

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 19, 2002**

CALL TO ORDER

The 1898th meeting of the Milwaukie City Council was called to order by Mayor James Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Michelle Gregory,
Neighborhood Services
Manager
Esther Gartner,
IST Manager
Grady Wheeler,
Information Specialist
John Gessner,
Planning Director
Lindsey Nesbitt,
Assistant Planner

JoAnn Herrigel,
Program Administrator
Brion Barnett,
Civil Engineer
Alice Rouyer,
Director of Community
Development and Public Works
Jason Wachs,
Program Specialist
Linda Noren,
Information Systems Analyst
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Public Safety Appreciation Week

Mayor Bernard read a proclamation recognizing November 25 – 30, 2002 as *Public Safety Appreciation Week*. Representatives of the Milwaukie Police Department and Clackamas County Fire District #1 were present.

Centennial Event Update

Gregory and Centennial Committee Chair **Wilda Parks** updated the City Council and public on the upcoming events for the 2003 celebration. Parks noted the enthusiasm and dedication of the Committee members and positive involvement by local businesses and organizations.

Pilot Centennial Quiz Winners

Each winner of the Centennial Quiz in the September and October editions of *The Pilot* were awarded a young dogwood tree to commemorate the event. Allan DeLay was recognized as the first resident to respond to the quiz, and he, in turn, gave the City Council a 1951 photograph of what was considered to be the largest dogwood tree in the world at the time. The tree did not recover from damage sustained in the 1962 Columbus Day Storm, and it eventually died. It was located on Harrison Street near 32nd Avenue. Other quiz winners were John Siefer, Phil Korten, Jim Redmond, Betty Farr, Gene Pisaneschi, Bill Kerry, Norma Paelser, John Sciarra, Mike Hardy, David Lambert, Fred Behrman, Jim Mishler, Margaret Parsons, Sharon Phillips, Shirley Faust, Melanie Phillips, Betty Stewart, Linda Palmer, Wanda Reily, Daryl Miller, Carolyn Matson, Peter Drake, Mary Jarman, and George Cordy.

Redesigned City Website

Wheeler and **Gartner** demonstrated the redesigned city website and discussed future enhancements including electronic Council packets.

Councilor Lancaster suggested using an easier to read font and recommended implementing an on-line payment system.

CONSENT AGENDA

It was moved by **Councilor King** and seconded by **Councilor Lancaster** to adopt the consent agenda that included:

- A. **City Council Minutes of November 4 & 5, 2002;**
- B. **Metro Local Share Intergovernmental Agreement Extension;**
- C. **Metropolitan Implementation Program (MTIP) Grant Application;**
- D. **Resolution 26-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Establishing a North Main Developer Selection Committee, Setting Criteria for Selection of Members and Setting a Timeframe for Reporting**
- E. **Community Development Block Grant Application**

The motion to adopt the consent agenda passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Code Amendment for Cell Towers and Other Wireless Communication Facilities (Application ZA-02-04) and Fee for Third Party Review

Mayor Bernard called the public hearing on the legislative zoning ordinance amendment to order at 6:50 p.m.

Mayor Bernard announced this would be a legislative decision by the Council based on the following standards: statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; and applicable provisions of implementing ordinances. He reviewed the order of business.

Mayor Bernard explained the City Council decision would be the final decision of the City. All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Any party with standing may appeal the decision to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submitted written comments or testified and signed the City Council Attendance sheet.

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

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

Initial Staff Presentation: **Nesbitt** presented the staff report in which the City Council was requested to adopt an ordinance amending the zoning ordinance improving Milwaukie regulations for wireless communication facilities.

Pursuant to FCC regulations, the City may adopt standards regulating cell towers, but it may not prohibit construction of new towers or discriminate in such a way that certain carriers cannot provide service to the area because of technological costs. Nesbitt reviewed the key issues related to the proposed action: prohibit construction of new towers in residential, commercial, and downtown zones; limit construction of new towers to the business industrial and manufacturing zones; establish a minimum separation requirement of 1500 feet for new towers; permit the placement of antennas on utility poles in all zones; and establish setback and landscape buffering requirements.

Nesbitt also proposed a resolution that would establish a fee for a third party review of wireless communication land use applications, a monthly fee for placing antennas on utility poles located within the right-of-way, and an administrative review fee for land use applications.

Correspondence: None.

Testimony in Support: None.

Neutral Testimony: None.

Testimony in Opposition: None.

Council Clarifications: **Councilor Lancaster** referred to staff report page 3, item 5.F, a proposed regulation to surround equipment cabinets and the tower base with a 6-foot security fence and landscape screening. He was concerned this somewhat vague language would be subject to interpretation.

Nesbitt explained the surrounding fence could be cyclone or wood, and standards would depend on the zoning of the site. There are no provisions for the type of wood used for fencing. The vegetative screening standards could be a condition of approval.

Councilor Lancaster asked how the collected fees would be used.

Nesbitt responded fees would be general fund revenue.

Councilor Marshall asked how staff arrived at a \$250 per month fee for each wireless antenna attached to a utility pole located in the right-of-way. He considered the fee low and suggested the rental be based on a percentage of revenue collected.

Nesbitt responded the fee is comparable to that charged by the City of Portland and Portland General Electric (PGE). Based on the Telecommunications Act of 1996, the City is prohibited from creating a regulation that would be too costly for some carriers.

Councilor Marshall was concerned about the poles being engineered to determine if they are able to withstand the stress of adding an antenna, and, thereby, potentially reducing their useful lives.

Nesbitt said applicants must have permission from PGE to attach an antenna before making application to the City. Essentially, the wireless communication provider is renting the right-of-way from the City rather than the pole itself.

Gessner encouraged the City Council to adopt the fee at this time and amend it later if need be. He will provide a supplemental fee report in December.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:10 p.m.

It was moved by **Councilor King** and seconded by **Mayor Bernard** to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by **Councilor Lancaster** and seconded by **Councilor Marshall** to read the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance amending Title 19, the Milwaukie zoning ordinance, adopting new regulations governing siting and design of wireless communication facilities. Motion passed unanimously among the members present.

ORDINANCE NO. 1910:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19, THE MILWAUKIE ZONING ORDINANCE, ADOPTING NEW REGULATIONS GOVERNING SITING AND DESIGN OF WIRELESS COMMUNICATION FACILITIES.

LUBA Appeal Information: Mayor Bernard announced any party with standing might appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

It was moved by Councilor Marshall and seconded by Mayor Bernard to adopt the resolution establishing a fee for third party review for wireless communication land use applications, a monthly fee for placing antennas on utility poles in the right-of-way, and a fee for administrative review of wireless communication facility land use applications. Motion passed unanimously among the members present.

RESOLUTION NO. 27-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FEES AND CHARGES ESTABLISHING A FEE FOR THIRD PARTY REVIEW FOR WIRELESS COMMUNICATION LAND USE APPLICATIONS, A MONTHLY FEE FOR THE PLACEMENT OF WIRELESS COMMUNICATION ANTENNAS ON UTILITY POLES LOCATED IN THE RIGHT-OF-WAY, AND A FEE FOR ADMINISTRATIVE REVIEW OF WIRELESS COMMUNICATION FACILITY LAND USE APPLICATIONS AND CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

OTHER BUSINESS

Franchise with Northwest Natural Gas Company

Herrigel presented the staff report in which the City Council was requested to approve a nonexclusive franchise to Northwest Natural Gas (NW Natural) to operate a natural gas utility system serving Milwaukie residents. The existing franchise will expire January 31, 2003. The terms of the proposed agreement are substantially unchanged

with the exception of the franchise fee. The utility agrees to increase the franchise fee to the City from 3% to 5%, so, if approved by Council, the City will realize an additional \$100,000 revenue in the general fund annually.

Herrigel referred to a letter from The Grove Homeowners' Association, which cited 3 issues. First, the Association has concerns about streets being returned to acceptable standards after utilities make street cuts. Herrigel believes this is an internal issue that should be addressed outside the action before City Council at this meeting. Second, the Association believes NW Natural should provide customers with a list of local contractors when conversions are being made. Herrigel recommended this be handled outside the franchise. Third, the Association suggests stubbing off lines at the curb to minimize right-of-way disruptions.

Sandra Hart, NW Natural representative, addressed the proposal to stub out the lines. Because stubs would be in sidewalks or residents' front yards, NW Natural is concerned about safety. The likelihood of third-party damages also increases. Hart believes the Public Utilities Commission (PUC) and the insurance carrier would support this position.

Councilor Lancaster said, from his perspective, the bigger issue is utility cuts, which can dramatically reduce a street's useful life.

Hart responded that NW Natural is conscientious in its street repairs. The company tries to carry out conversions in an area rather than on an individual customer basis. Unless the ground is too rocky, NW Natural crews use directional bores to reduce right-of-way disruptions.

Herrigel added there is language in the agreement that, if NW Natural's street restorations are not completed to City standards within a given period of time, the City may carry out that restoration and charge the expense back to the franchisee.

Councilor Lancaster asked if it was to the City's best advantage to enter into a 10-year franchise agreement.

Herrigel said the term and fee is comparable to what other cities in the state are doing. Milwaukie has had a good relationship with NW Natural, and there are no technological changes, such as one might see with a cable provider, which would make a shorter-term agreement more desirable.

Councilor Lancaster was concerned about all of the franchise fee programs' having more of an economic basis and recommended looking at the impacts of the City's franchise agreements.

Hart referred to the Grove Homeowners' Association's concerns about the contractor list. Contractors must go through a screening process to be included in the company's participation program. When NW Natural goes into a conversion area, it takes a

contractor along to discuss the process; however, the participation program is not limited to that one contractor.

Councilor Lancaster noted the common complaint about cuts being made to streets just recently improved. He asked if there is an outreach program to improve project coordination.

Hart replied NW Natural tries to work with cities and developers.

Mayor Bernard discussed the feasibility of placing a moratorium on street cuts.

Swanson commented that public works departments and utility companies working together is a fairly recent development. Regarding the franchise term, he noted franchise fees have recently come under attack and have been subject to challenges by companies such as Qwest. PGE and NW Natural have not taken that course and have continued to be supportive of local governments. If the City does annex additional land in the future, franchise revenues will increase proportionately. Swanson thanked Herrigel for taking on the responsibility of negotiating the franchise agreements and doing it very well.

It was moved by Councilor King and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to read the ordinance granting a nonexclusive franchise to Northwest Natural Gas for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance granting a nonexclusive franchise to Northwest Natural Gas. Motion passed unanimously among the members present.

ORDINANC NO. 1911:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING A NONEXCLUSIVE FRANCHSIE TO NORTHWEST NATURAL GAS TO OPERATE A NATURAL GAS UTILITY SYSTEM PROVIDNG NATURAL GAS SERVICES TO RESIDENTS WITHIN THE CITY AND TO INSTALL, MAINTAIN AND OPERATE FACILITIES FOR THE TRANSMISSION OF NATURAL GAS WITHIN RIGHTS OF WAY AS WELL AS RELATED COMMUNICATIONS SYSTEM FOR THE DISTRIBUTION OF NATURAL GAS.

Other Items

Rouyer announced that the City received a \$200,000 grant from the State to construct sidewalks on 42nd Avenue between Olsen Street and Johnson Creek Boulevard.

Board and Commission Appointments

Mayor Bernard, with the consent of Council, appointed Ray Harris to the Park and Recreation Board and Rick Bantz (Lake Road Neighborhood) and Karen Martin (Hector Campbell Neighborhood) to the Public Safety Advisory Committee.

Levy Failure

Swanson said the current 2002 – 2003 budget is balanced, but during the budget process last spring, a \$1.2 million shortfall was predicted for fiscal year 2003 – 2004. With the defeat of the local option tax measure in November, the City finds itself in the situation of having to respond as early as possible and making some decisions in order to approach the budget process in a good position. He suggested engaging in a process and making some decisions that might lead to adjustments in the current year's budget. He and Finance Director Smith recently projected about a \$973,000 shortfall in 2003 – 2004. PERS recently notified entities of a 5% increase, which translates into about \$80,000 for Milwaukie. Given this scenario, the target is about \$1.1 million reduction to balance the FY 2003 - 2004 budget.

Swanson discussed the need to balance speed with a quality decision-making process. The process must be speedy and fair and carry with it a high level of integrity. He recommended that the Budget Committee begin hearings in January 2003 and the changes, including staff notices, be implemented at the end of January. The intent is to balance the budget and provide services – not to hurt the taxpayers. He advocated for maintaining a healthy contingency to fulfill the City's fiduciary responsibilities.

Councilor Lancaster suggested starting the Budget Committee meetings in December.

Councilor King wished to have some input into the process before going off Council.

Councilor Marshall agreed he would like to provide input as well. There is a history, and to a certain degree it could be said he and King are a part of it. He encouraged scheduling a Budget Committee meeting in December with Councilors elect attending. He advocated making final decisions by the end of January and implementing plans by February 1st.

Councilor Lancaster encouraged public outreach to gather input on what services residents wish to receive.

It was the consensus of Council to direct the Budget Committee to call a meeting on December 16 in lieu of the regularly scheduled Council work session.

Executive Session

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment to discuss real property transactions pursuant to ORS 192.660(h).

ADJOURNMENT

It was moved by **Councilor King** and seconded by **Councilor Marshall** to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 7:55 p.m.



Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
NOVEMBER 19, 2002**

MILWAUKIE CITY HALL
10722 SE Main Street

1898TH MEETING

REGULAR SESSION - 6:00 p.m.

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

- II. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Public Safety Appreciation Week Proclamation**
 - B. **Centennial Event Update (Gregory)**
 - C. **Pilot Centennial Quiz Winners (Mayor Bernard)**
 - D. **Redesigned City Website (Gartner/Wheeler)**

- III. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of November 4 & 5, 2002**
 - B. **Metro Local Share Intergovernmental Agreement Extension (Herrigel)**
 - C. **Metropolitan Implementation Program (MTIP) Grant Application (Barnett)**
 - D. **North Main Street Developer Selection Committee – Resolution (King)**
 - E. **Community Development Block Grant Application (King)**

- IV. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*

- V. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

Code Amendment for Cell Towers and Other Wireless Communication Facilities (Application ZA-02-04) and Fee for Third Party Review – Ordinance and Resolution (Nesbitt)

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

Franchise with Northwest Natural Gas Company – Ordinance (Herrigel)

- VII. INFORMATION**

Park and Recreation Board Minutes, September 24, 2002

- VIII. ADJOURNMENT**

EXECUTIVE SESSION -- *At the end of the regular meeting, 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.

