification its most reasonable application.

**Bankful Stage** - Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begin to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

**Created Wetlands** - Those wetlands developed in an area previously identified as a non-wetland to replace, or mitigate wetland destruction or displacement. A created wetland shall be regulated and managed the same as an existing wetland.

**Constructed Wetlands** - Those wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and/or separated from naturally occurring or created wetlands.

**Debris** - discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance, or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees or trees which have fallen into protected water features.

**Department of Environmental Quality (DEQ) Water Quality Standards** - The numerical criteria or narrative condition needed in order to protect an identified beneficial use.

**Development** - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

**Disturb** - man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

enhancement or restoration of the Water Quality Resource Area;

planting native cover identified in the Milwaukie Native Plant List.

**Division of State Lands Wetland Determinations** - As defined in OAR 141-86-200 (1997) (definitions for Local Wetland Inventory Standards and Guidelines), "wetland determination" means identifying an area as wetland or non-wetland.

**Emergency** - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

**Enhancement** - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

**Flood Management Areas** - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

**Invasive Non-native or Noxious Vegetation** - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Milwaukie Native Plant List as adopted by Metro Council resolution.

**Mitigation** - the reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

**Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant list.

**ODFW Construction Standards** - Oregon Department of Fish and Wildlife construction guidelines for building roads, bridges and culverts or any transportation structure within a waterway.

**Open Space** - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farm land. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

**Ordinary Mean High Water Line** - As defined in OAR 141-82-005 as the line on the bank or shore to which water ordinarily rises in season; synonymous with Mean High Water (ORS 274.005).

**Ordinary Mean Low Water Line** - As defined in OAR 141-82-005 as the line on the on the bank or shore to which water ordinarily recedes in season; synonymous with Mean Low Water (ORS 274.005).

**Owner or Property Owner** - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

**Parcel** - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010(7)).

**Perennial Streams** - means all primary and secondary perennial water ways mapped by the U.S. Geological Survey.

**Plans** - The drawings and designs that specify construction details as prepared by the Engineer.

**Post-Construction Erosion Control** - Consists of re-establishing groundcover or landscaping prior to the removal of temporary erosion control measures.

**Practicable** - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

### **Protected Water Features**

*Primary Protected Water Features* shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

*Secondary Protected Water Features* shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

**Restoration** - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

**“Resource” versus “Facility”** - The distinction being made is between a “resource,” a functioning natural system such as a wetland or stream; and a “facility” which refers to a created or constructed structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

**Riparian** - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

**Routine Repair and Maintenance** - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

**Set-back Adjustment** - The placement of a building a specified distance away from a road, property line or protected resource.

**Significant Negative Impact** - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

**Steep slopes** - Steep slopes are those slopes that are equal to or greater than 25%.

**Stormwater Pre-treatment Facility** – any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

**Stream** - a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams.

**Structure** - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components.

**Title 3 Wetlands** - wetlands as shown on the Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

**Top of Bank** - The same as "bankful stage" defined in OAR 141-85-010(2).

**Utility Facilities** - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

**Vegetated Corridor** – the area of setback between the top of bank of a Protected Water Feature and the delineated edge of the Water Quality Resource Area as defined in Table 1.

**Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as established in Title 3.

**Water Quality and Floodplain Management Area** - The area that identifies where the Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

**Water Quality Facility** - Any structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as constructed wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

**Watershed** - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

**Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

WS. 4 24



October 24, 2001

Ms. Brenda Bernards  
Metro Growth Management  
600 NE Grand Avenue  
Portland, OR 97232

Re: Title 3 Compliance

Dear Brenda:

This supplements Alice Rouyer's October 23, 2001 letter regarding Title 3 compliance and is submitted for the Community Planning Committee's consideration.

City natural resource applications over the past three years have been examined to assess the consistency between city resource protection and Title 3 protections. Based on our review, we believe that through continuing enforcement of our Natural Resource Overlay Zone there is little danger of resource loss or impairment during the Title 3 adoption process. In support of this, please see summary comments below. (Case details are included in the attachment.)

- Development setbacks have been consistent with the intent of Title 3 for preservation of natural stream corridors, slope protection, erosion control, pollutant reduction, and flood management.
- City required mitigation is generally consistent with Metro Title 3 Model Ordinance Table 2.
- Most applications were for alteration of existing development.<sup>1</sup>
- No structures have been located in any Flood Management Area.

Thank you for your assistance in this matter. Do not hesitate to contact me at 503-786-7652 should you have any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "John Gessner".

