

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
SEPTEMBER 18, 2001**

**CALL TO ORDER**

The 1870<sup>th</sup> 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:

Larry Lancaster  
Brian Newman

Jeff Marshall

**Staff Present:**

Pat DuVal,  
City Recorder  
Tim Ramis,  
City Attorney  
Alice Rouyer,  
Planning Director  
John Gessner,  
Senior Planner  
Michelle Gregory,  
Neighborhood Services Manager  
Randy McCort,  
Consultant  
Scott Burgess  
Comm. Dev. Dir. Pro Tem  
Officer Monte Sterling,  
Police Department  
Officer Uli Neitch,  
Police Department

Sgt. Mark Dye,  
Police Department  
Dennis Lively,  
City Engineer  
Brion Barnett,  
Associate Engineer  
Larry Kanzler,  
Police Chief  
Mary Dorman,  
Consultant  
Roosevelt Carter,  
Program Service Coord.  
Carla Atwood,  
Accounting Technician, Utility Billing  
Jay Saatkamp,  
Operations Supervisor, Water

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARD**

**Mayor Bernard** read a proclamation recognizing September 17 - 23, 2001, as Constitution Week.

**Mayor Bernard** read a proclamation recognizing the week of October 7<sup>th</sup> – 13<sup>th</sup> as Healthcare Food Service Employee Week.

**Councilor Newman** read a proclamation recognizing October 2, 2001, as Walk Our Children To School Day in Milwaukie and encouraged everyone to consider the safety of pedestrians today and every day. This event will take place at Ardenwald School with the parents and children meeting at 32<sup>nd</sup> Avenue and Wake Street at 7:30 a.m. to walk to school.

**Mayor Bernard** read a letter from General Tanaka, Mayor of Milwaukie's Sister City, Iwaki, Japan. He expressed his sympathy for the victims, families, and the nation for the September 11, 2001, attacks in New York City and Washington, D.C.

**Mayor Bernard** then asked the audience to take a moment of silence in light of the actions of last week. Jennifer Mansfield sang the National Anthem.

**Chief Kanzler** announced special recognition to two officers for service above and beyond the call of duty. In the history of the Milwaukie Police Department there have been many officers who have put their lives ahead of their own personal safety and gone the extra mile with extra effort to save human lives. This is a new process for recognizing the individuals for this exceptional effort. He introduced Sgt. Mark Dye and Officer Ulrich Neitch.

**Officer Sterling**, Milwaukie Police Department, read the Citation of Award, Police Meritorious Service Medal, to the Council. **Mayor Bernard** made the presentations to Officers Sterling and Neitch.

**Mayor Bernard** read a proclamation which urged the citizens to extend their support to the victims of the New York and Washington tragedies in any way possible, including donations of blood and materials. The City Council and Mayor asked its citizens to hold the victims and their families, friends and co-workers in their thoughts. Remember the professionalism and the price paid by the fire fighters and police officers that responded. The Mayor and Council asked its citizens to pray for the wisdom for the leadership of the state for the City of New York and the United States. A moment of silence was observed for the victims of this horrible tragedy.

#### **CONSENT AGENDA**

**Mayor Bernard** read the list of consent agenda items:

- A. City Council Minutes of September 4, 2001**
- B. Center/Community Advisory Board Requests:**
  - 1. Bylaws Change**
  - 2. Board Re-appointments of Milwaukie residents 2002 Salary Schedule and Recognized Changes Negotiated with Represented Employees**
- C. Management, Non-represented and Seasonal Employees Fiscal Year 2001 – 2002 Salary Schedule and Recognized Changes Negotiated with Represented Employees**
- D. Intergovernmental Agreement for Funding Watershed Activities**
- E. Resolution 30-2001: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting a New Capital Improvement Plan.**

**It was moved by Councilor Newman and seconded by Councilor Marshall to adopt the consent agenda. Motion passed unanimously among the members present.**

**AUDIENCE PARTICIPATION**

None.

**PUBLIC HEARING**

Transportation System Plan Implementation Amendments: ZA-01-02 & CPA-01-02

**Mayor Bernard** called the public hearing on the proposed legislative Zoning and Subdivision Ordinance Text Amendments to order at 6:17 p.m.

The purpose of this hearing is to consider 4 legislative actions that would implement the Milwaukie Transportation System Plan.

Staff Report: **Gessner** acknowledged and gave credit to the technical advisory team: Alice Rouyer, Planning Director; Dennis Lively, City Engineer, Brion Barnett, Associate Engineer; Michelle Gregory, Neighborhood Services Manager; and Paul Roeger, Civil Engineer. The consultants to the city on this project are Mary Dorman and Randy McCort. Without their help, this project would not have succeeded.

Staff has been working on this project for the past nine months. There have been eight work sessions, a number of neighborhood association meetings, and extensive outreach with the private sector. The Council and Planning Commission have given direction that has been incorporated into the regulations.

The actions being requested tonight include:

1. Adopt the proposed ordinances amending the Comprehensive Plan and Zoning and Subdivision Ordinances for the purpose of implementing the Milwaukie Transportation Plan.
2. Amend the Zoning and Subdivision Ordinances to adopt Traffic Impact Analysis regulations.
3. Adopt two resolutions; one establishing a fee for the city review of traffic impact studies, and two, adopt a Transportation Design Manual.
4. Minor administrative changes incorporated into the revisions at the work session and incorporate by reference the minutes of the proceedings of all prior work sessions and public hearings.

In terms of other stakeholder issues, Attorney Mark Whitlow is requesting the city to consider developing a transferable system development charge credit. Staff and the technical advisory committee believe this has merit. The Planning Commission, on October 14, 2001, passed a resolution recommending approval of this credit to Council. This is an issue that will be addressed in the near future.

**Gessner** passed out correspondence received from Mark Whitlow today regarding Comments on Proposed ZA-01-02 (Zoning and Subdivision Ordinance Amendments). Staff is in support of working with Mr. Whitlow on his request to draft a procedure for adjusting the maximum building setback.

**Gessner** asked that the Council adopt the regulations tonight as proposed and they will follow up with Mr. Whitlow and see what can be done to respond to his concerns.

**Councilor Marshall** thanked everyone who worked on this project and congratulated them on the exceptionally well-done project.

Public Testimony:

**Mark Whitlow**, 1211 SW 5<sup>th</sup>, Portland, stated that he was an attorney and here on behalf of the Oregon Worstead Company. Mr. Dietrick, principal of the company, is also here to provide testimony.

Building orientation has been very controversial throughout the region. There has been a lot of debating and discussions in the communities, cities and counties on this issue. It is better to have a flexible program because it is very hard to anticipate in advance the problems you run into by applying the same rule for each development opportunity that comes up.

**Whitlow** suggested Council adopt language for an adjustment process. Language has been drafted by Mr. Whitlow for Council review and adoption. He explained that his firm is happy to work with staff on this issue if Council chooses to go forward with the adoption. He would prefer that the Council adopt this process tonight and they will continue to work with staff on further refinement after implementation. He suggested that Council direct staff to collect comments about the public needs for the first year to further adjust and refine this language.

**Howard Deitrick**, Oregon Worstead, Inc., stated that this is a long-needed plan. It will address the concerns of the community better than past proposals. The principal issue is mass transit. The need for transit is very important. The orientation of the buildings to the transit will make it acceptable depending on the site and how it is developed. It is important to have flexibility to increase mass transit. With the adoption of this amendment, each project can be assessed so that mass transit can be considered more fully.

**Councilor Newman** asked if the intent of these regulations is to take advantage or improve access of the transit riders to the buildings and improve the pedestrian environment of the street. **Gessner** stated that these are the two major affects; however, if you can reduce the walking distance between a transit stop and building, it may encourage transit access. The 30-foot provision does not contribute to an adverse pedestrian access for those who travel by transit exclusively. This would only apply at major transit stops. Staff is reviewing an adjustment rather than the TPR provision where the setbacks are only at major transit stops.

Staff Comments: **Gessner** stated that staff is asking that the Council adopt the regulations as proposed and they will work with Mr. Dietrick and Mr. Whitlow to draft an adjustment process.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 6:40 p.m.

Council Decision:

**Councilor Lancaster** stated that he likes flexibility so the right thing can be done in spite of any inherent defects with existing ordinances. Staff needs time to make sure that the language is right and that it will work for Milwaukie's needs and purposes are for these areas. He looks forward to staff bringing back suggested changes.

**Councilor Marshall** thanked John for keeping the Council so well-informed about this issue. **Mayor Bernard** thanked staff for their dedication and sincerity.

Ordinance for Application ZA-01-02

**Councilor Newman** moved for the first reading by title only of the ordinance amending the zoning ordinance to implement the Transportation System Plan with the additional language increasing the \$200,000 value threshold by 3% annually and striking the language requiring Council approval of design manual changes. **Councilor Marshall** seconded. Motion passed unanimously among the members present. The ordinance was read for the first time by title only and including those sections changed.

**Councilor Marshall** moved for the second reading by title only of the ordinance amending the zoning ordinance to implement the Transportation System Plan with the additional language increasing the \$200,000 value threshold by 3% annually and striking the language requiring Council approval of design manual changes. **Councilor Newman** seconded. Motion passed unanimously among the members present. The ordinance was read for the second time by title only and including those sections changed.

**Councilor Marshall** moved to adoption of the ordinance amending the zoning ordinance to implement the Transportation System Plan with the additional language increasing the \$200,000 value threshold by 3% annually and striking the language requiring Council approval of design manual changes. **Councilor Newman** seconded.

**Ayes:** Newman, Lancaster, Marshall, Bernard

**Nays:** None.

The motion passed unanimously among the members present.

**ORDINANCE NO. 1893**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS RELATED TO IMPLEMENTING THE CITY TRANSPORTATION SYSTEM PLAN.**

Ordinance for Application CPA-01-02

**Councilor Lancaster moved for the first reading by title only of the ordinance amending the Comprehensive Plan by adopting certain amendments related to implementation of the Milwaukie Transportation System Plan. Councilor Marshall seconded. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.**

**Councilor Newman moved for the second reading by title only of the ordinance amending the Comprehensive Plan by adopting certain amendments related to implementation of the Milwaukie Transportation System Plan. Councilor Lancaster seconded. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.**

**Councilor Marshall moved to adopt the ordinance amending the Comprehensive Plan by adopting certain amendments related to implementation of the Milwaukie Transportation System Plan. Councilor Newman seconded. Motion passed unanimously among the members present.**

**Ayes: Newman, Lancaster, Marshall, Bernard.**

**Nays: None.**

**ORDINANCE NO. 1894:**

**AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN BY ADOPTING CERTAIN AMENDMENTS RELATED TO IMPLEMENTATION OF THE MILWAUKIE TRANSPORTATION SYSTEM PLAN.**

Resolution Setting Fees for Impact Studies

**Councilor Newman moved to adopt the resolution setting a fee for the transportation impact study. Councilor Lancaster seconded. Motion carried unanimously among the members present.**

**RESOLUTION NO. 31-2001:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING A FEE FOR CITY REVIEW OF TRANSPORTATION IMPACT STUDIES RELATED TO LAND USE PROPOSALS.**

Resolution Adopting the Transportation Design Manual

**Councilor Newman moved to adopt the resolution adopting the Milwaukie Transportation Design Manual. Councilor Marshall seconded. Motion passed unanimously among the members present.**

**RESOLUTION NO. 32-2001:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE MILWAUKIE TRANSPORTATION DESIGN MANUAL.**

**OTHER BUSINESS**

Safeway Property Redevelopment

**Carter** reviewed staff report. The purpose of this agenda item is to seek Council approval of a \$750,000 community-incentive fund loan from Oregon Housing and Community Development Department to purchase the Safeway property. The term of the loan is 15 years at 1% interest per year, payable annually. There is a particular provision in the loan agreement that precludes the sale lease of the property to a developer or other persons without the written consent of the state. A draft side letter being negotiated by the City Attorney has been included to address flexibility in dealing with the lender.

Council approval authorizes the execution of the loan documents and option to purchase the Safeway property per the current lease agreement.

**Councilor Marshall moved to adopt the resolution approving the terms and conditions of a loan from the Oregon Housing and Community Services Department to purchase the Safeway property. Mayor Bernard seconded the motion. Motion passed unanimously by the members present.**

**RESOLUTION NO. 33-2001:**

**A RESOLUTION OF CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE TERMS AND CONDITIONS OF A LOAN FROM THE OREGON HOUSING AND COMMUNITY SERVICES (OHCS) DEPARTMENT TO PURCHASE THE SAFEWAY PROPERTY IN DOWNTOWN MILWAUKIE.**

Water Shut Off Policy – Ordinance & Resolution

**Burgess** reviewed staff report. Staff is requesting that the Council adopt the ordinance and resolution amending the City policies on utility notification and shut-offs for delinquent accounts. The City Manager asked that staff review the shut-off policy for consistency, equity and cost recovery. There are approximately 6,500 residential and business utility bills are sent monthly; half of the city is done one month and the other half the next month. About 525 bills are past due on average. Of those, 65 shut-offs result.

The changes in the ordinance and fee-setting resolution are:

1. Provide additional notice via door hanger for delinquent residential accounts 24 hours prior to shutting off water service.
2. Following notice, shut off water service for delinquent residential and business accounts that receive City water.
3. Add a \$5.00 past due notice fee.
4. Limit after hour times when water service will be restored.
5. Charge an additional \$25 if after hour service restoration is requested.
6. Add language in the sanitary sewer code section allowing the City at its option to shut off water (assuming that service is provided) for nonpayment as it is in the storm water code section.
7. Amend language to the sewer service section that allows the City to charge 10% per year on all accounts that remain delinquent for more than three months to cover interests and collection costs.

**Councilor Newman** asked for clarification of the \$5.00 past due notice fee. Does the \$25 fee kick in after three months? **Burgess** stated that the \$5 covers the actual cost of the past due notice after the bill. There is an additional \$25 charged for after-hour restoration of services. **Atwood** explained the billing timetable:

- Regular billing mailed on the last day of the month. This bill is due on the 15<sup>th</sup> of the month. It is considered delinquent on the last day of the month.
- On the first of the following month a past-due notice will be sent. A \$5 charge is assessed on the first of the month following billing. This past due notice is due 15 days after it is mailed out. This is 46 days after initial billing.
- On the third Tuesday, if the delinquent bill is not paid, a door hanger will be printed and an additional \$25 charge is then assessed. This door hanger gives 24-hour notice of shut-off.
- Shut-off is approximately 49 days from the initial billing date.

**Atwood** stated that the majority of the 65 shut-offs are reoccurring accounts. Special arrangements can be made to work with the residents before shut-offs are done. The goal of the department is to reduce the number of shut-offs.

**Councilor Lancaster** stated that he would like a process where the full cost of the inconvenience of shut-off is the responsibility of the resident. **Burgess** stated that they will collect data on return-to-service time involved and report back to the Council on their findings by means of a proposal or revised data.

**Sally Jacob**, 10500 SE 44<sup>th</sup> Avenue, voiced concern about a recession. There will be so many layoffs. She remembers that the city had a charity program for those unable to pay their utility bills. She asked if the Council is taking into consideration that part of the population that might find it difficult to pay for water. **Atwood** stated that people who are unable to pay their water bills because of special circumstances are referred to the low-income program that allows customer, by income, to pay a reduced rate. These residents must meet the guidelines based on how many people are living at their residence. Arrangements can be made to pay a smaller amount monthly so as to keep their bi-monthly bill lower. Staff can refer residents to other organizations for assistance in payment of their water bills.

**Councilor Marshall** suggested that assistance information be placed on one side of the past-due notice door hanger. **Atwood** stated that low-income information could be placed on the door hangers. **Burgess** stated that the intent of the door hanger is to get the resident's attention that shut off is pending. Public awareness on low-income information can be done through the *The Pilot* and other avenues.

It was the consensus of the Council to wait six months to see how this new process works on deterring shut offs.

**Councilor Lancaster** moved to increase the after-hour return to service fee to \$80/hr. **Councilor Marshall** seconded. Motion carried unanimously among the members present.

**Councilor Lancaster** moved for the first reading by title only of the ordinance amending the municipal code sections relating to utility fees and water service shut off. **Councilor Marshall** seconded. Motion carried unanimous among the members present. The ordinance was read for the first time by title only.

**Councilor Marshall** moved for the second reading by title only of the ordinance amending the municipal code sections relating to utility fees and water service shut off. **Councilor Newman** seconded. Motion carried unanimous among the members present. The ordinance was read for the second time by title only.

**Councilor Lancaster** moved to adopt the ordinance amending the municipal code sections relating to utility fees and water service shut off as amended. **Councilor Marshall** seconded. The motion passed unanimously among the members present.

**Ayes: Newman, Lancaster, Marshall, Bernard**

**Nays: None.**

**ORDINANCE No. 1895**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING SECTIONS 13.04.110, 13.04.120, 13.12.070, AND 13.14.060 OF THE MILWAUKIE MUNICIPAL CODE RELATING TO UTILITY FEES AND WATER SHUTOFF SERVICE.**

Other Information: None.

**ADJOURNMENT**

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

**Mayor Bernard adjourned the meeting at 7:45 p.m.**

*Pat DuVal for*

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Shirley Richardson, Recorder



## **MEMORANDUM**

TO: Mayor and City Council

FROM: Barb Kwapich, Office of City Recorder Administrative Specialist

DATE: September 14, 2001

RE: Additional Material for Regular Council Session September 18, 2001

Please add:

- To Item V Public Hearing, Transportation System Plan Implementation Amendments, document 'Revisions to Transportation System Plan Implementation Amendments'.
- To Item VI A Other Business, Safeway Property Redevelopment, additional pages 4 through 62.



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Scott Burgess, Community Development Director, Pro Tem  
Alice Rouyer, Planning Director

**From:** John Gessner, Senior Planner

**Subject:** Revisions to Transportation System Plan Implementation Amendments

**Date:** September 18, 2001

**ACTION REQUESTED**

1. Accept revisions to Attachment B, Exhibit 2 of the September 18, 2001 staff report on Transportation System Plan Implementation as shown below.
2. Accept revisions to Attachment E of the September 18, 2001 staff report on Transportation System Plan Implementation as shown below.

**BACKGROUND**

On September 10, 2001, the staff report for the public hearing on Transportation System Plan Implementation was distributed to the Council and public. Three minor defects that need correction have been discovered. The following section describes the required corrections:

Suggested corrections are:

- 1a. Add a provision to Section 19.1405.1 that adjusts the minimum value of construction costs to account for inflation. Value-of-construction determines if a land use application is required. There are two locations in the code where this provision is needed, only one was included in the draft ordinance. (See Exhibit 1 of this report for full text of the proposed changes.)
- 1b. Strike the proposed requirement for Council approval of changes to the Transportation Design Manual. Last year the Council amended the Municipal

Code, which now allows the City Engineer to amend design standards for public improvements. The requested revision makes the proposed code consistent with existing code authority. (See *Exhibit 2 of this report for full text of the proposed change.*)

2. The proposed resolution adopting the Transportation Design Manual lacks a needed reference to Milwaukie Municipal Code Chapter 15.36, which authorizes adoption of design standards for public improvements. The revised ordinance corrects that omission. (See *Exhibit 3 of this report for the revised resolution.*)

## 9/18/01 Staff Report Attachment B, Exhibit 2

### Proposed Revision to Application Threshold

*Additions are shown in underline.*

#### 19.1405.1 Type I Application Review

Type I review procedures are set forth in Section 19.1011.1. Type I review is used to check compliance with applicable provisions of Chapter 19.1400 for the following, unless a concurrent application will require Minor or Major Quasi-Judicial review, in which case the application will be processed under Sections 19.1011.3 and 19.1011.4 respectively:

A. Development of a new detached or attached single-family dwelling on an existing lot;

B. New construction or substantial redevelopment, as defined in Section 19.103, when the estimated value of the construction improvements is less than \$200,000; and a transportation impact analysis is not required by Section 19.1408;

C. New construction or substantial redevelopment, as defined in Section 19.103, when the estimated value of the construction improvements exceed \$200,000; and as follows:

1. frontage improvements that meet the design standards of Chapter 19.1400 are in place or will be provided prior to occupancy; and

2. a transportation impact study is not required pursuant to Section 19.1408.

The \$200,000 value threshold shall be increased 3 percent annually to account for inflation of material and labor costs, commencing 12:00 a.m. October 18, 2001 and thereafter.

## Exhibit 2

### 9/18/01 Staff Report Attachment B, Exhibit 2

#### Revisions to Administration of Transportation Design Manual

*Deletion is shown in strikeout.*

##### **19.1402 Administration.**

A. The Planning Director shall administer provisions of this chapter that apply to property excluding public rights-of-way. The City Engineer shall administer provisions that apply to public rights-of-way.

B. The City Engineer shall prepare and administer a Transportation Design Manual including the following subject to any limitations of this Code:

1. Design standards for transportation facilities located in public rights-of-way.
2. Policies, programs, or procedures related to neighborhood traffic management, school trip safety, capital improvements planning, and system development charges.
3. Traffic impact analysis methods, procedures, and submission requirements that implement Section 19.1408-Transportation Impact Analysis.
4. Facility maintenance policies and procedures.
5. Other provisions or requirements as needed or desired to manage the City's transportation system and its components.

The manual shall be adopted by resolution of the City Council. ~~and may be revised only by Council resolution.~~

C. Provisions of this Chapter shall be coordinated with Title 12-Street, Sidewalks, and Public Places; Chapter 15.32-Public Facilities Improvements; Chapter 15.36 Public Works Standards; Chapter 13.28-Capital Improvements; and Chapter 13.30 Reimbursement Districts. Any conflict between this Chapter and another shall be resolved by administrative determination of the City Engineer and Planning Director as applicable.

D. The City shall implement a system to collect and administer fees collected in lieu of constructing improvements required under provisions of this Title.

From 9/18/01 Staff Report Attachment E

Revisions to Resolution Adopting of Transportation Design Manual

Additions are shown in underline.

Deletions are shown in ~~strikeout~~.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE MILWAUKIE TRANSPORTATION DESIGN MANUAL.

**WHEREAS**, the City of Milwaukie has received a state grant to implement the Milwaukie Transportation System Plan and prepare a transportation design manual; and

**WHEREAS**, a design manual entitled "Milwaukie Transportation Design Manual" has been prepared, a copy of which is attached as Exhibit 1; and

**WHEREAS**, the design manual contains policies and design standards that affect construction of improvements within rights-of-way located in the City; and

**WHEREAS**, the design manual is intended to facilitate uniform compliance with city policies and standards for construction of transportation improvements in right-of-way,

**WHEREAS**, the City Council finds that the Transportation Design Manual is consistent with city policies and imposes appropriate standards for transportation improvements in the right of way; and

~~**WHEREAS**, Municipal Code Section 19.1400 authorizes the City to adopt design manuals by resolution; and~~

**WHEREAS**, Municipal Code Chapter 15.36 authorizes the City to adopt design standards for public works improvements by resolution;

**NOW, THEREFORE, BE IT RESOLVED** that City Council hereby adopts the Milwaukie Transportation Design Manual as shown in Exhibit 1 as the official City of Milwaukie design manual for transportation improvements in the right of way.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST

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

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

Date 9/18/01

I wish to address City Council on Agenda Item # V.

Name MARK WHITLOW

Organization ATTORNEY FOR OREGON WORSTED COMPANY

Address 1211 SW 5th AVE #1500

Phone (503) 721-2073

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date 9/17/2001

I wish to address City Council on Agenda Item # V.

Name Howard W. Dietrich

Organization Oregon Worsted Co. & various other Cos.

Address P.O. Box 82098 Portland, OR 97282

Phone 503-786-1234

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date Sep 18 2001

I wish to address City Council on Agenda Item # \_\_\_\_\_

Name Sally JACOB

Organization \_\_\_\_\_

Address LAyer OFFS

Phone what is going on charity arranged



To: Mayor and City Council

From: Mike Swanson, City Manager

Subject: Goals Discussion Draft

Date: September 10, 2001

Attached is a discussion draft of the goals we discussed a week ago. I have tried to tie them into some discussion of guiding principles. They are intended as a draft for your input and, eventually, for staff and public input.

The draft is intended to be of just those goals that are the long-term targets. Over time they will each need implementation plans. In fact, both the Middle School and Centennial goals need them sooner rather than later.

The more I work with this the more I see the potential for using the Centennial to make some of these things happen. That is, the Centennial could have a theme centered on the second hundred years and achieving results. By the time the Centennial rolls around we would have made significant progress on a number of the goals and could use those successes during the Centennial. A couple of ideas might be the Riverfront and/or the Middle School. If both or either is significantly on the way, we could use them as the sire for Centennial shenanigans—fireworks or the like.

I would like to have you review the attached and let me know if it is close. It doesn't have to be perfect at this point as we still have staff and citizen processes to go through. (We might even go to the Neighborhood Leaders September 19 meeting to present it as a draft.)

I am planning on meeting with Jeanne Lawson after your input. Jeanne and I will discuss the next steps with staff and citizens.

# DISCUSSION DRAFT

## CITY OF MILWAUKIE GUIDING PRINCIPLES

### AND

## COUNCIL/MANAGER GOALS

A healthy community defines and creates the future it desires. Having done so, its every action should be calculated to achieve that desired vision. It is toward that end that the following guiding principles and goals are established.

Externally, we value exceptional service to our customers and positive, open communications with our local and regional public sector partners. While this does not mean that every issue is reduced to a mutual agreement, it does mean that we strive to bridge differences, and, where impossible, we will clearly state the reason for not doing so. We value the principle of sustainability in preserving our environment and the character of our neighborhoods. We always seek to create and implement opportunities for the active involvement of our citizens.

Internally, we value both teamwork and the individual effort that contributes to the effectiveness of the team. We do everything we can to ensure that our decisions and actions are of the highest quality and are reliable and consistent. We effectively plan for the future and do all we can to ensure that our plans yield results. We always meet our commitments to our customers and fellow team members, and in all we do we act with the highest integrity.

Milwaukie will soon complete its one-hundredth year. Our responsibility is to ensure that we move into the next one hundred by creating the community we desire. Toward that end the following long term goals are established:

- **Develop and implement a financial plan that ensures the long-term financial viability and stability of the City.** Transportation, public safety, and library funding are all issues that are of immediate concern. In order to ensure that these and all other City services are adequately funded, all potential revenue sources shall be considered, including voter approval of additional funds, annexation, and expanded and creative development potentials.
- **Acquire the Milwaukie Middle School.** The decision to sell the Middle School to a private party does not eliminate its importance to the future of the City. Preservation of community history and available recreation and open space for public use, including transit, define what that community is about. In addition, the availability of the building for community uses, such as adult

education classes, recreation, and meeting space, serve as a focal point for activity in the downtown. The City's resolve to acquire the site for community purposes continues undiminished. All potentials for effecting that acquisition, including eminent domain, will be evaluated and a plan implemented.

- **Upgrade neighborhood livability.** The challenges of growth threaten the nature of the City's neighborhoods. Increased traffic is just one example of the impacts of growth. It is not enough to just hold on to what we have. Rather, we will improve the character of the City and its neighborhoods. Examples of our approach will be the aggressive representation of the City's interests at both the regional and local level and strong local control of our destiny through regulation.
- **Development of an economically vibrant Downtown and North Industrial Area and the Riverfront consistent with the character of the City and its neighborhoods.** The City possesses many hidden gems waiting to be uncovered. Among them are the Downtown, Industrial Area, and the Riverfront. We will seek to maximize those assets, consistent with the nature of the community. Chief among the hindrances to their effective development is the presence of the Kellogg Sewage Treatment Plant. Its removal and relocation will be aggressively pursued.
- **Celebration of the City's Centennial in 2003.** The first one hundred years should serve as a springboard to an active second hundred. The Centennial should see us moving aggressively toward the realization of the above goals.

## **Proposed Riverfront Cleanup Project**

### **Sept 15, 2001**

**Partners:** Milwaukie Downtown Development Association, Milwaukie Rotary Club and City of Milwaukie staff and volunteers

**Purpose:** To generate community support and enthusiasm for the Riverfront and to encourage grassroots community cleanup efforts while beautifying and drawing attention to one of the City's most valuable resources.

**Background:** At Council's August 20<sup>th</sup> work session, Jack Elder proposed that the MDDA and the Rotary work together to "Adopt the Riverfront" and perform cleanup activities along the City's waterfront property. At that time, Council was supportive, but expressed some concerns regarding liability and regulatory issues pertaining to the City's Riverfront property.

Since that work session, staff members JoAnn Herrigel, Alice Rouyer and Jack Perry have done a site visit to review the condition of the Riverfront and have discussed the liability, regulatory and logistical aspects of the MDDA/Rotary proposal. Following is staff's recommendation for the going forward with this volunteer effort:

#### **Program Summary:**

The staff contact for the MDDA/Rotary project will be JoAnn Herrigel, Program Services Coordinator. MDDA and Rotary will review all proposed activities with JoAnn and obtain approval from her before organizing projects on the City's Riverfront property. Herrigel will keep other pertinent departments informed as to the nature of each project and will assist with permitting where necessary.

The activities planned for the Riverfront will occur in three phases to allow appropriate regulatory approval and oversight.

#### **Phase One – Trash and debris collection and removal**

- This phase would involve the collection and disposal of litter scattered along the Riverfront. Bottles, cans, paper and other small pieces of easily removable trash would be collected in bags by volunteers.
- Staff will walk the site with crew leaders before each event to identify which materials may be removed.
- Liability forms will be signed by all volunteers participating in the cleanup.
- Abutting property owners will be notified by City staff before each event.
- MDDA/Rotary representatives have proposed that the first such collection take place on *Saturday, October 20*.