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: November 11, 2002
RE: FYI Memo for the Weeks of November 11 - November 29, 2002

There will be no regular work session on November 18, 2002. Rather, Council will meet to present the City Manager's evaluation. Council will meet at 5:00 P.M. to finalize its discussion, and I will join it at 5:10 (or whenever you decree) to continue the discussion. My self-evaluation is attached, along with a discussion of future goals.

NOVEMBER 19, 2002 COUNCIL REGULAR MEETING

(1) Metropolitan Implementation Program Funding: This is a request to authorize staff to complete a regional federal grant application for multimodal roadway improvements to Lake Road and to endorse Clackamas County's efforts to apply for Intelligent Transportation Systems projects on behalf of the City. Jurisdictions successful in applying for funding will be notified in July 2003, and funds will become available in 2006 and 2007.

(2) Metro Local Share Extension: The City has two open projects remaining under a local share grant from Metro, which was part of the Open Spaces, Parks, Trails, and Streams 1995 bond measure. Staff is requesting an extension of the IGA with Metro in order to complete the projects. It is anticipated that they will be completed by spring 2003.

(3) North Main Street Developer Selection Committee: This request is to formally adopt a resolution naming a Developer Selection Committee for the North Main Street Redevelopment Project. The RFP for the Project is expected to be released in late November. The Committee will assist the City in selecting a development proposal by making a report and recommendation. It will be a five-member committee.

(4) North Main Street Redevelopment Request for Proposal: This request is for approval to release an RFP for actual development proposals. The RFP will go to the four development teams that were qualified through the City's RFQ process. The goal is to release the RFP on November 15 with a proposal due

date of December 20, 2002. The RFP is currently undergoing final review by the City Attorney.

(5) Community Development Block Grant Application Support: This action authorizes the Mayor to sign a transmittal letter/letter of support for the City's 2002 Community Development Block Grant (CDBG) application to the Clackamas County Community Development Department. The application is a part of the three year 2003-2005 funding cycle. The application for funds is due November 22, 2002. A 20% cash or in-kind match is required if any project is awarded. The total cost of the projects is estimated at \$500,000.

(6) Code Amendment for Cell Towers and Other Wireless Communication Facilities and Establish a Fee for Third Party Review: Note: One requested action—that of an amendment to the Zoning Ordinance--involves enactment of an ordinance that will require two motions/seconds/passage to read by title only before enactment of the ordinance. This staff report presents final code amendments for new regulations that govern the location, height, and design of wireless communication facilities (such as cell towers). Staff requests that Council adopt by ordinance the proposed amendments to the Zoning Ordinance. Upon adoption of the proposed code changes by Council, the wireless regulations will require an applicant to pay a \$1,000 deposit for a third party review of a land use application. Upon adoption of the proposed wireless communication regulations by Council, the City will charge a monthly franchise fee for all wireless communication antennas attached to utility poles. The staff report addresses the proposed fee schedule changes and requests that Council adopt a resolution amending the City's fee schedule to reflect the changes.

OTHER ITEMS OF INTEREST

(1) The Planning Commission will hold the first public hearing for adoption of new water quality regulations on November 26, 2002. The regulations build on the City's existing code to provide additional protection of sensitive water resources in accordance with regional environmental standards. The City Council's adoption hearing is scheduled for December 17, 2002.

(2) An application for an 18-lot subdivision of the former Palm property on Lake Road has been resubmitted and is expected to be heard by the Planning Commission on December 10, 2002.

(3) The City's Technical Advisory Committee on the North Industrial Land Use Study met recently to review the project consultant's preliminary work products including a preliminary market study. Refinements to this work are now being made. Additional updates will be provided. A public open house will be held sometime in March.

(4) The owners of the King Road Shopping Center have recently reported that the Center's redevelopment project is still on the table but is awaiting legal review by Safeway.

(5) We are working with Deborah Barnes and Susan Stone to make sure that they will receive the necessary information to ensure that they are adequately prepared when they assume office in January. I know that they have differing knowledge of the City, and, therefore, I want to avoid a canned presentation that is not useful. Therefore, I am meeting with them both to define what each needs. Our goal is to make sure that they are the best-prepared Councilors when they take the oath. If you have any ideas for making the transition better, please let Pat or I know.

(6) Just before Election Day, we were notified that the Innovations Group had selected both of our submissions on Communications and Neighborhood Services as case studies for presentation at their May conference in Plano, Texas. An Innovations Group representative has been trying to chase me down for permission to use quotes from my Communications submission on their web site. We will have to think hard before committing funds for any trips until we get the budget issues straightened out.

(7) I will be taking a vacation day on Wednesday, November 13, returning on the 14th. Pat will be in charge.

(8) Just a reminder that the City offices are closed the day after Thanksgiving.

Proclamation

WHEREAS, those members of our communities who work daily as responders to emergencies and other public safety needs, whether in police, fire, medical response or other similar agencies, are vital to the well being of our citizens; and

WHEREAS, the health, safety and comfort of our community is enhanced by the resourcefulness and integrity of those public safety departments; and

WHEREAS, the efficiency of the qualified personnel who staff public safety departments is significantly influenced by public attitude and understanding of the importance of the work they perform; and

WHEREAS, community support and interaction is vital to the efficient operation of public safety departments and their programs; and

WHEREAS, it is fitting and proper that we recognize the ongoing contributions of the area's public safety personnel by honoring and remembering them throughout the week of November 25 – 30, 2002,

NOW, THEREFORE, BE IT RESOLVED, that the City of Milwaukie wishes to commend these individuals for their dedication and commitment to this state and hereby proclaims the week of November 25 – 30, 2002 as "Public Safety Appreciation Week."

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

**MILWAUKIE CITY COUNCIL
WORK SESSION
NOVEMBER 4, 2002**

III. A. _____

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

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

Staff present: City Manager Mike Swanson, Director of Community Development and Public Works Alice Rouyer, Planning Director John Gessner, Interim Engineering Director Paul Shirey, and Project Manager Jeff King.

Information Sharing

1. City Council agreed to read a proclamation recognizing Bob's Red Mill Natural Foods groundbreaking ceremony on November 12.
2. The group discussed disposition of property located at 12125 SE 19th Avenue. At a recent meeting, neighbors indicated they would like to see the lots developed for residential use.
3. Mayor Bernard, Planning Commissioner Rosemary Crites, and Project Manager King recently toured the Gresham Station development.
4. The City Council authorized the City Manager to sign a waiver of potential conflict of interest for Ramis, Crew, Corrigan & Bachrach in upcoming services related to AT&T Wireless.
5. Swanson feels that whatever the outcome of the local option tax measure 3-77 on the November ballot, the community and organization is richer for their coming together during the campaign. He felt he and Mayor Bernard had been treated with respect in all community meetings they attended.
6. Rouyer introduced Jeff King, Project Manager, and Paul Shirey, Interim Director of Engineering, both recently hired to fill vacant positions in the City.

Volume-Based Sewer Rate Update

Rouyer advised the City Council that staff has received citizen complaints about the recent sewer rate increases on their utility bills. Records indicate the volume-based sewer rate implemented on July 1 may not be revenue neutral as planned at the outset. The purpose of this update was to inform Council that staff is evaluating the current rate and will report its findings.

III. A. 2

The group discussed sewage treatment costs and the feasibility of an early pay off of capital improvement costs for the Kellogg Treatment Plant. **Councilor Lancaster** urged caution since there is a positive cash flow, and **Mayor Bernard** recommended some sort of interest rate charge on late payments.

Tyler McCune, Filbert Street resident, commented on the increased sewer charges. He felt the consumers could have been better informed and suggested training operations crews to respond to residents' questions in the field. He questioned why the sewer rate was greater than the water rate. He does not believe the sewer system has as many maintenance requirements as the City's water system, and the crews are equal.

North Main Street Developer Selection Committee Charge Statement

Rouyer reviewed the proposed charge statement and membership criteria.

The City Council did not feel it was necessary to have a Council member on the Committee to act as a liaison. After some discussion the City Council agreed to the following membership criteria: Library Board member or Friends of the Library representative; Historic Milwaukie Neighborhood District Association representative; downtown business or property owner; 2 at-large members with a preference for people with design, architecture, development, or commercial real estate backgrounds.

Councilor Marshall proposed charge the statement include step #5 – to disband the Committee after it makes its recommendation to the City Council.

Staff will prepare a resolution for the next City Council meeting that establishes the Committee so members can legitimately enter into executive session.

King briefly reviewed the project schedule that includes an open house for City Council and the public to review the proposals and provide input.

The House on 21st Avenue

Mayor Bernard announced Peterson had turned over ownership of the structure to another party who has agreed to move it to a suitable site. He anticipates it will be moved by early January.

The work session ended at 7:20 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 5, 2002**

III. A. 3

CALL TO ORDER

The 1897th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King	Brian Newman
Larry Lancaster	Jeff Marshall

Staff present:

Mike Swanson, City Manager	Larry Kanzler, Police Chief
Alice Rouyer, Director of Community Development and Public Works	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Veteran's Day Proclamation

Councilor King read a proclamation recognizing Veteran's Day on November 11, 2002.

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Newman to adopt the consent agenda that included:

- A. City Council Minutes of October 15, 2002; and
- B. Purchase Order for RLM Consulting Services, Inc.

The motion to adopt the consent agenda passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

Board and Commission Appointments

Mayor Bernard, with Council consent, made the following Board and Commission appointments: Barb Cartmill, Design and Landmarks Commission; Michael Welling, Library Board; Brent Carter, Planning Commission; and Dolly Macken-Hambright (Linwood Neighborhood) and Gene Covey (Lewelling Neighborhood) to the Public Safety Advisory Committee.

III. A. 4

ADJOURNMENT

It was moved by Councilor Newman and seconded by Councilor King to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 6:04 .m.

Pat DuVal, Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Program Administrator
Subject: Metro Local Share Extension
Date: October 30, 2002

Action Requested

Authorize the City Manager to sign Amendment No. 5 to Metro's Local Share IGA 904593 extending the expiration date of the IGA to December 31, 2003.

Background

In 1995, as part of the Open Spaces, Parks, Trails and Streams bond measure, Metro granted the City \$349,020 in funds as part of \$25 million allocated to local governments. Of the six projects funded under this local share program, two have yet to be completed. The two projects are:

1) Ardenwald to Springwater Access Capital Improvement

Completed to date:

- Replaced jersey barriers at entrance with large river rock
- Installed "Welcome to Ardenwald Neighborhood Springwater Trail Entrance" sign

Yet to be completed:

- Installation of "No Parking" signs

2) Minthorn North Addition/Acquisition

Completed to date:

- Removed large mound of imported soil from Northwest corner of site
- Seeded excavated area

III. B. 2

Council Staff Report -- (Metro Local Share)
Page -- 2

- Modified ditches to expand wetland area
- Installed fence along northern edge of property along Railroad and on western edge along 37th
- Installed path along edge and through property

Yet to be completed:

- Install wetland and other native plants (installation Nov-Feb)
- Install interpretive sign (Jan)

Concurrence

Metro staff has agreed to extend the IGA to allow the two projects to be completed.

Fiscal Impact

The current budget has \$39,060 remaining for these two projects. \$36,000 for Minthorn and \$3,060 for the Springwater entrance.

Work Load Impacts

No additional work load. Staff anticipates completion of these projects within the next three months.

Alternatives

Deny authorization, terminating the IGA with Metro and forfeiting the remaining local share funds.



To: Mayor and City Council

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

From: Paul Shirey, Interim Engineering Director
Brion Barnett, Civil Engineer *BB*

Subject: Authorization to submit a Metropolitan Implementation Program (MTIP) grant application

Date: November 4, 2002 for the November 19 meeting

Action Requested

Authorize staff to complete a regional federal grant application for multimodal roadway improvements to Lake Road, and endorse Clackamas County's efforts to apply for Intelligent Transportation Systems (ITS) projects on behalf of the City of Milwaukie.

Background

Metro works with the Oregon Department of Transportation (ODOT) and federal agencies as the gatekeeper of federal transportation funds in the greater Metro region. The Metropolitan Implementation Program (MTIP) is the process used by Metro to ensure that available transportation funds are distributed equitably among jurisdictions throughout the region. Typically, applications are completed several years in advance of funding becoming available. The current MTIP application cycle considers projects that would qualify to receive funding in 2006 and 2007.

Clackamas County jurisdictions are expected to receive approximately a proportionate share of the total \$41 million dollars estimated to be available to the region. Clackamas County jurisdictions work together to develop project lists that are spread equitably across the County.

In August, staff developed a preliminary list of MTIP projects. Projects included Railroad Avenue (curbs, gutters, sidewalks and bicycle lanes), roadway

III. C. 2

reconstruction on King Road and multimodal improvements to Lake Road. After prioritizing projects with the County and other jurisdictions, staff has selected Phase I of the Lake Road Multimodal Project as the project to be considered in Milwaukie's MTIP grant request. Phase I would allow for staff to complete preliminary engineering and right-of-way acquisition. Phase II would be funded in a future MTIP cycle and would include construction of the multimodal improvements. Breaking the project in to two phases will give the City a better chance of competing for the limited regional funding that is available in this cycle. It is estimated that Phase I will cost approximately \$1.65 million. Staff estimates that the total project cost (from 21st to the eastern city limits) will be approximately \$6-7 million.

The Lake Road Improvements Project is a favorable candidate project because planning has already been completed as part of the adopted Lake Road Multimodal Plan in 1997 and the project is part of the City's Transportation System Plan and Capital Improvements Plan for 2003-2007. Jurisdictions successful in applying for funding will be notified in July 2003 and funds would become available in 2006 and 2007.