John Gessner  
Interim Planning Director

cc: Mayor James Bernard  
Mike Swanson, City Manager  
Alice Rouyer, Interim Community Development Director

---

<sup>1</sup> Only one new structure has been located in a Water Quality Resource Area; setbacks and mitigation were required.

| <b>Case #</b> | <b>Description</b>   | <b>Title 3 Resources</b>                   | <b>Resource Setback</b> | <b>Mitigation/ Conditions</b>  |
|---------------|--|--|-------------------------|--|
| 98-02         | Construct communication tower on developed industrial site | None                                       | not applicable          | None   |
| 98-03         | Addition to industrial building                            | None on-site; abuts Minthorn Creek wetland | 50 feet plus            | Preserve existing landscaping buffer; no direct stormwater discharges to wetland |
| 98-05         | Steinmann: Abatement of unauthorized fill.                 | Mt. Scott Creek                            | not applicable          | Remove fill  |
| 98-06         | Roswell Pond Enhancement                                   | wetlands                                   | not applicable          | Remove invasive species, restore native plants                                   |
| 98-07         | Criterion: Commercial Building on existing parking lot     | Minthorn Creek wetlands                    | 10-15 feet              | Remove invasive species, restore native plants                                   |



**To:** City Council

**Through:** Mike Swanson, City Manager

**From:** Alice Rouyer, Director of Community Development & Public Works *ACR*

**Subject:** Amended Intergovernmental Agreement with Happy Valley for Engineering and Building Official Services

**Date:** September 4, 2002 for the September 16, 2002 meeting

**Action Requested**

Review and give feedback on proposed amendments to an intergovernmental agreement (IGA) with Happy Valley, eliminating shared Building Official services.

**Background**

The City of Milwaukie and the City of Happy Valley have been sharing building inspection and engineering services by agreement since 1995. The City has provided engineering services on an as-needed basis, while Happy Valley has been Milwaukie's service provider for Building Official, Building Inspection and Plans Examiner services.

Due to changes in staffing levels at Happy Valley, the City decided to temporarily contract with another service provider for Building Official services beginning August 5, 2002. A private Building Official/Inspection/Plans Examiner contractor is providing daily services to Milwaukie and will continue in that capacity for the next two to three months.

The City has now decided to hire its own Building Official and provide more inspection services in-house. Therefore, the agreement with Happy Valley for shared Building Official services is no longer necessary. The attached IGA has been amended to remove references to shared Building Official and Inspection services. The agreement for Milwaukie to provide as-needed engineering services to Happy Valley remains in effect.

**Concurrence**

Staffs in Community Development, the City Manager's Office and the City Attorney's Office have reviewed the proposed IGA. The proposed IGA is currently under review by Happy Valley.

**Fiscal Impact**

Staff has evaluated the cost of providing in-house Building Official and inspection services and has determined that the City can provide this service at the same or less cost than the existing agreement with Happy Valley.

**Work Load Impacts**

The amended IGA will effectively move contracted building services in-house. This is a move that staff believes will be positive from a service standpoint.

**Alternatives**

1. Amend the attached IGA, as proposed.
2. Suggest additional amendments to the IGA.
3. Do not authorize the City Manager to sign the attached IGA.

**Attachments**

Draft Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2002, by and between the City of Milwaukie, a municipal corporation (hereinafter "Milwaukie") and the City of Happy Valley, an Oregon municipal corporation (hereinafter "Happy Valley").

**RECITALS**

- a. Milwaukie and Happy Valley have shared engineering and building official services pursuant to an agreement between the parties dated July 18, 1995 and replaced by a new agreement dated January 1, 1997, and now wish to terminate the previous agreement and replace it with an agreement covering only engineering services
- b. Happy Valley has need of certain engineering services relating to its drinking water, sanitary sewer, storm drainage, streets and development reviews.
- c. Milwaukie has qualified staff available to provide engineering services to Happy Valley, on an as-needed basis.
- d. Milwaukie has decided to provide its own Building Official Services and no longer will need Building Official and Inspection Services from Happy Valley.
- e. Milwaukie and Happy Valley acknowledge that they have authority to enter into this Intergovernmental Agreement pursuant to the powers contained in their respective Charters and ORS 190.010.