## **Phase Two – Removal of Noxious or Invasive Species**

- This phase would involve removal of invasive plants like blackberries, ivy and poison oak from the ground and along the bases of trees on the City's property. Weed eaters, rakes and shovels would be used by volunteers participating in these events.
- Staff will walk the site with crew leaders before each event to identify which materials may be removed.
- JoAnn Herrigel will work closely with Alice Rouyer (planning), Jack Perry (storm/sewer) and Kelly Somers (facilities) to ensure that all plant removal is safe and appropriate.
- Abutting property owners will be notified by City staff before each event.
- Liability forms will be signed by all volunteers participating in the cleanup.

## **Phase Three – Removal of larger debris from riverbank**

- This phase would involve the identification, removal and disposal of larger pieces of debris from the City's riverfront property.
- Staff will walk the site with crew leaders before each event to identify which materials would be targeted for removal.
- Especially where materials are close to or in the water, Herrigel will confer with other staff as well as appropriate state and federal agencies regarding best removal practices and which items may safely and legally be removed.
- Abutting property owners will be notified by City staff before each event.
- Liability forms will be signed by all volunteers participating in the cleanup.

### **Fiscal Impact For City:**

None. MDDA and Rotary would solicit and organize volunteers and identify sources of equipment and other necessary supplies.

**CITY OF MILWAUKIE  
CITY COUNCIL AGENDA  
SEPTEMBER 18, 2001**

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**1870<sup>th</sup> MEETING**

**REGULAR SESSION - 6:00 p.m.**

- I. CALL TO ORDER**  
Pledge of Allegiance
  
- II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. Constitution Week -- Proclamation**
  - B. Healthcare Food Service Employee Week -- Proclamation**
  
- 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 September 4, 2001**
  - B. Center/Community Advisory Board Requests:**
    - 1. Bylaws Change**
    - 2. Board Reappointments**
  - C. Management, Nonrepresented and Seasonal Employees Fiscal Year 2001 - 2002 Salary Schedule and Recognized Changes Negotiated with Represented Employees**
  - D. Intergovernmental Agreement for Funding Watershed Activities**
  - E. Five-Year Capital Improvement Plan Adoption -- Resolution**
  
- 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.*)

**Transportation System Plan Implementation Amendments**

1. **ZA-01-02 Zoning & Subdivision Ordinance Text Amendment -- Ordinance**
2. **CPA-01-02 Comprehensive Plan Amendment -- Ordinance**
3. **Transportation Impact Study Review Fee -- Resolution**
4. **Transportation Design Manual Adoption -- Resolution**

- 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.*)

- A. **Safeway Property Redevelopment -- Resolution (Carter)**
- B. **Water Shutoff Policy -- Ordinance & Resolution (Burgess)**

VII. **INFORMATION**

**Planning Commission Minutes, May 8 & 22, June 12, July 24, and August 14, 2001**

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.***

**PROCLAMATION**

**WHEREAS**, September 17, 2001, marks the two hundred fourteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS**, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and

**WHEREAS**, Public Law 915 guarantees the issuing of proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

**NOW, THEREFORE**, I, James Bernard, by virtue of the authority vested in me as Mayor of the City of Milwaukie in the State of Oregon do hereby proclaim September the week of September 17 through 23 as

***Constitution Week***

And ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 18<sup>th</sup> day of September 2001.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

**PROCLAMATION**

**WHEREAS**, hospitals and nursing homes in the State of Oregon employ hundreds of workers in their nutrition service departments to provide healthy and appetizing food; and

**WHEREAS**, these employees are caring people who provide a vital service in the care and treatment of hospitalized patients; and

**WHEREAS**, food service workers, chefs, dietary assistants, dietitians and administrators work in concert with other healthcare professionals to provide the best patient care; and

**WHEREAS**, the effects of a nutritious and appetizing meal may help lift the spirits and speed patient recovery;

**NOW, THEREFORE**, I, James Bernard, Mayor of the City of Milwaukie, do hereby proclaim the week of October 7 - 13, 2001 as

***Healthcare Food Service Employee Week***

And encourage all citizens to join in this observance.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 18<sup>th</sup> day of September 2001.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
SEPTEMBER 4, 2001**

**CALL TO ORDER**

The 1869<sup>th</sup> meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Larry Lancaster

Jeff Marshall

## Staff present:

Mike Swanson,  
City ManagerTim Ramis,  
City AttorneyAlice Rouyer,  
Planning DirectorMichelle Gregory,  
Neighborhood Services ManagerDennis Lively,  
City EngineerJack Ostlund,  
Associate EngineerJim Colt,  
Police Captain**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARD**

**Mayor Bernard** read a proclamation recognizing the month of September 2001 as *National Alcohol and Drug Addiction Recovery Month*.

**CONSENT AGENDA**

**Mayor Bernard** read the list of consent agenda items:

- A. City Council Minutes of August 20 & 21, 2001;**
- B. Resolution 26-2001 to Amend the City's Current Contract for the Juvenile Diversion Panel;**
- C. Resolution 27-2001 Amending Resolution 17-2001 Setting Fees for Services; and**
- D. Resolution 28-2001 Granting Consent to Clackamas County to Administer Dog Control and Licensing.**

It was moved by Councilor Marshall and seconded by Councilor Lancaster to adopt the consent agenda. Motion passed unanimously among the members present.

**AUDIENCE PARTICIPATION**

None.

## PUBLIC HEARING

### Volume Based Sewer Rate

**Mayor Bernard** called the public hearing on the proposed sanitary sewer rate charge to order at 6:09 p.m.

The purpose of this hearing was to consider public comment on the proposed volume based sewer charges.

Staff Report: **Ostlund** introduced Ed Cebron, Financial Consulting Solutions Group, Inc. (FCSG), consultant who worked with the Citizens Utility Advisory Board (CUAB) and staff on the proposed rate structure.

**Cebron** reviewed the background of the volume based rate structure. After adopting a sewer rate increase in February 2000, Council directed staff to determine if a volume based structure would be more equitable than the flat rate method. After reviewing policy and technical options with the CUAB, several key issues were identified: conservation should be encouraged and rewarded, billing based on residential customer winter usage is appropriate, and transition to a new structure should be phased in over 3 years. In addition to charging a more equitable fee, proposed charge is intended to create financial stability for the utility.

The CUAB considered patterns of customer usage and recommended the 3-year program with gradual increases. Customers will have the opportunity to evaluate their conservation options during that time. The impact on City revenues is neutral and is not intended to create untoward increases.

**Councilor Marshall** was concerned about accounting for administrative costs, including consumer education, related to implementing the new rate structure.

**Cebron** said additional funds, generated while customers adapt, can be used for additional administrative expenses. There will be certain start up costs related to researching customer records and developing administrative procedures.

**Councilor Lancaster** understood this was a very complex issue and would be concerned if rate increases were needed to support rising administrative costs. He asked if the impact of zero-volume usage had been determined.

**Cebron** said impact would be slight since research shows there are actually very few zero-volume customers. Those on wells will be locked into the system average until such time as they connect to the municipal system.

The group discussed the low-income residential rate, and **Cebron** believed applications were approved based on Clackamas County standards. There are currently about 100 low income customers.

**Councilor Lancaster** noted this is a pay-as-you-go program and all fractions are rounded down when bills are calculated.

Correspondence: None.

Public Testimony: None.

**Carla Bantz**, 4439 SE Pennywood Drive, Milwaukie, spoke in opposition to the increase. She believed the proposed rate structure would place a burden on families, and seniors would not see the rate decrease they anticipated. She was concerned additional residents would have their water shut off each month.

**Sara**, 6136 SE Monroe, Milwaukie, was opposed to the rate structure. Families with children would have high utility bills. She did not feel the public information accurately stated the percentage of increases.

**Lee Cox**, 11656 SE 48<sup>th</sup> Avenue, Milwaukie, supported the volume based rate structure. She believes the current flat rate subsidizes large families with high water consumption.

**Councilor Lancaster** felt the volume based rate proposal was the best compromise and discussed rising treatment costs.

Staff Comments: None.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 6:45 p.m.

Council Decision:

**Councilor Marshall** agreed volume based method seems to be the best compromise and is perceived as being overall the most equitable. It encourages the option to conserve. He suggested residents write the Clackamas County Board of Commissioners and urge construction of a new, more efficient treatment plant to replace Kellogg.

**Councilor Lancaster** said the Council will remain open to other community suggestions as the 3-year program is implemented.

**It was moved by Councilor Lancaster and seconded by Councilor Marshall to adopt the resolution establishing sewer service charges. Motion passed unanimously among the members present.**

**RESOLUTION NO. 29-2001:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MILWAUKIE, OREGON, ESTABLISHING SEWER SERVICE CHARGES.**

**OTHER BUSINESS**

**Recommendation to South Corridor Policy Group**

**It was moved by Councilor Marshall and seconded by Councilor Lancaster to forward the Milwaukie City Council recommended options to the South Corridor Policy Group for further study. Motion passed unanimously among the members present.**

**Other**

**Councilor Marshall** expressed his concern with flaglot language in the Comprehensive Plan and suggested the Planning Commission review it.

**Rouyer** said the Planning Commission is scheduled to discuss flaglot standards at its September 25 meeting.

**Mayor Bernard** announced the City Council discussed updating the Community Goals at its September 1 work session and will meet with staff to discuss action plans.

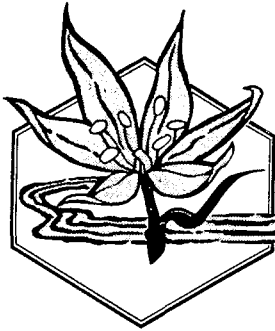
**ADJOURNMENT**

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

**Mayor Bernard** adjourned the meeting at 6:50 p.m.

---

Pat DuVal, Recorder



**NORTH  
CLACKAMAS  
PARKS & RECREATION  
DISTRICT  
MILWAUKIE  
CENTER**

TO: City of Milwaukie Mayor and City Council  
FROM: Joan Young, Milwaukie Center Director  
DATE: September 7, 2001  
RE: **1. APPROVAL OF CENTER/COMMUNITY ADVISORY BOARD  
BYLAWS CHANGE:**  
Change in term of officer for officers from calendar year January  
through December to July through June.

**2. APPROVAL OF REAPPOINTMENTS TO NCPRD  
CENTER/COMMUNITY ADVISORY BOARD – MILWAUKIE  
CENTER:**

Alice Neely	Position 1	5925 SE Kent St
Joan Staley	Position 4	10905 SE 52 <sup>nd</sup> Ave
Karen Kasserman	Position 7	10523 SE 70 <sup>th</sup> St

**Background:**

- 1. BYLAWS:** The Center/Community Advisory Board (C/CAB) voted at their January 12, 2001 monthly board meeting to recommend change in term of office for officers from January 1 – December 31 of each year to July 1 – June 30 of each year. The board approved temporary terms of office for the interim period of January 1, 2001 through June 30, 2001. At the June monthly meeting, the board approved new officers for the fiscal year starting July 1, 2001. The attached bylaws were presented to the Parks District Advisory Board (DAB) on August 23, 2001. The DAB unanimously recommends approval of the change in term of office for officers as requested by the C/CAB. NOTE: Bylaws attached.
- 2. BOARD MEMBER REAPPOINTMENTS:** The Center/Community Advisory Board reviewed the attached reapplications for Positions 1, 4 and 7. All three board members continue to be actively involved in their positions on the board. The C/CAB voted unanimously to recommend to the Mayor and City Council that all three applicants be reappointed to their positions for another three year term, to begin March 2001 and end February 2004. NOTE: Membership list attached.

III. B. 2

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## MODEL BYLAWS

**Article I. Name**

The name of this board is the Center/Community Advisory Board (C/CAB).

**Article II. Purpose, Authority and Duties**

- A. The purpose of this Board is to be the primary policy advisor with regards to the activities and operations of the Milwaukie Center. The Board will advise the North Clackamas Parks and Recreation District (NCPRD), Milwaukie City Council and Milwaukie Center staff regarding Center client/participant needs.
- B. The C/CAB is established in the August 20, 1992, Intergovernmental Agreement between North Clackamas Parks and Recreation District and the City of Milwaukie.
- C. The C/CAB's duties include addressing the programs and facilities of the Milwaukie Center concentrating on the problems, desires and needs of the senior citizens and others within the boundaries of NCPRD; making decisions regarding capital improvements, programs, maintenance, and operations policies that will have to be approved by both the Milwaukie City Council (deedholders to the property and facilities) and the NCPRD Board, and providing the NCPRD Board of Directors with budget recommendations.

**Article III. Membership**

- A. The C/CAB shall consist of eighteen members.
- B. Nine of the eighteen C/CAB members shall be appointed by the NCPRD Board and those members shall serve at the pleasure of that governing body. These nine members must reside within the NCPRD boundaries, but not within the City of Milwaukie. No member may be a NCPRD employee.
- C. Nine of the eighteen C/CAB members shall be appointed by the City of Milwaukie Mayor with the consent of Council, and those members shall serve at the pleasure of that governing body. The nine City of Milwaukie appointees must reside within the Milwaukie City limits. No member may be a City of Milwaukie officer, agent or employee.
- D. Terms are for a period of three years. Board members shall serve no more than two consecutive full terms. The body which appointed a particular C/CAB member (the Milwaukie City Council or the NCPRD Board as the case may be) may waive this limitation if it is in the public interest to do so.
- E. Vacancies are filled in the same manner as the original appointments and for the unexpired term of the vacant position.

### III. B. 4

- F. Upon failure of any member to attend two consecutive meetings without a valid excused absence, the C/CAB may recommend termination of that appointment to the governing body which made the appointment, and that governing body may remove the incumbent from the Board and declare the position vacant to be filled in the manner of a regular appointment. A valid excused absence requires that the C/CAB member notify a C/CAB officer or Milwaukie Center staff prior to the meeting to be missed except for the case of an emergency.
- G. All C/CAB members shall serve without compensation.

#### **Article IV. Officers and Staffing**

- A. Officers. The officers consist of a chairperson, vice chairperson and secretary who shall be selected by the C/CAB membership by simple majority vote and who shall serve at the pleasure of the membership for one year. ~~Elections shall be held yearly in January, July 1-June 30. Elections shall be held yearly in June.~~ Officers may be re-elected.
- B. Chairperson. The chairperson shall be general supervisory and directional powers over the Board. The chairperson shall preside at all Board meetings, set Board agendas and establish committees and appoint committee chairpersons. The chairperson shall also be an ex-officio member of all subcommittees and shall be the sole spokesperson for the Board unless this responsibility is delegated in writing.
- C. Vice Chairperson. The vice chairperson shall execute all powers of the chairperson in the absence of the chairperson; the secretary in the absence of the secretary.
- D. Secretary. The secretary shall keep records of all Board meetings, correspondence and related documents.
- E. Temporary Appointments. The chairperson may fill a vacancy in any office by a temporary appointment not to exceed two regular meetings. An election by the C/CAB must be held by the third meeting to fill the vacancy and that member so elected shall serve for the remainder of the term of that office.

#### **Article V. Organizational Procedures**

- A. The C/CAB shall meet at least once each month (a "regular meeting"). All members shall be subject to the requirements of the Oregon Public Meetings Law.
- B. Special meetings may be called by any two officers. Only business specified in the agenda for the special meeting may be considered.
- C. Fifty-one percent of the voting membership of the C/CAB shall constitute a quorum. The concurrence of a majority of the C/CAB members present shall be required to decide any matter.

- D. Bylaws may be amended at any regular C/CAB meeting providing written notice of the proposed amendment is submitted at a prior, regular meeting. In order to be effective, such amendments must also first be approved by the Milwaukie City Council and NCPRD Board.
- E. The parliamentary authority for this board is *Robert's Rules of Order Revised* except where superseded by these bylaws or local, state or federal laws.

Adopted 8/9/96 by Center/Community Advisory Board

Adopted 9/3/96 by City of Milwaukie City Council

Adopted 9/12/96 by District Parks Advisory Board

Revised 1/12/01 by Center/Community Advisory Board

III. B. 6

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# MILWAUKIE CENTER

5440 SE KELLOGG CREEK DRIVE  
MILWAUKIE, OR 97222  
(503) 653-8100

## APPLICATION - CENTER/COMMUNITY ADVISORY BOARD

NAME: Alice M. Neely

ADDRESS: 5925 S.E. Kent - Milwaukie, 97222

TELEPHONE: (HOME) 657-7178 (WORK) N/A

AREA RESIDENT SINCE: 1976

RESIDENT OF: City of Milwaukie  Park District Outside City

PREVIOUS APPOINTMENTS, OFFICES, BOARD EXPERIENCE: Food Bank  
Trust

EMPLOYMENT OR PROFESSIONAL ACTIVITIES: Member San. Purchasing Assoc. / Wells Fargo

OTHER COMMUNITY AFFILIATIONS OR ACTIVITIES: None now

ARE YOU AVAILABLE FOR REGULAR MEETINGS: yes  
More services for elders - living on very little

WHAT ARE YOUR SPECIAL INTERESTS, GOALS FOR THE CENTER: I'd like to see the local State involvement - but  
at this level - to keep abreast of what the school  
services available & track the next services

OTHER BACKGROUND OR INPUT YOU FEEL WOULD BE BENEFICIAL TO  
THIS COMMITTEE OR COMMITTEES: years experience  
at Legislative Bd.

This information will be kept on file. Please feel free to attach any additional background information you think would be of value.

Thank you.

Alice M Neely  
Signature

7-16-01  
Date

III. B. 8

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# MILWAUKIE CENTER

5440 SE KELLOGG CREEK DRIVE  
MILWAUKIE, OR 97222  
(503) 653-8100

## APPLICATION - CENTER/COMMUNITY ADVISORY BOARD

NAME: Joan Carson Staley

ADDRESS: 10905 SE 52<sup>nd</sup> Avenue

TELEPHONE: (HOME) 503-654-3036 (WORK) \_\_\_\_\_

AREA RESIDENT SINCE: 1964

RESIDENT OF: City of Milwaukie  Park District Outside City \_\_\_\_\_

PREVIOUS APPOINTMENTS, OFFICES, BOARD EXPERIENCE: member

Center Adv Bd, Bd. of Directors Genealogical Forum of Oregon

EMPLOYMENT OR PROFESSIONAL ACTIVITIES: retired Clackamas Co

employee - (Administrative Services Manager)

OTHER COMMUNITY AFFILIATIONS OR ACTIVITIES: Regent - Susanah

Lee Barlow DAR; Co-Chair Exhibits Comm. for 2001 Natl Genealogical Conference

ARE YOU AVAILABLE FOR REGULAR MEETINGS: yes

WHAT ARE YOUR SPECIAL INTERESTS, GOALS FOR THE CENTER: We need to ensure that adequate funding remains to meet the needs of sr's + folks w/ disabilities, particularly health + nutrition needs of at-risk folks

OTHER BACKGROUND OR INPUT YOU FEEL WOULD BE BENEFICIAL TO THIS COMMITTEE OR COMMITTEES: I worked for 18 years with programs for low-income + disabled residents of the County + have understanding of and sympathy for their situations

This information will be kept on file. Please feel free to attach any additional background information you think would be of value.

Thank you.

Joan Carson Staley  
Signature

31 July 2001  
Date

III. B. 10

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# MILWAUKIE CENTER

5440 SE KELLOGG CREEK DRIVE  
MILWAUKIE, OR 97222  
(503) 653-8100

## APPLICATION - CENTER/COMMUNITY ADVISORY BOARD

NAME: KAREN KASSERMAN

ADDRESS: 10523 SE 70<sup>th</sup> Ave, Milw, OR 97222

TELEPHONE: (HOME) 503-794-5900 (WORK) 503-655-8875

AREA RESIDENT SINCE: 1998

RESIDENT OF: City of Milwaukie \_\_\_\_\_ Park District Outside City

PREVIOUS APPOINTMENTS, OFFICES, BOARD EXPERIENCE: CCBS/CAB,

Oregon Hospice association, Lifespan Respite

EMPLOYMENT OR PROFESSIONAL ACTIVITIES: Senior Companion

Program Director - local worker for Transportation & Vol. Financial Svcs Progs.

OTHER COMMUNITY AFFILIATIONS OR ACTIVITIES:

Clackamas County Compassionate Friends Board member

ARE YOU AVAILABLE FOR REGULAR MEETINGS: Yes

WHAT ARE YOUR SPECIAL INTERESTS, GOALS FOR THE CENTER:

Social Senior + Transportation - To assist + promote services to senior + disabled folks in the Milwaukie area.

OTHER BACKGROUND OR INPUT YOU FEEL WOULD BE BENEFICIAL TO THIS COMMITTEE OR COMMITTEES:

\_\_\_\_\_  
\_\_\_\_\_

This information will be kept on file. Please feel free to attach any additional background information you think would be of value.

Thank you.

Karen Kasser

Signature

7-19-01

Date

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Center/Community Advisory Board  
 Membership Status  
 2001-2002

City Appointments  
Positions 1 thru 9


<u>POSITION</u>	<u>Term Expires</u>
Position 1 Alice Neely 5925 SE Kent 97222 503-654-7178	3/01
Position 2 Molly Jo Hanthorn 12014 SE 19th 97222 503-654-3587	3/02
Position 3 Stanley Keltz 12250 SE 31 <sup>st</sup> Pl. #80 97222 503-654-4610	3/03
Position 4 Joan Staley 10905 SE 52 Ave 97222 503-654-3036	3/01
Position 5 Dolly Macken-Hambright 12258 SE Grove Loop 97222 (H)503-659-7582 (W)503-659-8908	3/02
Position 6	3/03
Position 7 Karen Kasserman 10523 SE 70 <sup>th</sup> 97222 (w)503-655-8875	3/01
Position 8 Janet Witter 4515 SE Adams 97222 503-654-0342	3/02
Position 9	3/03

District Appointments  
Positions 10 thru 18

<u>POSITION</u>	<u>Term Expires</u>
Position 10 Kim Buchholz 12705 SE River Rd Milw 97222 (w) 503-652-6233	10/02
Position 11 Mary Siberz 8595 SE Fuller Rd. #3 Portland 97266 503-771-4734	10/03
Position 12 James (Jim) McCready 15650 S.E. Hanwood Lane 97267 503-654-1048	10/03
Position 13 Joan Newman 13557 SE Kuehn Rd 97222 503-654-4502	10/01
Position 14 Carol Storment 2975 S.E. Walta Vista Ct. 97267 503-654-0931	10/03
Position 15 Eleanor Johnson 4343 SE Robin Rd. 97267 503-654-4420	10/03
Position 16 Judith Garvey 13630 SE 145 <sup>th</sup> Ave Clackamas 97015 503-558-0299	10/01
Position 17 Ben Tabler 14741 SE 132 <sup>nd</sup> Ave. Clackamas 97015 503-698-3640	10/02
Position 18 Marc Burnham 8787 SE Owen Dr Portland 97266 503-653-8570 cell – 503-807-9955	10/03



To: Mayor and City Council

From: Mike Swanson, City Manager 

Subject: Management, Nonrepresented and Seasonal Employees Fiscal Year 2001 - 2002 Salary Schedule and Recognized Changes Negotiated with Represented Employees

Date: September 7, 2001

Action Requested



Direct, by motion, that the City Manager adopts by City Manager Directive, the City of Milwaukie, 2001-2002 Paytable, with salary schedule effective July 1, 2001 plus the additional changes negotiated with the representative employees as listed below.

The proposed changes are as follows:

1. 3% increase for fiscal year for all, excluding the City Manager. (The 3% general increase is included in the Adopted FY 2001-2002 budget.)
2. Lower medical/dental rates (use language from MPEA/AFSCME contracts.)
3. Longevity pay % of base salary: 10 years/1%; 15 years/2%; 20+ years/3%
4. Add "step" to definition of Immediate Family and include grandchildren.
5. Bereavement Leave:
  - Increase to five days
  - G. (2) of Personnel Rules: Additional Days, change to employee may chose to deduct this additional leave from his or her vacation, compensatory time off, or sick leave banks.
6. Sick Leave:
  - Add sections (3) and (4) from MPEA/AFSCME contracts regarding use of demutualization funds and employee contributions.
  - Add Sick Leave Transfer.
7. Fitness/Wellness: Increase time allowed to submit the request to include next calendar quarter after it is earned. Also impose a cap of 80 hours on total.





To: Mayor and City Council  
Through: Mike Swanson, City Manager   
From: Scott A. Burgess, Community Development Director Pro Tem   
Subject: IGA for Funding Watershed Activities  
Date: September 5, 2001

Action Requested

Authorize the City Manager to sign the Intergovernmental Agreement for Joint Funding of Clackamas River Watershed Activities (IGA) and pay for services accordingly.

Background

The City of Milwaukie purchases 500,000 gallons per day of surface water from Clackamas River Water (CRW) to supplement our domestic water supply, which comes from wells (5.8 mgd). Therefore, we cooperate with CRW and other Clackamas River water providers in monitoring and protecting the river and its watershed.

The IGA provides for joint funding of watershed projects for fiscal years 2000-05. The IGA allows for participation of the participants in developing a scope of work and allows for annual approval of the projected budgets by councils and boards.

The allocation and an explanation of the projects are attached.

Concurrence

The IGA, the allocation, and the projects have been reviewed and approved by staff in the Department of Community Development, including Engineering and Water. All other noted parties to the IGA have signed. The City of Lake Oswego has agreed to participate and to be added in a joinder to the IGA.

Fiscal Impact

The allocated cost for the City of Milwaukie for FY 2000 is \$1,985 and for FY 2001 is \$2,481. The costs will be allocated to the Water Fund and be funded from water rate revenues.

Work Load Impacts

No City of Milwaukie staff time will be necessary to implement the IGA. The costs are for reimbursing CRW and the U.S. Geological Survey for services provided.

# Clackamas River Water

## MEMORANDUM

---

**DATE:** August 31, 2001  
**TO:** Scott Burgess, Interim City Manager, City of Milwaukie  
**FROM:** Gordon McGhee, Water Resources Team Leader  
**SUBJECT:** **Clackamas River Basin Project Summary and Justification**

The Clackamas River Water Providers agreed to share in the funding of watershed projects in the Clackamas River basin for fiscal years 2000-2005 and signed an intergovernmental Agreement in May 2001. The Agreement allows for participation of the participants in developing a scope of work and allows for annual approval of the projected budgets by councils and boards. Total annual expenditures for each entity will not exceed those listed in Exhibit A of the Agreement. Exhibit B shows the anticipated distribution of costs for each participant for each project, thus allowing each participant, if desired, to be selective in the projects they wish to help fund.

An explanation of the purpose of those projects follows (Attachment 1 contains explanations of the three projects funded through a Joint Funding Agreement with the US Geological Survey):

**Clackamas River Basin Council (CRBC)-** The CRBC has become a significant player in providing project management services to the local area water providers to complete assessments of the remaining sub basins in the Clackamas River basin. The CRBC has also become instrumental in conducting restoration projects in the basin and acquiring funds from the Oregon Watershed Enhancement Board (OWEB) for assessments and restoration projects. The request is to recover costs incurred by CRW for CRBC operations, i.e., mailing, telephone, internet, and office supplies.

**Clear and Foster Creeks and Deep and Goose Creeks Watershed Assessment Projects-** Provides funds for project management, fieldwork and report writing to conduct the assessment. It is anticipated that we will gain further understanding and knowledge of the potential impacts to the Clackamas River basin once we understand more completely what factors are impacting the sub basins. We will then be in a position to recommend appropriate Best Management Practices (BMP) that will enable us to maintain and enhance the Clackamas River basin.

**Giardia/Cryptosporidium Analysis-** The presence and prevalence of Giardia cysts and Cryptosporidium oocysts in the Clackamas River will be determined by performing monthly, seasonal and storm sampling for Giardia/Cryptosporidium.

**Carter Bridge Monitoring Station-** A permanent monitoring station has been installed by the USFS at the Carter Bridge (above North Fork reservoir) on the Clackamas River. Our participation includes providing funds for telemetry and costs associated with maintenance, i.e., calibration standards and reagents and expenses for probes.

**Pesticide Report/Streamflow Gauge/River Mill Monitoring Station-** Projects contracted to USGS See Attachment 1. Funds cover expenses related to specific projects i.e., operate, maintenance and upkeep of the monitor as needed, purchasing calibration standards and reagents, and telemetry.

January 9, 2001

Attachment 1

**FY 2001 Project Proposals  
Clackamas River Water/USGS Cost Share**

**Pesticide Data Collection**

The USGS conducted two synoptic samplings for pesticides in the Clackamas Basin in May and October 2000. Some additional samples also were collected from the Clackamas River Water treatment plant (raw and finished water) in October 2000 and January 2001. The data from the spring sampling have been received from the laboratory and reviewed for accuracy, while the fall and winter data are currently being reviewed.