Separate from the City's planned application for improvements to Lake Road, the County is applying for Intelligent Transportation Systems (ITS) projects on behalf of the City of Milwaukie and other cities in the County. ITS projects involve the application of advanced technology to enhance safety, provide services to travelers, and assist transportation system operator in implementing suitable traffic management strategies. The specific project that the County is applying for is called the Railroad Crossing Safety Improvements Project. This project focuses on coordinating and improving operations of both vehicle and train traffic at surface street crossings, with a total project cost of approximately \$550K dollars. If awarded, the County would manage the project. Some of the improvements would be located in Milwaukie, benefiting City residents.

Concurrence

Community Development, Planning, Engineering, and Neighborhood Services Departments all support proceeding with the application process for the Lake Road Multimodal Project and also support Clackamas County's separate application for ITS projects on behalf of the cities throughout the County.

Fiscal Impact

Federal funds can provide up to approximately ninety-percent (89.73%) of the project, while the City is required to provide a local match of approximately ten-percent (10.27%). Based on this, staff estimates that the total city match for the Lake Road Improvements Project will be approximately \$170,000 dollars. It is important to note that the city's total local match will be made in separate parts, each part dedicated for a specific phase of the project, and each part required to be deposited with Metro prior to proceeding with a particular phase. Typically, preliminary engineering (PE) is the first

phase of the project and the right-of-way (ROW) acquisition phase occurs after the PE phase is approximately one-third (1/3) complete. It is likely that matching funds required for PE and ROW could be spread across two fiscal years. Staff projects that sufficient gas tax revenue will be available to provide for this match over two fiscal years.

The matching requirements for the County's Railroad Crossing Safety Improvements Project will also require a local match of approximately ten-percent (10.27%). However, the total local match for this project would be spread across other cities in the County and the ultimate match would be determined in conjunction with the County based on a proportionate share.

Work Load Impacts

A staff team from the Engineering and Community Development Departments will complete the application and participate in the public involvement process. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Decide to endorse a different project
- Decide not to proceed with the application process for Lake Road
- Decide not to endorse the County's efforts in applying for ITS projects on behalf of the City.



To: City Council

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

From: Jeffrey King, Community Development Project Manager

Subject: North Main Developer Selection Committee Resolution

Date: November 5 2002 for the November 19, 2002 meeting

Action Requested

Review and adopt the attached Resolution to establish the proposed North Main Project Developer Selection Committee.

Background

The Council has discussed using a citizen committee to review development proposals and provide a recommendation to Council concerning the appropriate development team for the North Main site. The Request for Proposal (RFP) document will be released to the four qualified development teams in mid-November. The four teams will submit development proposals in response to the RFP by mid-December. Assuming this schedule, the committee should be ready to convene in January to begin reviewing the various proposals and interviewing project teams. The Resolution includes information about the proposed size and composition of the group and was refined based on Council direction to the initial charge statement presented on November Fourth. This Resolution statement will be used to recruit members to apply to the committee.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING A NORTH MAIN DEVELOPER SELECTION COMMITTEE, SETTING CRITERIA FOR SELECTION OF MEMBERS AND SETTING A TIMEFRAME FOR REPORTING.

WHEREAS, The City Council finds it necessary to appoint a committee to assist it in the selection of a development team for the North Main Street Redevelopment Site; and

WHEREAS, said committee will review development proposals and developer qualifications submitted by the four qualified firms approved in the Request for Qualifications (RFQ) project phase in August 2002; and

WHEREAS, said committee will review the proposals against project selection criteria identified in the Request for Proposal (RFP) document and will interview development teams for compatibility with city goals and values; and

WHEREAS, said committee will, within two (2) months of the commencement of its deliberations, report to the City Council its recommendation of a proposal and development team for consideration and final approval by the City Council; ; and

WHEREAS, The Committee will disband after submission of its report and recommendation to the City Council; and

NOW, THEREFORE, BE IT RESOLVED that the City Council approves and shall appoint a North Main Developer Selection Committee, which shall deliberate for a period of time not to exceed two months, and which shall report to the City Council its recommendation of a proposal and development team for the North Main City Council approval. Said committee shall consist of five members chosen from the following stakeholder groups:

- a. One Library Board or Friends of the Library representative
- b. One Historic Milwaukie NDA representative
- c. One Downtown area business or property owner
- d. Two at-large members, with a preference for persons possessing a design, architectural or real estate development background.

Introduced and adopted by the City Council on November 19, 2002.

This resolution is effective on November 19, 2002.

III. D. 3

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document4 (Last revised Nov. 6, 2002)



To: Mayor and City Council

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

From: Jeffrey King, Project Manager, Community Development & Public Works *JK*

Subject: Community Development Block Grant Application

Date: November 5, 2002 for the November 19, 2002 meeting

Action Requested:

Authorize the Mayor to sign a letter of support for the 2002 City of Milwaukie Community Development Block Grant (CDBG) application to Clackamas County Community Development Department.

Background:

CDBG funds may be used for a variety of housing, infrastructure, and limited types of public facilities projects. In order for improvement applications to qualify for CDBG funds, they must be located in areas that are recognized by U.S.HUD as low and moderate-income areas. The attached maps show which areas of Milwaukie are parts of Clackamas County, are currently eligible.

Completed applications for these projects are due on Friday, November 22, 2002. These applications will be for the 2003-2005 funding cycle and will compete with projects submitted from areas within the county. The total to Clackamas County funding for the three-year period is estimated to be \$6.5 million.

Staff will be submitting that three separate proposals be submitted with the grant application. This will give the County a choice in deciding the most suitable project for Milwaukie when reviewed against the CDBG criteria. It is possible that all three projects could be funded over a three-year period.

1. Neighborhood Streets and Sidewalk Improvements Project

This project would improve pedestrian access, drainage and safety in the Ardenwald, Lewelling and Hector Campbell neighborhoods.

Specific projects elements include:

- **Harvey St. between SE 32nd and SE 42nd Avenue.** Scope of Work: Paving of roadway (this will compliment new sidewalk, curb and drainage work that will be installed as part of a already funded CDBG grant from the previous cycle.)
- **SE 36th Street between King and Harvey Streets.** Scope of Work: sidewalks, curb and stormwater drainage improvements.
- **King Road between SE 42nd Ave and SE 34th Street and SE 34th Street between King Rd and Harrison St.** Scope of Work: Street Paving.

This project benefits people who live in low and moderate-income areas of the City of Milwaukie. It also meets urgent community needs called out in the City's School Trip Safety program and Transportation System Plan. The main beneficiaries of these projects will be elementary school students, senior citizens, people using Water Tower Park, and low to moderate income residents who live in the immediate area. Other beneficiaries will be low and moderate-income residents who walk or use mass transit throughout the city, because of the increased linkage between existing continuous sidewalks. The project also allows the city to fill in system gaps from recent sidewalk projects also funded by CDBG.

The City does not have sufficient funding in its street fund to make these road, sidewalk and drainage improvements. So without this grant funding, this project will be postponed for many years.

2. Johnson Creek Sewer/55th Street Project.

This project would provide a sanitary sewer system to approximately 27 commercial and industrial sites that flank both sides of Stanley Ave where it intersects Johnson Creek Blvd. Current septic systems are beginning to fail in some areas and also restricts expansion or development. The project would also help protect Johnson Creek and its watershed and improve public health conditions. As part of the process, the site would be annexed into the City of Milwaukie. A Local Improvement District (LID) would be created to assess property owners. Because much of the area is low-moderate income, one major barrier to annexation has been the concern or inability of property owners to pay the LID assessments. However for this project, CDBG grants funds would be used to pay for 100% of the LID Assessment for Low Income homeowners and 50% of the assessment of moderate-income homeowners. A fair amount of planning and study work has

been completed on this site and could proceed within the next three year cycle. With financial assistance for low moderate-income residents, local support for the project would increase markedly.

3. Railroad Crossing Pedestrian Access

This project would create safe, dedicated pedestrian access at the railroad crossings at SE 37th Avenue and S.E. Oak Street. The project would greatly increase safety at these crossings. Currently pedestrian and bike crossings at these locations is dangerous. It is also extremely difficult for the disabled and senior citizens to cross through these rail crossing areas. This cuts off access to local shopping areas and other services. The project is also part of the City Transportation System Plan and Capital Improvements Plan. The project would create separate pedestrian crossings on both sides of the SE Oak Street railroad crossing and on one side of SE 37th. Previously, ODOT or Union Pacific Railroad had improved the railroad crossings but failed to install adequate pedestrian access. This will complete improvements to the crossings improve connectivity with existing sidewalks.

Concurrence

Community Development Staff has consulted with Neighborhood Services, Engineering, Planning & Public Works in preparing these grant proposals

Fiscal Impact

The total cost of the three projects is estimated at \$500,000. The request for CDBG grant funds will be \$400,000 with the city providing an in-kind or cash match of 20%, which is approximately \$100,000.

A match of 20% to the project is required either as cash or in-kind expenditures. The match would be less if only one of the three project proposals is funded. The projects are generally phased over a three-year period, so total match funds would not be required in a single year. The source of match funds includes in-kind labor, street funds and storm, sewer or water funds.

Milwaukie will be submitting three distinct projects 1.) Neighborhood Sidewalk and Road Improvements in the Harvey and King St. area 2.) Johnson Creek Sewer Project in the area to be annexed and 3.) Pedestrian Access at Railroad crossings at 17th St. and Oak St.

Work Load Impacts

The CDBG program will allow the city to expedite projects in the Five Year Capital Improvement Program (CIP).

III. E. 4

Council Staff Report -- (title of report)

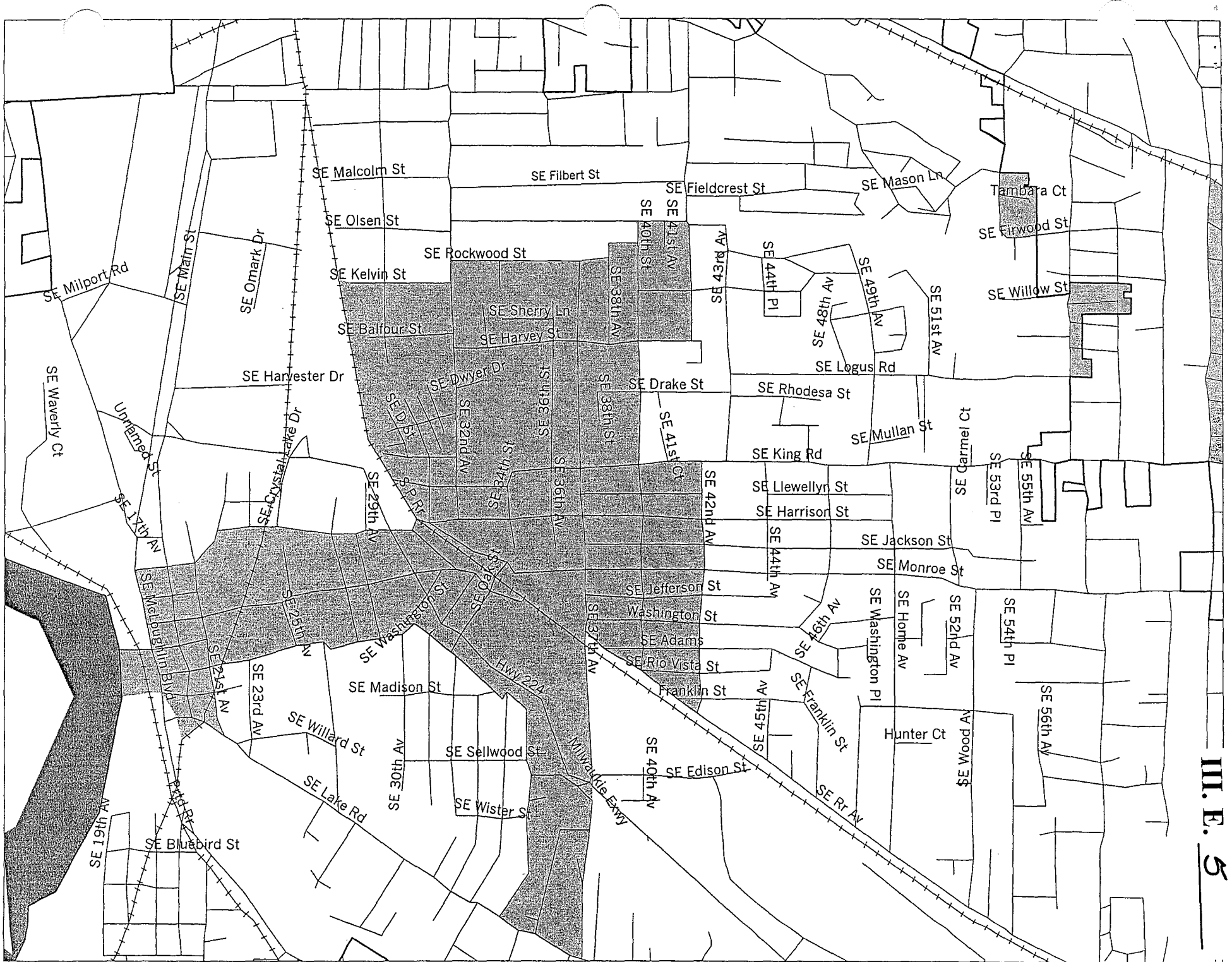
Page -- 4

Alternatives

- Authorize the Mayor to sign the letter of support for projects
- Suggest other projects to be included in the grant application
- Direct staff not to proceed with the grant application

Attachment

Exhibit A – CDGB Eligibility Boundary



Boundaries eligible for CDBG Grant

EXHIBIT A

III. F. 5



To: Mayor and City Council
Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works *AR*
John Gessner, Planning Director *JG*
From: Lindsey Nesbitt, Assistant Planner *LN*
Date: November 19, 2002
Subject: Application ZA-02-04
Code Amendment for Cell Towers and other Wireless Communication Facilities.

Action Requested

Adopt the proposed amendments to the Zoning Ordinance improving city regulations for wireless communication facilities as contained in Exhibit 1.