**AGREEMENT**

1. **SERVICES PROVIDED BY MILWAUKIE.** Milwaukie will provide the following engineering services to Happy Valley, on an as-needed basis, either through or under the direction of a registered engineer:
  - A. Represent Happy Valley as City Engineer in discussions with City Council, Planning Commission, other jurisdictions, developers and the public;
  - B. Provide design services and prepare construction drawings, technical specifications, bid documents, and opinions on construction costs of improvement projects;
  - C. Review and update city standards and specifications for public infrastructure;
  - D. Consult with Happy Valley staff regarding operation and maintenance of the drinking water, sanitary sewer, storm drainage and street systems;
  - E. Provide field inspections;

- F. Assist in the planning and development of local improvement districts to finance proposed improvements and prepare engineering reports for district formation and assessment.
  - G. Coordinate with engineering consultants that Happy Valley has retained;
  - H. Provide consultation service on short notice for emergencies that threaten public health, safety or welfare.
2. **WORKERS' COMPENSATION AND EMPLOYER LIABILITY.** Milwaukie shall remain fully responsible as the employer for all taxes, assessments, fees, premiums, wages, withholdings, and other direct and indirect compensation, benefits, and related obligations with respect to its own employees as required by Oregon Revised Statutes.
  3. **RATES FOR SERVICES.** The rates for services shall be in accordance with Milwaukie's Labor Rates adopted as part of the Fee Schedule and amended from time to time.
  4. **BILLING.** The parties shall mutually agree upon a billing schedule and a time frame for payment for services rendered.
  5. **TERM OF THE AGREEMENT.** This agreement shall continue in full force and effect in perpetuity unless terminated by one or both of the Parties in conformance with this Agreement.
  6. **TERMINATION OF THE AGREEMENT.** The Agreement may be terminated by either Party without cause upon giving 90 days written notice of intent to terminate.
  7. **ATTORNEYS FEES.** In the event any suit, action or other proceeding is brought with regard to this Agreement, or to enforce any of the provisions hereof, the prevailing Party in any such suit, action or other proceeding, or any appeal there from, shall be entitled to reasonable attorneys' fees and court costs.
  8. **INDEMNIFICATION.** To the maximum extent permitted by law, Milwaukie shall hold harmless, defend and indemnify Happy Valley, its officers and employees from any claims for damages to property or injury to persons or for any penalties or fines, which may be occasioned in whole or in part by Happy Valley's performance under this Agreement.

To the maximum extent permitted by law, Happy Valley shall hold harmless, defined and indemnify Milwaukie, its officers and employees from any claims for damages to property or injury to persons or any penalties or fines, which may be occasioned in whole or in part by Happy Valley's performance under this Agreement.

Nothing in this Agreement is intended nor shall it be construed as imposing any liability on a jurisdiction for claims in excess of the Oregon Tort Claims Act. Each Party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282 for the

duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270.

- 9. **APPLICABLE LAW.** This agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 10. **COMPLIANCE WITH LAWS.** In connection with their activities under this Agreement, both Parties shall comply with all federal, state and local laws and ordinances applicable to the work under this Agreement.
- 11. **APPROVAL OF THIS AGREEMENT.** This Agreement shall not go into effect until the governing body of each Party enacts a resolution approving the Agreement. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 12. **AMENDMENTS.** Any amendment to this Agreement must be approved by the governing body of each Party and signed by an authorized representative of each Party. This agreement supersedes the prior agreement dated January 1, 1997 referred to in Recital a. That agreement is hereby terminated by mutual agreement.
- 13. **ASSIGNMENT.** Neither Party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without prior written approval of the other Party, which shall not be unreasonably withheld.
- 14. **SEVERABILITY.** In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.
- 15. **MERGER.** This Agreement constitutes the entire Agreement between the parties, no waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

**CITY OF MILWAUKIE**

**CITY OF HAPPY VALLEY, OREGON**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



WS. 6 1

**To:** City Council

**Through:** Mike Swanson, City Manager

**From:** Alice Rouyer, Director of Community Development & Public Works *AR*

**Subject:** Briefing on the Intergovernmental Agreement with Clackamas County regarding repayment of capital improvement costs at the Kellogg Creek Wastewater Treatment Plant.

**Date:** September 4, 2002 for the September 16, 2002 meeting

**Action Requested**  
Information only.

**Background**

Staff will brief the Council at the September 16, 2002 work session on a September 17th regular session agenda item. Staff will discuss the proposed IGA with Clackamas County for repayment of capital improvement costs at the Kellogg Creek Wastewater Treatment Plant. Please see the September 17, 2002 Regular Session staff report for background.