**Interpretive Report on Pesticides**

The USGS will prepare an interpretive report on the occurrence of pesticides in selected tributaries, the main stem Clackamas River, and raw and finished water from the Clackamas River Water treatment plant. Pesticide concentrations will be evaluated with respect to criterion established for drinking water and aquatic life. Associations between pesticide occurrence and land use also will be evaluated, where possible. The report will contain calculations of pesticide loads in the tributaries, which will be related to loads in the main stem (where applicable) at various drinking-water intakes. The report also will contain a section addressing future studies on pesticides in the basin.....\$40,000

**Water-Quality Monitor**

The USGS proposes to operate a continuous water-quality monitor in the Clackamas Basin downstream of River Mill Dam located at the USGS streamflow gage. The USGS will train personnel from the CRWP in the operation and maintenance of the monitor during this first year. Activities will include checking, cleaning, and calibration of the monitor for water temperature, turbidity, specific conductance, dissolved oxygen, and pH every two weeks from March - September, cross-sectional measurements of water-quality parameters over a range of conditions, availability of continuous real-time water-quality data on USGS's home page, publication of the adjusted data in USGS's annual data report, and storage of data in USGS's National Water Information System (NWIS) database. The Clackamas River Water Providers will be responsible for monitor installation, providing calibration standards, replacement units/probes, if necessary, and for the monthly phone charges.....\$22,200

In addition, the estimated cost for the USGS to make 6 quality-assurance checks (including cross sectional measurements) and to publish the data (real-time data on USGS's home page and final publication of reviewed data) in FYO2 will be approximately \$8,400 (possible cost share of \$4,200 a side).

**Streamflow Gage**

The USGS proposes to install and operate a continuous streamflow gage in the lower Clackamas River at the South Fork Water Board intake structure from mid-August through September 2002.

Includes installation of a submersible pressure transducer and wire weight gage, establishment of gage datum by running levels to known benchmarks, at least two low-flow streamflow measurements this summer, publication of real-time gage height (and streamflow once a rating curve has been established) on USGS's home page, publication of the reviewed stage data in USGS's annual data report, and storage of stage data in USGS's National Water Information System (NWIS) database. The Clackamas River Water Providers will be responsible for the monthly phone charges.....\$17,200

Next year, the gage will be operated from October through September 2001, and will include high-flow and low-flow measurements, development of a rating curve to convert river stage to stream discharge, and publication of real-time data on USGS's home page and in USGS's annual data report. The estimated cost for the USGS to operate the gage in FY02 will be approximately \$10,600 (possible cost share of \$5,300 a side).

**SUMMARY OF COSTS, FY 2001**

Activity	Clackamas River Water	USGS FY01	Total
Pesticide data collection	\$8,600	\$8,600	\$17,200
Pesticide interpretive report	\$20,000	\$20,000	\$40,000
Water quality monitor	\$11,100	\$11,100	\$22,200
Streamflow gage	\$8,600	\$8,600	\$17,200
<b>Total</b>	<b>\$48,300</b>	<b>\$48,300</b>	<b>\$96,600</b>

INTERGOVERNMENTAL AGREEMENT  
JOINT FUNDING  
OF  
CLACKAMAS RIVER WATERSHED ACTIVITIES

This ORS 190 Intergovernmental Agreement is entered into by and between the following parties: North Clackamas County Water Commission and South Fork Water Board, both intergovernmental entities formed under ORS Chapter 190, the Sunrise Water Authority, formed under ORS 450, the cities of Milwaukie and Estacada, both municipal corporations, and Clackamas River Water, a domestic water supply district formed under ORS Chapter 264, hereafter known as the "Water Providers".

RECITALS

WHEREAS, the need for greater knowledge of the Clackamas River and its tributaries is needed for long-term management of the Basin, and

WHEREAS, the United States Geological Survey (USGS) and the Water Providers have determined that a study, monitoring, assessment, and support of the Clackamas River would further provide meaningful data for the management of the Basin, and

WHEREAS, the Water Providers and others have agreed to share in the costs of sampling and analyses for the presence of pesticides, share in the cost of hiring a consultant to conduct watershed assessments, conduct other analyses within the Basin, and cost-share on other projects, and

WHEREAS, the Water Providers have agreed to enter into an intergovernmental agreement pursuant to ORS 190.003 - 190.110, which authorizes units of local government to enter into such agreements, to jointly fund a portion of the matching funds needed for the USGS to conduct studies and fund other projects as noted herein.

NOW, THEREFORE, the Water Providers agree as follows:

SECTION 1. AUTHORIZATION OF CRW

By execution hereto, the Water Providers hereto authorize Clackamas River Water (CRW) to become the paying agent for the parties. The initial term of the agreement is for the life of the studies indicated herein and CRW shall make all payments to the USGS required under a series of Joint Funding Agreements that coincide with the Project and Allocation Matrix and shown on Exhibit B. The Water Providers acknowledge and agree that CRW is acting as the agent of this agreement but that all are benefited thereby. CRW shall be responsible for day-to-day project and contract administration.

## SECTION 2. APPROPRIATIONS OF THE PARTIES AND REIMBURSEMENT OF CRW

Each Water Provider agrees to reimburse CRW for its proportionate share, as depicted on Exhibit A, Cost Distribution Matrix, and Exhibit B, Project, and Allocation Matrix, both, attached hereto and incorporated by reference. These matrices will be revised and updated annually to reflect changing projects and cost allocations subject to annual approval by the Water Providers and then revised to reflect available funds.

The parties also agree to participate in the development of a scope of work for the pesticide study, watershed assessments, monitoring stations, *Giardia* and *Cryptosporidium* samplings, and have determined the benefits of providing matching funds for these various projects, as follows:

1. Two periods of pesticide sampling and preparing a report on the data, including the hiring of a consultant to conduct watershed assessments of the Clear and Foster Creek watersheds, the Deep and Goose Creek watersheds, Data Gathering and Analysis of the Clackamas River Basin, provide up to .30 FTE of professional staff time for project management, coordination and planning, and sharing in the cost of hiring the Clackamas River Basin Council Coordinator as the Project Manager for the assessment projects mentioned above not to exceed .33 FTE.
2. Share in the costs of operating and maintaining monitoring stations at the Carter Bridge and below River Mill Dam on the Clackamas River.
3. Share in the costs for raw water sampling and analysis for the presence of *Giardia* and *Cryptosporidium*,
4. Share in the costs of installation and maintaining a river flow gage at the SFWB intake,
5. Share in the costs for support of the Clackamas River Basin Council,
6. Costs are not to exceed the levels outlined in Attachment 1 and 2, for each party over the fiscal years 2000-2005.

CRW shall invoice each party at quarterly intervals coinciding with work-in-progress invoicing from the USGS and the additional projects outlined above and in Exhibit B. Payments shall be made to Clackamas River Water at PO Box 2439, Clackamas, Oregon 97015-2439. Any amount unpaid after thirty (30) days shall accrue interest at the rate of nine percent (9%) per annum until paid.

## SECTION 3. NEW MEMBERS

The parties agree that other local government entities may join this Agreement by execution of a joinder Agreement whereby all terms and conditions of this agreement shall be binding upon the joining entity and costs shall be shared proportionately as if that entity had joined originally. The parties agree that action of the governing bodies of the current signatory entities shall not be required; the General Manager or City Manager shall be authorized to consent to joinder.

**III. D. 8**

IN WITNESS WHEREOF, the parties have executed this Agreement set forth opposite their names below. This document may be signed in counterparts.

CITY OF ESTACADA

CLACKAMAS RIVER WATER

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF MILWAUKIE

NORTH CLACKAMAS COUNTY WATER  
COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SOUTH FORK WATER BOARD

SUN RISE WATER AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### Cost Distribution Matrix

Exhibit A

Exhibit A

	Projected Annual Cost	CRW	NCCWC	SFWB	LO	Est	Milw	WES	PGE	BLM	CRBC	Other	Total
Population		54,000	54,000	54,000	35,000	2,600	18,000	N/A	N/A	N/A	N/A		217,600
Cost share: 2000-2001	\$119,515	\$23,839	\$23,839	\$23,839	\$0	\$1,148	\$1,985	\$5,000	\$5,000	\$15,000	\$9,000	\$10,865	\$119,515
Cost share: 2001-2002	\$179,913	\$29,774	\$29,774	\$29,774	\$34,771	\$1,434	\$2,481	\$6,000	\$10,000	\$35,000		\$905	\$179,913
Cost share: 2002-2003	\$126,500	\$29,655	\$29,655	\$29,655	\$19,221	\$1,428	\$1,648	\$7,000					\$118,262
Cost share: 2003-2004	\$132,000	\$30,772	\$30,772	\$30,772	\$19,945	\$1,482	\$1,728	\$8,000					\$132,000
Cost share: 2004-2005	\$132,000	\$30,524	\$30,524	\$30,524	\$19,784	\$1,470	\$1,610	\$9,000					\$132,000
<b>Total share: Five years</b>		<b>\$144,564</b>	<b>\$144,564</b>	<b>\$144,564</b>	<b>\$93,721</b>	<b>\$6,962</b>	<b>\$9,452</b>	<b>\$35,000</b>	<b>\$15,000</b>	<b>\$50,000</b>	<b>\$9,000</b>	<b>\$11,770</b>	<b>\$652,827</b>

## Watershed IGA Project and Allocation Matrix Cost Share Distribution for Fiscal Year 2000-2001

Updated Annually

### Exhibit B

		CRW	NCCWC	SFWB	Est	Milw	WES	PGE	BLM	CRBC	Other	Total	
<b>Population</b>		169,100	54,000	54,000	54,000	2,600	4,500	NA	NA	NA	NA	Projected	
<b>Activity</b>	<b>Purpose</b>	<b>REQUEST</b>											
Clackamas River Basin Council	Operating Costs	\$4,550	\$1,453	\$1,453	\$1,453	\$70	\$121	\$0	\$0	\$0	\$0	\$0	\$4,550
Clear/Foster Creeks Watershed Assessment	Project Management	\$18,250	\$3,593	\$3,593	\$3,593	\$173	\$299	\$0	\$0	\$5,000	\$2,000	\$0	\$18,250
	FieldWork	\$22,750	\$1,836	\$1,836	\$1,836	\$88	\$153	\$0	\$0	\$10,000	\$7,000		\$22,750
Monitoring Projects	Giardia/Crypto	\$11,100	\$3,545	\$3,545	\$3,545	\$171	\$295	\$0	\$0	\$0	\$0	\$0	\$11,100
Monitoring Projects	Carter Bridge	\$2,000	\$479	\$479	\$479	\$23	\$40	\$0	\$500	\$0	\$0	\$0	\$2,000
Monitoring Projects-USGS	River Mill	\$12,300	\$3,289	\$3,289	\$3,289	\$158	\$274	\$500	\$1,500	\$0	\$0	\$0	\$12,300
Watershed Projects USGS	Pesticide Analysis	\$17,200	\$4,694	\$4,694	\$4,694	\$226	\$391	\$1,500	\$1,000	\$0	\$0	\$0	\$17,200
Pesticide Report	Pesticide Report	\$10,000	\$2,555	\$2,555	\$2,555	\$123	\$213	\$1,000	\$1,000	\$0	\$0	\$0	\$10,000
Monitoring Projects	Stream flow gauge	\$10,500	\$2,395	\$2,395	\$2,395	\$115	\$200	\$2,000	\$1,000	\$0	\$0	\$0	\$10,500
	Subtotal	\$108,650	\$23,839	\$23,839	\$23,839	\$1,148	\$1,987	\$5,000	\$5,000	\$15,000	\$9,000	\$0	\$108,650
	Contingency 10%	\$10,865	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,865	\$10,865
	<b>Total</b>	\$119,515	\$23,839	\$23,839	\$23,839	\$1,148	\$1,987	\$5,000	\$5,000	\$15,000	\$9,000	\$10,865	\$119,515

## Cost Share Distribution of Watershed Projects Allocated by Project Fiscal Years 2001-2002

		CRW	NCCWC	SFWB	LO	Est	Mitw	WES	PGE	BLM	CRBC	Other	Total	
<b>Population</b>		204,100	54,000	54,000	54,000	35,000	2,600	4,500	NA	NA	NA	NA	Projected	
<b>Activity</b>	<b>Purpose</b>	<b>REQUEST</b>												
Clackamas River Basin Council	Operating Costs	\$7,030	\$1,860	\$1,860	\$1,860	\$1,206	\$90	\$155	\$0	\$0	\$0	\$0	\$0	\$7,030
Clear/Foster Creeks Watershed Assessment	Project Management	\$25,360	\$3,535	\$3,535	\$3,535	\$2,291	\$170	\$295	\$0	\$0	\$12,000	\$0	\$0	\$25,360
	Analysis/Report	\$37,600	\$3,466	\$3,466	\$3,466	\$2,246	\$167	\$289	\$0	\$1,500	\$23,000	\$0	\$0	\$37,600
Deep/Goose Creeks Watershed Assessment	Project Management	\$17,610	\$4,130	\$4,130	\$4,130	\$2,677	\$199	\$344	\$0	\$2,000	\$0	\$0	\$0	\$17,610
	Analysis/Report	\$19,390	\$4,336	\$4,336	\$4,336	\$2,811	\$209	\$361	\$0	\$3,000	\$0	\$0	\$0	\$19,390
Monitoring Projects	Giardia/Crypto	\$12,150	\$3,215	\$3,215	\$3,215	\$2,084	\$155	\$268	\$0	\$0	\$0	\$0	\$0	\$12,150
Monitoring Projects	River Mill	\$13,100	\$2,540	\$2,540	\$2,540	\$1,646	\$122	\$212	\$2,500	\$1,000	\$0	\$0	\$0	\$13,100
	Carter	\$2,000	\$265	\$265	\$265	\$171	\$13	\$22	\$0	\$1,000	\$0	\$0	\$0	\$2,000
Monitoring Projects	Pesticide Report	\$10,000	\$2,249	\$2,249	\$2,249	\$1,458	\$108	\$187	\$1,500	\$0	\$0	\$0	\$0	\$10,000
Monitoring Projects	Stream flow gauge	\$5,250	\$463	\$463	\$463	\$300	\$22	\$39	\$2,000	\$1,500	\$0	\$0	\$0	\$5,250
	<b>Subtotal</b>	<b>\$149,490</b>	<b>\$26,058</b>	<b>\$26,058</b>	<b>\$26,058</b>	<b>\$16,890</b>	<b>\$1,255</b>	<b>\$2,172</b>	<b>\$6,000</b>	<b>\$10,000</b>	<b>\$35,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$149,490</b>
	Contingency 10%	\$14,949	\$3,716	\$3,716	\$3,716	\$2,408	\$179	\$310	\$0	\$0	\$0	\$0	\$905	\$14,949
	Other					\$15,474								
	<b>Total</b>	<b>\$164,439</b>	<b>\$29,774</b>	<b>\$29,774</b>	<b>\$29,774</b>	<b>\$34,772</b>	<b>\$1,434</b>	<b>\$2,481</b>	<b>\$6,000</b>	<b>\$10,000</b>	<b>\$35,000</b>	<b>\$0</b>	<b>\$905</b>	<b>\$179,913</b>



To: Mayor and City Council  
Through: Mike Swanson, City Manager  
From: Dennis Lively, City Engineer/Engineering Director  
Subject: Five Year Capital Improvement Plan Adoption  
Date: September 11, 2001

Action Requested: Approve a resolution adopting a new Capital Improvement Plan (CIP).

Background: The draft five year CIP was developed by staff and management for the use of the Budget Committee and the City Council in reviewing the budget requests for FY 2002 and beyond. Over twenty members of staff who have had input and provided production of the document. It contains specific project or purchase related data for items from: Administration; Information Systems and Technology; Facilities; Fleet; Sewer; Storm; Streets; and, Water. Information from the CIP was used in formulating the current budget and by the Budget Committee and Council in approving the FY 2002 Budget.

The Plan guides City priorities in constructing its improvements and serves as the systems development charge funds project program as required by Milwaukie Municipal Code Section 13.28.080. The Five Year CIP is an important major step forward in organized planning of needs for capital funding and it provides critical input to long range financial planning. Adoption of this draft document will give it the status it deserves in the budgeting process.

Fiscal Impact: No direct impact; however, each year's Adopted Budget will incorporate information from this document in formulation, review and approval process. The Five Year CIP is a planning document and authorizes no actual spending.

Work Load Impacts: Each year the CIP will be reviewed and another year added so that it remains a five year window of capital improvement needs. The CIP for each years budget can be brought out of this document and reviewed as it is placed into the proposed budget. Overall the staff work impact will be neutral as they currently do one years figures each year.

RESOLUTION \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
ADOPTING A NEW CAPITAL IMPROVEMENT PLAN.**

WHEREAS, the City's Budget Committee has recommended that the City adopt a new Capital Improvement Plan in the form of Exhibit A; and

WHEREAS, the City Council concurs that the proposed Capital Improvement Plan's priorities for capital improvements are consistent with the City's needs and policies;

**NOW, THEREFORE, THE CITY OF MILWAUKIE, OREGON, RESOLVES AS  
FOLLOWS:**

Section 1: The City of Milwaukie Capital Improvement Plan attached hereto as Exhibit A and incorporated by this reference is hereby adopted as the official City of Milwaukie Capital Improvement Plan. The Capital Improvement Plan shall guide City priorities in constructing capital improvements and shall serve as the systems development charge funds project program required by Municipal Code Section 13.28.080. All previous Capital Improvement Plans are hereby repealed.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on September 18, 2001.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Ramis, Crew, Corrigan & Bachrach, LLP



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Scott Burgess, Community Development Director, Pro Tem  
Alice Rouyer, Planning Director *AR*  
Dennis Lively, City Engineer *DML*

**From:** John Gessner, Senior Planner *JG*

**Subject:** Transportation System Plan Implementation Amendments  
ZA-01-02 Zoning & Subdivision Ordinance Amendments  
CPA-01-02 Comprehensive Plan Amendments

**Date:** September 18, 2001

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**I. ACTION REQUESTED**

1. Adopt the proposed ordinances amending the Comprehensive Plan and Zoning and Subdivision Ordinances for the purpose of implementing the Milwaukie Transportation System Plan.
2. Adopt a new fee for city review of Transportation Impact Studies by resolution.
3. Adopt the proposed Transportation Design Manual by resolution.

**II. BACKGROUND**

**1. Planning Commission Recommendation**

On August 14, 2001 the Planning Commission adopted a motion recommending the Council adopted the proposed ordinances, which include the following:

- a. Zoning amendments including:
  1. New traffic impact analysis requirements.
  2. Simplified application procedures for small-scale projects.
  3. Revised "adequate transportation facility" requirements.
  4. Driveway spacing and access management standards.

- b. Changes to the subdivision regulations by relocating street and other transportation design standards to the zoning chapter of the municipal code.
- c. Municipal code amendments that clarify all street work within the city requires a permit.
- d. Comprehensive Plan Amendments revising the functional classification of certain streets, and adopting a “master transit map”.
- e. New Transportation Design Manual that includes street design standards, traffic impact analysis and other guidelines.

**2. Staff Report & Related Materials**

This staff report provides summary information and analysis of the proposed comprehensive plan and municipal code changes. A list of attachments is provided below.

Attachment A—Proposed Findings in Support of Approval

Attachment B—Proposed ordinance amending the Zoning and Subdivision Ordinances

Attachment C—Proposed ordinance amending the Comprehensive Plan

Attachment D—Proposed Fee Resolution

Attachment E—Proposed resolution adopting Transportation Design Manual

**3. Project Objectives**

The City has few tools to evaluate the traffic impacts of development and ensure implementation of the Milwaukie Transportation System Plan, which was adopted in 1997. With direction from City Council and Planning Commission, the project team<sup>1</sup> has been developing the following:

- a. New regulations that:
  - 1. Require City review of traffic impacts of new development;
  - 2. implement goals and policies of the Milwaukie Transportation System Plan, and
  - 3. ensure compliance with state and regional transportation plans.
- b. A “transportation design manual” that centralizes design standards and other elements managing the street system as needed to control how transportation facilities are constructed.

**4. Key Elements**

**a. Consolidation of Existing Codes**

Many provisions of the Subdivision Ordinance will be moved into the Zoning Ordinance to for ease of use and elimination of existing redundancies.

**b. Adequate Public Facility Regulations**

Based on direction from the City council and Planning Commission, the proposed regulations eliminate use of developer's agreement based on direction from the City Council and Planning Commission Since 1988, the city has had an "adequate public facility" code that requires public improvements be provided at the time of development. An exception allows work to be deferred by means of an agreement to participate in a future local improvement district. This approach has been widely used in the past.. Under the proposed regulations developers will be required to construct improvements or pay the City for the cost of improvements.

**c. Performance Standards for Intersections**

The proposal includes "level of service" standards for all intersections in the city. In accordance with the adequate public facility requirements, deficient intersections must be brought up to standard at the time of development. An exception may be granted when city improvements will be constructed in the near future.

**d. Traffic Impact Analysis**

Development that may have traffic impacts will be required to submit a traffic impact analysis prior to approval. The purpose of the study is to identify impacts and ensure measures needed to reduce the impacts are provided.

**e. Legal Limitations**

Case law limits the extent of improvements that may be required by the city. U.S. Supreme Court decisions on land use cases establish two standards in deciding development proposals. The first requires that there be a direct relationship between the impact created by development and the improvement required. The second requires that the scale of the improvement be roughly proportional to the impacts created by the development. Staff believes the proposed regulations are consistent with these standards.

f. **Transportation Design Manual**

A “transportation design manual” has been developed to facilitate consistent transportation design and administration of traffic impact study requirements. The manual contains standards on street design and guidelines for preparation of traffic impact studies.

e. **Public Information and Outreach**

Extensive public information and outreach efforts have been made to give interested parties an opportunity to comment. The materials were presented at a total of eight work sessions. The four work sessions with the City Council were televised. In addition, staff presented the project at a quarterly leadership meeting of Neighborhood District Associations and a regular meeting of the Lake Road NDA. Project materials have been sent to numerous stakeholders including private property owners and managers, County and state agencies, Clackamas County Schools, and others.

f. **Change in Notice Area.**

The notice area for applications decided by the Planning Director and applications decided by the Commission have been increased from 150 and 250 feet to 300 feet respectively.

**III. ANALYSIS**

1. **How have concerns raised by the Planning Commission and City Council in past work sessions been addressed?**

Council/Commission Concern	Staff Response
The determination of “when” a traffic study is needed should be objective to ensure consistent actions on the part of the City.	A scoring method was developed to help ensure that all projects are judged against the same criteria.
New regulations should be crafted so that minor deviations can be handled without too much “process” or burden on the applicant.	The Planning Director or City Engineer can approve minor deviations from minimum requirements of the code. Criteria have been created to ensure consistency and appropriateness. The conventional variance process will be used for major deviations.
Sight distance and stopping distance requirements may be excessive.	After internal discussion, staff dropped the proposed stopping distance standards citing insufficient need. To ensure appropriate sight distance standards, the code allows the City Engineer to reduce sight distances when conditions are acceptable.

Council/Commission Concern	Staff Response
When is it appropriate to deny an application based on traffic impacts?	Under the proposed regulations a project may be denied if it results in traffic impacts that can not be mitigated. An alternative to denial would be to allow development to proceed but only when required improvements are in-place.
Neighborhoods should be protected from traffic impacts of non-residential development.	Traffic studies will be required for development proposals based on the type of land use and potential trip generation. Conditional uses and community service overlay uses will trigger a traffic study when trip generation exceeds 200 trips per day.  In addition, projects that create more than 25 daily through-trips in a neighborhood requires a study of neighborhood impacts.
Can cumulative impacts of traffic be managed?	The traffic impact study and adequate facility requirements improve the city's ability to manage traffic by ensuring needed improvements are provided. The regulations however do not limit the potential for new vehicle trips related to regional traffic and changes in demographic and socio-economic patterns .

## 2. Stakeholder Comments

On June 29, 2001 an information packet was distributed to key stakeholders in the communities including Neighborhood District Association officers, certain property owners, managers, and business operators<sup>2</sup>, North Clackamas School District; Clackamas County Development and Transportation; Clackamas Education Service District; Providence Hospital; Milwaukie Downtown Development Association, and Northwest Housing Associates.

See below for a summary of concerns and comments that were discussed with the Planning Commission at its August 14, 2001 public hearing:

*Mark Whitlow, Esq., Perkins Coie*

Mr. Whitlow has suggested that the City consider adopting regulations that would allow transportation system fees to be credited when a developer makes substantial improvements in excess of their proportional share of traffic impacts.

<sup>2</sup> John Murphy, The Murphy Company (Murphy Plywood); Gene Dieringer, Dieringer Properties, Inc, (owner of King Road shopping center); Robert Gant (Real Estate Professional); Andrew Franklin, ODS; Dave Hamilton, Norris & Stevens (Real Estate Professional)

It is possible that improvements beyond what the developer alone may be responsible will be needed due to existing deficiencies in order to comply with adequate public facility requirements. In such cases the developer may elect to construct the needed improvements. Under the present regulations, the developer would be required to pay a transportation system development charge in addition to paying for construction of transportation improvements. The suggested system development charge credit would allow the developer to recover a portion of these costs.

At its August 14, 2001 public hearing, the Planning Commission considered the matter and recommended that the City Council direct staff to investigate new transferable system development charge credits. Staff will be scheduling a work session with the Council in the near future for direction on this matter.

*Dave Hamilton, Norris & Stevens*

Mr. Hamilton has expressed concern about the method used to determine whether a development proposal is subject to the Type I process or the Type II process. Projects with comparatively low square footage are able to spend more per square foot than larger projects without the burden of the Type II application. There is concern that the process creates unequal treatment of development proposals based on value of construction cost.

Mr. Hamilton's concerns were addressed with the Planning Commission. They have been resolved to satisfaction by increasing the threshold for Type II permit process to \$200,000 and by applying an annual increase to account for inflation.

**3. Compliance with Approval Criteria**

Staff believes the proposed amendments are consistent with approval criteria for changes to the Comprehensive Plan and Zoning Ordinance.

**4. Proposed Fee for Review of Transportation Impact Studies**

Staff has proposed that the fee for the review of impact studies be based on the actual cost to the city. A \$1,000.00 deposit will be paid at the time an application is submitted when an impact study is required. Actual hours will be billed against the deposit. A refund will be provided when actual cost is less than the deposit. Additional fees will be charged when the actual cost of review exceeds the deposit.

**III. CONCURRENCE**

The affected city departments, (Planning, Public Works, and Neighborhood Services) and the City Attorney staffed the project's technical advisory committee. All are in agreement with the proposed ordinances.

On August 14, 2001, the Planning Commission adopted a resolution recommending the City Council adopt the proposed regulations. The Commission questioned whether the proposed definition of “substantial redevelopment” (See Attachment B, Exhibit 2) applied to the site, individual buildings, or all buildings on-site. Staff clarified that it applies to all improvements on a site that are assessed for tax purposes. Changes were made to the code for clarification.

In addition, the Commission questioned if consideration was given to saving trees when reviewing street improvement proposals. Section 19.1404.C authorizes the City Engineer to grant adjustments to design standards for the purpose of protecting significant features in the right-of-way including trees. (See Attachment B, Exhibit 2)

#### **IV. FISCAL IMPACT**

Fiscal impacts may result from the following, but will be recovered through the proposed review fee:

- a. The cost of staff review of traffic impact studies submitted for development review, and/or
- b. The cost of hiring a traffic consultant to review a developer's traffic study on behalf of the city when workload or technical demands warrant external review.

#### **V. WORK LOAD IMPACTS**

Staff workloads are likely to increase due to the following:

- a. Identification of potential traffic impacts and review of “threshold scoring” for determining when a traffic study is required during the pre-application process; and
- b. Review of traffic studies during the development review process.

Workload impacts are difficult to predict and will vary based on the type and location of development applications and the number received.

#### **VI. ATTACHMENTS**

- A. Proposed Findings in Support of Approval
- B. Proposed ordinance amending the Zoning and Subdivision Ordinances
- C. Proposed ordinance amending the Comprehensive Plan
- D. Fee Resolution for Transportation Impact Study Review
- E. Resolution adopting the Transportation Design Manual

# ATTACHMENT A

## Proposed Findings in Support of Approval Transportation System Plan Implementation

*(Milwaukie Planning Department Files ZA-01-02 & CPA-01-02)*

1. The City desires to adopt Comprehensive Plan and code amendments that implement the Transportation System Plan consistent with the State Transportation Plan Rule and Regional Transportation Plan.
2. Applications CPA-01-02 and ZA-01-02 accomplish this goal.
3. Required legal and public notices have been provided in accordance with Milwaukie Municipal Code Chapter 19.900 and the Oregon Revised Statutes.
4. The proposed amendments are consistent with Milwaukie Municipal Code Chapter 19.905-Approval Criteria for All Amendments and Comprehensive Plan Chapter 2-Plan Review and Amendment Process.

# ATTACHMENT B

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS RELATED TO IMPLEMENTING THE CITY TRANSPORTATION SYSTEM PLAN AND DECLARING AN EMERGENCY AS TO THE ADOPTION OF THE NEW MUNICIPAL CODE SECTION 19.1402.B.**

*(Milwaukie Planning Department Application ZA-01-02)*

**WHEREAS**, on July 15, 1997, the City Council revised the City Comprehensive Plan by adoption of the Milwaukie Transportation System Plan, and

**WHEREAS**, the Milwaukie Transportation System Plan specifies policies for the safe, convenient, and orderly development of city street, pedestrian, and bicycle networks and improvements, and

**WHEREAS**, the Oregon Revised Statutes require municipalities to enact land use regulations to enact their comprehensive plans, and

**WHEREAS**, the City received a state grant to develop regulations to implement the Transportation System Plan, and

**WHEREAS**, on August 14, 2001, after a public information and involvement process, the Planning Commission held a public hearing on the proposed revisions to the Comprehensive Plan and Zoning and Subdivision Ordinances and adopted a motion recommending the City Council approve the proposed amendments, and

**WHEREAS**, all required referrals and public notices of public hearings on the proposed amendments have been made in accordance with applicable law, and

**WHEREAS**, the Milwaukie City Council held a public hearing on September 18, 2001,

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

**Section 1.** The proposed amendments to Milwaukie Municipal Code Chapter 12.08 as described in Exhibit 1 are found to be in the public interest and are hereby adopted and incorporated.