Background

On October 22, 2002 the Planning Commission adopted a resolution recommending that the City Council approve the proposed code changes for wireless communication facilities. This staff report presents final amendments for new regulations that govern the location height, and design standards for wireless communication facilities (WCFs).

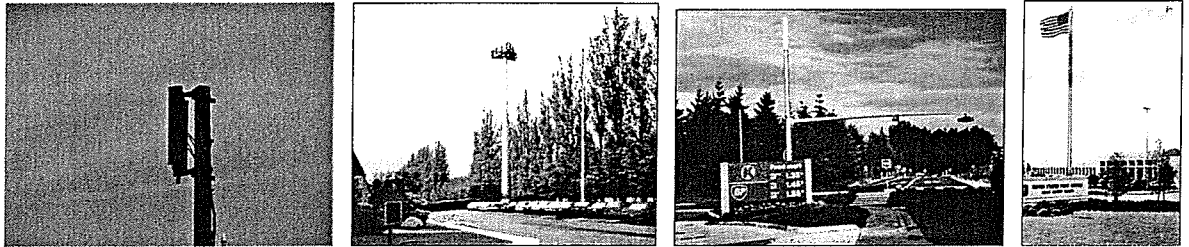
Currently, the placement of a WCF is reviewed against criteria listed in Section 19.321-Community Service Overlay Zone, which allows towers to be constructed in residential zones. Limitations of the existing Community Service Overlay Zone include weak standards for the placement, size, and types of WCFs.

Over the last year staff has developed the proposed regulations based upon feedback from the City Council, Planning Commission, Neighborhood District Associations, industry stakeholders, and the City Attorney.

Key Issues

1. Types of Wireless Communication Facilities (WCF)

A WCF is a facility that is designed and used for the purpose of transmitting, receiving, and relaying radio waves of various wireless communication devices. WCFs include, but are not limited to, towers and antennas attached to, or built into, existing structures such as utility poles, water towers, buildings, flagpoles, stadium lighting, and existing towers. Examples are shown below.



2. Regulatory Limitations

The Federal Telecommunications Act of 1996 authorizes local governments to regulate the placement, construction, and modification of personal wireless services subject to limitations. The act states that a local government may not unreasonably discriminate among providers of personal wireless communications, prohibit the construction of wireless communication facilities, or prohibit the ability of a wireless communication provider to provide wireless communication services to the area.

The proposed regulations permit the construction of new towers in the Business Industrial and Manufacturing zones only (see Exhibit 2 Zoning Map). Antennas may be attached to utility poles in all zones. Antennas may be attached to buildings in all Downtown, Commercial, Manufacturing, and Business Industrial zones. The City Attorney has reviewed the proposed regulations and determined that the City's approach of regulating the placement, height and type of WCFs is consistent with the intent of the Telecommunications Act of 1996(See Exhibit 3 City Attorney's Comments).

3. Residential Neighborhood Protection

Under current regulations a tower may be constructed in any residential zone. The proposed regulations offer protection from potential negative impacts associated with towers by prohibiting the construction of new towers in all residential zones. The placement of antennas on utility poles will be permitted in all residential zones.

4. Public Input and Stakeholder Outreach

Staff conducted a stakeholder analysis by identifying persons who are likely to be affected by the proposed regulations. Potential stakeholders include



To: Mayor and City Council
Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works *ACR*
John Gessner, Planning Director *JG*
From: Lindsey Nesbitt, Assistant Planner *LN*
Date: November 19, 2002
Subject: Application ZA-02-04
Code Amendment for Cell Towers and other Wireless Communication Facilities.

Action Requested

Adopt the proposed amendments to the Zoning Ordinance improving city regulations for wireless communication facilities as contained in Exhibit 1.

Background

On October 22, 2002 the Planning Commission adopted a resolution recommending that the City Council approve the proposed code changes for wireless communication facilities. This staff report presents final amendments for new regulations that govern the location height, and design standards for wireless communication facilities (WCFs).

Currently, the placement of a WCF is reviewed against criteria listed in Section 19.321-Community Service Overlay Zone, which allows towers to be constructed in residential zones. Limitations of the existing Community Service Overlay Zone include weak standards for the placement, size, and types of WCFs.

Over the last year staff has developed the proposed regulations based upon feedback from the City Council, Planning Commission, Neighborhood District Associations, industry stakeholders, and the City Attorney.

Key Issues

1. Types of Wireless Communication Facilities (WCF)

A WCF is a facility that is designed and used for the purpose of transmitting, receiving, and relaying radio waves of various wireless communication devices. WCFs include, but are not limited to, towers and antennas attached to, or built into, existing structures such as utility poles, water towers, buildings, flagpoles, stadium lighting, and existing towers. Examples are shown below.



2. Regulatory Limitations

The Federal Telecommunications Act of 1996 authorizes local governments to regulate the placement, construction, and modification of personal wireless services subject to limitations. The act states that a local government may not unreasonably discriminate among providers of personal wireless communications, prohibit the construction of wireless communication facilities, or prohibit the ability of a wireless communication provider to provide wireless communication services to the area.

The proposed regulations permit the construction of new towers in the Business Industrial and Manufacturing zones only (see Exhibit 2 Zoning Map). Antennas may be attached to utility poles in all zones. Antennas may be attached to buildings in all Downtown, Commercial, Manufacturing, and Business Industrial zones. The City Attorney has reviewed the proposed regulations and determined that the City's approach of regulating the placement, height and type of WCFs is consistent with the intent of the Telecommunications Act of 1996 (See Exhibit 3 City Attorney's Comments).

3. Residential Neighborhood Protection

Under current regulations a tower may be constructed in any residential zone. The proposed regulations offer protection from potential negative impacts associated with towers by prohibiting the construction of new towers in all residential zones. The placement of antennas on utility poles will be permitted in all residential zones.

4. Public Input and Stakeholder Outreach

Staff conducted a stakeholder analysis by identifying persons who are likely to be affected by the proposed regulations. Potential stakeholders include

Neighborhood District Associations, wireless communication providers (industry), utility pole owners, and the City.

The outreach process included:

- A. City Council and Planning Commission work sessions¹.
- B. Publication of an article in the February 2002 issue of the Pilot.
- C. Neighborhood District Association March, 2002 quarterly leadership meeting.
- D. Direct communication with industry stakeholders.

5. Key Elements of Proposed Regulations

The draft regulations include the following:

- A. Co-location, which is the placement of antennas on existing structures such as utility poles and water towers, is required when feasible to avoid construction of new towers.
- B. Prohibit the construction of new towers in Residential, Commercial, and Downtown zones.
- C. 100-foot height limitation and a 1500-foot minimum separation distance requirement for towers constructed within the Business Industrial and the Manufacturing Zones.
- D. Antennas may be placed on utility poles in all zones. The pole may be extended 15 feet to accommodate the placement of the antenna. If it is not technologically feasible to extend the pole, the utility pole may be replaced at the cost of the applicant. The height of the replaced utility pole and antenna shall not exceed 15 feet in height of the original utility pole.
- E. For new towers in the Manufacturing and Business Industrial zones, the front yard setback for towers and equipment cabinets shall maintain a front yard setback of 75 feet, a rear yard setback of 20 feet, and a side yard setback of 15 feet, unless abutting a residential zone. New towers and equipment cabinets that will be constructed on properties that abut residential zones shall maintain a 75-foot setback from the property line.
- F. A 6-foot security fence shall surround equipment cabinets and the base of the tower. Landscaping shall be provided to effectively screen the view of the tower, equipment cabinets, and the security fence.
- G. Applications for siting a new tower shall be reviewed and approved by the Planning Commission at a public hearing.
- H. Wireless communication facilities not involving the construction of a new tower, or the modification to increase the height of an existing structure (cell tower or utility pole) shall be subject to staff review.

¹ Planning Commission Work Sessions held on November 27, 2001, May 28, 2002, and September 10, 2002. City Council Work Session held on July 1, 2002.

V. 4

- I. The regulations will require the applicant to pay a \$1000 deposit upon submission of a land use application giving staff the ability to hire a third party to review the application for accuracy.

6. Recent Code Revisions

Minor modifications were made to the proposed wireless communication regulations at the October 22, 2002 Planning Commission public hearing as outlined below.

- A. In order to provide clarification for applicants a definition of FAA approval was added to the proposed. FAA approval means that the applicant has demonstrated compliance with all FAA rules and regulations.
- B. The proposed code permits existing monopoles to be extended to no greater than 120 feet in height. However, regulations requiring the applicant to construct a monopole tall enough to accommodate future carriers were not addressed. The regulations were modified ensure that new towers will be able to support co-location.

All support structures 80 feet in height or greater shall be designed to not preclude co-location. All support structures 80 feet in height or greater shall be designed to hold additional antennas substantially similar to the proposed antenna array.

- C. The proposed code permits existing utility poles to be replaced at the expense of the applicant. The replaced utility poles may not exceed 45 feet above grade. However, some utility poles in Milwaukie exceed 45 feet in height. New utility poles are not to exceed more than 15 feet in height of the original utility pole.”
- D. The applicant will be required to provide adequate sound buffering that ensures nighttime noise after construction is no greater than nighttime noise prior to construction. Emergency back-up generators provide power for the WCF during power outages. Emergency back-up generators are often louder than standard equipment cabinets. The code was revised to exclude emergency back-up generators from the daily noise limitations.
- E. The proposed code permits one 4 square foot sign to be placed on site. Often more than one sign may be required. The code was modified to permit multiple signs not to exceed 4 square feet in area within the lease area of the WCF.

Other Issues

Limitations on prohibiting new towers

At the July 1, 2002 work session, City Council asked staff to research the feasibility of developing wireless regulations that prohibit the construction of new towers.

Staff has researched the feasibility of prohibiting towers by consulting with the City Attorney, wireless consultants, Radio Frequency Engineers, and other City Planners. The following summarizes staff's findings:

1. In order to prohibit the construction of new towers the City must have:
 - Alternative structures that are of adequate height to meet coverage needs.
 - Alternative sites that will not significantly increase the cost of locating an antenna within the City.

Since the City does not have a ready supply of tall structures, the City cannot develop regulations that prohibit the construction of new towers. However, the City can limit the placement of towers.

2. Creating regulations that significantly increase the cost of providing wireless service within the City is considered to be a barrier to entry². Stealth³ technology is expensive and often smaller wireless providers cannot afford such technology. Creating regulations that significantly increase the cost of providing wireless service to the area:
 - Discriminates against smaller companies who cannot afford such technology; and
 - Gives larger companies, who can afford advanced technology, an unfair advantage over smaller companies.

Based upon this research, at the September 10, 2002 Planning Commission meeting, the Commission advised staff to develop regulations that:

1. Restrict the construction of towers to as few as technologically feasible.
2. Require proof that co-location is not possible prior to allowing construction of a new tower.

In response to research and direction from the Planning Commission at the September 10, 2002 meeting, staff has drafted regulations that limit the construction of new towers to the greatest extent possible that technology allows.

Notice to Property Owners

Notice has been provided to each of the more than 6,300 property owners within the City of Milwaukie. Staff has received few comments from property owners. Some residents expressed concern how the regulations will affect the height and location of new towers.

² The Telecommunications Act of 1996 provides that wireless communications carriers have a right to provide coverage to any given area. If the City creates regulations that are too restrictive and create what may be deemed a "barrier to entry", the City will not be in compliance with the Telecommunications Act of 1996 and may run the risk of exposing itself to lawsuits.

³ A wireless communication facility that is designed or located in such a way that the facility is not readily recognizable as wireless communication equipment and is compatible with surrounding uses.

Concurrence

The City Attorney, Engineering Director, and Police Chief have reviewed and signed-off on the proposed amendment.

Fiscal Impact

Cost recovery for staff review will result from the land use application fees. For applications requiring Planning Commission approval, the land use fee will be greater than applications requiring staff level review.

The city will be receiving revenue for any antennas placed on utility poles located within the right-of-way. The City Attorney has modified the City's current franchise agreement with PGE to include provisions for the collection of fees.

Currently the city is receiving revenue for antennas placed on city owned property at Water Tower Park.

Work Load Impact

The proposed code amendment has been on the Planning Department work program for over tow years. The proposed code will streamline the review of cell tower facilities over existing regulations.

Alternatives

The council has the following decision making options:

1. Adopt the proposal.
2. Adopt the proposal with modifications.
3. Reject the proposal
4. Take no action.

Attachments

Exhibit 1- Adopting Ordinance

Attachment 1- Amending Section 19.103-Definitions

Attachment 2- Section 19.321.11-Proposed Wireless Communication Ordinance

Exhibit 2- Zoning Map

Exhibit 3- City Attorney's Comments

EXHIBIT 1

V. 16

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AMENDING TITLE 19, THE MILWAUKIE ZONING ORDINANCE ADOPTING NEW
REGULATIONS GOVERNING SITING AND DESIGN OF WIRELESS COMMUNICATION
FACILITIES.**

(Milwaukie Planning Department File ZA-02-04)

WHEREAS, prior to adoption of these wireless communication regulations, the only standard the city had to regulate wireless communication facilities was a 50-foot height restriction of the Community Service Overlay zone of the Milwaukie Zoning Ordinance; and

WHEREAS, the City Council and the Planning Commission expressed an interest in developing wireless communication regulations that establish strict provisions regulating the location, height, and type of wireless communication facilities that may be placed within the city; and

WHEREAS, industry stake holders were asked to comment on the proposed regulations; and

WHEREAS, over the past year, the proposed amendments were reviewed in several work sessions of the Planning Commission and the City Council, and with the interest and involvement of the Neighborhood District Associations; and

WHEREAS, based upon feedback from the Planning Commission, City Council, Neighborhood District Associations, and industry stakeholders, staff revised the draft wireless communication regulations which establish standards that limit the location, height and type of wireless communication facility that may be placed with in the city; and

WHEREAS, on October 22, 2002, after an extensive public information and outreach process, the Planning Commission held a public hearing and adopted a motion recommending the City Council approve the proposed amendments; and

WHEREAS, the City Council held a duly noticed public hearing on the Planning Commission's recommendation to adopt the proposed amendments; and

WHEREAS, public and agency notice of application ZA-02-04 has been provided in accordance with the Milwaukie Municipal Code and Oregon Revised Statutes; and

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

Section 1. Findings of fact in support of the proposed amendment contained in application ZA-02-04.

Application ZA-02-04 and the code amendments proposed therein are consistent with Zoning Ordinance 19.902 Amendment Procedure and 19.905 Approval Criteria for all Amendments and 19.1011.5- Legislative Actions as shown in Attachment 3. The findings included in Attachment 3 are adopted as the Council's findings and incorporated herein by this reference.

Section 2. Ordinance 1712, Milwaukie Municipal Code Title 19 Zoning Ordinance section 103 is amended as shown in Attachment 1.

Section 3. The following sections Ordinance 1712, Milwaukie Municipal Code Title 19 Zoning Ordinance section 321 are repealed:

- a. Section 19.321.2.B (4)- Telephone switching stations
- b. Section 19.321.2.B (6)- Telephone, microwave facilities
- c. Section 19.321.2.B (7)- Radio and television transmission facilities, including studios
- d. Section 19.321.3-Notice Requirements

Section 4. Ordinance 1712, Milwaukie Municipal Code Title 19, Zoning Ordinance section 321.2 is amended by adoption of a new section 321.2 (D) as follows:

- a. Section 19.321.2.D- Communication Facilities
- b. 19.321.2.D (1)- Telephone switching station
- c. 19.321.2.D (2)- Telephone, microwave facilities
- d. 19.321.2.D (3)- Radio and television transmission facilities, including studios
- e. 19.321.2.D (4)- Wireless Communication Facilities

Section 5. Ordinance 1712, Milwaukie Municipal Code, Title 19 Zoning Ordinance section 321 is amended by adoption of a new section 321.3 Notice Requirements as follows:

Section 19.321.3- Notice Requirements

Except as provided in Section 19.321.4C and 19.321.11- Wireless Communication Facilities the Planning Commission shall hold a public hearing for a community service use request per the procedures outline in subsection 1011.3-Minor Quasi-Judicial Review, Community Service Overlay.

Section 6. Ordinance 1712, Milwaukie Municipal Code Title 19 Zoning Ordinance section 321 is amended by adoption of a new section 321.11 Wireless Communication Facilities as shown in Attachment 2.

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

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

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST

APPROVED AS TO FORM
RAMIS CREW CORRIGAN
& BACHRACH, LLP

Pat DuVal, City Recorder

City Attorney

EXHIBIT 1 ATTACHMENT 1

Definitions for Proposed Wireless Communication Regulations to be added to Section 19.103- Definitions

“Abandonment” means wireless communication facility is abandoned when it has not been used by a licensed carrier for a period of 6 months.

“Antenna” means electrical conductor or group of electrical conductors in the form of a metal rod, wire panel or dish that transmit or receive radio waves or microwaves for wireless communications.

“Antenna support structure” means a structure on which a wireless antenna is or may be placed.

Alternative support structure: An existing building, water, tower, utility pole in the right of way or an antenna support structure that meets stealth design criteria.

Existing antenna support structure: Any support structure existing at the time of the application

“Co-location” means the placement of an antenna on an existing wireless communication facility, building, water tower, utility pole, where the antennas and all supports are located on an existing structure.

“Equipment Cabinets” means An enclosed box or structure used to house equipment for the operation, maintenance, or repair of a wireless communication antenna.

“FAA Approval” means demonstration of compliance with all applicable rules and regulations under the FAA’s jurisdiction.

“Greenway Areas” means lands that lie along the Willamette River and major courses flowing into the Willamette River. Shown on the zoning map as the Willamette Greenway Overlay.

“Guyed tower” means a tower which is supported by the use of cables (guy wires).

“Lattice Tower” means a tower characterized by an open framework of lateral cross members, which stabilize the tower, without the use of guy wires.

“Lease Area” means the area of a parcel on which wireless communication facilities, antennas, and equipment buildings are located.

“Monopole” means a single upright pole engineered to be self-supporting without lateral cross supports or guy wires and used as an antenna support structure..

“Stealth Design” means a wireless communication facility that is designed or located in a such a way that the facility is not readily recognizable as wireless communication equipment and is compatible with surrounding uses.

V. 9

“Tower” means a structure with the sole purpose of serving as an antenna support structure. “Tower” includes guyed towers, lattice towers, and monopoles, but does not include any alternative antenna support structure.

“Wireless Communication Facility (WCF)” means a facility that is designed and used for the purpose of transmitting, receiving, and relaying radio waves of various wireless communication devices. A wireless communication facility normally includes one or more of the following:

1. Antennas
2. An antenna support structure
3. An equipment cabinet.

EXHIBIT 1 ATTACHMENT 2

Proposed Wireless Communication Regulations

19.321.11 Standards for Wireless Communication Facilities

A. Applicability

The placement, construction, or modification of wireless communication facilities are subject to the provisions of this section.

B. Purpose

The purpose of this section is to establish regulations for the siting of wireless communication facilities to allow service to the community while protecting the community from clutter and designs which are not consistent with existing and future land uses.

The goals of this section are to:

1. Enhance the ability of providers of wireless communication to provide comprehensive service to the community.
2. Minimize the number of towers throughout the community.
3. Encourage facilities to be located in areas least disruptive to residential, park, natural resource, and Willamette Greenway areas.
4. Encourage co-location of wireless communication facilities.
5. Preserve and improve the appearance of the City by encouraging the use of existing buildings, light, utility poles, water towers, and stealth designs for instead of constructing new towers or support structures.
6. Minimize the visual impact on the immediate surroundings and throughout the community by ensuring that all new wireless communication facilities (WCFs) are located and constructed in such a manner so to avoid adverse impacts on their surrounding settings.

C. Application Process

1. Placement, construction, or modification of WCFs not involving the construction of a new monopole shall be subject to the Provisions of Section 19.1011.2 Type II Administrative Review process provided that the antennas and base equipment comply with the standards contained in this section.
2. All proposed new monopole towers are subject to Minor Quasi-Judicial Review

D. Application Submission Requirements.

In addition to the required submission material the following must also be included with the application:

1. Applications for a WCF that will include a new monopole tower:
 - a. A narrative description of:
 1. Tower location
 2. Design
 3. Height
 4. Antenna location and type for all planned antennas
 5. Indication of the number of additional antennas the tower will be able to accommodate.
 - b. Type of antennas the tower is designed to accommodate and
 - c. Reason for the location, design, and height of the proposed tower and antenna.
 - d. A photo simulation of the proposed tower in relation to the surrounding area.
 - e. A signed agreement binding present and future owners or operators of the WCF that allows co-location of antennas on the WCF.
 - f. Documentation that all necessary applications, permits, agreements, and easements have been obtained.
 - g. Documentation of FAA or satisfactory evidence that FAA approval is not required. Satisfactory evidence that FAA approval is not required shall be an Aerospace Safety Analysis Corporation determination or similar evidence.
 - h. The signature of the property owner(s) on the application form or a written signed statement from the property owner(s) granting authorization to proceed with the land use application and building permits.
 - i. Documentation that alternative antenna support locations within 1500 feet have been considered and have been determined to be technologically or legally infeasible or inadequate. The applicant shall pay to the City the costs of hiring a third party to review the application for accuracy in accordance with the fee resolution adopted by the City Council.
 - j. In addition to those items required on the Site Plan Checklist, the following must also be included:
 1. Landscaping plan showing existing and proposed vegetation, including size, type, and the amount of proposed vegetation.
 2. Location of connections to utilities and right-of-way curb cuts.
 3. Location of required easements and access drives.
 4. Location of the proposed wireless communication facility and related base equipment.

5. The lease area in relation to the underlying parcel/property as well as neighboring parcels on all sides.
2. WCF Not Including a New Tower
 - a. Detailed narrative description describing the proposed antenna location, design, and height.
 - b. Statement that antenna was placed so as to allow for placement of additional antennas on the same antenna support structure, to the extent practicable.
 - c. Documentation demonstrating the proposal has been submitted and approved by the owner of the structure to which the antenna will be attached.
 - d. Document demonstrating that necessary applications, permits, agreements, and easements have been obtained.
 - e. For extensions to existing facilities the applicant shall provide documentation of FAA approval of the tower design or satisfactory evidence that FAA approval is not required. Satisfactory evidence that FAA approval is not required shall be an Aerospace Safety Analysis Corporation determination or similar evidence.
 - f. The site plan must include the elements listed on the Site Plan Checklist and must also include, to the extent applicable:
 1. Landscaping plan showing existing and proposed vegetation, include size, type, and amount of proposed vegetation. In some cases, such as co-location on rooftops or other similar uses, the City may determine that landscaping will not be required.
 2. Location of connections to utilities and right-of-way curb cuts.
 3. Location of required easements and access drives.
 4. Location of proposed related base equipment and existing WCF.
 5. Lease area in relation to the underlying parcel/property as well as neighboring parcels on all sides.

Table 19.321.11.D

1 = Minor Quasi Judicial Review- requires a public hearing in front of the Planning Commission
2 = Type II Administrative Review- provides for an administrative decision with the option of a public hearing

P = Permitted N = Not Permitted

Towers		WCFs Not Involving New Tower		
ZONES	New Monopole Tower 100 feet	Building Rooftop or Wall mounted antenna ¹	Water towers, existing towers, and other stealth designs	On existing utility pole in ROW with or with out extensions ²
BI	P1	P2	P2	P2
M	P1	P2	P2	P2
C-N	N	P2	P2	P2
C-G	N	P2	P2	P2
C-L	N	P2	P2	P2
CSC	N	P2	P2	P2
DC	N	P2	P2	P2
DR	N	P2	P2	P2
DO	N	P2	P2	P2
DS	N	P2	P2	P2
ROC	N	P2	P2	P2
R1B	N	P2	P2	P2
R1	N	N	P2	P2
R2	N	N	P2	P2
R2.5	N	N	P2	P2
R3	N	N	P2	P2
R5	N	N	P2	P2
R7	N	N	P2	P2
R10	N	N	P2	P2

¹ Rooftop extensions are not to exceed 15 feet in height above the roof top and are not to project greater than 5 feet from the wall of a building.

² 2 Antennas placed on row utility poles may be extended 15 feet, if the pole cannot be extended, the carrier may replace the pole. The replacement utility pole shall not exceed 15 feet in height of the pole that is to be replaced.

E. Use of Existing Tower or Antenna Support Structure

1. All wireless communication providers are required to attempt to co-locate on existing antenna support structures or locate on alternative antenna support structures before applying to construct a WCF that will include a new tower.
2. New towers shall not be approved unless the applicant demonstrates to the reasonable satisfaction of the Planning Director that no existing towers or alternative antenna support structure can accommodate the applicant's need for the placement of an antenna in the vicinity of the applicants proposed location. Evidence demonstrating that use of an existing or alternative support structure is not possible shall be submitted to the Planning Director and shall include one or more of the following:
 - a. That no existing antenna support structures are located within the geographic area which meet the applicant's engineering requirements in regards to location, size, and structural strength and that alternative antenna support structures are not feasible.
 - b. That use of any existing structure would cause electromagnetic interference with the existing antennas and electronic and other radio frequencies.
 - c. That co-locating on an existing antenna support structure would violate RF emissions standards set by the FCC.
 - d. That fees, costs, or contractual provisions required by the owner in order to use an existing antenna support structure are unreasonable. A refusal by the owner to allow co-location shall be considered an unreasonable provision.
3. Evidence demonstrating that alternative support structures were considered, but determined to be technologically insufficient submitted to the Planning Director for review must be verified and stamped by an engineer licensed in the state of Oregon.
4. All wireless communication providers shall cooperate with other wireless communication providers and act in good faith in co-locating additional antennas on existing support structures and/or existing buildings or other alternative support structures. All support structures 80 feet in height or greater shall be designed to not preclude co-location. All support structures 80 feet or greater shall be designed to hold additional antennas that are substantially similar to the proposed antennas array.

F. Location and Size Restrictions

1. Separation for New Monopole Towers

New monopole towers may not be constructed within 1500 ft. of any pre-existing tower. The Planning Commission has the authority to approve a reduction in the minimum separation requirement to not less than 1000 feet, provided that the applicant can demonstrate the need to the satisfaction of the Planning Commission, for the distance reduction. A tower shall include any pre-existing tower or any tower for which the city has issued a building permit, or for which a land use application has been filed and not denied. This distance shall be measured in a straight line from the base of the existing tower to the base of the proposed tower.

2. Height

Maximum heights. Also see table 19.321.11.D.

- a. Height Restrictions: The maximum height limitation of the monopole tower and antennas shall not exceed the following:
 1. BI and M zone 100 feet.
 2. New towers are not permitted in the R-1-B, R-1, R-2, R-2.5, R-3, R-5, R-7, R-7PD, R-10, R-10PD, R-O-C, C-N, C-G, C-L, DC, DR, DO, DS, and the D-O-S zones.
- b. For co-location on existing towers extensions or pole replacements shall be permitted, but are not to exceed 120 feet.
- c. Antennas on buildings may not extend greater than 15 feet from the rooftop, or shall not project more than 5 feet from the side of a building.
- d. For antennas on utility poles in the right-of-way, a 15-foot extension is permitted. If the carrier may replace the existing pole with a new utility pole not to exceed 15 feet above the height of the pole that is to be replaced. Equipment cabinets shall be attached to the utility pole, where this is not practicable, the base equipment shall be subject to requirements of Section 321.11.G.1(b).

G. Development Standards for All WCFs

1. Setbacks and Equipment Cabinets

- a. Setbacks for new monopole towers and equipment cabinets shall be established from the from the property line and not the leased area. Regardless of the zone, the set backs shall be as follow:
 1. Front Yard- A front yard shall be at least 75 feet.
 2. Side Yard- A side yard shall be at least 15 feet.
 3. Rear Yard- A rear yard shall be at least 20 feet.