**Section 2.** Findings of fact in support of these amendments contained in Exhibit 4 are hereby adopted and incorporated.

- a. The proposed amendments to the Zoning Ordinance contained in Exhibit 2 are consistent with Milwaukie Zoning Ordinance Section 19.905-Approval criteria for All Amendments as shown in Exhibit 4.
- b. The proposed amendments to the Subdivision Ordinance contained in Exhibit 3 are consistent with Milwaukie Zoning Ordinance Section 19.905-Approval Criteria for All Amendments as shown in Exhibit 4.

**Section 3.** The following sections of Milwaukie Municipal Code Title 19-Zoning Ordinance are repealed:

(Items a. through s. below are repealed and replaced by provisions of Title 19-Zoning Ordinance, Chapter 19.1400-Transportation Planning, Design Standards, and Procedures adopted herein.)

- a. *19.301.3.E, R-10 Residential Zone, yard abutting a major street.*
- b. *19.302.3.E, R-7 Residential Zone, yard abutting a major street.*
- c. *19.303.3.E, R-5 Residential Zone, yard abutting a major street.*
- d. *19.304.3.E, R-3 Residential Zone, yard abutting a major street.*
- e. *19.306.3.E, R-2 Residential Zone, yard abutting a major street.*
- f. *19.307.3.E, R-1-B Residential Zone, yard abutting a major street.*
- g. *19.308.3.E, R-1 Residential Zone, yard abutting a major street.*
- h. *19.309.3.E, R-O-C Residential Office Commercial Zone, yard abutting a major street.*
- i. *19.310.3.E, C-N, Commercial, Neighborhood Zone, yard abutting a major street.*
- j. *19.311.3.E, Commercial, Limited Zone, yard abutting a major street.*
- k. *19.313.3.E, Commercial, General Zone, yard abutting a major street.*

- l. 19.319.14.1.F, Manufacturing Zone, sidewalks and transit facilities.*
- m. 19.315.3.B, Commercial, Community Shopping Zone, application procedures and notice requirements.*
- n. 19.318.8.A.21, Mixed Use Overlay Zone, bicycle and pedestrian connections.*
- o. 19.311.9.C, Community Service Overlay Zone, public facility requirements.*
- p. 19.314.3.E, Business Industrial Zone, yard abutting a major street.*
- q. 411.1.C, Supplementary Regulations, additional setbacks along major streets.*
- r. 423, Supplementary Regulations, closed end street systems prohibited.*
- s. 19.312.17, Natural Resource Overlay Zone, dedication of trails.*

**Section 4.** The following sections of Milwaukie Municipal Code Title 17-Subdivision Ordinance are repealed:

(Items a. through f. below are repealed and replaced by provisions of Title 19-Zoning Ordinance, Chapter 19.1400-Transportation Planning, Design Standards, and Procedures adopted herein.)

- a. 17.16.070.B, Supplemental information, pedestrian ways.*
- b. Table 17.28.020, Transportation Improvement Standards.*
- c. 17.28.020.B through 17.28.020.P, Design Standards.*
- d. 17.28.030, Design Standards, Blocks.*
- e. 17.28.040, Design Standards, closed end street systems.*
- f. 17.28.050.C, Design Standards, pedestrian ways.*
- g. 17.28.080, Design Standards, bicycle and pedestrian connectivity.*

**Section 5.** Milwaukie Municipal Code Chapter 12.08, Street and Sidewalk Excavation, Construction, and Repair is amended as described in Exhibit 1.

- Section 6.** Milwaukie Municipal Code Title 19, the Milwaukie Zoning Ordinance, is amended as described in Exhibit 2.
- Section 7** Milwaukie Municipal Code Title 17, the Milwaukie Subdivision Ordinance, is amended as described in Exhibit 3.
- Section 8.** All required changes to title, chapter, and section citations and references are automatically adopted.
- Section 9.** An emergency is declared to exist in that amendment to the Municipal Code adding a new Section 19.1402.B is necessary for the health, safety and general welfare of the people of the City of Milwaukie, therefore the amendment adding Section 19.1402.B shall take effect immediately upon passage. All other provisions of this ordinance shall be effective 30 days from the date of this ordinance.

Read for the first time on \_\_\_\_\_ and moved to a 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 &  
BACCRACH, LLP

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

## Exhibit 1

**Amendments to Milwaukie Municipal Code Chapter 12.08  
Street and Sidewalk Excavations, Construction, and Repair**

**Underlined text is to be inserted**

**Strikeout text is to be deleted**

**SECTION 12.08.020 CONSTRUCTION STANDARDS:**

A. Permit Required. No person shall commence or continue with any work in the right-of-way except as provided in this code and in compliance with ~~all~~ Title 19, the Milwaukie Transportation Design Manual, other applicable codes, rules and regulations, and design standards. As used in this chapter, "work" means any activity in the public rights-of-way resulting in physical change thereto, including the following:

1. excavation or placement of structures;
2. and any activity resulting in alteration of the surface of the right-of-way;
3. pavement overlays;
4. new traffic control and changes to existing traffic control;
5. drainage improvements;
6. new sidewalks and alterations to existing sidewalks;
7. new road construction;
8. alteration of street configuration or geometry;
9. new traffic calming structures and alterations to existing traffic calming devices; and/or
10. new bicycle lanes or bicycle accommodations and alterations to existing bicycle lanes or accommodations.

B. Preapplication Conference. A preapplication conference with the Civil Engineer, or designee, is required prior to submission of any application for work within public rights-of-way, except that the City Engineer may waive this requirement for small-scale projects.

B-C. Permit Applications. Applications for permits to perform work within city rights-of-way shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

1. That the work will be performed in accordance with all applicable codes, rules and regulations, specifically including city standard specifications and drawings;

2. That all issues identified in the preapplication conference have been resolved to the satisfaction of the Civil Engineer;

~~2.3.~~ That any proposed new or modified facilities will be constructed in accordance with any applicable franchise agreement;

~~3.4.~~ The location and route of all facilities to be installed aboveground or on existing utility poles;

~~4.5.~~ The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction;

~~5.6.~~ The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way; and

~~6.7.~~ The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

~~I-J.~~ Notice of Construction. All applicants for work in the right-of-way must notify the City Engineer at least 120 days prior to planned commencement of work. Once a permit has been issued and ~~E~~except in the case of an emergency, the permittee shall notify the city not less than two working days in advance of any excavation or construction in the public rights-of-way.

## Exhibit 2

**Amendments to Milwaukie Municipal Code**  
**Title 19—Zoning Ordinance**

Underlined text is to be inserted  
Strikeout ~~text~~ is to be deleted

**SECTION 19.103 DEFINITIONS:****New Definitions:**

"Neighborhood street" means a roadway that moves local traffic in and out from residential areas to arterials and collectors. Neighborhood streets are similar to local streets in design (with residential frontage), but carry more traffic and are commonly used by local residents. Neighborhood streets do not provide citywide circulation, but mainly serve an immediate neighborhood. Because their traffic levels are greater than local streets and potential for speeding can be higher, neighborhood traffic management techniques can be appropriate.

"Substantial redevelopment" means any renovation, expansion, or alteration of an existing building that has a development permit value that exceeds fifty percent of the real market value of site improvements as determined by the County Assessor. The development permit value includes all labor and material costs associated with the proposed construction. The Building Official shall determine the value of the development permit.

**SECTION 19.300 USE ZONES:****19.301.3, R-10 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

~~J. Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet except as provided in the subdivision ordinance. The lot for an interior single-family attached unit shall abut a public street for at least twenty feet.

L. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.302.3, R-7 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

V. 11e

J. ~~Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet, except as provided in the subdivision ordinance. The lot for an interior single family attached unit shall abut a public street for at least twenty feet.

L. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.303.3, R-5 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

K. ~~Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet, except as provided in the subdivision ordinance. The lots for interior single-family attached units shall abut a public street for at least twenty feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.304.3, R-3 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

J. ~~Access~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet, except as provided in the subdivision ordinance. Lots for interior single-family attached units will abut a public street for at least twenty feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.305.3, R-2.5 Residential, Standards:**

H. ~~Access:~~Frontage requirements: Every lot shall abut a public street for at least thirty-five feet; except as provided in the subdivision ordinance, and attached residential lots which shall abut a public street for at least twenty feet.

K. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.306.3, R-2 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

J. ~~Access~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet except as provided in the subdivision ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least twenty feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.307.3, R-1-B Residential-Business Office-Commercial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

J. ~~Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet except as provided in the subdivision ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least twenty feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.308.3, R-1 Residential, Standards:**

*(Note: See ordinance for sections that have been repealed)*

J. ~~Access~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet except as provided in the subdivision ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least twenty feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.309.3, R-O-C Residential-Office-Commercial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

K. ~~Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet except as provided in the subdivision ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least twenty feet.

N. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.310.3, C-N Neighborhood Commercial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

K. ~~Access requirement:~~Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet.

L. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.311.3, C-L Limited Commercial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

G. ~~Access: Entrances from a public street to properties in this zone shall be located to minimize traffic congestion and avoid directing traffic onto residential streets.~~Frontage requirements: Every lot shall abut a public street other than an

alley for at least thirty-five feet except as permitted under the subdivision ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least twenty feet.

L. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.313.3, C-G General Commercial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

~~G. Access: Entrances from a public street to properties in this zone shall be located to minimize traffic congestion and avoid directing traffic onto residential streets.~~  
Frontage requirements: Every lot shall abut a public street other than an alley for at least thirty-five feet.

M. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.314.1, M Manufacturing, Permitted uses are limited to industrial uses meeting the following criteria:**

*(Note: See ordinance for sections that have been repealed)*

**19.314.6, M Manufacturing, Site development requirements:**

G. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.315.3, C-CS Community Shopping Commercial, Procedure:**

**A. Application review; minimum requirements:**

5. Detailed traffic report, analyzing existing traffic, traffic generation, turning movements, and impact on adjacent streets. Report shall recommend roadway improvements needed to mitigate impacts as specified in Chapter 19.1400;

*(Note: See ordinance for sections that have been repealed)*

The application shall be reviewed under Minor Quasi-Judicial review procedures as provided in Section 19.1011.

**19.315.5, C-CS Community Shopping Commercial, Development standards:**

F. Transit. Reserve areas for transit facilities (bus turnout, shelter, benches, station, etc.) for the use of mass transit if requested by Tri-Met in their review of the project as specified in Chapter 19.1400.

J. Transportation requirements and standards: as specified in Chapter 19.1400.

**19.318.8, MU Mixed Use Overlay, Development standards (for):**

**A. Commercial and Commercial/Residential Mixed Use (Office Uses are Included in the Commercial Designation):**

*(Note: See ordinance for sections that have been repealed)*

21. Bicycle and pedestrian routes and facilities shall be provided consistent with the requirements and standards of Chapter 19.1400.

**19.321.4, CSO Community Service Overlay, Authority to grant or deny a community service use:**

A. An application for a community service use may be allowed if:

1. The requirements of the underlying zone are met;

2. Specific standards for the uses found in subsections 19.321.7--19.321.10 are met; and

3. The hours and levels of operation of the proposed use can be adjusted to be reasonably compatible with surrounding uses. ~~For solid waste facilities, this shall mean:~~

~~a. Hours of Operation. If a solid waste facility is to be located within five hundred feet of property planned, zoned, or used for residential purposes, no solid waste facility shall be in operation between the hours of seven p.m. and seven a.m.~~

~~b. Traffic. No solid waste facility shall be approved except where all vehicular access to and from the solid waste facility site is via a city designated arterial street or Oregon Department of Transportation highway. No solid waste facility shall be approved where the level of service at the nearest arterial intersection that would serve the facility is below a level of service "C" (higher than a volume/capacity ratio of .8), as defined by the Highway Capacity Manual, Special Report 209, Transportation Research Board, 1985. Further, no solid waste facility shall be approved where the design capacity of the adjacent roadway is exceeded by existing or future traffic.~~

~~c. Litter Control. The applicant shall provide to the city at the time of application a plan for daily litter control. Said plan shall include identification of personnel, financing, available tools and facilities, methods to be used, and a method for public contact to notify operators of litter, noise or other operational problems.~~

~~d. Noise. Noise levels shall comply with Chapter 8.08 (Noise Control) of the Milwaukie Municipal Code.~~

~~e. Storage. All materials shall be stored within an enclosed building except as follows: (1) where all materials are stored within an area enclosed by a solid, opaque wall or fence eight feet or more in height and landscaped along all street frontages, and, (2) when located at least two hundred fifty feet from property~~

~~planned, zoned, or used as residential, and, (3) where all materials are nonputrescible.~~

~~f. After Hours Use. Any containers provided for after hours donation of recyclable materials only shall be located at least two hundred fifty feet from any property planned, zoned, or used for residential purposes.~~

~~g. Glare. Exterior light shall be in accordance with the latest recommendations of the Illumination Engineering Society. Glare from either direct or indirect sources shall not exceed 0.5 footcandles. Site lighting shall be hooded and directed downwards, onto the site.~~

~~h. Materials Handled. No hazardous wastes, as defined and regulated by ORS 466.005 as amended, shall be disposed on the site.~~

**19.321.7, CSO Community Service Overlay, Specific standards for schools:**

C. Walkways, both on and off the site, ~~will~~shall be provided as necessary for safe pedestrian access to schools subject to the requirements and standards of Chapter 19.1400.

**19.321.9, CSO Community Service Overlay, Specific standards for churches, convents, and related facilities:**

*(Note: See ordinance for sections that have been repealed)*

**19.321.11, CSO Community Service Overlay, Specific standards for solid waste facilities (new):**

**19.321.11. Specific standards for solid waste facilities.**

A. Hours of operation.

If a solid waste facility is to be located within 500 feet of property planned, zoned, or used for residential purposes, no solid waste facility shall be in operation between the hours of 7:00 p.m. and 7:00 a.m.

B. Traffic.

No solid waste facility shall be approved except where all vehicular access to and from the solid waste facility site is via a City of Milwaukie designated arterial street or Oregon Department of Transportation highway. No solid waste facility shall be approved unless consistent with the Level of Service standards of Chapter 19.1400.

C. Litter control.

The applicant shall provide to the City of Milwaukie at the time of application a plan for daily litter control. Said plan shall include identification of personnel, financing, available tools and facilities, methods to be used, and a method for public contact to notify operators of litter, noise, or other operational problems.

D. Noise.

Noise levels shall comply with Chapter 8.08 (Noise Control) of the Milwaukie Municipal Code.

E. Storage.

All materials shall be stored within an enclosed building except as follows:

1. where all materials are stored within an area enclosed by a solid, opaque wall or fence 8 feet or more in height and landscaped along all street frontages, and,

2. when located at least 250 feet from property planned, zoned, or used as residential, and,

3. where all materials are nonputrescible.

F. After-hours use.

Any containers provided for after-hours donation of recyclable materials only shall be located at least 250 feet from any property planned, zoned, or used for residential purposes.

G. Glare.

Exterior light shall be in accordance with the latest recommendations of the Illumination Engineering Society. Glare from either direct or indirect sources shall not exceed 0.5 footcandles. Site lighting shall be hooded and directed downwards, onto the site.

H. Materials handled.

No hazardous wastes, as defined and regulated by Oregon Revised Statutes 466.005 as amended, shall be disposed on the site.

**19.322, NR Natural Resource Overlay:**

*(Reorder subsections to reflect repealed subsection.)*

**~~19.322.18~~ 19.322.17 Coordination Among Regulatory Agencies.**

**19.324.6, BI Business Industrial, Standards:**

*(Note: See ordinance for sections that have been repealed)*

**K. Building Siting and Design. Buildings and sites shall be designed using the following principles:**

7. Provisions for bus shelters, bike racks, street furniture, kiosks, drinking fountains, art sculptures, and/or other pedestrian and transit amenities should be considered as required by Chapter 19.1400.

**SECTION 19.400 SUPPLEMENTARY REGULATIONS:**

**Section 19.401 Accessory uses, general provisions:**

**19.401.1 Limitations.** Accessory uses shall comply with all requirements for the principal use except where specifically modified by this chapter and shall comply with the following limitations:

A. Fences, walls, and plantings may be constructed or maintained in yards with the following limitations:

Fences, walls, or plantings shall be constructed or maintained in yards only so as to permit unobstructed vision of passenger vehicle operations when approaching intersecting streets or driveways. Fence, wall, and planting standards to maintain unobstructed vehicle vision are to be provided by city public works as part of the clear vision determination process specified ~~within the municipal code in~~ Chapter 19.1400. Fences and walls on lot perimeters in areas other than those obstructing the vision of passenger vehicle operators shall be constructed or maintained to the following standards:

**Section 19.404 Clear vision areas:**

A clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad according to the provisions of ~~the clear vision ordinance~~ Chapter 19.1400.

**Section 19.411.1, Yard requirements, general exceptions, Exceptions:**

*(Note: See ordinance for sections that have been repealed)*

**Section 19.423 Closed-end street systems prohibited:**

*(Note: See ordinance for sections that have been repealed)*

**SECTION 19.500 OFF-STREET PARKING AND LOADING:**

**Section 19.503.12, Off-street parking standards, Curb Cuts:**

Curb cuts to parking areas shall be the minimum number necessary to provide access while not inhibiting the safe circulation and carrying capacity of the street. Curb cuts shall comply with the access spacing standards of Chapter 19.1400.

**Section 19.505.1, Bicycle parking, Applicability:**

Bicycle parking shall be provided for all new commercial, business industrial (BI), community service (CSO), and multifamily development, except for temporary and seasonal uses (e.g., fireworks and Christmas tree stands) and storage units. Bicycle parking shall be provided in the downtown zones and at transit centers.

**Section 19.505.2, Bicycle parking, Number of Spaces:**

The number of bicycle parking spaces shall be at least ten percent of the required automobile parking for the use. In no case shall less than two spaces be provided. The number of bicycle parking spaces at transit centers shall be provided at the ratio of 1 space per 100 daily boardings.

**Section 19.505.5, Bicycle parking, Covered or enclosed bicycle parking**

Covered or enclosed bicycle parking shall be provided when ten percent or more of automobile parking is covered. If more than ten bicycle parking spaces are required, then a minimum of fifty percent of the bicycle spaces shall be covered and/or enclosed (lockers).

**SECTION 19.600 CONDITIONAL USES:****Section 19.601.2, Authorization to grant or deny conditional uses, Applicant's responsibilities Review criteria**

~~At the public hearing the applicant~~ Applicants for conditional use shall provide evidence that all requirements of this title relative to the proposed use are satisfied, and demonstrate that the proposed use also satisfies the following criteria:

F. The proposed use complies with the transportation requirements and standards of Chapter 19.1400.

**Section 19.602.7, Standards governing conditional uses, Single-Family Attached Dwellings:**

In considering a conditional use application for single-family attached dwellings, the planning commission shall consider the following:

~~D. Terrain of the site. The project shall not cause traffic to move through the adjoining lower density areas.~~

**Section 19.602.8, Standards governing conditional uses, Multifamily Condominium and Apartment Dwellings:**

~~The project shall not cause traffic to move through adjoining lower density areas.~~

**SECTION 19.900 AMENDMENTS:**

**Section 19.905.1, Approval criteria for all amendments, For all proposals, the applicant shall have the burden of proof regarding the following criteria:**

E. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.1400.

**SECTION 19.1000 ADMINISTRATIVE PROVISIONS:**

**Section 19.1011.2, Procedures, Type II Administrative Review:**

A. Public notification. Within fifteen days of the receipt of an application, the director will mail a notice of tentative decision. This notice shall contain a description of the request and shall describe the tentative decision made by the director, including findings and conclusions based on the applicable criteria. It will specify the deadline for submission to request a public hearing and provide for potentially affected persons to communicate concerns to the director, who will take them into account in reaching a final decision on the application. The notice shall be mailed to the owner, applicant, and all property owners within ~~one hundred fifty~~300 feet of the outer boundaries of the site. The names and addresses used for this purpose shall be those shown on the current records of the county assessor. At least fourteen days shall be given from the date of the notice to state objections or request a public hearing. The notice shall also contain a listing of the applicable criteria upon which the decision was based.

**Section 19.1011.3, Procedures, Minor Quasi-Judicial Review:**

B. Public Notification. Notice shall be mailed to the property owner and applicant, if different, and to all property owners within ~~two hundred fifty~~300 feet of the outer boundaries of the site, not less than twenty days prior to the date of the hearing. In addition, a sign that is legible from the closest street, indicating the date of the public hearing, shall be posted on the subject property not less than ten days prior to the date of the hearing.

C. Notice for Community Service Overlay Uses and Community Scale Shopping Center Use. Notice for development of community service uses shall be mailed to the applicant, property owner, and all property owners within ~~two hundred fifty~~300 feet of the outer boundaries of the site. The names and addresses for this purpose shall be those shown on the current records of the county assessor. In addition, a sign that is legible from the closest street, indicating the date of the public hearing, shall be posted on the subject property not less than ten days prior to the date of the hearing. Notice of a hearing shall be published once each week for two consecutive weeks in a newspaper of general circulation in the city, of which the second publication shall be not less than five days prior to the date of the hearing.

**CHAPTER 19.1400 TRANSPORTATION PLANNING, DESIGN STANDARDS, AND PROCEDURES:**

*(Note: See ordinance for sections that have been repealed)*

**19.1401 Purposes.**

The purposes of this Chapter include the following:

A. Provide standards and procedures to implement provisions of the State Transportation Planning Rule (OAR 660, Division 12) and local, regional and state transportation system plans.

B. Implement performance measures to protect the functional classification, capacity and level of service of transportation facilities.

C. Assure that new development provides transportation improvements in rough proportion to identified impacts of the development.

D. Assure that transportation improvements are designed and connected to accommodate multiple modes of travel, including pedestrian, bicycle, transit and auto.

**19.1402 Administration.**

A. The Planning Director shall administer provisions of this chapter that apply to property excluding public rights-of-way. The City Engineer shall administer provisions that apply to public rights-of-way.

B. The City Engineer shall prepare and administer a Transportation Design Manual including the following subject to any limitations of this Code:

1. Design standards for transportation facilities located in public rights-of-way.

2. Policies, programs, or procedures related to neighborhood traffic management, school trip safety, capital improvements planning, and system development charges.

3. Traffic impact analysis methods, procedures, and submission requirements that implement Section 19.1408-Transportation Impact Analysis.

4. Facility maintenance policies and procedures.

5. Other provisions or requirements as needed or desired to manage the City's transportation system and its components.

The manual shall be adopted by resolution of the City Council and may be revised only by Council resolution.

C. Provisions of this Chapter shall be coordinated with Title 12-Street, Sidewalks, and Public Places; Chapter 15.32-Public Facilities Improvements; Chapter 15.36 Public Works Standards; Chapter 13.28-Capital Improvements; and Chapter 13.30 Reimbursement Districts. Any conflict between this Chapter and another shall be resolved by administrative determination of the City Engineer and Planning Director as applicable.

D. The City shall implement a system to collect and administer fees collected in lieu of constructing improvements required under provisions of this Title.

**19.1403 Applicability.**

Chapter 19.1400 is applicable to the following general categories of development, except as limited by Section 19.1403.1:

- A. New construction, including residential, commercial, industrial, or other.
- B. Creation of new lots by partition, subdivision, and planned development.
- C. Substantial redevelopment (as defined in Section 19.103 of this Ordinance) of multifamily, commercial, industrial, and institutional uses.
- D. The following are subject to transportation impact analysis requirements of Section 19.1408 when the action increases development potential:
  - 1. Proposed changes to Comprehensive Plan or Land Use Map.
  - 2. Proposed changes to Milwaukie Municipal Code Title 19 or zoning map.

**19.1403.1 Limitations.**

A. Development of a detached or attached single-family dwelling on an existing lot.

The only provisions of Chapter 19.1400 that apply to single-family residential development on existing lots are:

- 1. Section 19.1407.2 Adequacy Requirement (excluding Level of Service standards);
  - 2. Section 19.1409.1.B, Required frontage;
  - 3. Table 19.1409.3, Additional Setbacks in Major Streets;
  - 4. Section 19.1409.2.B, Right-of-way dedication;
  - 5. Section 19.1409.2.E., Vision clearance;
  - 6. Section 19.1410.2, Public sidewalks; and
  - 7. Section 19.1413, Access management.
- B. Development in the Downtown Zones.

Specific design standards and public area requirements have been adopted for the Downtown Zones; therefore, only the following provisions of Section 19.1400 shall apply in the Downtown Zones:

- 1. Section 19.1405.4, Notice and coordinated review.
- 2. Section 19.1408, Transportation impact analysis.
- 3. Section 19.1413, Access management.

C. New construction or substantial redevelopment, as defined in Section 19.103, is exempt from Section 19.1408.2 Adequacy Requirements, when the estimated value of the construction improvements is less than \$200,000, and when a transportation impact study is not required. The \$200,000 value

threshold shall be increased 3 percent annually to account for inflation of material and labor costs, commencing 12:00 a.m. October 18, 2001, and thereafter.

#### **19.1404 Exception, Adjustment, or Variance.**

##### **A. Intent.**

The criteria in this chapter reflect the need for flexibility in the application of transportation requirements and design standards to respond to unique site characteristics or hardship situations. Criteria are provided for different categories of exceptions and adjustments.

##### **B. Review Process.**

All requests for adjustments and exceptions shall be processed in accordance with 19.1011.2-Type II-Administrative Review procedures concurrent with the application for land use approval.

##### **C. Adjustments.**

The transportation facility design standards of Chapter 19.1400 and the Transportation Design Manual may be adjusted in accordance with Table 19.1409.3 and the criteria listed below. Transportation facility design standards apply only to improvements located within public rights-of-way. An adjustment to a design standard may be granted when the City Engineer finds it is consistent with the following, based upon professional judgement and accepted engineering practices:

1. In all cases the adjustment is consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan;

2. The adjustment serves to protect significant features such as but not limited to trees, historic or other valued buildings, water resources, and the like where means to ensure continued protection of the resource are secured;

3. Strict compliance with the design standard will result in a potentially hazardous condition;

4. Strict compliance is deemed infeasible due to engineering limitations including connectivity to adjoining transportation and stormwater facilities; and/or

5. Existing transportation facilities that serve the site are adequately sized and are in usable and safe condition but do not meet a dimensional standard.

Cost of required improvements shall not be a basis for granting an adjustment.

##### **D. Exceptions.**

The City Engineer may waive compliance with transportation facility design standards for improvements located in the right-of-way in the following cases:

1. An approved and funded capital improvement project that benefits the site is scheduled for construction within three years of the land use approval;

2. The developer pays to the City a fee in lieu of construction costs for required site improvements and there will be no safety hazards as determined by the City Engineer; and/or

3. A local improvement district, which includes the development site, has been approved.

E. Variances.

Requests for relief from any provision of this chapter or the roadway design manual that cannot be modified under 19.1404.C or 19.1404.D shall be reviewed under provisions of Chapter 19.700-Variance, Exceptions, and Home Improvements.

**19.1405 Development Review Process.**

The review procedure used to confirm compliance with Chapter 19.1400 varies depending on the review procedure applicable to the proposed development.

**19.1405.1 Type I Application Review.**

Type I review procedures are set forth in Section 19.1011.1. Type I review is used to check compliance with applicable provisions of Chapter 19.1400 for the following, unless a concurrent application will require Minor or Major Quasi-Judicial review, in which case the application will be processed under Sections 19.1011.3 and 19.1011.4 respectively:

A. Development of a new detached or attached single-family dwelling on an existing lot;

B. New construction or substantial redevelopment, as defined in Section 19.103, when the estimated value of the construction improvements is less than \$200,000; and a transportation impact analysis is not required by Section 19.1408;

C. New construction or substantial redevelopment, as defined in Section 19.103, when the estimated value of the construction improvements exceed \$200,000; and as follows:

1. frontage improvements that meet the design standards of Chapter 19.1400 are in place or will be provided prior to occupancy; and

2. a transportation impact study is not required pursuant to Section 19.1408.

**19.1405.2 Type II Review.**

Type II review procedures are set forth in Section 19.1011.2. Type II application review process shall be used to confirm compliance with Chapter 19.1400, unless a concurrent application will require Minor or Major Quasi-

Judicial review, in which case the application will be processed under Sections 19.1011.3 or 19.1011.4 as applicable.

A. Type II review is required in the following situations:

1. When a transportation impact analysis is required by Section 19.1405; or
2. When an adjustment or exception to a transportation facility design standard of Chapter 19.1400 or the Transportation Design Manual is requested.

### **19.1405.3 Minor or Major Quasi-Judicial Review.**

Review procedures for Minor and Major Quasi-Judicial Review are set forth in Sections 19.1011.3 and 19.1011.4, respectively. A separate application and fee is required for the Chapter 19.1400 compliance review; however, the application will be consolidated and reviewed concurrent with the Minor or Major Quasi-Judicial Review.

### **19.1405.4 Notice and Coordinated Review.**

A. Specific notice requirements. In addition to the general notice provisions set forth in Chapter 19.1100, the City shall provide notice of applications submitted for Chapter 19.1400 review as outlined below:

1. Notice to the Oregon Department of Transportation (ODOT) if the proposed development generates more than 200 vehicle trips per day, is within 200 feet of a State highway, or is within 1,320 feet of a State highway interchange ramp.

2. Notice to Metro and Clackamas County if the proposed development is within 200 feet of a designated arterial or collector roadway, as identified in Figure 6.1 of the Milwaukie Comprehensive Plan.

3. Notice to Metro if the proposed development is within 200 feet of a designated regional multiuse trail, as identified in the Regional Transportation Plan.

4. Notice to Tri-Met if the proposed development (excluding single family development on an existing lot) is within 200 feet of an existing transit route.

B. Maps of areas subject to notice. The Transportation Design Manual includes maps that outline the areas subject to the specific notice requirements described above.

C. Coordinated review. The City shall coordinate the development application review and conditions with the agencies listed above. If there is a deadline for agency submittal of comments and suggested conditions, it shall be included in the original notice provided by the City. The agency shall indicate if additional permits or approvals are required for access or transportation improvements separate from the City of Milwaukie requirements.

### **19.1405.5 Approval Criteria.**

Criteria for decisions under Chapter 19.1400 are as follows:

A. The proposed development and related transportation improvements comply with procedures, requirements, and standards of Chapter 19.1400 and the Transportation Design Manual unless an exception or adjustment has been granted in accordance with Section 19.1404 or a variance has been granted in accordance with Chapter 19.700.

B. If a transportation impact analysis is required, the findings of the analysis ensure that the development will provide transportation improvements and mitigation in rough proportion to the identified impacts of the development.

C. All required improvements identified under city review of a transportation impact analysis shall be provided or otherwise accommodated in accordance with Section 19.1407.4-Mitigation.

D. The proposed development will not result in hazardous or unsafe transportation conditions or unacceptable level of service impacts that cannot be mitigated.

**19.1406 Neighborhood Through-trip Study.**

Any non-residential development adding more than 25 through vehicles per day to an adjacent residential local street will require assessment and mitigation of local street impacts. Through trips are defined as those to and from a development that have neither an origin nor a destination in the neighborhood. The through-trip study shall include the following:

A. An estimate of the number of through trips per day on adjacent residential streets created by the development and the existing counts for the same streets.

B. Traffic management strategies shall be identified to mitigate the impacts of increased through trips attributed to new development consistent with Section 19.1408.3-Rough Proportionality and 19.1408.4-Mitigation.

This provision shall be implemented independent of Section 19.1408 when the development proposal does not require a transportation impact study in accordance with 19.1408.2.B-Threshold Scoring. If a transportation impact analysis is required, the through-trip study shall be included in the transportation impact study.

**19.1407 Adequate Transportation Facility Requirement.**

**19.1407.1 Purpose.**

The purpose of this Chapter is to ensure that streets, sidewalks, and other transportation facility design elements are safe, convenient, and adequate to accommodate the impacts of new development or redevelopment consistent with the State Transportation Plan Rule and the Milwaukie Comprehensive Plan, Transportation System Plan, and Capital Improvement Plan.

**19.1407.2 Adequacy Requirement.**

Rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities shall be adequate at the time of development or shall be made adequate in a timely manner for all development projects subject to review under Chapter 19.1400. This provision applies to transportation facilities located in the public right-of-way abutting the development site.

The provision may also apply to transportation facilities located in rights-of-way that do not abut the site when a transportation impact analysis conducted under Section 19.1408 demonstrates that affected facilities are insufficient to accommodate the impacts of the proposed development. In such cases transportation improvements are required in rough proportion to the impacts created by the development in accordance with Section 19.1408.

**19.1407.3 Definition of Necessary Improvements.**

As used in 19.1407.2, "necessary improvements" are:

A. Improvements identified as necessary in a transportation impact analysis to comply with the adequate public facility requirement; and/or

B. Improvements otherwise identified as necessary for compliance with 19.1407.4.B.

**19.1407.4 Definition of Adequacy.**

As used in 19.1407.2, "adequate" means the following:

A. Compliance with Level of Service D for all intersections, except those on Oregon Highway 99E, which shall be subject to the following:

1. Level of Service F for the first hour of the morning or evening two-hour peak period; and

2. Level of Service E for the second hour of the morning or evening two-hour peak period; and

B. Compliance with the design standards specified in Chapter 19.1400 and the Transportation Design Manual, including but not limited to the following:

1. Right-of-way width;

2. Functional classification cross section;

3. Transportation facility design standards;

4. Pedestrian, bicycle and transit standards; and

5. Access management standards.

**19.1407.5 Determination of Level of Services.**

Level of Service is determined by using the latest edition of the Highway Capacity Manual (Transportation Research Board). Comparable measures of

performance, including volume to capacity analysis, may be substituted for Level of Service analysis, as outlined in the Transportation Design Manual.

**19.1407.6 Definition of Timely.**

As used in 19.1407.2, "timely" means the following:

A. Necessary transportation improvements will be constructed by the developer or through another mechanism, such as a local improvement district. Necessary improvements shall be completed, or the developer shall provide the City with a deposit, letter of credit, performance bond or other surety satisfactory to staff, prior to:

1. Final city inspections for occupancy approval; and/or
2. Recording of the plat in the case of a subdivision or partition; and/or

B. Necessary transportation improvements are included in the Milwaukie Capital Improvement Plan, are fully funded and are scheduled to be under construction within three years of the date the land use approval is issued.

**19.1408 Transportation Impact Analysis.**

**19.1408.1 Intent.**

A transportation impact analysis documents the expected impacts of a proposed development on the surrounding transportation system and the adequacy of the transportation system to serve the proposed development. The TIA provides a consistent framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts. Frontage improvements are a development requirement and shall not be considered mitigation of transportation impacts.

**19.1408.2 Applicability.**

A. All projects that require development review under Chapter 19.1400 shall schedule a pre-application conference with the Planning Director and City Engineer or designees prior to submittal of the land use application.

B. Based on the information provided by the applicant, the City will determine whether a transportation impact analysis is required under the "threshold scoring" method described in the Transportation Design Manual.

C. The City may also require a pre-application conference and transportation impact analysis for quasi-judicial plan amendment, zone change and conditional use permit applications.

D. The determination of whether a transportation impact analysis is required is not a land use action and may not be appealed.

E. If it is determined that a transportation impact analysis is required, the City shall specify the required content and impact area of the project, consistent with the guidelines in the Transportation Design Manual.

F. The applicant shall pay to the City the costs of transportation impact study review in accordance with the fee resolution adopted by the City Council.

G. If the application requires specific notice to ODOT or Clackamas County under the provisions of 19.1405.4, the City will request agency input to establish a coordinated scope for the transportation impact analysis.

H. The transportation impact analysis shall be submitted with the application materials for land use approval. Failure to submit the transportation impact analysis shall be grounds for deeming the application incomplete pursuant to Section 19.1004 and Oregon Revised Statutes 227.178.

I. The decision-making authority may apply conditions to land use decisions as needed to satisfy adequate transportation facility requirements of Section 19.1408 or otherwise mitigate transportation impacts described in the transportation impact analysis.

#### **19.1408.3 Rough Proportionality.**

A. Mitigation of impacts due to increased demand for transportation facilities associated with the development proposal shall be provided in rough proportion to the transportation impacts of the development. These impacts shall be identified by the transportation impact analysis conducted under Section 19.1408.2.

B. The applicant shall bear the burden of demonstrating proportionate impacts to motor vehicle, pedestrian, bicycle, and transit facilities related to the development proposal.

C. The estimation of rough proportionality does not require precision, though it shall be as precise as possible given available analytical methods. Accepted engineering methods shall be used when available and appropriate. Limitations of available engineering methods and practices do not preclude estimation of rough proportionality through other approaches. Professional judgement and reasoning may be used to describe proportional impacts in terms that allow identification of required mitigation. In identifying proportional impacts the following shall be considered:

1. Condition and capacity of existing facilities within the impact area in relation to city standards.

2. Existing vehicle, bicycle, pedestrian, and transit use within the impact area.

3. The effect of increased demand on transportation facilities related to the proposed development and any other approved development within the impact area.

4. Applicable Transportation System Plan/Comprehensive Plan policies and network action plans.

5. Whether any route affected by increased demand within the impact area is listed in any city program including School Trip Safety; Neighborhood Traffic Management; Capital Improvement; System Development Improvement, or others.

6. Accident history within the impact area.

7. Potential increased safety risks to transportation facility users, including pedestrians and cyclists.

8. Other considerations as may be specified in the development review process and communicated in writing by the City.

#### **19.1408.4 Mitigation.**

A. Mitigation of transportation impacts shall be provided by the applicant when there is an increase in demand for transportation facilities, including motor vehicle, pedestrian, bicycle, and/or transit trips within the impact area. Increase in demand is demonstrated through a transportation impact analysis conducted under this Chapter.

B. Mitigation options include, but are not limited to, the following:

1. On- and off-site improvements constructed by the developer (beyond required frontage improvements) can be considered as mitigation of transportation impacts.

2. Demand management programs may be used as mitigation when applied as conditions of land use approval.

3. Payment of in-lieu fee may be used to meet mitigation requirements where it is not practical to construct improvements due to cost or timing considerations. The in-lieu fee shall be commensurate with the cost of mitigation improvements. Such payments shall be reserved by the city for future transportation projects that serve the project impact area.

4. Correction of off-site transportation deficiencies within the impact area, not substantially related to the impacts of the project, may be credited toward mitigation requirements.

5. Construction of on-site facilities or facilities located within the right-of-way adjoining the project site that exceed minimum required standards and which have a public transportation benefit may be considered toward meeting mitigation requirements.

#### **19.1409 Street Requirements and Design Standards.**

##### **19.1409.1 General Provisions.**

A. Streets shall be designed and improved in accordance with the standards of this Chapter and the Transportation Design Manual.

B. Streets shall be designed in consideration of Chapter 5 of the Milwaukie Comprehensive Plan. Chapter 5, Figure 6.1 illustrates the Functional Classification of Streets; Figure 6.10 illustrates the Street Master Plan.

C. No development permit shall be issued unless it complies with the Adequate Transportation Facility Requirement set forth in Section 19.1408.

D. No development permit shall be issued unless the development has frontage or approved access to a public street. For lots that are legally nonconforming with regard to frontage, an access easement sufficient to accommodate required improvements will be required.

E. All transportation facilities shall be designed and improved in accordance with the standards of this Chapter and the Transportation Design Manual. ODOT facilities shall be designed consistent with state and federal standards.

F. Cross sections for street improvements by functional classification are included in the Transportation Design Manual.

G. Rights-of-way shall be provided in accordance with the widths shown in Table 19.1409.3 and may not be varied under provisions of this Chapter.

H. Transportation facility design standards shall be provided in accordance with the dimensions shown as "required" on Table 19.1409.3.

I. Under provisions of Section 19.1404-Adjustments and Exceptions, the City Engineer may authorize adjustments to transportation facility design standards not less than the "minimum allowed" dimensions in Table 19.1409.3.

### **19.1409.2 Street Functional Classification and Improvement Standards.**

A. Right-of-way and Improvements. Table 19.1409.3 specifies right-of-way widths and improvement standards by street functional classification. The Transportation Design Manual includes cross sections that illustrate the improvements (e.g., lanes, parking strip, sidewalk, etc.) associated with each functional classification and right-of-way width.

B. Dedication. All streets and necessary rights-of-way shall be dedicated to the public for street purposes in accordance with Table 19.1409.3 and Section 19.1407 Adequate Transportation Facility Requirements. Additional dedication may be required at intersections for improvements identified as needed by the Milwaukie Transportation System Plan or a transportation impact analysis conducted under Section 19.1408.

C. Improvements. No development shall occur unless the development has frontage or approved access to a public street.

1. Any new street or additional street width planned as a portion of an existing street shall be dedicated and improved in accordance with this Chapter.

2. New development shall be connected to the street network by a paved street.

3. Half-street improvements, as opposed to full-width street improvements, are generally not acceptable. However, half-street improvements may be approved where essential to reasonable development of the property and when the review authority finds that it will be possible to obtain the dedication and/or improvement of the remainder of the street when property on the other side of the half-street is developed. The minimum width for a half-street improvement shall be 20 feet.

4. To ensure adequate access to a development site, the review authority may require off-site street improvements concurrent with development if warranted by a Transportation Impact Analysis.

5. Where necessary to give access or permit future development of adjoining land, streets shall be extended to the boundary lines of the tract to be developed, and:

a. These street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through streets at such time as the adjoining property is developed.

b. A barricade and sign shall be constructed at the end of the street that shall not be removed until authorized by the City Engineer. The cost of the barricade and sign shall be included in the street construction cost.

c. Temporary hammerhead turnouts or temporary cul-de-sac bulbs shall be constructed for stub streets in excess of 150 feet in length.

d. In order to assure the eventual continuation or completion of the street, reserve strips may be required.

e. Drainage facilities shall be provided to properly manage storm water run-off from temporary dead-ends.

D. Traffic calming may be required in the design of a proposed street through the development review process or through the Neighborhood Traffic Management Program for existing streets. Traffic calming devices shall be designed to the standards in the Transportation Design Manual.

E. Vision Clearance. No signs, structures, or vegetation in excess of three feet in height shall be placed in "vision clearance areas" at intersections of streets, driveways, and alleys based on the guidelines in the most recent edition of the "AASHTO Policy on Geometric Design of Highways and Streets" (Green Book). The City Engineer may vary sight distance standards in the interest of preserving significant vegetation, or other valued features, where the variance will not cause undue safety hazards.

F. Additional Setbacks from Major Streets. Yards abutting a major street are subject to additional yard requirements. Yards shall be measured so that the minimum distance from the center line of the right-of-way to the closest point of a building shall be in accordance with Table 19.1409.2.

**19.1409.3 General Street Design Standards.**

A. General. The length, width and shape of blocks shall take into account the need for adequate lot size, convenient access, circulation and traffic safety, and shall recognize the limitations of the topography.

B. Street layout and connectivity. Street layouts shall be generally rectilinear and may be aligned to physically adapt streets to topography or other natural conditions; or to provide a variety of alignments or grid patterns within an interconnected street system.

C. Block length and perimeter.

For parcels of land to be subdivided with a total size of three acres or larger, no block may be more than 530 feet in length between intersecting street lines, unless it is adjacent to an arterial street, except where topography, barriers including railroads, freeways, existing development, or environmental constraints including but not limited to wetlands or water features warrant exception.

For sites to be subdivided with a total size of less than three acres, no block may be more than 800 feet in length between intersecting street lines, unless it is adjacent to an arterial street, except where topography, barriers including railroads, freeways, existing development, or environmental constraints including but not limited to wetlands or water features warrant exception.

The average perimeter of blocks formed by streets shall not exceed 1,600 feet.

For the purpose of this section, "existing development" means built improvements including streets, associated utilities, and permanent residential, commercial, or institutional structures. Modification of the block length and perimeter standards shall only be permitted under variance provisions of Zoning Ordinance Chapter 19.700.

D. Cul-de-sacs shall only be provided when no opportunity exists for creating a through street connection. The lack of present ownership or control over abutting property shall not be grounds for construction of a cul-de-sac. For parcels of land to be subdivided with a total size of three acres or larger, a street ending in a cul-de-sac shall have a maximum length of 200 feet, measured from the cross street right-of-way to the farthest point of right-of-way containing the cul-de-sac. For parcels of land to be subdivided with a total size of less than three acres, a street ending in a cul-de-sac shall have a maximum length of 400 feet, measured from the cross street right-of-way to the farthest point of right-of-way containing the cul-de-sac. A cross section for cul-de-sacs is provided in the Transportation Design Manual.

E. Pedestrian/bicycle accessways shall be required to provide mid-block connections between blocks that exceed 600 feet, or to link the end of a cul-de-sac with a nearby collector or arterial street or activity center. The standards for accessways are provided in Sections 19.1410 and 19.1411.

F. Closed end street systems, as defined in Section 19.103 may serve no more than 20 dwellings.

G. Alleys. Alleys are encouraged in commercial and industrial developments. Alleys are allowed in residential districts with the approval of the Planning Commission, subject to the standards in the Transportation Design Manual.

H. Street design details. Standards for design speed, horizontal/vertical curves, grades and curb return radius are specified by street functional classification in the Transportation Design Manual.

I. Street names. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.

J. Railroad crossings. Where an adjacent development results in a need to install or improve a railroad crossing, the cost for such improvements may be a condition of development approval, or another equitable means of cost distribution subject to Section 19.1407-Adequate Transportation Facilities and 19.1408-Transportation Impact Analysis as applicable.

K. Street signs. The City shall install all street signs, relative to traffic control and street names, as specified by the City Engineer for any development. The cost of signs shall be the responsibility of the developer.

L. Traffic signals. The location of traffic signals shall be noted on approved development plans. Where a proposed intersection will result in an immediate need for a traffic signal, a signal meeting approved specifications shall be installed.

M. Streetlights. The location of streetlights shall be noted on approved development plans. Streetlights shall be installed in accordance with regulations adopted by the City.

#### **19.1409.4 General Intersection Design Standards.**

A. Connecting street intersections shall be located to provide for traffic flow, safety, and turning movements, as conditions warrant.

B. Street and intersection alignments for local streets should facilitate local circulation but avoid alignments that encourage non-local through traffic.

C. Streets should generally be aligned to intersect at right angles (90 degrees). Angles of less than 75 degrees will not be permitted unless the City Engineer has approved a special intersection design.

D. New streets shall intersect with existing street intersections so that centerlines are not offset, except as provided in Table 19.1409.1. Where existing streets adjacent to a proposed development do not align properly, conditions may be imposed on the development to provide for proper alignment.

**Table 19.1409.1. Street/Intersection Spacing.**

<u>Street Classification</u>	<u>Minimum Distance Between Street Intersections</u>	<u>Maximum Distance Between Street Intersections</u>
<u>Arterial</u>	<u>530 feet</u>	<u>1000 feet</u>
<u>Collector</u>	<u>300 feet</u>	<u>600 feet</u>
<u>Neighborhood Route</u>	<u>150 feet</u>	<u>400 feet</u>
<u>Local</u>	<u>100 feet</u>	<u>530 feet</u>

**Table 19.1409.2. Additional Yard Requirements.**

<u>Major Street</u>	<u>Distance from Centerline</u> (plus yard requirements in zone)
<u>Firwood Street (55th to Stanley)</u> .....	<u>25 feet</u>
<u>Harmony Road</u> .....	<u>40 feet</u>
<u>Harrison Street (Milwaukie Expressway to 44th)</u> .....	<u>40 feet</u>
<u>Harrison Street (Milwaukie Expressway to McLoughlin)</u> .....	<u>30 feet</u>
<u>Harvey Street (32nd to 42nd)</u> .....	<u>25 feet</u>
<u>Howe Street (42nd to 43rd)</u> .....	<u>30 feet</u>
<u>Johnson Creek Boulevard</u> .....	<u>30 feet</u>
<u>King Road</u> .....	<u>40 feet</u>
<u>Linwood Avenue</u> .....	<u>40 feet</u>
<u>Lake Road</u> .....	<u>30 feet</u>
<u>Logus Road</u> .....	<u>25 feet</u>
<u>Monroe Street (52nd to Linwood)</u> .....	<u>30 feet</u>
<u>Oak Street</u> .....	<u>30 feet</u>
<u>Oatfield Road</u> .....	<u>30 feet</u>
<u>Ochoco Street</u> .....	<u>30 feet</u>
<u>Olsen Street</u> .....	<u>25 feet</u>
<u>Railroad Avenue</u> .....	<u>30 feet</u>
<u>River Road (south of Lark Street)</u> .....	<u>30 feet</u>
<u>Roswell Street (32nd to 42nd)</u> .....	<u>25 feet</u>
<u>Washington Street (west of Railroad)</u> .....	<u>30 feet</u>
<u>Willow Street (Windsor Drive to Stanley)</u> .....	<u>25 feet</u>
<u>River Road (City limits to Lark)</u> .....	<u>30 feet</u>
<u>17th Avenue (Ochoco to McLoughlin)</u> .....	<u>40 feet</u>

V. 40

<u>32nd Avenue (north of Harrison)</u> .....	<u>30 feet</u>
<u>37th Avenue (Lake Road to Grogan)</u> .....	<u>25 feet</u>
<u>40th Avenue (Harvey to Railroad)</u> .....	<u>40 feet</u>
<u>42nd Avenue (Johnson Creek Blvd to Howe Street)</u> .....	<u>30 feet</u>
<u>42nd Avenue (Harrison Street to King Road)</u> .....	<u>30 feet</u>
<u>43rd Avenue (Howe to King)</u> .....	<u>30 feet</u>
<u>55th Avenue (Firwood to Johnson Creek Blvd.)</u> .....	<u>25 feet</u>

V. 4/1

**Table 1409.3 Transportation Facility Design Standards**

*Dimensions are shown in feet*

Classification	Right of Way	Travel Lane		On-street Parking		Sidewalks		Landscape Strips		Bike Lane/ Combined Bike & Travel Lane	
		Req'd.	Min. Allowed	Req'd.	Min. Allowed <sup>1</sup>	Req'd.	Min. Allowed	Req'd.	Min. Allowed	Req'd.	Min. Allowed
Arterial <sup>2</sup>	73	12	11	8	7/6	10	5	5	0	6/16	5/14
Collector <sup>3</sup>	60	11	10	8	7/6	8	5	5	0	6/16	5/14
Neighborhood	52	10	10	8	7/6	6	4	5	0	6/16	5/14
Local	50	10	10	8	7/6	6	4	5	0	6/16	5/14
Truck Route	n/a	12	11	8	7/6	n/a	n/a	n/a	n/a	6/16	5/14
Bus Route	n/a	12	11	8	7/6	n/a	n/a	n/a	n/a	6/16	5/14

**Arterials<sup>4</sup>**

**Collectors**

**Neighborhood Routes**

OR Highway 99E*	Johnson Creek Blvd.*	Main Street	Roswell Street	Logus Road
OR Expressway 224*	17 <sup>th</sup> Avenue*	Stanley Avenue	Olsen Street	27 <sup>th</sup> Avenue
Linwood Avenue*	32 <sup>nd</sup> Avenue	Oak Street	Harvey Street	37 <sup>th</sup> Avenue
Lake Road*	Washington Street	Monroe Street	Brookside Drive	Wood Avenue
King Road*	Jefferson Street	Jackson Street	Regents Street	Washington Street/Ida Lane
Harrison Street*	34 <sup>th</sup> Avenue	Railroad Avenue	Willow Street	Furnberg Drive/71 <sup>st</sup> Avenue
River Road*	42 <sup>nd</sup> Avenue	Rusk Road	Mason Lane	Cedar Crest Drive
	43 <sup>rd</sup> Avenue	37 <sup>th</sup> Avenue	Howe Street	Home Avenue

\*Street shown with an asterisk indicate the route is a regional facility in accordance with the Regional Transportation Plan

<sup>1</sup> Minimum residential on-street parking is 6 feet. Minimum commercial on-street parking on is 7 feet.

<sup>2</sup> Right-of-way requirements for Oregon Highway 99E and Expressway 224 shall be determined by Oregon Department of Transportation. Required rights-of-way for the following arterials supercede Table 1408.5: Oatfield Road, 60 feet; Linwood Avenue, 64 feet;

<sup>3</sup> Right of way requirements for 17<sup>th</sup> Avenue are 72 feet between Highway 99E and Expressway 224; north of Expressway 224, 60 feet.; 50 feet for Monroe Street west of 224, Stanley Ave., 34<sup>th</sup> 600 feet north of Lake Rd, 32<sup>nd</sup> Ave, 43<sup>rd</sup> Ave-Howe St.-42<sup>nd</sup> Ave.

<sup>4</sup> Minor arterials include Linwood Avenue, Lake, Harrison, King, and Oatfield Roads. McLoughlin Blvd. south of Harrison is a major arterial, north of Harrison it is a principal arterial.

**19.1410 Pedestrian Requirements and Standards.**

**19.1410.1 General Provisions.**

A. Pedestrian facilities, including public sidewalks, on-site walkways, and pedestrian/bicycle accessways, shall be designed and improved in accordance with the standards of this Chapter and the Transportation Design Manual.

B. Goals, objectives and policies relating to walking are included in Chapter 5 of the Milwaukie Comprehensive Plan and provide the context for the pedestrian requirements and standards. Figure 3.1 of the Comprehensive Plan illustrates the Walkways Network Master Plan and Figure 3.2 illustrates the Walkways Action Plan.

C. Americans with Disabilities Act (ADA) requirements for pedestrian facilities shall apply where there is a conflict with City standards.

**19.1410.2 Public sidewalks.**

A. Requirement. Public sidewalks are required on the public street frontage of all new development (including detached and attached single family dwellings on existing lots), all land divisions, and substantial redevelopment of commercial, industrial, multifamily and institutional uses. Public sidewalks are generally constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within an easement with the approval of the City Engineer.

B. Design Standards. Standards and cross section details for the location, width and design of public sidewalks are included in the Transportation Design Manual.

C. Maintenance. Maintenance of sidewalks, curbs, and planting strips is the continuing obligation of the adjacent property owner in accordance with Chapter 12.04.

**19.1410.3 On-site walkways and circulation.**

A. Requirement. All new development (excluding single family) and substantial redevelopment of commercial, industrial, multifamily and institutional uses shall provide a system of walkways that encourage safe and convenient pedestrian movement within the site and connections to off-site destinations. On-site walkways shall link the site with the public street sidewalk system. Walkways are required between parts of a site where the public is invited to walk. Walkways are not required between buildings or portions of a site that are not intended or likely to be used by pedestrians, such as truck loading docks and warehouses.

B. Location. A walkway into the site shall be provided for every 300 feet of street frontage.

C. Connections. Walkways shall connect building entrances to one another and building entrances to adjacent public streets and existing or planned transit stops. On-site walkways shall connect with walkways, sidewalks, bicycle facilities, alleys and other bicycle or pedestrian connections on adjacent properties used or planned for commercial, multifamily, institutional or park use. The City may require connections to be constructed and extended to the property line at the time of development.

D. Routing. Walkways shall be reasonably direct. Driveway crossings shall be minimized. Internal parking lot circulation and design shall provide reasonably direct access for pedestrians from streets and transit stops to primary buildings on the site.

E. Design Standards. Walkways shall be constructed with a hard surface material and shall be no less than 5 feet in width. If adjacent to a parking area where vehicles will overhang the walkway, a 7-foot wide walkway shall be provided. The walkways shall be separated from parking areas and internal driveways using curbing, landscaping, or distinctive paving materials. On-site walkways shall be lighted to an average 0.5 foot-candle level. Stairs or ramps shall be provided where necessary to provide a direct route.

#### **19.1410.4 Pedestrian/bicycle accessways.**

A. Intent. Pedestrian/bicycle accessways are intended to provide safe and convenient connections within and from new residential subdivisions, multifamily developments, planned developments, shopping centers and commercial districts to adjacent and nearby residential areas, transit stops and neighborhood activity centers where public street connections between such uses are unavailable.

Public street connections for cars, pedestrians and bicycle circulation are preferable to accessways. Pedestrian/bicycle accessways should only be used to ensure connectivity to nearby neighborhood activity centers in areas where no other public street options are available.

B. Requirement. Pedestrian/bicycle accessways shall be required in the following situations:

1. In residential and industrial districts where a street connection is not feasible and the addition of an accessway would reduce walking or bicycling distance by 400 feet or more, and by at least 50 percent over other available pedestrian routes to an existing transit stop, a planned transit route, or to a school, shopping center, or neighborhood park.

2. In commercial and community service overlay districts where addition of an accessway would reduce walking or bicycling distance by 200 feet, and by at least 50 percent over other available pedestrian routes to an existing transit stop, a planned transit route, or to a school, shopping center, or neighborhood park.

3. For purposes of 1 and 2 above, other available pedestrian routes include public sidewalks and walkways within shopping centers, planned developments

and industrial districts. Routes may cross parking lots on adjoining properties if the route is open to the public for pedestrian use, is a paved surface and is unobstructed.

4. Accessways shall be located to provide a reasonably direct connection between likely pedestrian destinations.

C. Design Standards. An accessway shall have a minimum right-of-way width of 15 feet and shall be improved to a minimum width of 10 feet and paved with a hard surface material. If an accessway also provides secondary fire access or a public utility corridor, its right-of-way width shall be at least 20 feet with a minimum 15-foot wide paved surface. Additional standards relating to entry points, maximum length, visibility, and lighting of accessways are provided in the Design Manual.

D. Ownership, liability and maintenance of accessways. To enable access and allow maintenance over time for all pedestrian/bicycle accessways, the City Engineer can require one of the following:

1. That the accessways be dedicated to the public and accepted by the City as public right-of-way prior to the final approval of the development.

2. That approval of the development shall be contingent upon granting to the public access easements to such accessways.

3. That the developer incorporate the accessway into recorded easements or tract(s) of common ownership which specifically requires the property owners and future property owners who are subject to such easements or are owners of such tracts to provide for the ownership, liability and maintenance of the accessway.

## **19.1411 Bicycle Requirements and Standards.**

### **19.1411.1 General Provisions.**

A. Bicycle facilities, including on-street bike lanes, off-street bikeways, and bicycle parking, shall be designed and improved in accordance with the standards of this Chapter, the bicycle parking provisions of Section 19.505, and the Transportation Design Manual.

B. Goals, objectives and policies relating to bicycling are included in Chapter 5 of the Milwaukie Comprehensive Plan. Figure 4.1 of the Comprehensive Plan illustrates the Bikeways Network Master Plan and Figure 4.2 illustrates the Bikeways Action Plan.