4. For all properties abutting residential zones, a 75 foot setback shall be maintained from the border of the residential zone.
 5. The equipment cabinet shall meet the vegetative screening requirements addressed in Section 19.321.G.6- Landscaping and Fencing Requirements.
- b. For antennas placed on existing utility pole and other support structures located in the right-of-way, the equipment cabinet shall be located on the utility pole to the greatest extent.

If it is technologically infeasible to place the equipment cabinet directly on the utility pole due to cabinet size then the cabinet shall be placed in an underground vault in the right-of way.

If this it is not technologically feasible to place the cabinet in an underground vault then the following setbacks and standards shall apply:

1. The equipment cabinet may be located in the right-of-way provided the equipment cabinet does not exceed a length and width of 3 feet by 2 feet and 4 feet in height.
2. If the equipment cabinet is larger than 3 feet by 2 feet and 4 feet in height, then the following setbacks shall apply regardless of the zone.

Front Yard- Equipment cabinets are not permitted within the front yard setback

Side Yard- shall be at least 15 feet from the property line

Rear Yard- shall be at least 20 feet from the property line

3. The equipment cabinet shall meet the vegetative screening requirements addressed in Section 19.321.G.6- Landscaping and Fencing Requirements.
- a. Equipment cabinets for water towers, "stealth" designs, or other antenna support structures not covered by the previous sections.
1. Regardless of the zone the following Setbacks shall apply:
Front Yard- Equipment cabinets are not permitted within the front yard setback
Side Yard- shall be at lest 15 feet from the property line
Rear Yard- shall be at least 20 feet from the property line
 2. The equipment cabinet shall meet the vegetative screening requirements addressed in Section 19.321.G.6- Landscaping and Fencing Requirements.

2. Ladder rungs

No ladder rungs or climbing pegs on new towers or poles shall be allowed within 20 feet of the ground.

3. Guy Anchorage and Lattice Towers

Lattice or guyed towers shall not be permitted in any zone.

4. Lighting

a. The minimum security lighting necessary, as required by the FAA, to secure the tower shall be permitted. All security lighting must be directed downward onto the tower compound itself.

b. Lights on existing antenna support structures may remain.

5. Noise

When the property and adjacent properties are zoned for residential uses or occupied by hospitals, schools, libraries, nursing homes, or other similar uses, noise-generating equipment shall be sound buffered so that nighttime noise after construction is no louder than the ambient nighttime noise prior to construction of the WCF. The nighttime noise shall be measured between the hours of 10:00 p.m. and 7:00 a.m. Emergency back-up generators shall be excluded from this noise requirement.

6. Landscaping

A landscaping plan, which demonstrates how the proposed vegetation will effectively screen the view of the base of the tower, equipment cabinets, and the security fence, shall be submitted with the application. The landscaping plan shall include the following:

1. New Monopoles

a. A six foot high security fence shall be placed around the base of the monopole and the equipment cabinets.

b. The landscaping shall include a screen of plants with an anticipated height at time of maturity of at least 6 feet. Plantings shall be placed densely so as to form a screen.

c. Landscaping shall be kept healthy and maintained

2. Equipment cabinets for antennas placed on alternative support structures located out of the right-of way.

a. The landscaping shall include a screen of plants with an anticipated height at time of maturity of at least 6

feet. Plantings shall be placed densely so as to form a screen.

- b. Landscaping shall be compatible with native vegetation found in the surrounding area, if any.
- c. Landscaping shall be kept healthy and maintained.

3. Landscaping is not required for equipment cabinets located on buildings, or in the right-of-way.

4. In some cases equipment cabinets may be placed in areas where landscaping may not be practical. For these circumstances for Type II Land Use reviews the applicant may request that the Planning Director waive landscaping requirements. For Minor Quasi Judicial land use applications, the applicant may request that the Planning Commission waive landscaping requirements.

7. Access drives

All newly created access drives shall meet the following standards:

- a. The driveway shall not exceed 10 feet in width.
- b. On a site with an existing use, access to the site shall be achieved through existing drives to the greatest extent practicable.
- c. Any portion of the access drive located within the front yard of a parcel shall be paved with asphalt or concrete.

8. Signage

- a. Advertising is not permitted.
- b. Identification signs are permitted, but are not to exceed 4 square feet in area.
- c. Additional signage as required by law shall be permitted.

9. Discontinued use of and removal of WCFs

- a. Any WCF not operated for a continuous period of 6 months shall be considered abandoned. The WCF owner is required to remove all abandoned facilities and base equipment within 90 days after notice from the City of Milwaukie.
- b. If the owner of the WCF can not be located or is no longer in business, it shall be the responsibility of the landowner on whose property the WCF is located to remove the abandoned facility and base equipment.

5. Affirmative duty to keep city informed

- a. All operators of WCFs within the City of Milwaukie shall be required to report in writing to the Planning Director any changes in the status of their operation. The report shall include any of the following changes:
 - 1. Changes in or loss of FCC license from the FCC to operate.
 - 2. Receipt of notice of failure to comply with the regulations of any other authority over the business or facility.
 - 3. Loss or termination of lease for the WCF for a period of 6 months or longer.
- b. An annual written statement shall be filed with the Planning Director verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with state and federal agency regulations.

H. Expiration of Approval

Authorization of under this chapter shall be void after 6 months unless substantial construction has taken place. If substantial construction has not taken place and the approval becomes void, the facility must be completely removed and the site must return to its pre-existing condition.

**EXHIBIT 1
ATTACHMENT 3**

Compliance With 19.900
Approval Criteria for Zoning Text Amendments

19.902- Amendment Procedure

19.902.1- The following application and review procedures shall be in effect for all proposed amendments:

- A. The Planning Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after the application has been determined to be complete, but the Director.

The Planning Commission will review the proposed wireless communication text amendments at the October 22, 2002 Public Hearing.

- B. The Planning Department shall provide notice to Metro of any proposed amendment to Zoning Ordinance. Notice shall also be provided to Oregon Department of Land Conservation and Development (DLCD) at least 45 days prior to the final hearing on the adoption of the amendments.

Notice of the proposed text amendments and a copy of the proposed amendments were sent to Metro and DLCD on September 4, 2002 satisfying the required 45-day notice deadline.

- C. Denial of the proposed amendment shall be final unless it is appealed to the City Council as provided under Section 1002 of the Milwaukie Zoning Ordinance.

At this time, this section is not applicable.

- D. Upon approval of the proposed amendment by the Planning Commission, the Director shall provide a report of the Commission's recommendation to the City Council within 40 days after the hearing.

The Planning Commission approved the proposed amendment at the October 22, 2002 public hearing. Final code amendments will be presented at the November 19, 2002 City Council meeting, which satisfies the 40-day time requirement.

19.905- Requirements for Zoning Text Amendments

19.905.1 For all proposals, the applicant shall have the burden of proof regarding the following criteria:

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

The proposed wireless communication regulations are consistent with the Comprehensive Plan Chapter 1- Public Involvement as follows:

1. Goal- to encourage and provide opportunities for citizens to participate in all phases of the planning process.
2. Objective 1- The City will promote citizen participation in the planning process.
3. Objective 3- Promote informed public participation in planning decisions by providing readily available publications and printed materials regarding current issues and proposed policies.

Policy 1- Make planning documents available to the public.

Policy 2- Advertise all public hearings in newspapers.

Policy 3- Seek citizen input on major issues.

Policy 4- City staff will issue news releases explaining upcoming issues.

The proposed wireless communication regulations are consistent with the comprehensive plan Chapter 2- Plan Review and Amendment Process as follows:

Goal- Establish plan review and amendment process as a basis for land use decisions, provide for participation by citizens affected governmental units, and ensure a factual basis for decisions and actions.

Staff has provided opportunities for public involvement and review throughout the process of the development of the regulations as follows:

1. *An article was published in an issue of the Pilot, a monthly newsletter mailed to Milwaukie residents, outlining staffs intent to develop regulations governing the location, size and type of wireless communication facility that could be sited within the city limits.*
2. *Discussed the proposed regulations and answer questions at the Neighborhood District Association quarterly meeting.*
3. *Discussed the proposed regulations and addressed the concerns of the public, council members, and commissioners at City Council and the Planning Commission public meetings.*
4. *The regulations were revised based upon feedback gathered from City Council, Planning Commission, and the Neighborhood District Associations.*
5. *A Notice was sent Citywide to over 6,000 property owners. The noticed outlined the intention of the regulations and provided a contact number for concerned citizens to call with questions, comments, or concerns they may have regarding the proposed regulations.*
6. *Handouts also outlining the proposed regulations were made available to the public at three of the City's buildings, City Hall, Ledding Library, and the Johnson Creek Boulevard facility.*

B. The anticipated development must meet the intent of the proposed zone taking into consideration factors: site location character of area, the predominant land use pattern

and density of area, the potential for mitigation development pattern for the area, the need for uses allowed by the proposed zone amendment, and lack of suitable alternative sites already appropriately zoned for the intended uses. The Planning Commission and City Council shall use its discretion to weight factors in determining the intent of the proposed zone.

This section is not applicable, the amendment does not propose a specific development for one area. Wireless communications facilities may be sited city wide, however, the regulations were drafted with the intent of protecting specific zones from adverse impacts that are some times associated with wireless communication towers.

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

The Telecommunications Act of 1996 authorizes local governments to make decisions concerning the placement, construction, and modification of personal wireless services. However, local municipalities may not unreasonably discriminate among the providers of wireless communications, prohibit the construction of wireless communication facilities, or prohibit the ability of a wireless communication provider to provide wireless communication services to the area.

The City Attorney has reviewed the wireless communication regulations for consistency with the Telecommunications Act of 1996 and has determined that the proposed regulations are consistent with the Telecommunications Act of 1996.

- D. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

Not applicable, the proposed amendment does not address regulations governing planned public facilities and services.

City of Milwaukee Zoning

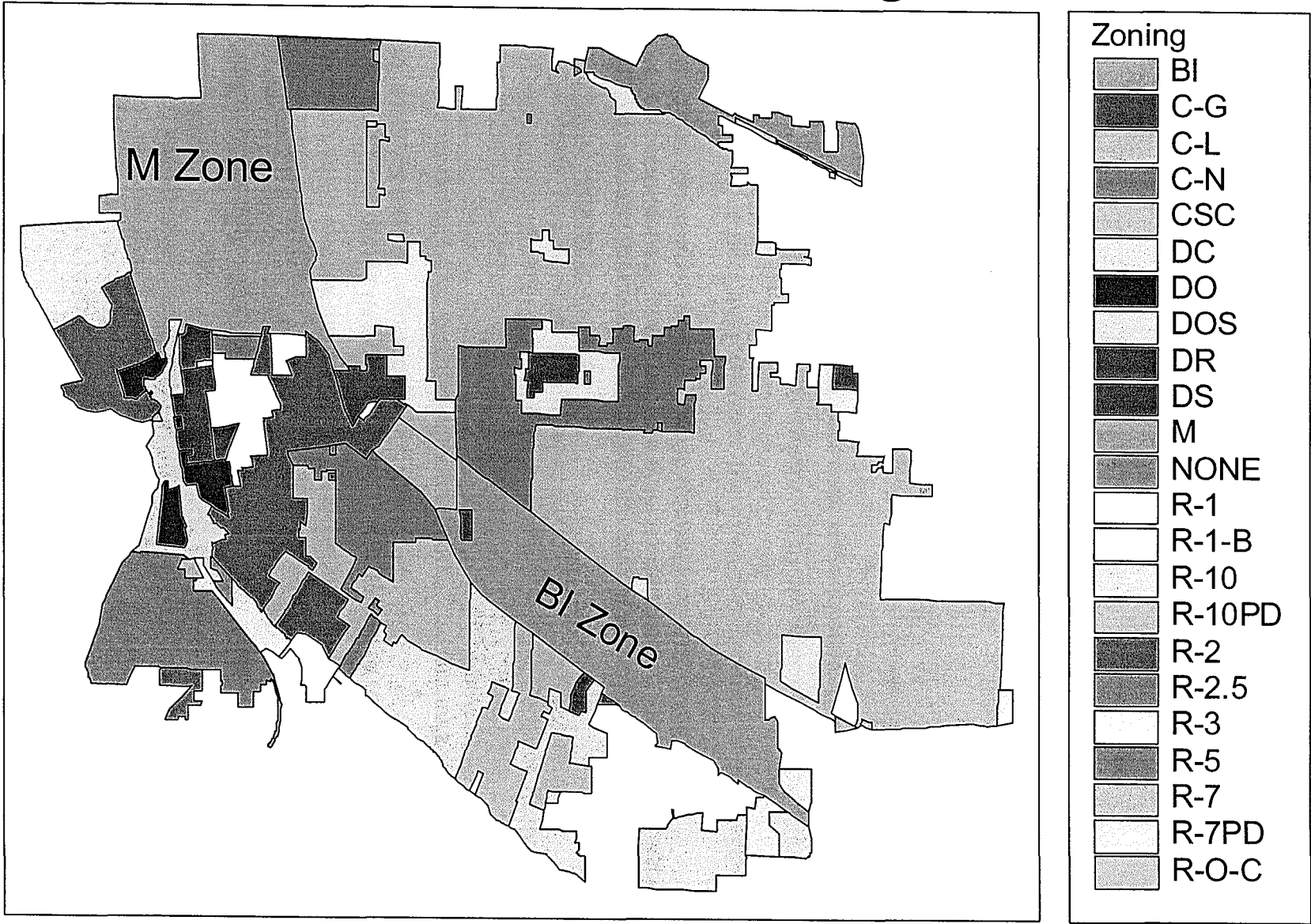


EXHIBIT 2

V. 23

and density of area, the potential for mitigation development pattern for the area, the need for uses allowed by the proposed zone amendment, and lack of suitable alternative sites already appropriately zoned for the intended uses. The Planning Commission and City Council shall use its discretion to weight factors in determining the intent of the proposed zone.

This section is not applicable, the amendment does not propose a specific development for one area. Wireless communications facilities may be sited city wide, however, the regulations were drafted with the intent of protecting specific zones from adverse impacts that are some times associated with wireless communication towers.