### **19.1411.2 Bike Lanes and Bikeways.**

A. Requirement. Bike lanes and bikeways shall be provided in accordance with the Milwaukie Transportation System Plan. Except as amended by the

Transportation System Plan, bike lanes shall be provided along collector and arterial streets.

B. Timing of Construction. To assure continuity and safety, bike lanes and bikeways will generally be constructed as part of the construction or improvement of collector and arterial streets.

C. Design Standards. Bike lanes shall be 6 feet wide and shall be provided for each direction of travel allowed on the street. Bike lanes and bikeways shall be constructed consistent with the design guidelines and standards delineated in the latest edition of the Oregon Bicycle Plan. Excerpts of the guidelines and standards are provided in the Transportation Design Manual.

### **19.1411.3 Bicycle Parking.**

Bicycle parking requirements are set forth in Chapter 19.500.

### **19.1412 Transit Requirements and Standards.**

#### **19.1412.1 General Provisions.**

A. Transit facilities, including bus stops, shelters and related facilities, shall be designed and improved in accordance with Tri-Met standards and the requirements and standards of this Chapter and the Transportation Design Manual.

B. Goals, objectives and policies relating to transit are included in Chapter 5 of the Milwaukie Comprehensive Plan.

#### **19.1412.2 Transit Facilities.**

A. Notice and Coordination with Tri-Met. When development of a multifamily, commercial, office, or institutional use is proposed within 200 feet of an existing or planned transit route, notice shall be provided to Tri-Met as outlined in Section 19.1405.4. Tri-Met may recommend that transit-related facilities be constructed at the time of development to support transit use.

B. Factors Determining Transit Requirements. The factors that determine the level of transit facility requirements include but are not limited to street classification, existing and planned level of transit service in adjacent streets, block length, proximity of major pedestrian destinations, existing and anticipated ridership, and transit needs of a development. Required improvements may include provision of an easement for a bus stop, benches, shelters, bus turnouts, curb extensions, median refuges for pedestrian crossings, public telephones, or pedestrian lights. The required improvements shall reflect a reasonable and proportionate share of the impacts of the development.

C. Location of Transit Facilities. Transit facilities shall be located at controlled street intersections, where possible. A bus stop shall consist of at least a bus

stop pad designed in compliance with the ADA. The location of the bus stop shall be chosen so that there is a connection to an accessible route. Where a bus stop has already been established within 500 feet of the affected development, a new bus stop shall only be provided if recommended by Tri-Met and required by the Director. Otherwise, the developer shall upgrade the existing stop through provision of improved waiting facilities (i.e., installation of benches, shelters or landscaping).

### **19.1412.3 Building Orientation to Transit.**

The following requirements apply to all new multifamily, commercial, office, and institutional development within 500 feet of an existing or planned transit route measured along the public sidewalk that provides direct access to the transit route:

A. Building Orientation to Transit Street. New buildings shall have their primary orientation toward a transit street or, if not adjacent to a transit street, a public right-of-way which leads to a transit street. The primary building entrance shall be visible from the street and shall be directly accessible from a sidewalk connected to the public right-of-way. A building may have more than one entrance. If the development has frontage on more than one transit street, the primary building entrance may be oriented to either street or to the corner.

B. Maximum Setbacks Adjacent to Transit Street. When adjacent to a street served by transit, new commercial, office or institutional development, including uses authorized under Section 19.321-Community Service Overlay Zone, shall be set back no more than 30 feet from the right-of-way that is providing transit service.

1. An individual building may be set back more than 30 feet, provided the building is part of an approved phased development that will result in a future building(s) that complies with the 30 foot setback standard.

2. For sites with multiple buildings, the maximum distance from a street with transit to a public entrance of the primary building shall be no more than 100 feet.

3. If the proposed building is part of an institutional campus, the Director may allow flexibility in the setback and orientation of the building. As a trade-off for this flexibility, enhanced sidewalk connections shall be provided between the institutional building(s) and nearby transit stops.

4. If the site abuts more than one street served by transit, then the maximum setback requirement need only apply to one street.

### **19.1413 Access Management Standards.**

#### **19.1413.1 General Provisions.**

A. Access permit required. Access to a public street requires an access permit in accordance with the following:

1. Permits for access to City streets shall be subject to review and approval by the City Engineer based on the adopted City standards contained in this Chapter. An access permit may be in the form of a letter to the applicant, or it may be attached to a land use decision notice as a condition of approval.

2. Permits for access to State highways shall be subject to review and approval by ODOT, except when ODOT has delegated this responsibility to the City or Clackamas County. Decisions regarding access permits to State highways shall be based on access standards adopted by ODOT.

3. Permits for access to County highways shall be subject to review and approval by Clackamas County, except where the County has delegated this responsibility to the City. Decisions regarding access permits to County highways shall be based on access standards adopted by Clackamas County.

B. Access Spacing Targets.

All development shall be provided public street access. Access roads (public and/or private), driveways, and easements shall be as set forth in other sections of these Design Standards. Spacing of access points (public street and/or driveways) shall meet the criteria in Table 19.1413.1 to the greatest extent practicable. The minimum spacing is measured between the nearest points of the point of curvature on the curb return(s) of public streets or the top of the wings of any driveway.

**TABLE 19.1413.1. Access Spacing Targets.**

<b><u>Street Classification</u></b>	<b><u>Minimum, feet</u></b>
<u>Arterial</u>	<u>600</u>
<u>Collector</u>	<u>300</u>
<u>ODOT Facilities (ORE 99E, ORE 224)</u>	<u>Per Appendix C of Oregon Highway Plan</u>

Spacing criteria are based upon several factors, including stopping sight distance, ability of turning traffic to leave a through lane with minimal disruption to operation, minimizing right turn conflict overlaps, maximizing egress capacity and reducing compound turning conflicts where queues for turning/decelerating traffic encounter conflicting movements from entering/exiting streets and driveways.

C. Modification of Access Spacing Targets.

Any development that deviates from the access spacing (public street or driveway) targets will be required to prepare an access study that assesses transportation impacts adjacent to the project frontage within a distance equal to the access spacing requirements established in Table 19.1413.1. For example, for a site with arterial access, analysis would include evaluation of site access and capacity along the project frontage plus capacity and access issues within 530 feet of the adjacent property. The access study shall include the following:

1. Review of site access spacing and design.

2. Traffic impacts adjacent to the site within a distance equal to the access spacing distance from the project site.

3. Review of all modes of transportation to the site.

4. Where access spacing targets are not met, a series of mitigation measures shall be identified including but not limited to assessment of medians, consolidation of access, shared driveways, temporary access, provision of future consolidated access or other measures that would be acceptable to the City Engineer or designee.

D. Driveways. Access to private property shall be permitted with the use of driveway curb cuts. The access points with the street shall be the minimum necessary to provide access while not inhibiting the safe circulation and carrying capacity of the street. Driveways shall meet all applicable guidelines of the Americans with Disabilities Act.

E. Access study requirements. The City or other agency with access jurisdiction may require an access study prepared by a qualified professional to determine access requirements.

F. Authority to restrict access. To provide for increased traffic movement on congested streets and to eliminate turning movement problems, the City Engineer may restrict the location of driveways on streets and require that driveways be placed on adjacent streets, upon the finding that the proposed access would:

1. Cause or increase existing hazardous traffic conditions;

2. Provide inadequate access for emergency vehicles; or

3. Cause hazardous conditions that would constitute a clear and present danger to the public health, safety, and general welfare.

G. Conditions of approval. The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements for shared driveways, development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system.

#### **19.1413.2 Location of Driveway Access.**

A. Double frontage. When a lot has frontage onto two or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street.

B. Distance from property line. Unless a shared access is proposed or required, new curb cuts for driveway access shall be at least 7 1/2 feet from the

property line in residential districts and at least 10 feet from the property line in all other districts.

C. New single family development fronting arterials or collectors. Direct individual access to arterial or collector streets from detached or attached single-family dwellings and lots shall be discouraged. Direct access shall be considered only if there is no practical alternative way to access the site and only if the driveway is designed to allow for vehicles to turn around on-site (via a hammerhead or loop).

D. Backing into the right-of-way prohibited. Driveways shall be designed to contain all vehicle backing movements on-site, except for detached or attached single family uses on local streets.

E. Minimum distance from driveway to intersection curb return. To protect the safety and capacity of street intersections, the following minimum distance from the intersection curb return to the bottom of the driveway wing shall be maintained:

1. For local and neighborhood streets, driveways for detached or attached single family residential shall be located at least 45 feet from the intersection curb return, or located as far away from the curb return as possible.

2. Driveways for multifamily and all other uses accessing local and neighborhood streets shall be located at least 100 feet from the intersection curb return.

3. For arterials and collectors, driveways shall be located beyond the end of queue of traffic during peak hour conditions or a minimum of 400 feet for arterials and 300 feet for collectors, whichever is greater.

### **19.1413.3 Number and Size of Driveways.**

A. Number. The number of access points on arterial and collector streets from any development shall be minimized whenever possible through the use of shared driveways and coordinated on-site circulation patterns.

1. One driveway per site frontage will be the normal number allowed. For residential properties, additional site access is permitted by use of a mountable curb and reinforced sidewalk in accordance with design requirements of the Transportation Design Manual.

2. Multifamily, commercial or industrial developments with street frontage greater than 150 feet may request an additional driveway, if needed.

B. Shared driveways. Within commercial, industrial and multifamily areas, shared driveways and internal access between similar uses are encouraged to reduce the number of access points to the higher classified roadway, to improve internal site circulation, and to reduce local trips or movements on the street system. Shared driveways or internal access between uses will be established by means of common access easements.

C. Driveway size. Driveway openings (curb cuts) shall be the minimum width necessary to provide the required number of vehicle travel lanes (9 feet for each travel lane). The following standards (measured where the front property line meets the sidewalk or right-of-way) are required to provide adequate site access, minimize surface water runoff, and avoid conflicts between vehicles and pedestrians. This Chapter does not apply to requirements for flag lots, which are found in Title 17.

1. Single family attached and detached uses shall have a minimum driveway width of 9 feet and a maximum width of 18 feet.

2. Three-family uses shall have a minimum driveway width of 16 feet and a maximum width of 20 feet.

3. Multiple family uses with between 4 and 7 dwellings shall have a minimum driveway width of 20 feet, and a maximum width of 24 feet.

4. Multiple family uses with more than 8 dwelling units, and off-street parking areas with 16 or more spaces, shall have a minimum driveway width of 24 feet, and a maximum width of 30 feet.

5. Commercial, office and institutional uses shall have a minimum driveway width of 12 feet, and a maximum width of 36 feet.

6. Industrial uses shall have a minimum driveway width of 15 feet, and a maximum width of 45 feet.

Maximum driveway widths for commercial and industrial uses may be increased if the City Engineer determines that more than two lanes are required based on the number of trips generated or the need for turning lanes.

**Amendments to Milwaukie Municipal Code  
Title 17—Subdivision Ordinance**

**Underlined text is to be inserted**

**Strikeout text is to be deleted**

**Comments in italic *text* are not code changes**

**CHAPTER 17.16 PRELIMINARY PLAT:**

**Section 17.16.070 Supplemental information.**

*(Reorder subsections to reflect repealed subsection.)*

The following information shall be submitted with the preliminary plat:

A. A vicinity map shall be drawn at a scale of one inch equals four hundred feet, showing all existing subdivisions, streets and nonsubdivided land ownership between the proposed subdivision and the nearest existing arterial or collector streets and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map shall depict future street connections for land within four hundred feet of the subject property;

~~C.B.~~ Proposed deed restrictions, if any, in outline form;

~~D.C.~~ Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, state law, and other applicable city ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted at least thirty days prior to the approval time of the final plat is requested.

**CHAPTER 17.28 DESIGN STANDARDS:**

**Section 17.28.020 Streets.**

*(Note: See ordinance for sections that have been repealed)*

~~A. General. The location, width and grade of streets shall be considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of the land served by the streets. The street system shall assure an adequate traffic circulation system. Intersection angles, grades, tangents and curves shall be appropriate for the~~

~~traffic to be carried and to the terrain. Where their location is not shown in a development plan, the arrangement of streets in a subdivision shall either:~~

~~1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or~~

~~2. Conform to a plan for the neighborhood approved or adopted by the planning commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.~~

Requirements and standards for the layout, design, and improvement of streets, pedestrian facilities, bicycle facilities, and transit facilities are included in Chapter 19.1400 of the Zoning Ordinance and are applicable to all land divisions.

**Section 17.28.030 Blocks:**

*(Note: See ordinance for sections that have been repealed)*

**CHAPTER 17.36 IMPROVEMENTS:**

**Section 17.36.020 Required improvements.**

If any part of the subdivision is within the city, the following improvements shall be installed at the expense of the subdivider:

A. Streets. Streets within the subdivision and streets partially within the subdivision shall be graded for the entire right-of-way width, constructed and surfaced in accordance with standards adopted by the city in Chapter 19.1400 of the Zoning Ordinance. Existing streets which abut the subdivision shall be graded, constructed, reconstructed, surfaced or repaired as determined by the planning commission with the advice of the public works director.

**CHAPTER 17.44 EXCEPTIONS AND VARIANCES:**

**Section 17.44.020 Variance—Application.**

When necessary, the community development director or the planning commission may authorize variances to standards within the subdivision ordinance following the criteria of ~~Section 702~~ Chapter 19.700 of the zoning ordinance. ~~Process procedures shall be those of Section 1013 of the zoning ordinance.~~ In granting a variance, the planning commission or community development director may attach conditions which they find necessary to lessen the impact of the variance on nearby property, protect the general welfare of the city, and achieve the purposes of this title.

**Transportation System Plan Implementation**  
**Zoning and Subdivision Ordinance Amendments**  
**Compliance with Approval Criteria**

**I. Compliance with Zoning Ordinance Section 905**

Milwaukie Zoning Ordinance Section 905 requires all amendments to meet 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 amendments are consistent with the Comprehensive Plan, Functional Plan, and Regional Transportation Plan as demonstrated above.

- b. *The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The Planning Commission and City Council shall use its discretion to weigh these factors in determining the intent of the proposed zone.*

This criterion applies to development in association with rezonings and, therefore, does not apply to this project.

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

The amendment is consistent with the Statewide Planning Goals and the Metro Urban Growth Management Functional Plan. There are no known federal regulations that apply to the proposal.

- 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.*

This criterion relates to proposed changes that involve development that uses public infrastructure and facilities. Accordingly, it does not apply to this project.

# ATTACHMENT C

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE COMPREHENSIVE PLAN BY ADOPTING CERTAIN AMENDMENTS RELATED TO IMPLEMENTING THE CITY TRANSPORTATION SYSTEM PLAN.**

*(Milwaukie Planning Department File CPA-01-02)*

**WHEREAS**, on July 15, 1997, the City Council revised the City Comprehensive Plan by adoption of the Milwaukie Transportation System Plan; and

**WHEREAS**, the Milwaukie Transportation System Plan specifies policies for the safe, convenient, and orderly development city street, pedestrian, and bicycle networks and improvements; and

**WHEREAS**, the Oregon Revised Statutes require municipalities to enact land use regulations to enact their comprehensive plans; and

**WHEREAS**, the City received a state grant to develop regulations to implement the Transportation System Plan; and

**WHEREAS**, the City desires to adopt policies to ensure that transportation facilities are adequate at the time of development; and

**WHEREAS**, the City desires to update the Comprehensive Plan by adoption of a transit network map; and

**WHEREAS**, on August 14, 2001, after an extensive public information and involvement process, the Planning Commission held a public hearing on the proposed revisions to the Comprehensive Plan and Zoning and Subdivision Ordinances and adopted a motion recommending the City Council approve the proposed amendments; and

**WHEREAS**, all required referrals and public notices of public hearings on the proposed amendments have been made in accordance with applicable law; and

**WHEREAS**, the Milwaukie City Council held a public hearing on September 18, 2001,

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

**Section 1.** Findings of fact in support of these amendments contained in Exhibit 3 are hereby adopted and incorporated.

- a. The proposed amendments are consistent with Comprehensive Plan, Chapter 2, Objective 7, Policy 1-Approval Criteria as described in Exhibit 3.

**Section 2.** The Milwaukie Comprehensive Plan, Chapter 5-Transportation, Public Facilities, and Energy Conservation, Streets Element is amended as described in Exhibit 1.

**Section 3.** The Milwaukie Comprehensive Plan, Chapter 5-Transportation, Public Facilities, and Energy Conservation, Transit Element is amended by adoption of a transit network map as shown in Exhibit 2.

**Section 4.** The Milwaukie Comprehensive Plan, Figure 6.1 Functional Classification map is amended by reference as follows: Johnson Creek Boulevard, 17<sup>th</sup> Avenue, and River Road are hereby designated collectors of regional significance.

Read for the first time on \_\_\_\_\_ and moved to a 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 &  
BACCRACH, LLP

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

## Amendments to Milwaukie Comprehensive Plan

(Milwaukie Planning Department File CPA-01-02)

Underlined text is to be inserted

**Amend Chapter 5, Goal 2, Transportation, Public Facilities, and Energy Conservation, Streets element by adding a new objective #7 to read as follows.**

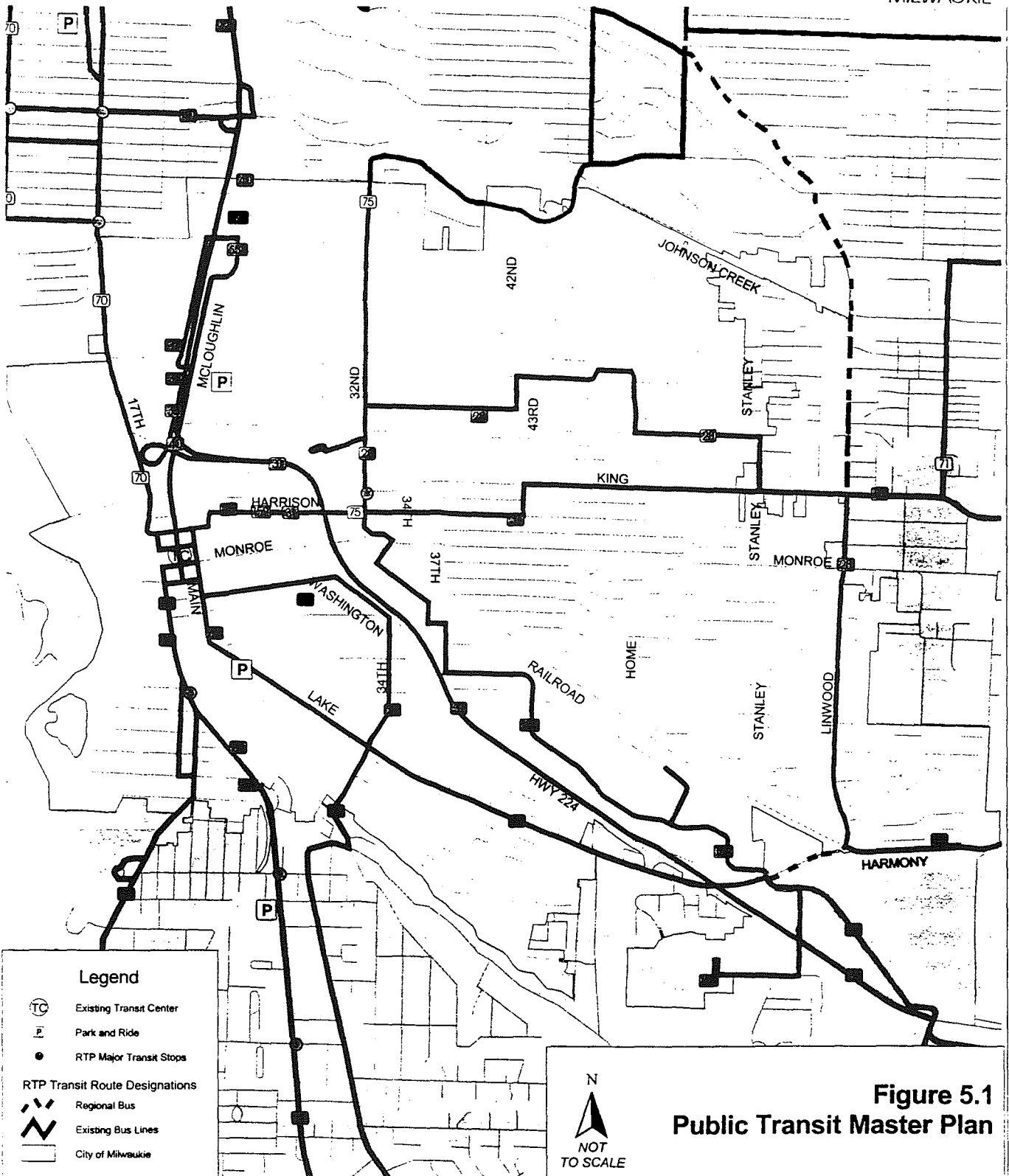
Objective #7: To protect the functional classification, capacity and level of service of the transportation system.

Policies:

1. The City will establish an "adequate transportation facility" requirement and performance standards in Milwaukie Municipal Code Chapter 19.1400 to assure that allowed land uses are consistent with the identified function, capacity and level of service of the transportation system.

2. The City will establish a transportation impact analysis procedure in Milwaukie Municipal Code Chapter 19.1400 of the Zoning Ordinance to provide a consistent framework to evaluate impacts of quasi-judicial plan amendment, zone change and conditional use permit applications and development review applications and the basis to require reasonable and proportionate mitigation of transportation impacts.

City of Milwaukie  
Transportation System Plan



**Amendments to Milwaukie Comprehensive Plan  
Compliance with Approval Criteria**

*(Milwaukie Planning Department File CPA-01-02)*

**The City Council finds the proposed amendments to the Milwaukie Comprehensive Plan comply with approval criteria as described below:**

**I. Compliance with Comprehensive Chapter 2, Objective #1, Policy 7-Approval Criteria.**

All Plan amendments will be evaluated based on the following criteria:

1. Conformance with the Comprehensive Plan, its goals, policies, and spirit.

- a. The Milwaukie Comprehensive Plan is a guide for physical development of the City. It includes goals for neighborhoods, natural resources, business and economic development, and the transportation system and public facilities. An overriding management policy of the Comprehensive Plan follows:

*Public facilities and services will adequately serve existing residents and business, and not be overburdened by new public or private development.*

The proposal is consistent with this policy since its purpose is to ensure that transportation facilities are adequate to accommodate new development.

- b. Chapter 1 outlines the City's citizen involvement policies, which are designed to ensure meaningful and ongoing public participation in comprehensive planning and land use activities. The Transportation System Plan Implementation project includes extensive outreach efforts. Staff believes this effort has been, and will continue to be, consistent with public involvement policies.

Public information efforts have included the following:

- Presentations at four work sessions each of the City Council and Planning Commission;
- distribution of project information;
- appearances at Neighborhood District Association meetings;

- articles in The Pilot, the city newsletter;
  - direct mailings to key stakeholders; and
  - legal notices publicizing the August 14, 2001, and September 18, 2001, public hearings.
- c. Policies concerning economic and industrial development are included in Chapter 4-Land Use, Economic Base and Industrial/Commercial Land Use Element. Policies of this section specify that adequate public facilities to serve industrial and commercial areas will be provided.
- The proposed regulations are consistent with economic development policies since its purpose is to ensure adequate transportation facilities citywide.
- d. Similar to above the Neighborhood Element of Chapter 4 specifies objectives to provide adequate public facilities, implement traffic safety programs, and improve neighborhood traffic circulation.
- The proposal meets these objectives through the review of traffic and transportation needs at the time of development review.
- e. In 1997, the City Council adopted elements of the City's Transportation System Plan, which is a guide for developing and improving the street network. The purpose of this project is to implement key features of the Transportation System Plan and is therefore consistent with the Comprehensive Plan.
2. Public need for the change.
- The need for the project is described below:
- a. While the City adopted the Transportation System Plan, it did not adopt regulations that implement the plan. State law requires that regulations be adopted to implement plans. The plan itself reflects public policies and needs concerning the development and improvement of the City's street network. This project meets these needs.
  - b. The project is funded by a grant of the Oregon Department of Transportation and Department of Land Conservation and Development. The Department of Transportation has required that city plans and regulations be updated to meet recent changes in the state Transportation Plan Rule and Regional Transportation Plan.
  - c. The project improves the City's ability to manage transportation infrastructure at the time of development

review. There is a public need and interest in ensuring review of traffic impacts for the purposes of protecting residential neighborhoods, reducing safety hazards and reducing congestion, and protecting existing business and economic development opportunities.

3. Public need will be best satisfied with this particular change.  
The needs identified above are directly addressed by the proposed adequate facility and traffic impact study requirements. No alternative approaches that meet project objectives have been identified.
4. The change will not adversely affect the health, safety, and welfare of the Community.  
The purpose of the project is to improve the health, safety, and welfare of the community through evaluation of traffic impacts and implementation of transportation polices.
5. The change is in conformance with applicable Statewide Planning Goals.  
State planning statutes are implemented through nineteen statewide planning goals that address a broad range of public issues. The project is consistent with the following Goals:
  - a. Goal 1-Citizen Involvement though execution of city public involvement policies.
  - b. Goal 11-Public Facilities and Services, by linking adequacy of transportation facilities to land use decisions and implementing methods to ensure traffic impacts are mitigated.
  - c. Goal 12-Transportation Plan Rule, through implementation of level of service standards that protect the performance of intersections and support of pedestrian, bicycle, and transit faculties.
6. The change is consistent with Metro Urban Growth Management Functional Plan and applicable regional policies.  
The proposal is consistent with Functional Plan Title 6-Regional Accessibility and with the Regional Transportation Plan Table 1-2 and Chapter 6-Implementation.

# ATTACHMENT D

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING A FEE FOR CITY REVIEW OF TRANSPORTATION IMPACT STUDIES RELATED TO LAND USE PROPOSALS.**

**WHEREAS**, the City of Milwaukie has adopted an ordinance that requires transportation impact studies to be submitted for certain land use and development proposals; and

**WHEREAS**, the City of Milwaukie has existing fees for reviewing land use and development proposals that do not include the costs reviewing transportation impacts studies; and

**WHEREAS**, the City of Milwaukie desires to recover the costs of reviewing transportation impact studies including technical review, preparation of staff reports, and attendance at public meetings and hearings; and

**WHEREAS**, The City of Milwaukie may contract with private consultants to provide professional services including review of transportation impact studies; and

**WHEREAS**, the cost of reviewing transportation impact studies may vary depending on the several factors, which may not be reliably estimated at the time of application submission, and which therefore warrants flexibility to ensure that costs in excess of the fee collected may be recovered; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** that the following fee shall be effective October 19, 2001

Transportation Impact Study Review Fee.....	Actual Cost of Review
Transportation Impact Study Review Deposit.....	\$1,000.00

The review deposit shall be due at the time a land use application is submitted when a transportation impact study is required in accordance with Milwaukie Municipal Code 19,1400. The cost of city review of any transportation impact study related to the land use application shall be billed against the Transportation Impact Study Review Deposit based on adopted fees for staff time.

If the deposit is greater than the actual cost to the City, the difference between the deposit and the actual cost will be returned to the applicant.

When the actual cost of city review exceeds the deposit, the applicant shall pay the balance remaining on the total actual cost of review. The City shall specify the manner in which payment shall be made.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on September 18, 2001.

\_\_\_\_\_  
James Bernard, Mayor

# ATTACHMENT E

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE MILWAUKIE TRANSPORTATION DESIGN MANUAL.**

**WHEREAS**, the City of Milwaukie has received a state grant to implement the Milwaukie Transportation System Plan and prepare a transportation design manual; and

**WHEREAS**, a design manual entitled "Milwaukie Transportation Design Manual" has been prepared, a copy of which is attached as Exhibit 1; and

**WHEREAS**, the design manual contains policies and design standards that affect construction of improvements within rights-of-way located in the City; and

**WHEREAS**, the design manual is intended to facilitate uniform compliance with city policies and standards for construction of transportation improvements in right-of-way,

**WHEREAS**, the City Council finds that the Design Manual is consistent with city policies and imposes appropriate standards for transportation improvements in the right of way; and

**WHEREAS**, Municipal Code Section 19.400.\_\_\_\_\_ authorizes the City to adopt design manuals by resolution;

**NOW, THEREFORE, BE IT RESOLVED** that City Council hereby adopts the Milwaukie Transportation Design Manual as shown in Exhibit 1 as the official City of Milwaukie design manual for transportation improvements in the right of way.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST

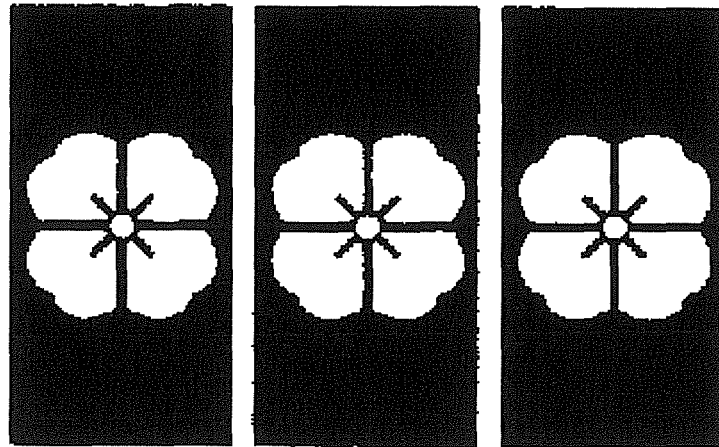
APPROVED AS TO FORM:  
Ramis Crew Corrigan & Bachrach, LLP

\_\_\_\_\_  
Pat Duval, City Recorder

\_\_\_\_\_  
City Attorney

# TRANSPORTATION DESIGN MANUAL

C I T Y O F



MILWAUKIE

**CITY OF MILWAUKIE  
COMMUNITY DEVELOPMENT**

September 7, 2001

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## **Chapter 1**

# **Street Design Requirements**

### **1.1 GENERAL DESIGN REQUIREMENTS**

All street designs shall provide for the safe and efficient travel of all modes of travel for the public. Streets shall be designed to meet or exceed minimum guidelines set forth in the following references and as defined in this design manual, except that alternate design specifications may be accepted by the City Engineer based upon professional judgement and acceptable engineering practices:

"A Policy on Geometric Design of Highways and Streets," American Association of State Highway and Transportation Officials (latest edition, also referred to as the "Green Book")

"Manual on Uniform Traffic Control Devices for Streets and Highways," Federal Highway Administration, with Oregon Supplements, Oregon Department of Transportation (latest edition).

"Guide for the Development of Bicycle Facilities," AASHTO (latest edition)

"American National Standard Practice for Roadway Lighting," ANSI/IESNA R-8-00, Illuminating Engineering Society of America (latest edition)

"Highway Capacity Manual," Transportation Research Board (latest edition)

"Trip Generation," Institute of Transportation Engineers (latest edition)

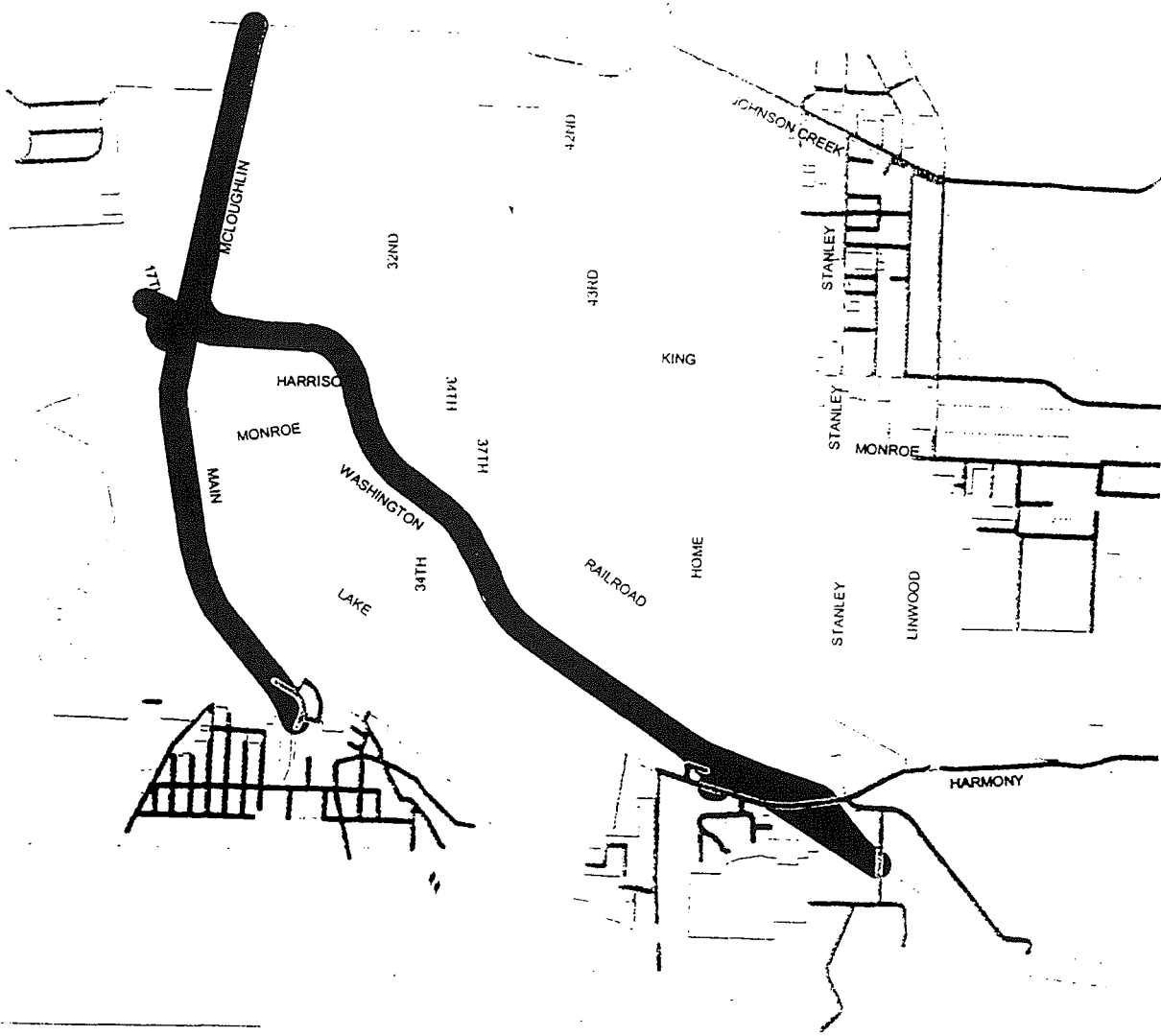
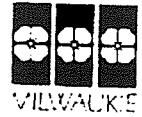
"Parking Generation," Institute of Transportation Engineers (latest edition)

"Regional Transportation Plan," Metro, August 10, 2000.

"Oregon Highway Plan," Oregon Department of Transportation, May 1999, amendment December 13, 2000.

### **1.2 JURISDICTION AND STREET DESIGNS**

Streets within Milwaukie are under the jurisdiction of the City of Milwaukie. Figure 1 shows the areas of jurisdiction for Milwaukie, ODOT and Clackamas County (based upon the Clackamas County Road Map Atlas, 1997).



Legend

- ODOT Jurisdiction
- - - County Jurisdiction
- City of Milwaukee



Figure 1  
ODOT and County  
Jurisdiction

### **1.3 Functional Classification and its Relationship to Design**

The street functional classifications as defined in Chapter 5 of the City of Milwaukie Comprehensive Plan shall be utilized to determine:

- the appropriate mix of modal activities/cross section,
- intersection and access spacing standards, and
- design parameters (design speed, curvature, grade, ...etc.)

Classifications are defined in the Comprehensive Plan as freeways, arterials, collectors, neighborhood routes and local streets. The following sections outline the relationship between street design and functional classification.

#### **1.3.1 Cross Sections/Right-of-Way/Pavement Width**

Functional classification is used to group the types of street cross sections. All streets in Milwaukie shall have a minimum of 50 feet of right-of-way. Exceptions to this standard include the following:

- Arterial and collector streets with greater traffic needs (with rights-of-way defined in Figure 2);
- Certain streets within the jurisdiction of ODOT or Clackamas County;
- Alleys in residential areas where no driveway frontage is provided or commercial areas for loading access (as approved by the City Engineer)

**How is Right-of-way Determined for a Street?** The standard right-of-way is 50 feet. The selection of an appropriate street cross section for a residential street is based upon ultimate traffic volume. When a residential street has a traffic volume of less than 1,500 vehicles per day, the right-of-way width is 50 feet and the pavement cross section is 28 feet curb to curb. For residential streets that carry 1,500 or more vehicles per day, the right-of-way width is 52 feet and the pavement cross section is 32 feet curb to curb.

Existing collector streets requiring standard 52 feet of right-of-way include the following:

- Monroe west of ORE 224
- Stanley Avenue
- 34<sup>th</sup> for 600 feet north of Lake Road
- 32<sup>nd</sup> Avenue
- 43<sup>rd</sup> Avenue/Howe Street/42<sup>nd</sup> Avenue

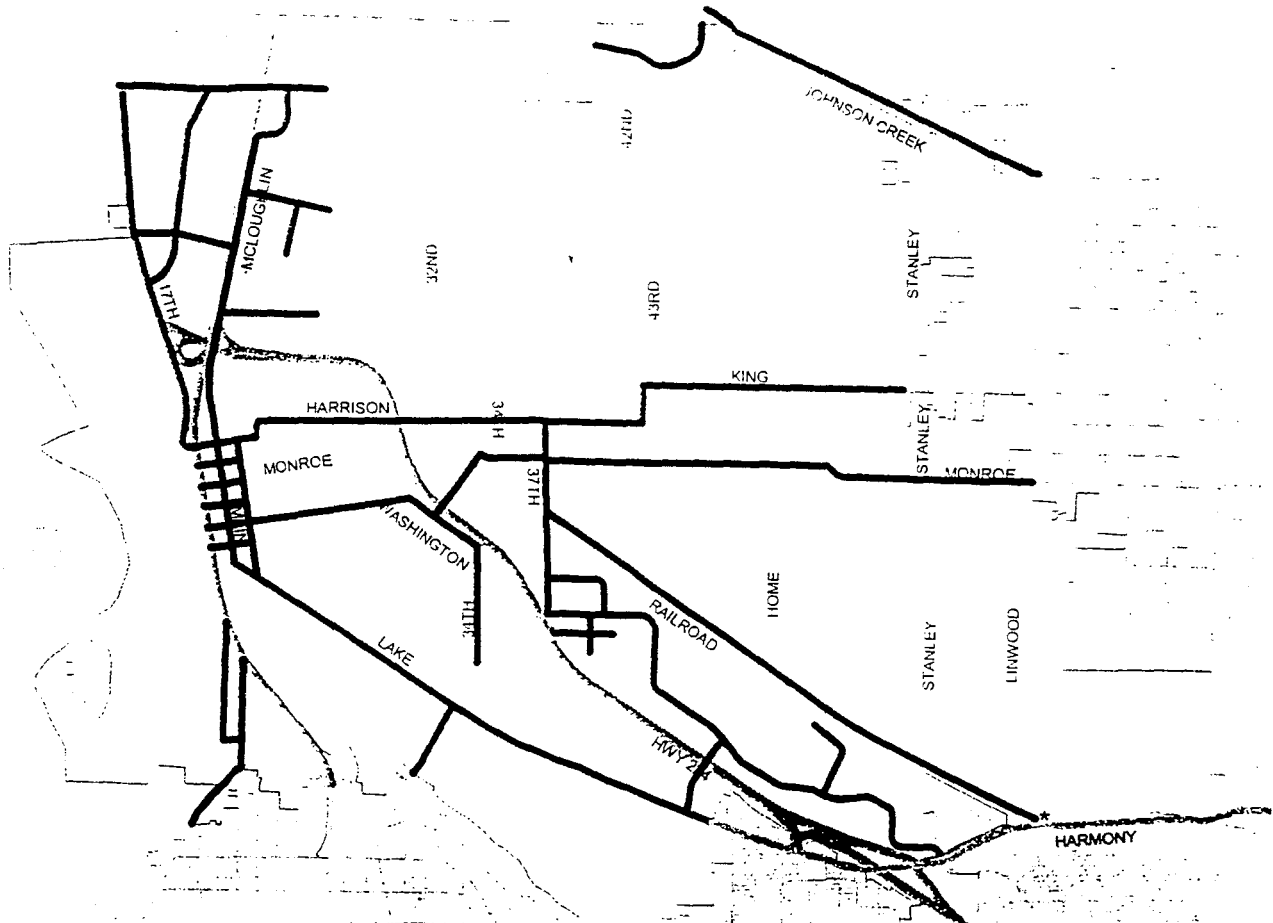
City streets where 60 feet or more of right-of-way are required are documented in Figure 2. Streets requiring 60 feet or more of required right-of-way include multi-lane streets (three lanes or more), two lane arterial/collector streets and any two-lane industrial streets. The use of street cross sections with less than a 50 foot right-of-way requires

written documentation regarding the safety of the application and the approval of the City Engineer.

Figures 3 and 4 outline arterial/collector and local/neighborhood cross sections to be used in Milwaukie. Together with Figure 2, these provide the definitions to right-of-way needs. Any request for right-of-way deviations (Milwaukie Municipal Code Chapter 19.1400) shall be approved prior to preparation of engineering submittals or design plans to the City.







**Multiple Lane Streets.** The Transportation System Plan (TSP) and, where necessary, the Transportation Impact Study will provide identification of streets that require more than two lanes for travel. This includes the need for turning lanes (left or right turn) or bicycle lanes. While the TSP outlines certain locations where bicycle lanes or additional vehicle turning lanes are necessary, evaluation of site impacts may dictate provision of other turning lanes. Right-of-way for right turning lanes is not included in the cross section diagrams (Figures 3 and 4) and must be added to the basic right-of-way requirement. Additionally, where a center left turn lane is required on a two lane cross section, additional right-of-way may be necessary at such intersections.

**Medians.** Raised medians are required for any street with five or more lanes. When medians are utilized and design speeds are at or above 35 MPH, two feet of shy distance will be required (between the face of median curb and the edge of travel lane). At design speeds of 30 MPH, one foot of shy distance should be utilized, and at or below 25 MPH, no shy distance is required. Street lighting meeting the standard for the functional classification of street shall be utilized when medians are provided.



Legend

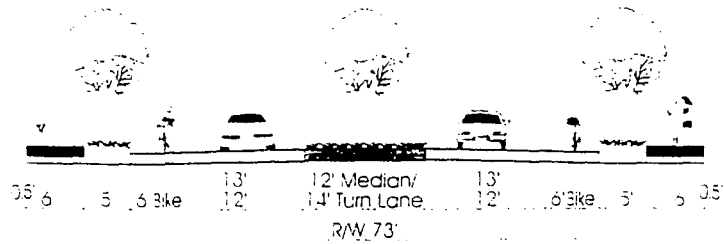
Street ROW Width Required

-  60 feet
-  65 feet
-  73 feet
-  ODOT Facility
-  Clackamas County Facility
-  City of Milwaukie

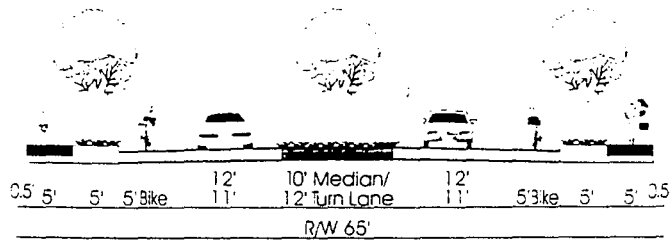
\* Note: This section of Harmony Road is approximately 100 feet in right-of-way.



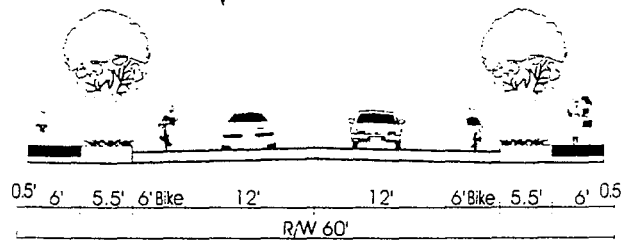
**Figure 2**  
**City Streets where 60 feet**  
**or greater of ROW**  
**is required**



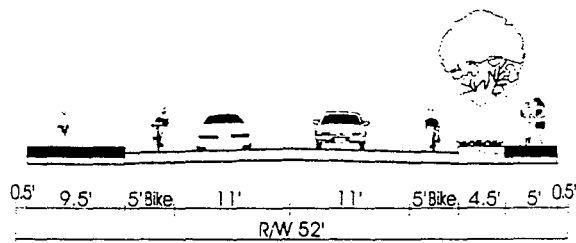
**Arterial 73'**



**Arterial 65'**



**Arterial/Collector 60'**



**Collector 52'**

**Notes:**

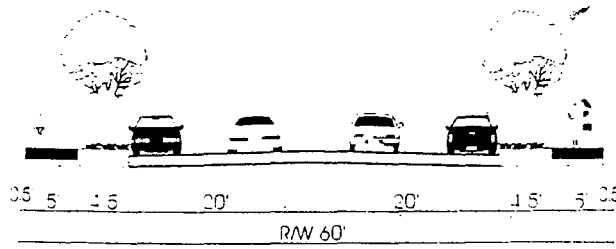
1. Turn lanes (left and right turns) may require additional right-of-way.
2. Dimension for on-street parking in addition to those stated.
3. Sidewalk 5' minimum with landscape strip. Where sidewalk is curb tight 9.5' minimum for Collector, 10' minimum for Arterial. For a landscape strip adjacent to the curb or curb tight sidewalks, width includes curb.
4. When median provided add 1' shy distance for 30 mph streets, 2' for streets 35 mph or greater.



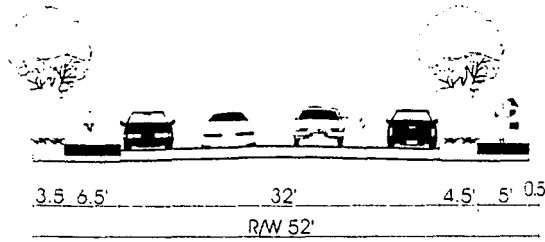
CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.

ARTERIAL/COLLECTOR STREET CROSS SECTIONS

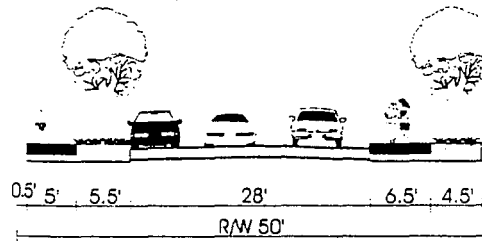
**Figure 3**



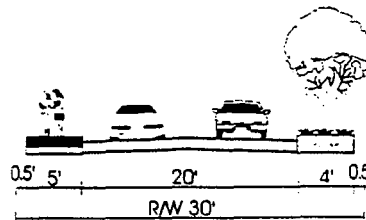
**Commercial/Industrial 60'**  
On-street Parking



**Neighborhood Residential 52'** **>1500 vpd**  
On-street Parking



**Local Residential 50'** **<1500 vpd**  
One Side On-street Parking



**Alley 30'**  
No On-street Parking

**Notes:**

1. Use of landscape strip typically symmetric about street cross section. Samples show examples of landscape strip and curb tight sidewalk for reference.
2. Sidewalk 5' minimum with landscape strip. Where sidewalk is curb tight, provide 6' sidewalk on Local/Neighborhood Street, not including curb width. For alley minimum sidewalk 4.5', for cul-de-sac minimum sidewalk 5' (not including curb width).



CITY OF MILWAUKIE, OREGON – PUBLIC WORKS DEPT.

LOCAL/NEIGHBORHOOD STREET CROSS SECTIONS

**Figure 4**

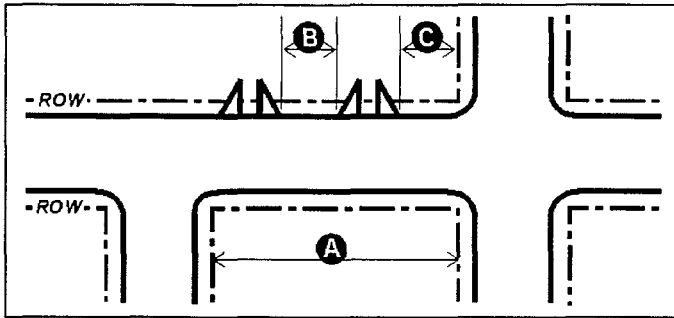
**Design Variations.** Table 1 provides design guidance where the individual street elements of a cross section may need to vary to accommodate unique features of an individual corridor to address issues of severe topography, barriers, such as freeways, railroads or environmental constraints such as wetlands, water features, historic trees or other sensitive environmental features. Table 1 is applicable only in conditions that can be described as constrained for the above reasons and provides the minimum design dimensions that can be applied to tailor a cross section to the unique circumstances, with the approval of the City Engineer.

**Table 1  
Minimum Criteria in Assessment of Street Cross Section Elements in Right-of-Way**

Vehicle Lane Widths: (minimum widths)	Truck Route=12 feet Bus Route=11 feet Arterial=11 feet Collector=10 feet Neighborhood=10 feet Local=9 feet Turn Lane=10 feet
On-Street Parking:	Industrial Street = 8 feet Commercial Street = 7 feet Residential Street = 6 feet
Bike Lanes: (minimum widths)	New Construction = 6 feet Reconstruction = 5 feet
Bike Accommodation: (minimum width)	New Construction=15 feet Reconstruction=14 feet
Curb Extensions for Pedestrians:	Consider on any Walkway
Sidewalks: (minimum width, not including width of curb)	With landscape strip = 5 feet Without landscape strip = 4.5 feet (alley), 5 feet (culdesac) 6 feet (local/neighborhood) 8 feet (collector) 10 feet (arterial)
Landscape Strips:	Preferred (Consider on any Walkway )
Medians:	5-Lane=Required 3-Lane=Optional
Neighborhood Traffic Management:	Local/Neighborhood/Collector = Appropriate (collectors must consider emergency and transit needs) Arterials = Allowable with Council approval and minimum of 50% frontage zoned residential (must also consider emergency and transit needs)
Transit	Arterial or Collector Streets (Neighborhood Streets=Under Special Circumstances)
Access Control	Arterial: Max. Public Street Spacing = 1000 feet Minimum Public Street Spacing = 530 feet Collector: Max. Public Street Spacing = 600 feet Minimum Public Street Spacing = 300 feet
Turning Lanes	When required, width must be added to right-of-way at intersection (common for streets above 5,000 vehicles per day)

**1.3.2 Intersections and Access Spacing**

Access spacing involves the placement of driveways and public streets in relation to one another, as seen below. When traffic volumes increase and access spacing is frequent, the safety of motor vehicles, pedestrians, bicycles freight movement and transit is directly impacted. The design of intersections also influences access spacing issues. Milwaukie Municipal Code Chapter 19.1400 addresses several elements of intersection and access spacing design including:



- Minimum Spacing
- Driveways
- Clear Sight Zone
- Connectivity

This manual provides additional information regarding those elements and addresses the following:

- Intersection Alignment
- Turn Lanes
- Curb Returns

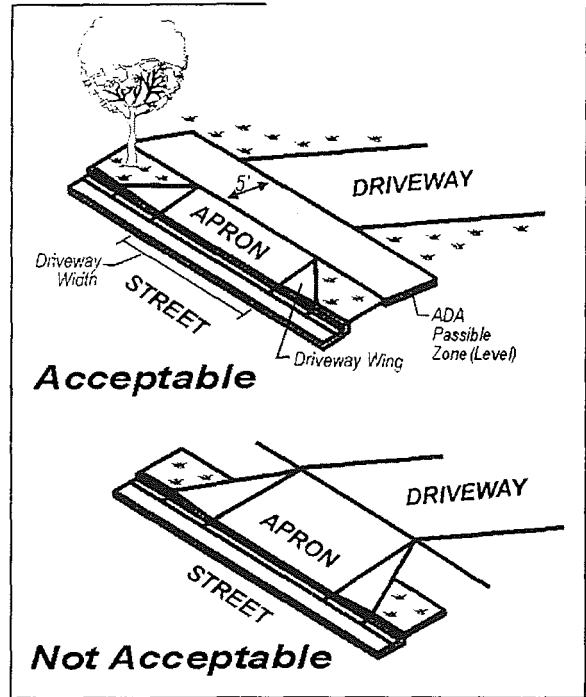
**Minimum Spacing.** Access spacing criteria is based upon several factors including stopping sight distance, ability of turning traffic to leave a through lane with minimal disruption to operation, minimizing right turn conflict overlaps, maximizing egress capacity and reducing compound turning conflicts where queues for turning/decelerating traffic encounter conflicting movements from entering/exiting streets/driveways. All development must have access to a public street. Access roads (public and/or private), driveways, and easements shall be in accordance with Milwaukie Municipal Code Chapter 19.1400. Minimum spacing on arterial or collector streets facilitates safe operation of traffic and preserves their functional integrity. Minimum spacing is measured between the nearest points of the right of way lines (see A above) of public streets or the top of the wings of any driveway (see B and C above).

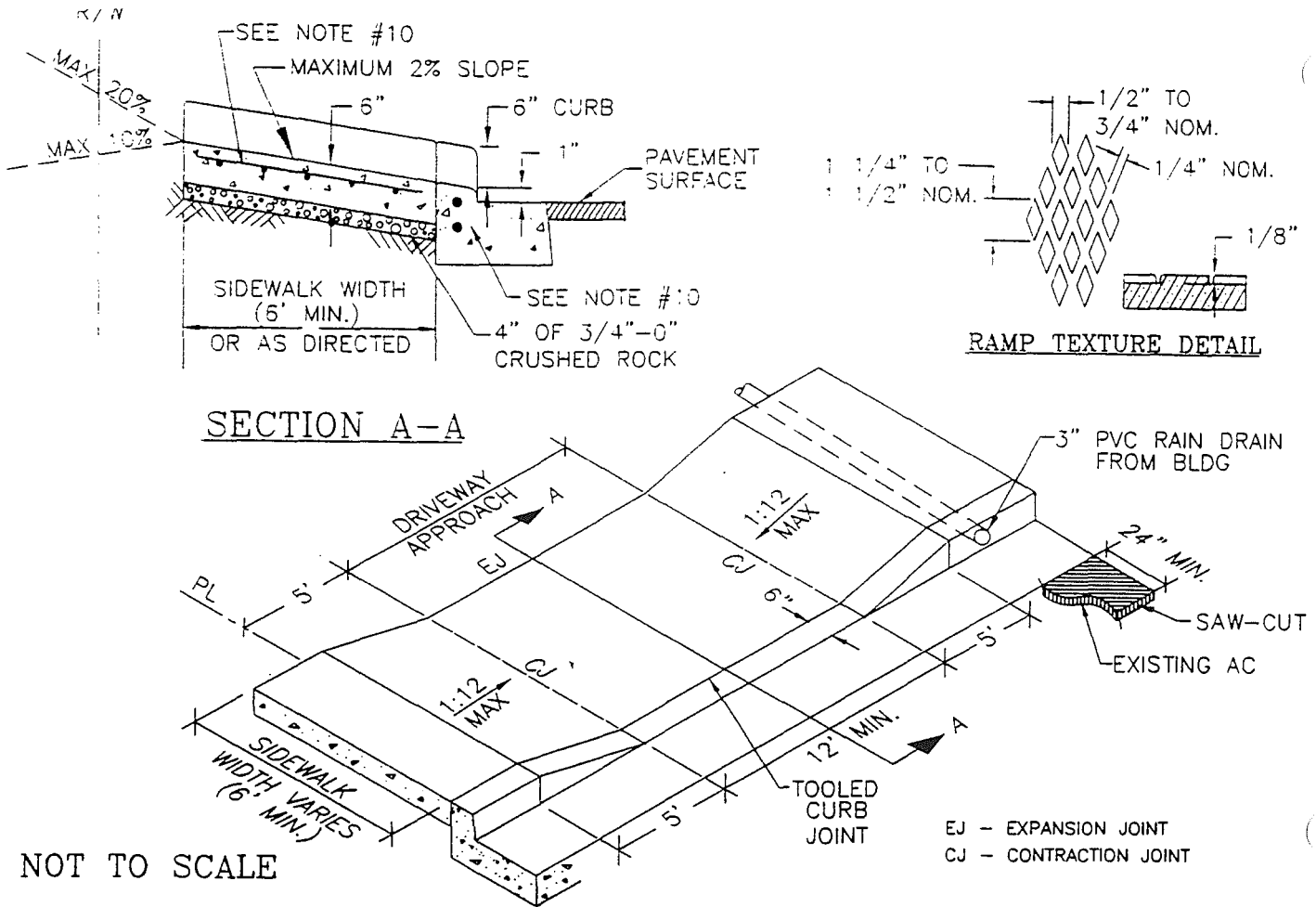
**Access Studies:** Any proposed access point on a street or driveway that does not meet the minimum spacing standards shall require a transportation impact analysis to be conducted. The scoping of this study may be refined or limited, prior to analysis, with the approval of the City Engineer.

**Driveways.** Access to private property shall be permitted with the use of driveway curb cuts, as outlined in Milwaukie Municipal Code Chapter 19.1400. The number of driveway points with public streets shall be the minimum necessary to provide access while not inhibiting the safe circulation and carrying capacity of the street. Driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). This includes a level area for passage as shown at right. Driveways shall be constructed per standards shown in Figures 5 (residential) and 6 (commercial).

**Shared Driveways.** Within commercial, industrial, and multi-family areas, shared driveways and internal access between similar uses are encouraged to reduce the number of access points to the higher classified roadways, to improve internal site circulation, and to reduce local trips or movements on the street system. Shared driveways or internal access between uses can be established by means of common access easements at the time of development. For commercial, industrial and multi-family uses driveway placement should minimize directing traffic through local residential streets.

Shared driveways should be considered when the space between a proposed driveway and adjacent property line is less than  $\frac{1}{2}$  the minimum driveway/public street spacing standard. Driveway spacing criteria shall not be construed to prohibit access to small parcels. If minimum spacing requirement would result in no access to the site, a driveway with restricted turn movements or temporary access may be permitted until such time as adjoining parcels develop allowing for the potential to share access points.