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

The Telecommunications Act of 1996 authorizes local governments to make decisions concerning the placement, construction, and modification of personal wireless services. However, local municipalities may not unreasonably discriminate among the providers of wireless communications, prohibit the construction of wireless communication facilities, or prohibit the ability of a wireless communication provider to provide wireless communication services to the area.

The City Attorney has reviewed the wireless communication regulations for consistency with the Telecommunications Act of 1996 and has determined that the proposed regulations are consistent with the Telecommunications Act of 1996.

- D. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

Not applicable, the proposed amendment does not address regulations governing planned public facilities and services.

City of Milwaukie Zoning

EXHIBIT 2

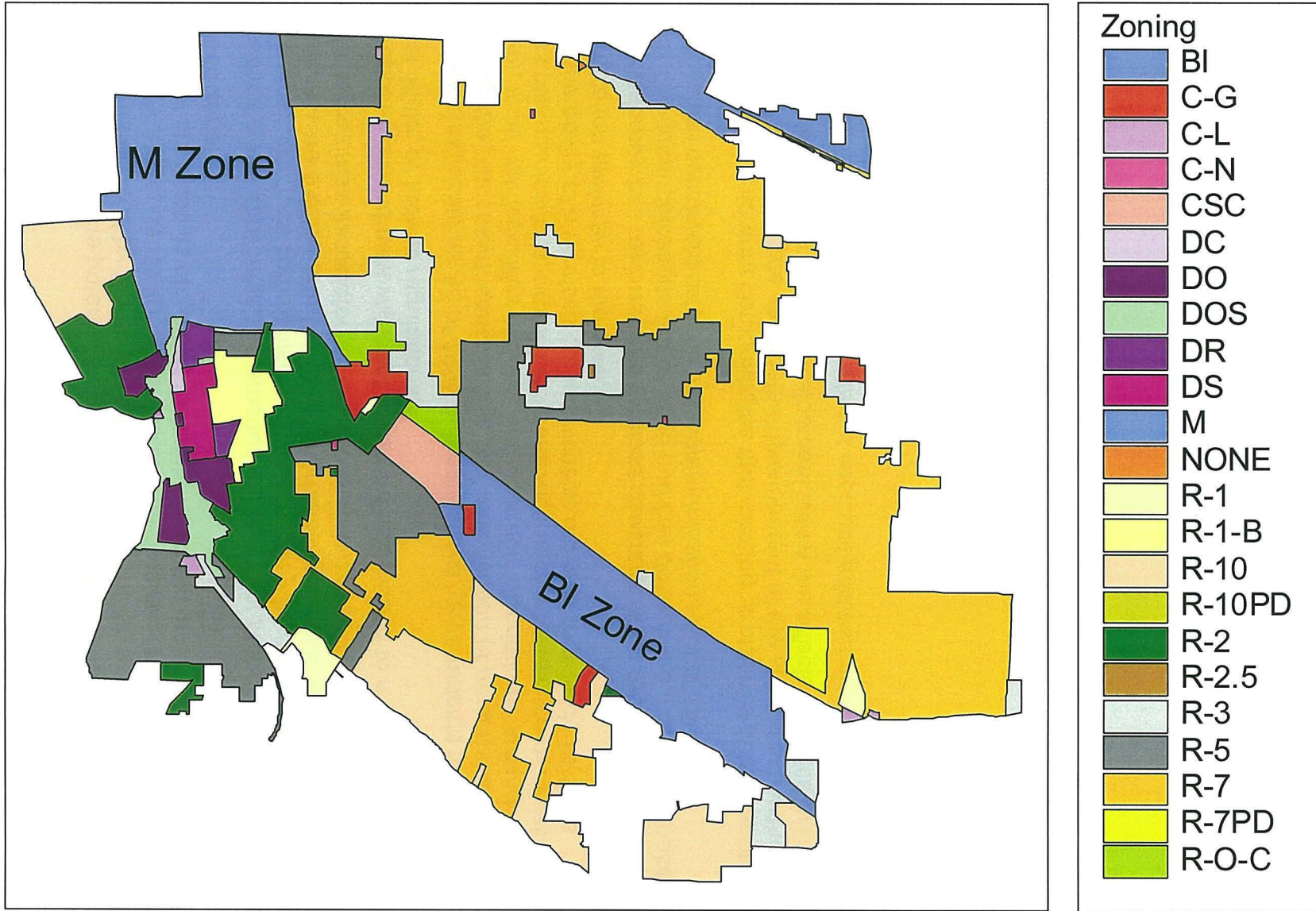


EXHIBIT 3

V. 24

RAMIS
CREW
CORRIGAN &
BACHRACH, LLP

Practicing as
Hibbard Caldwell Schultz
Ramis & Crew
in Oregon City

ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402

Fax: (503) 243-2944

MEMORANDUM

To: Lindsy Nesbitt, Assistant Planner, City of Milwaukie

From: Gary Firestone, City Attorney's Office

Date: October 15, 2002

Re: Wireless Communication Facilities Code Provisions

I have reviewed the draft code provisions that would add standards for wireless communications facilities to the Zoning Ordinance. The proposed standards would be added as Section 19.321.11.

I have no legal concerns with the proposed regulations. Although the ability of local governments to regulate telecommunications carriers is limited, one area where local control is not pre-empted is the authority to impose reasonable land-use and siting regulations on telecommunications facilities. The proposed regulations are the type of regulations permitted by the Telecommunications Act and are consistent with that act.

I concur with staff that it is appropriate to provide more detailed code provisions regulating the placement of WCFs, such as those that are proposed.

RECEIVED

OCT 15 2002

CITY OF MILWAUKIE
PLANNING DEPARTMENT



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Program Administrator *JH*

Subject: Franchise with Northwest Natural Gas Company

Date: October 30, 2002

Action Requested

Adopt an ordinance granting a nonexclusive franchise to operate a natural gas utility system providing natural gas services to residents within the City and to install, maintain and operate facilities for the transmission of natural gas within rights of way, as well as related communications system for the distribution of natural gas.

Background

The existing franchise with Northwest Natural Gas Company expires on January 31, 2003. Staff met with a Northwest Natural representative in October and the proposed franchise, written by legal counsel, was agreed to by both parties. The terms of this franchise are substantially the same as those in the preceding one. The new agreement requires a 5% franchise fee on revenue generated in the City by Northwest Natural Gas Company. This is an increase from the previous franchise agreement, which set the rate at 3%.

Concurrence

Engineering staff and legal counsel reviewed and concur with the franchise terms.

Fiscal Impact

The new agreement will result in additional franchise fee money being collected by the City.

Work Load Impacts

No workload impacts are anticipated.

Alternatives

Do not adopt the ordinance and request that staff continue negotiating with Northwest Natural Gas Co.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING A NONEXCLUSIVE FRANCHISE TO NORTHWEST NATURAL GAS TO OPERATE A NATURAL GAS UTILITY SYSTEM PROVIDING NATURAL GAS SERVICES TO RESIDENTS WITHIN THE CITY AND TO INSTALL, MAINTAIN AND OPERATE FACILITIES FOR THE TRANSMISSION OF NATURAL GAS WITHIN RIGHTS OF WAY, AS WELL AS RELATED COMMUNICATIONS SYSTEM FOR THE DISTRIBUTION OF NATURAL GAS.

WHEREAS, the current franchise will expire January 31, 2003 and it is in the interest of the City and its citizens that the franchise renewal take effect upon expiration of the current franchise so that seamless provision of natural gas services and appropriate regulation thereof can occur ; and

WHEREAS, the City Council finds based on its assessment of community needs that the proposed non-exclusive franchise agreement attached hereto as Exhibit A meets those community needs and that it should therefore grant the franchise renewal requested, consistent with the terms and conditions of Exhibit A.; and

WHEREAS, the City Council finds that it is appropriate to have the new franchise take effect on January 1 and to have the new agreement supersede the existing agreement;

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

Section 1. Franchise Grant. Northwest Natural Gas Company is hereby granted a ten year nonexclusive franchise, effective January 1, 2003, to operate a natural gas utility system and to maintain and operate facilities for the provision of natural gas within rights of way within the City of Milwaukie. The terms of the franchise are those terms set out in the form of Franchise Agreement between the City and Northwest Natural attached hereto as Exhibit 1.

Section 2. Acceptance Required. The grant of franchise in this ordinance may be withdrawn if Northwest Natural fails to accept the grant of franchise by executing a Franchise Agreement in the form of Exhibit 1 within 30 days of adoption of this ordinance.

Section 3. Existing Franchise Superseded. The existing franchise granted to Northwest Natural Gas is set to expire on January 31, 2003. All provisions of the existing franchise shall remain in effect until the new franchise granted by this ordinance takes effect. Once the new franchise granted by this ordinance takes effect, the provisions of the new franchise shall prevail over any inconsistent provisions of the existing franchise.

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

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

Signed by the Mayor on _____.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document4 (Last revised)

FRANCHISE AGREEMENT

The City of Milwaukie, an Oregon municipal corporation ("City"), and Northwest Natural Gas Company, a corporation ("NW Natural"), enter into this agreement, which is effective January 1, 2003.

1. **Rights Granted**

- A. This agreement sets forth the terms of the nonexclusive franchise granted by the City to NW Natural and accepted by NW Natural by signing this agreement. In return for the payment and other obligations set forth in this franchise agreement, NW Natural shall have a nonexclusive right and privilege to operate a natural gas utility system providing natural gas services to residents within the City and to install, maintain and operate facilities for the transmission of natural gas within rights of way, as well as related communications system for the distribution of natural gas. Nothing in this agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this agreement.
- B. All facilities in possession of NW Natural currently located within rights of way are covered by this agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in this agreement.

2. **Term**

This agreement shall be effective as of January 1, 2003 and shall remain effective through January 1, 2013 unless sooner terminated as provided in this agreement.

3. **Construction Work**

- A. *Non-emergencies.* Except in the case of an emergency, NW Natural shall file with the City Engineer maps or plans showing the location of any facilities to be placed in the right of way prior to the placement of those facilities. NW Natural shall also file with the City Engineer maps or plans showing the location of any construction work to be performed in the right of way, even if no new facilities are placed. No non-emergency work involving excavation, new facilities or relocated facilities may be performed until the City Engineer has approved the location for the work and facilities. No facilities shall be attached to a bridge without approval by the City Engineer of the design of facilities and method of attachment. In issuing the approval for non-emergency work, the City Engineer may restrict the times or dates when the work may be performed in order to minimize disruption of rights of way and may require work by NW Natural to be coordinated with work of the City or of others using the rights of way.

- B. *Emergencies.* NW Natural may conduct emergency work at any time and must provide the City Engineer with oral notice of the emergency work as soon as reasonably possible and no later than one business day after the emergency work has commenced. NW Natural shall provide the City Engineer a map of any excavations and repavings conducted on an emergency basis within 30 days of completion of the work. NW Natural shall also provide the City Engineer a map of any new facilities constructed on an emergency basis within 30 days of completion of the work.
- C. *Reasonable care.* All work by NW Natural within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using city rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. NW Natural shall not move, cut, modify or otherwise affect any facility of any other entity in the right of way without the consent of the other entity and notification to the City.

4. **Maps**

NW Natural shall maintain maps and operations data pertaining to its operations in the City on file at an office in Oregon. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, and subject to the provisions of this section, NW Natural shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of its facilities, but not other proprietary information, used in operating NW Natural's transmission and distribution facilities within the City's Urban Growth Boundary area served by NW Natural. NW Natural and the City may determine that the location of certain Gas Facilities should be confidential as the public interest may require. In such a case, NW Natural is under no obligation to provide records of the location of these facilities to City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provision of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City will not sell or transmit NW Natural maps or data to third parties unless permitted by NW Natural. The City will make available to NW Natural any City-prepared maps or data.

5. **Excavation**

Subject to Sections 3 and 6 of this agreement, NW Natural may make all necessary excavations within any right of way for the purpose of installing, repairing or maintaining any facility.

6. **Restoration After Excavation**

Except as otherwise provided in this section, NW Natural shall restore the surface of any right of

VI. 6

way disturbed by any excavation by NW Natural to the same condition it was in prior to its excavation. In the event that NW Natural's work is coordinated with other construction work in the right of way, the City Engineer may excuse NW Natural from restoring the surface of the right of way, providing that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 30 days or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case NW Natural shall pay the City for the cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

7. **Relocation**

- A. *Permanent Relocation - General.* The City may by written order require NW Natural to move any facility in the right of way. If the relocation is the result of a public project, NW Natural shall be responsible for the costs of relocation. If the relocation is required to accommodate an individual development, NW Natural shall have the right to seek reimbursement from the developer. In no event shall the City be responsible for the costs of relocation of any of NW Natural's facilities.
- B. *Notice.* The notice required by Subsection A of this Section shall be in writing and shall be provided at least 90 days before the date that NW Natural is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and NW Natural from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that NW Natural fails to comply with a notice to relocate and the City and NW Natural have not reached agreement on a schedule for relocation, the City may remove NW Natural's facilities that were the subject of the relocation notice at NW Natural's expense. All personnel or contractors employed by City to relocate NW Natural facilities shall be qualified to perform the work.
- C. *Location for Relocated Facilities.* The City shall provide NW Natural with a suitable location in existing right-of-way for all facilities required to be relocated.

8. **City Public Works and Improvements**

Nothing in this agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in any right of way. The City shall coordinate any such work with NW Natural to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of NW Natural's facilities.

9. **Payment by NW Natural for Use of Rights of Way**

- A. In consideration for its use of rights of way and for the City's administration of the rights of way, NW Natural agrees to pay City a franchise fee of five percent of the gross revenue received by NW Natural from customers for natural gas consumed within the City. The fee shall be paid semi-annually for the preceding six month period. To the extent permissible under state law and regulation, the franchise fee imposed by this subsection shall be considered an operating expense of NW Natural and shall not be itemized or billed separately to consumers within the City.
- B. NW Natural shall pay the franchise fee to the City Finance Director for the period from July 1 through December 31 of each year on or before April 1 of the following year. NW Natural shall pay the franchise fee for the period from January 1 through June 30 of each year on or before October 31 of the same year. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest as established by the Bank of America or its successor, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until 10 days after the discovery of the error by NW Natural or receipt by NW Natural of notice of the error.
- C. With its payments, NW Natural shall provide the City a statement under oath showing NW Natural's gross revenue for the period for which the payment is made.
- D. The City may audit NW Natural at any time while this agreement is in effect to determine the accuracy of the reporting of gross revenues. NW Natural shall make all records available to the City and any auditor retained by the City on demand. Any such audit shall be at City's expense unless the audit reveals an underpayment of one percent in any one year, in which case NW Natural shall reimburse the City for the costs of the audit.
- E. In consideration of NW Natural's agreement to pay the franchise fee, the City agrees that it will not impose any additional license fee, tax, or charge on the business of NW Natural while this agreement is in effect, but this provision shall not exempt the property of NW Natural from lawful ad valorem property taxes. This provision shall be void and have no effect if NW Natural fails to or refuses to pay the franchise fee or if the franchise fee is held to be invalid or void for any reason.
- F. The obligation to pay the franchise fee imposed by Subsection A of this Section shall

survive expiration of this agreement. In the event this agreement is terminated before expiration, NW Natural shall pay City the franchise fee based on gross revenue through the date of termination within 60 days of the termination date.

10. Vacation of Right of Way

Whenever the City vacates any right of way for the convenience or benefit of any person or government agency or instrumentality, NW Natural's rights under this agreement shall be preserved as to any of its facilities then existing in the right-of-way if reasonably practicable. To the extent NW Natural's rights in the right of way cannot be preserved, City shall attempt to provide an acceptable alternative right of way for the location of NW Natural's facilities. If the City is unable to provide an acceptable alternative location, NW Natural may be responsible for purchasing an easement for its use outside existing City right of way. If NW Natural's facilities must be relocated from a vacated right of way, the petitioners of such vacation, unless in support of a public project, shall bear the costs of relocating the facilities. Upon receipt of a notice of a petition for vacation, NW Natural shall as soon as practicable investigate and advise the City and petitioners in writing whether the facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.

11. City's Right to Use NW Natural Facilities

NW Natural shall permit City, without charge, to run wires or place equipment in NW Natural trenches for municipal purposes. The City shall indemnify and hold NW Natural harmless from loss or damage resulting from the City's wires and equipment.

12. Scope of Right Granted

This agreement grants NW Natural the right to place gas transmission facilities and related facilities in the right of way and to operate those facilities. It does not give NW Natural the right to place other resources or facilities in the right of way.

13. Termination

- A. *By City.* The City may terminate this agreement upon one year's written notice to NW Natural in the event that the City decides to provide natural gas to customers throughout the City.
- B. *By City for Nonpayment.* City may terminate this agreement and NW Natural's franchise if NW Natural fails to pay the franchise fee. The City shall provide 30 days' notice of termination prior to any termination for non-payment. The agreement shall not be terminated if NW Natural pays the full amount, including interest, within 30 days of the notice.

C. *By City for Cause.* If NW Natural ceases to maintain its facilities and the lack of maintenance increases the risk of personal injury or property damage, the City may terminate this agreement by providing NW Natural 30 days' notice of termination. The agreement shall not be terminated if NW Natural restores its facilities to the satisfaction of the City within 30 days of the notice.

14. Sale of Franchise

NW Natural shall not sell or assign this franchise to an entity that is not authorized by the Oregon Public Utilities Commission to provide service as a natural gas utility in the City.

15. Removal of Facilities

If this agreement is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, NW Natural shall remove the facilities pursuant to ORS 221.470, provided, however, that NW Natural and City may agree in writing to some other disposition of the facilities.

16. Nondiscrimination

NW Natural shall provide service to natural gas consumers in the City without discrimination or undue preference or disadvantage.

17. Hold Harmless

NW Natural shall indemnify and hold harmless the City, its public officials and employees against any and all claims, damages, costs and expenses to which they may be subjected as a result of any action by NW Natural under this agreement or otherwise arising from the rights and privileges granted by this agreement. This indemnity does not extend to claims that arise primarily from the City's own negligence or fault.

18. Notice

Any notice under or relating to this agreement shall be sent by first class mail or delivered by hand to the following addresses:

IF TO CITY:

City Manager
Milwaukie City Hall
10722 SE Main Street
Milwaukie, OR 97222

IF TO NW NATURAL:

NW Natural Gas Company
220 NW Second Avenue
Portland, Oregon 97209
Attn: Franchise Manager

19. Effect of Invalidity of a Portion of this Agreement

If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the agreement that are not held to be invalid or unconstitutional shall remain in effect until the contract is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this agreement, either party may demand that the other party meet to discuss amending the agreement to adjust the relationship of the parties to conform to their original intent in entering into this agreement. If the parties are unable to agree on a revised franchise agreement within 90 days after a portion of the agreement is found to be invalid or unconstitutional, either party may terminate the agreement on 180 days' notice to the other party.

20. Third-Party Beneficiaries

Nothing in this agreement shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this agreement or any duty or obligation established in this agreement.

21. Representations and Warranties

Each of the parties to this agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

22. Definitions

- A. "Facility" includes any poles, wires, fixtures, equipment, conduit, circuits, and other property necessary or convenient to the supply of natural gas owned or operated by NW Natural within the City.
- B. "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration. "Right of way" does not include any state highway or county road.
- C. "Install" means to erect, construct, build or place.

D. "Gross revenue" includes any and all revenue earned by NW Natural within the City from the sale of natural gas after adjustment for the net write-off of uncollectible accounts. Gross revenue shall also include revenue from the use, rental or lease of NW Natural's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

CITY OF MILWAUKIE

NW NATURAL GAS COMPANY

By: _____
Title: _____
Dated: _____

By: _____
Title: _____
Dated: _____

G:\muni\westlinn\wnnatfranchiseagreeclean073102.doc



Park & Recreation Board PARB

VII. . 1

Tuesday, September 24, 2002
7:00 PM to 9:00 PM
City Hall Conference Room

MINUTES

Attendees: Mart Hughes, Kathy Buss, Joe Loomis, Sherri Dow,
Staff: JoAnn Herrigel, Joan Young

Meeting called to order by Chair Hughes at 7:00 PM

Open Period: No audience

No minutes were approved since the last meeting of PARB took place at Council's 8/19/02 work session.

North Clackamas Park Master Plan

Beth Park of the North Clackamas Park and Recreation District addressed the group on the District's process for updating the Master Plan for North Clackamas Park and moving the plan through Milwaukie's land use approval process. Beth noted that a master plan had been completed for the site by Walker Macy in 1995. There had been 4 public meetings and a preferred alternative had been selected. The District Advisory Board (DAB) had approved the plan but it had never gone through Milwaukie Planning Commission. She said the master plan approval has become a priority for the District's budget and is in the master plan.

Beth noted that she'd met with the Planning director and was aware of the environmental issues on the site. She said she'd been told that a wetlands delineation had been done in 1993 and that it may not be necessary to do another one. She noted that she had revised the language in the document to reflect the new environmental regulations - such as Title 3. She said that there is funding in the levy for design and engineering for this site.

Comments from PARB:

- Need to do a wetland delineation for sure
- Need to evaluate habitat (wildlife) issues
- Old plan drew no distinction between passive and active recreation activities (need to)
- Plan should be completely reworked
- Need to develop stewardship activities for the site
- Adequate protection for Mt Scott Creek must be ensured

Beth handed out fliers for two public meetings to discuss the North Clackamas Park master Plan. One is October 17 and the other is Oct 22. The group expressed concerns that showing the old master plan at these meetings might mislead people regarding what could actually be done on the site given the environmental constraints.



To: Mayor and City Council
Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works *AR*
John Gessner, Planning Director *JG*
From: Lindsey Nesbitt, Assistant Planner *LN*
Date: November 19, 2002
Subject: Wireless Communication Facilities Fee Schedule Amendment

Action Requested

Adopt a resolution that establishes a fee for third party review of wireless communication land use applications, a monthly fee for the placement of wireless communication antennas on utility poles located in the right-of-way, and fee for administrative review of Wireless Communication Facility Land Use Applications.

Background

The City Council is considering regulations that permit the attachment of wireless communication antennas on existing utility poles located within the right-of-way.

Upon approval, the City will charge a franchise fee for all antennas that are attached to utility poles located within the right-of-way. Staff has worked with the City Attorney to develop a procedure for the collection of these charges. In addition the regulations will require the applicant to pay a \$1,000 deposit at submission of a land use application for the purpose of a third party review of the application.

Wireless Communication Facilities (WCFs) not involving the construction of a new tower, or the modification to increase the height of an existing structure shall be subject to staff review (Type II). Staff recommends the City Council adopt a \$750 fee for this type of application review.

Key Issues

A. Franchise Agreement with Portland General Electric (PGE)

Staff has worked with the City Attorney to modify the City's current franchise agreement with PGE to include provisions for the collection of fees for the attachment of antennas to utility poles in the right-of-way.

B. Fee Schedule

This resolution will amend the fee schedule to include provisions allowing the city to charge a fee for antennas attached to utility poles located in city right-of-way. Wireless carriers will be required to pay a fee of \$250 each month per utility pole to which an antenna is attached.

C. Limitations

The Federal Telecommunications Act of 1996 authorizes local governments to regulate the placement, construction, and modification of personal wireless communications, but local government may not unreasonably discriminate among providers of personal wireless communications, prohibit the construction of wireless communication facilities, or prohibit the ability of a wireless communication provider to provide wireless communication services to the area.

Creating regulations that significantly increase the cost of providing wireless service within the City is considered to be a barrier to entry¹. Stealth² technology is expensive and often smaller wireless providers cannot afford such technology.

PGE owns the majority of utility poles in Milwaukie. PGE charges a fee for usage of their utility poles, that fee in addition the city's fee may significantly increase the cost of providing wireless communication coverage to the city. In order to comply with the Telecommunications Act of 1996 and keep the cost of providing coverage to Milwaukie reasonable, staff proposes a monthly fee of \$250 dollars per utility pole to which an antenna is attached, which is comparable to fees charged by PGE and the City of Portland.

D. Third Party Review

The regulations require the applicant to provide documentation and evidence demonstrating compliance with city standards as well as Federal standards. The regulations also require the applicant to provide documentation supporting the need for a reduction of the minimum standards identified in the regulations.

Staff reserves the right to hire a third party, which has expertise in the subject matter of wireless communications and radio frequency systems to review the land use application for consistency and accuracy of materials submitted with the application. To recover costs incurred by third party review, the applicant shall submit a refundable \$1,000 deposit at the time of submission of a land use application. The \$1,000 deposit shall be paid in addition to Community Service Overlay Land Use Application fee.

¹ The Telecommunications Act of 1996 provides that wireless communications carriers have a right to provide coverage to any given area. If the City creates regulations that are too restrictive and create what may be deemed a "barrier to entry", the City will not be in compliance with the Telecommunications Act of 1996 and may run the risk of exposing itself to lawsuits.

² A wireless communication facility that is designed or located in such a way that the facility is not readily recognizable as wireless communication equipment and is compatible with surrounding uses.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE FEES AND CHARGES, ESTABLISHING A FEE FOR THIRD PARTY REVIEW OR WIRELESS COMMUNICATION LAND USE APPLICATIONS, A MONTHLY FEE FOR THE PLACEMENT OF WIRELESS COMMUNICATION ANTENNAS ON UTILITY POLES LOCATED IN THE RIGHT-OF-WAY, AND A FEE FOR ADMINISTRATIVE REVIEW OF WIRELESS COMMUNICATION FACILITY LAND USE APPLICATIONS AND CLASSIFYING THE FEE IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11 B OF THE OREGON CONSTITUTION.

WHEREAS, On November 19, 2002 the City Council adopted wireless communication regulations that permit antennas to be placed on utility poles in the right-of-way; and

WHEREAS, the adopted wireless communication regulations authorize collection of a monthly fee for antennas attached to utility poles; and

WHEREAS, the franchise agreement with Portland General Electric has been revised as needed to administer the fee; and

WHEREAS, the adopted wireless communications regulations authorize the collection of a \$1,000.00 deposit at submission of a land use application allowing staff to hire a third party to review the application; and

WHEREAS, the adopted wireless communication regulations authorize an administrative review for wireless communication facilities not involving the construction of a new tower, or the modification to increase the height of an existing structure.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie amends Resolution 23-2002, establishing a the following fees:

A fee for the placement of wireless communication antennas attached to utility poles located in the right-of-way. The fee shall be \$250 dollars per month per utility pole to which a wireless communication antenna is attached.

A \$1000.00 deposit at time of submission of a land use application.

A fee for Administrative Review of Wireless Communication Facilities Land Use Applications of \$750.00.

The City Council determines that the fees imposed by this Resolution are not taxes subject to the property tax limitations of Article XI. Section 11(B) of the Oregon Constitution.

Introduced and adopted by the City Council of the City of Milwaukie on November 19, 2002.

This resolution is effective 30 days from the date of adoption.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

E. Type II Land Use Review fee

Staff will review applications for modifications of existing WCFs. The recommended fee for staff review is \$750. This fee is based on an estimate of time required to review the application. Modifications to this fee may be recommended in the future.

Concurrence

The City Attorney and JoAnn Herrigel, the City's franchise manager, have reviewed and signed off on the proposed fee schedule amendments.

Fiscal Impact

The placement of an antenna on an existing utility pole requires the submission of a land use application and an application fee. The land use application fee will cover the cost of work done by staff to review the land use application.

Once the land use application has been approved, the applicant will be permitted to attach equipment to the utility pole. Prior to attaching the equipment to the utility pole, the applicant shall submit final design plans for staff to review.

Staff cannot estimate the potential of fiscal benefit since actual future use of utility poles cannot be projected.

Cost recovery for staff review will result from the land use application fees.

Workload Impact

There is no impact on the workload associated with the proposed fee amendment. The fee will be paid once city staff has approved a land use application.

Attachments:

Attachment 1 Proposed Fee Resolution