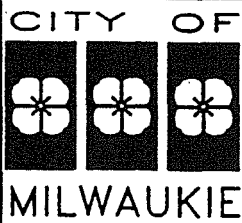




NOT TO SCALE

1. WIDTH OF SIDEWALK VARIES WITH STREET FUNCTIONAL CLASSIFICATION OR AS DIRECTED BY THE CITY ENGINEER.
2. EXPANSION JOINTS SHALL BE 1/2" WIDE, PREFORMED ASPHALT IMPREGNATED MATERIAL OR EQUAL EXTENDING FROM SUBGRADE TO FINISHED GRADE.
3. CONTRACTION JOINTS SHALL BE 1/8" TO 1/4" WIDE. DEPTH OF THE JOINT SHALL BE A MIN. OF 1/3 THE THICKNESS OF THE CONCRETE.
4. ALL SURFACES SHALL BE LIGHTLY BROOMED AND EDGED IN A WORKMANLIKE MANNER. PLACE TACTILE WARNING PATTERN ON RAMPS.
5. SAW CUT EXISTING CURBS THAT ARE TO BE REMOVED. IF LESS THAN 3' TO EXISTING JOINT, REMOVE TO THE JOINT.
6. EXISTING A/C IN FRONT OF THE APPROACH SHALL BE SAW CUT ALONG A LINE PARALLEL TO THE CURB AT A MIN. DISTANCE OF 24" AWAY FROM THE FACE OF THE CURB (OR CONCRETE GUTTER OUTER EDGE) AND REPLACED WITH HOT "C" MIX WITH MIN. THICKNESS OF 4" OR MATCH EXISTING, WHICHEVER IS GREATER. MAY REQUIRE INFRARED REPAIR.
7. CONCRETE SHALL BE 3500 PSI AT 28 DAYS.
8. CURB JOINT SHALL BE A TROWLED JOINT WITH A MINIMUM 1/2" RADIUS ALONG THE BACK OF CURB.
9. 8' CURB TRANSITIONS WILL BE REQUIRED IF WARRANTED BY LOCAL TRAFFIC CONDITIONS.
10. AT DISCRETION OF THE CITY ENGINEER, 6" X 6" #10 WIRE MESH IN APPROACH, #4 REBAR IN CURB AND MONO-POUR OF APPROACH & CURB MAY BE REQUIRED.

Z:\Engineering\STDDWG\APPROVED\STREETS\STR-0009 10-6-98 10:18:30 am EST



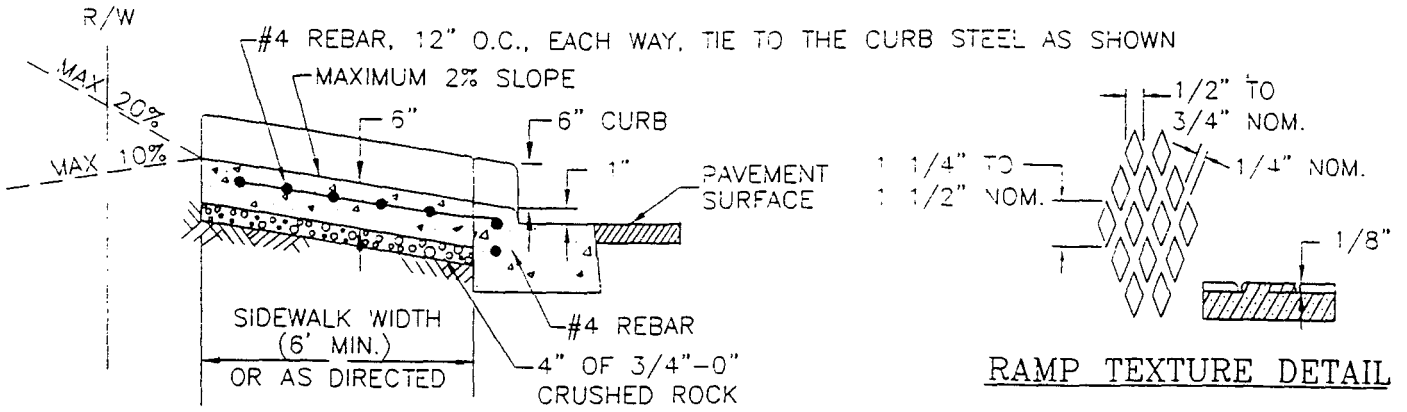
CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.

RESIDENTIAL DRIVEWAY  
(CURBLINE SIDEWALK WITH ADA RAMPS)

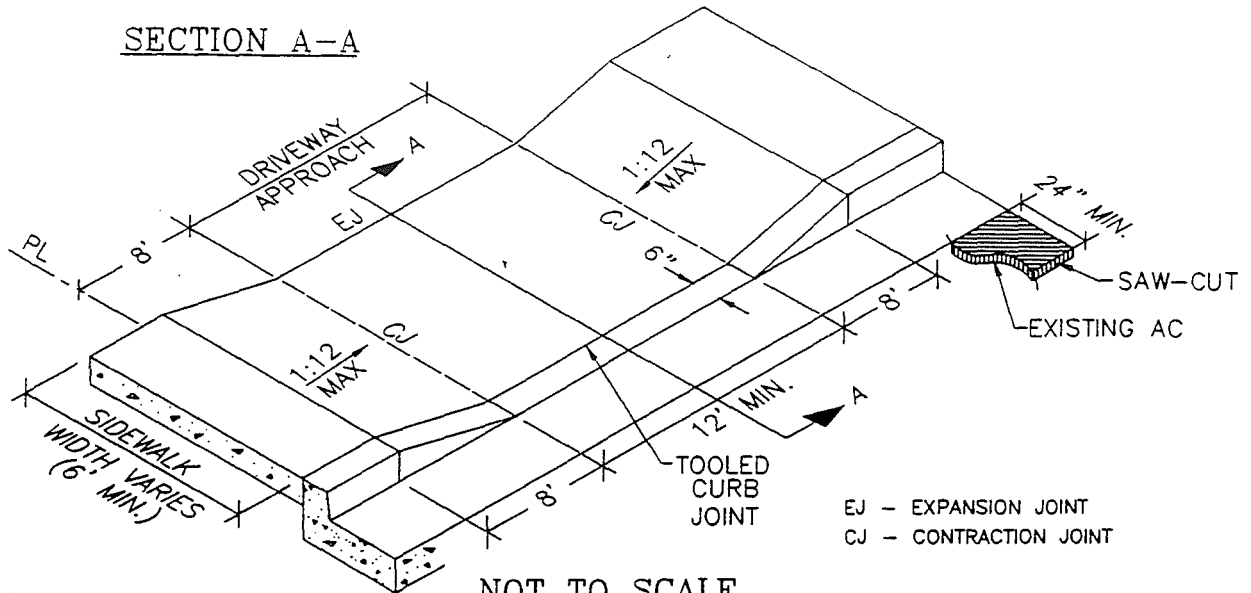
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Figure 5

APPROVED	NO.	REVISIONS	DATE	BY
	1	AC REPLACEMENT REQUIREMENTS, NOTES	10/6/98	AS
CITY ENGINEER				



SECTION A-A



NOT TO SCALE

NOTES:

1. WIDTH OF SIDEWALK VARIES WITH STREET FUNCTIONAL CLASSIFICATION OR AS DIRECTED BY THE CITY ENGINEER.
2. EXPANSION JOINTS SHALL BE 1/2" WIDE. PREFORMED ASPHALT IMPREGNATED MATERIAL OR EQUAL EXTENDING FROM SUBGRADE TO FINISHED GRADE.
3. CONTRACTION JOINTS SHALL BE 1/8" TO 1/4" WIDE. DEPTH OF THE JOINT SHALL BE A MIN. OF 1/3 THE THICKNESS OF THE CONCRETE.
4. ALL SURFACES SHALL BE LIGHTLY BROOMED AND EDGED IN A WORKMANLIKE MANNER. PLACE TACTILE WARNING PATTERN ON RAMPS PER ADA STANDARDS.
5. SAW CUT EXISTING CURBS THAT ARE TO BE REMOVED. IF LESS THAN 3' TO EXISTING JOINT, REMOVE TO THE JOINT.
6. EXISTING A/C IN FRONT OF THE APPROACH SHALL BE SAW CUT ALONG A LINE PARALLEL TO THE CURB AT A MIN. DISTANCE OF 24" AWAY FROM THE FACE OF THE CURB (OR CONCRETE GUTTER OUTER EDGE) AND REPLACED WITH HOT "C" MIX WITH MIN. THICKNESS OF 4" OR MATCH EXISTING, WHICHEVER IS GREATER. MAY REQUIRE INFRARED REPAIR.
7. CONCRETE SHALL BE 3500 PSI AT 28 DAYS. 4000 PSI CONCRETE AND MONO-POUR OF APPROACH AND CURB MAY BE REQUIRED AT DISCRETION OF THE CITY ENGINEER.
8. CURB JOINT SHALL BE A TROWLED JOINT WITH A MINIMUM 1/2" RADIUS ALONG THE BACK OF CURB.

Z:\Engineer\DDWG\New-dwgs\SIR-0035 2-8-99 9:52:26 am EST

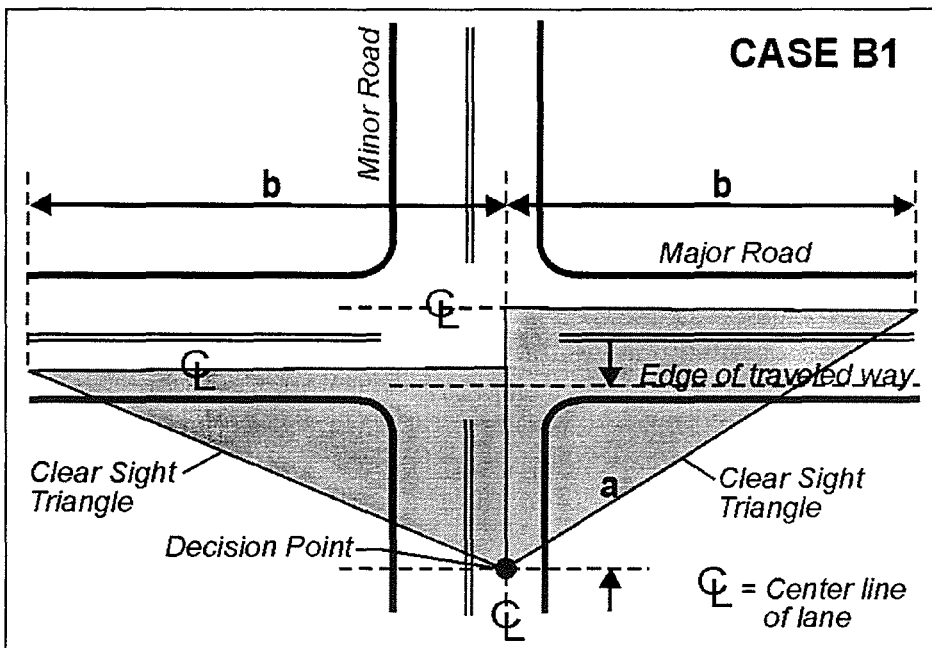
CITY OF		CITY OF MILWAUKIE, OREGON - PUBLIC WORKS			
		COMMERCIAL DRIVEWAY (CURBLINE SIDEWALK WITH ADA RAMPS)			DRAWING NO.
APPROVED		NO.	REVISIONS	DATE	BY
MILWAUKIE		1	AC REPLACEMENT REQUIREMENTS, NOTES	12/9/98	AS
CITY ENGINEER		DATE		Figure 6	

**Clear Sight Zones/Sight Distance.** All new or modified access points shall provide for clear sight distance meeting the requirements outlined in the AASHTO Green Book. A registered Civil or Traffic Engineer from the State of Oregon shall sign a document indicating the adequate provision of clear sight distance for every new or modified access point (driveway or public street). Within the sight distance triangle, no obstruction to sight distance above three feet high shall be permitted. This is particularly important for sight distance between vehicles and pedestrians.

AASHTO outlines sight distance requirements for various conditions. As a minimum, three conditions for sight distance must be met:

1. Intersection of public streets or driveways with arterial and collector streets where the minor street is stop controlled (AASHTO Case B1)
2. Driveways to local residential and commercial streets
3. Uncontrolled intersections (AASHTO Case A)

Sight distance requirements for Case B1 (vehicles turning left from a minor street stop condition) are summarized in Table 2. This criteria applies to all intersecting public streets, driveways intersecting arterial and collector streets and industrial driveways. The basic calculation assumptions are described below and outlined in the attached sketch. A driver on the approach street should be able to see each vehicle on the intersecting street within the criteria for sight distance established in the Green Book. Poles, trees and similar obstructions are allowable within the sight distance area only if it can be shown that such obstructions do not prevent the continuous view of the vehicle approaching on the intersecting street (exceptions may be granted by the City Engineer based on the provisions of Milwaukie Municipal Code Chapter 19.1400).



**Speed** – Posted speed at 25 MPH or below. Above 25 MPH, highest of 85<sup>th</sup> percentile, design speed or posted speed for all others.

**Driver Eye Position (a)** – 14.4 to 17.8 feet back from near edge of traveled way, 3.5 to 7.6 feet above the pavement (to account for passenger car and truck drivers eye heights)

**Edge of Travel Way** – Based upon a marked edge line (such as a bicycle lane stripe or right edge line) or the edge of pavement or the extension of the curb line across the intersection or driveway throat.

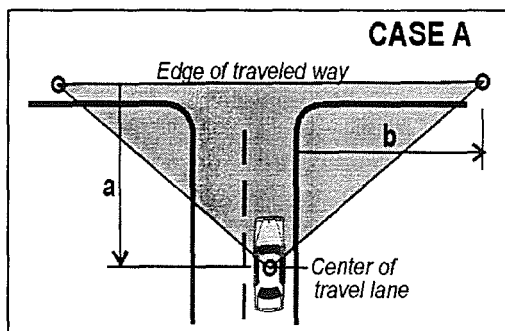
**Table 2**  
**Corner Intersection Sight Distance Guide**  
 Minor Road Stop Condition: Case B1

Speed (MPH)	Minimum Corner Sight Distance – b (Feet)
20	225
25	280
30	335
35	390
40	445
45	500

Note: Use of this table does not preclude the need of designers to meet requirements set forth in the AASHTO Green Book for intersection sight distance.

When considering sight distance for driveways on residential local or neighborhood streets or commercial driveways on local streets, the (a) dimension would be 14.4 feet and would be measured to the extended curb line or six feet toward the center line of the roadway if on-street parking is allowed on the adjoining side of street. The (b) dimension is as follows (based upon AASHTO Green Book Case A, no traffic control):

- Residential local (25 MPH)      b = 115 feet
- Neighborhood street (25 MPH)      b = 115 feet
- Commercial local street (20 MPH) b = 90 feet



The final case is for uncontrolled intersections (no stop signs on any approach – AASHTO Case A). The criteria for this situation require the (a) and (b) dimensions to be the same (115 feet for 25 MPH, 90 feet for 20 MPH).

**Connectivity.** Connectivity shall conform to the Milwaukie Municipal Code Chapter 19.1400.

**Intersection Alignment:** New streets shall intersect with existing street intersections so that centerlines are not offset, except as provided by the public street spacing criteria in the Milwaukie Municipal Code Chapter 19.1400. Where existing streets adjacent to a proposed development do not align properly, conditions may be required of the development to provide for proper alignment. The interior angle of intersecting streets should be as close to right angles (90 degrees) as possible. In no case shall the interior angle of the centerline of an intersecting street be less than 75 degrees.

**Intersection Approach Tangent.** All intersections should have at least 25 feet of tangent approach to an intersection measured along the intersecting right-of-way lines.

**Turn Lanes:** The warrants for left or right turn lanes shall be determined by the following sources:

1. Unsignalized Left Turn Lanes – “Volume Warrants for Left Turn Storage Lanes at Unsignalized Grade Intersections,” Highway Research Board, Report Number 211, 1967.
2. Unsignalized Right Turn Lanes – “Intersection Channelization Design Guide,” National Cooperative Highway Research Program Report 279, 1985, pages 63-65.
3. Signalized Intersections – Based upon capacity needs to retain adequate performance at determined in “Highway Capacity Manual,” Transportation Research Board HCM 2000, 2000.

**Turn Lane Tapers:** The deceleration taper approaching turn lane can be designed as straight line or reversing curves. The length of the taper shall be defined in AASHTO’s Green Book as an 8:1 taper for design speeds of 30 mph and 15:1 for design speeds of and above 50 mph. For speeds in between 30 mph and 50 mph, taper rates should be interpolated. For design speeds below 30 mph, the minimum taper shall be as identified in the AASHTO Green Book (50 feet). For example a 12 foot left turn lane on a 30 mph street would require a 96 foot deceleration taper.

**Curb Return Radius:** Curb return radius at street intersections shall be designed to accommodate all expected traffic. Curb extensions and/or special crosswalk/sidewalk features designed to enhance pedestrian safety may be required to encourage pedestrian usage. Minimum curb radius required shall be as follows:

Intersection Type	Minimum Radius
Local/Neighborhood with Collector/ Local/Neighborhood	20'
Local/Neighborhood with Arterial	25'
Collector with Arterial/Collector	25'
Turning Transit Route on Arterial or Collector	35'
Arterial with Arterial	35'

Streets serving significant traffic volume, commercial/industrial properties or bus routes may be required to install larger curb radius as required for large vehicle movements, as determined by the City Engineer. Truck turning paths should be checked for each new or modified public street intersection, providing notation of truck types that are unable to turn between travel lanes without encroaching into on-coming traffic on any arterial or collector. The City Engineer will need to approve any intersection design that limits any vehicle movements and/or allows encroachment into on-coming lanes.

**1.3.3 Design Speed**

Design speeds for classified streets shall be as follows:

Arterial	30 - 45 mph
Collector	25 - 35 mph
Neighborhood	25 mph
Local	25 mph

Where the 85<sup>th</sup> percentile vehicle speed of existing traffic is a speed in excess of design speeds listed, the higher speed will be used for design purposes. For new local and neighborhood streets, design speeds will not exceed 25 mph without the approval of the City Engineer or designee (design of these streets should attempt to maintain 85<sup>th</sup> percentile speeds at the design speed). Above 35 mph, the design speed should be set 5 mph above the posted speed zone. At or below 35 mph, the design speed and posted speed should be the same.

**1.3.4 Street Curvature and Grade**

**Horizontal Curves:** Horizontal curve radius (on centerline) for each street classification shall be designed according to the roadway design speed per the AASHTO Green Book. The radius shall not be less than the following, as established in the Subdivision Ordinance:

<u>Functional Classification</u>	<u>Subdivision Ordinance</u>	<u>AASHTO Green Book</u>
Arterial	300'	600' - 750'
Collector	150'	150' - 500'
Local/Neighborhood	75'	100' - 165'

**Vertical Curves:** Vertical curve length shall be utilized when the profile of the street grade changes. Curves are based on the design criteria in the AASHTO Green Book which include: (1) design speed, (2) crest vertical curve, and (3) sag vertical curve. Stopping sight distance for crest and sag vertical curves shall be based on sight distance and headlight sight distance, respectively. All vertical curves shall be parabolic and the length shall be computed for each location.

**Grades:** Minimum grade for all streets shall be 0.0050 feet per foot (0.50%) however, in all cases street grades shall allow for proper and adequate drainage. Cul-de-sac "bulbs" shall have a minimum slope of 0.0060 feet per foot (0.60%). Maximum grades for each street classification shall be as follows:

Arterial	0.060 ft./ft.	(6%)
Collector	0.100 ft./ft.	(10%)
Neighborhood/Local/Driveway	0.150 ft./ft.	(15%)

**1.3.5 Street Lighting**

Street lighting plans shall conform to American National Standard Practice for Roadway Lighting (latest edition), by functional classification of roadway.

**1.3.6 Neighborhood Traffic Management**

The City of Milwaukie has a separate policy and process that address traffic calming on city streets. The program involves only residential streets. Residential streets, as defined in the plan, are either a "Local" street, a "Neighborhood Route," or a "Collector" street as identified in the Transportation System Plan. Emergency and transit needs must be considered for collector and arterial streets. Arterials will only be considered in the neighborhood traffic management program if approved by the City Council. More than 50% of the abutting properties must be zoned Residential before the street or street section can be classified as residential.

The current neighborhood traffic management plan does not address the provision of traffic calming measures on new streets. However, specific design measures may be considered when they would preserve the functional integrity of local residential streets with the approval of the City Engineer.

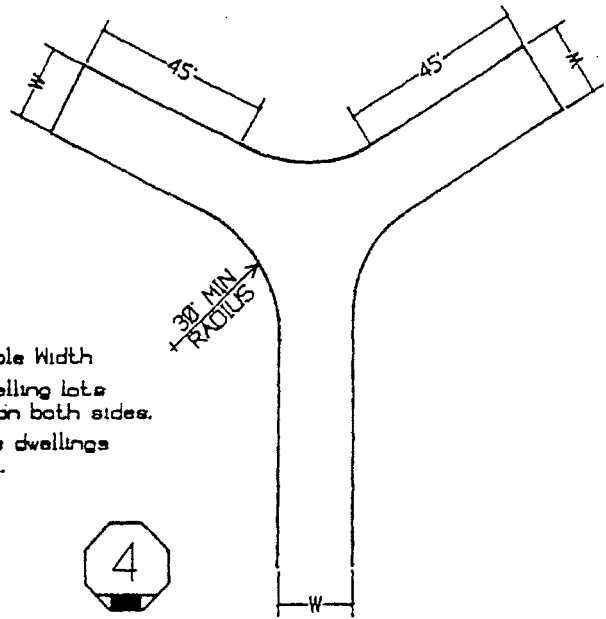
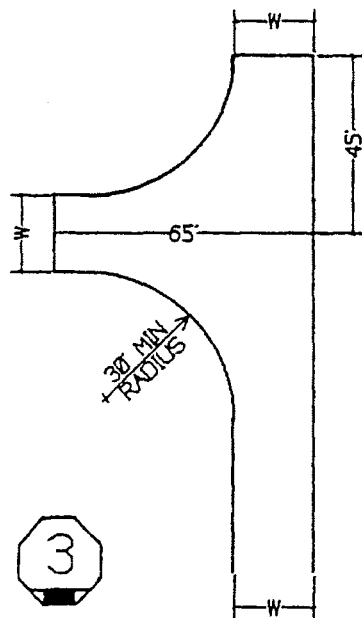
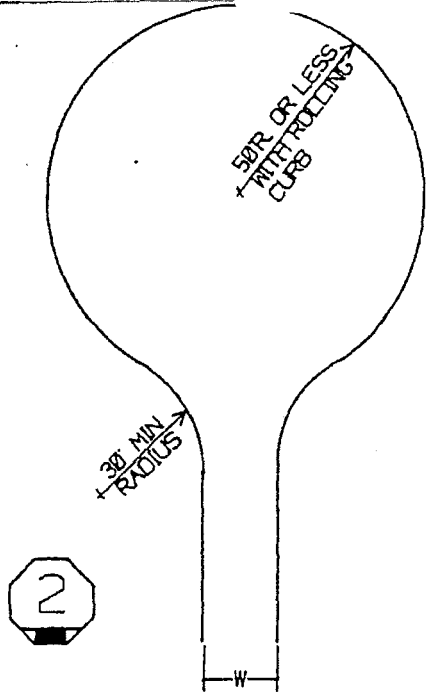
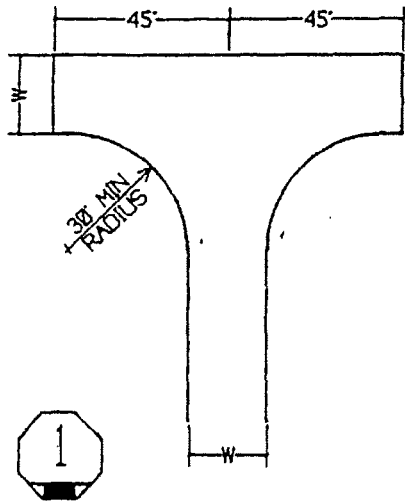
**1.4 OTHER TRANSPORTATION DESIGN STANDARDS**

**1.4.1 Stub Streets**

Residential subdivisions providing public streets will, where appropriate, provide accommodations to extend streets to adjacent undeveloped lands by stubbing streets to the property line of adjacent lands. A barricade shall be placed at the end of the stub street as part of the project, including a sign that states that the stub street may be extended at a future date.

Design for cul-de-sac, turnarounds and hammerhead street ends shall be according to the requirements for fire vehicle access (Figure 7).





DIMENSION "W" = Drivable Width  
 12' Serving 1 or 2 Dwelling lots  
 Need 4' Clear space on both sides.  
 20' Serving 3 or more dwellings  
 or any commercial lot.

<p>Not to Scale</p> <p>Drawn: Pierce          Date: 3/12/97</p>	<p>Examples are minimum standard</p> <p>Local Fire Marshal approval          of construction plans          required prior to construction</p>	<p>FIRE VEHICLE ACCESS          TURN AROUND OPTIONS</p> <p>AHJ:</p>
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Figure 7  
 Turnaround Options

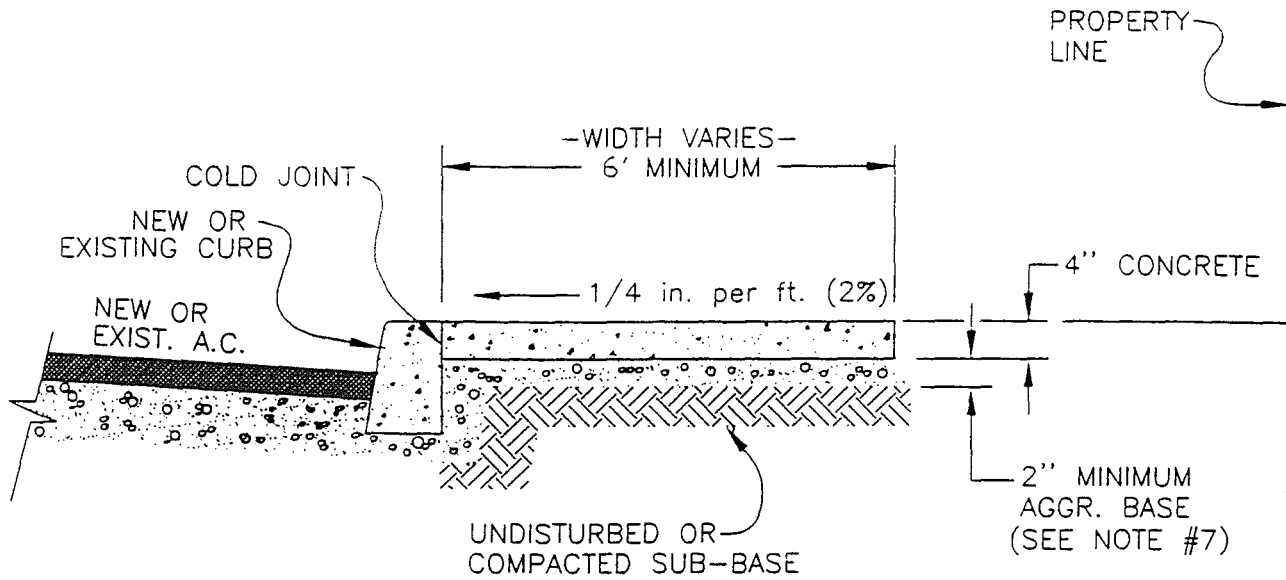
### **1.4.2 Parking**

On-street parking shall be restricted as follows:

1. Arterials – On-street parking should not be allowed within the distance back from the cross street equal the 95% percentile queue of existing and future traffic (based upon forecasts from the current Transportation System Plan).
2. Collector - No parking within 40' of the point of curb return.
3. Local - No parking within 20' of the point of curb return.
4. Cul-de-sac - No parking allowed within the radius of the cul-de-sac turnaround.

### **1.4.3 Sidewalks**

Sidewalks with curbs shall be provided along the frontage to new developments and street projects per the provisions of Milwaukie Municipal Code Chapter 19.1400. Residential sidewalk design standards are shown in Figure 10.

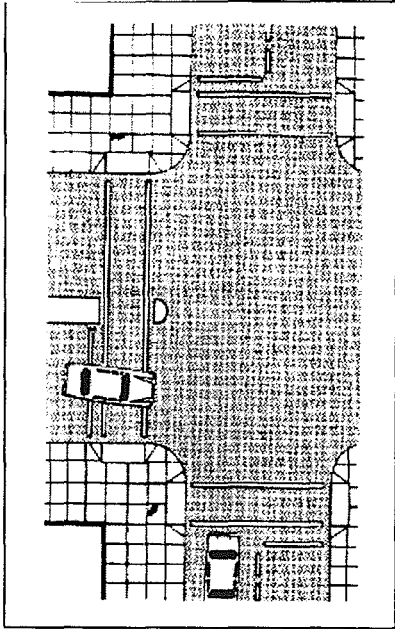


NOTES:

1. CONCRETE SHALL BE 3500 P.S.I. @ 28 DAYS ( MINIMUM ) I.E., CLASS 3500-1 1/2 PER A.P.W.A. SEC. 212.1 THRU 212.4, SLUMP RANGE 2" TO 4" (MAX.).
2. MINIMUM SIDEWALK THICKNESS SHALL BE 4".
3. 1/4" TO FT. CROSS SLOPE (2%).
4. BROOM FINISH WITH TOOLED EDGES (SHINERS NOT REQUIRED)
5. SIDEWALK PANELS SIDES SHALL BE EQUAL TO WIDTH (4x4, 5x5, etc.).
6. EXPANSION JOINTS AT EACH SIDE OF DRIVEWAY APPROACHES, AT UTILITY VAULTS, WATER METER BOXES AND EVERY 45 FEET.
7. CONTRACTION JOINTS EVERY 15 FEET MAXIMUM.
8. AGGREGATE BASE SHALL BE 3/4" OR 1" MINUS CRUSHED ROCK CONFORMING TO A.P.W.A. SECTION 207.2.05, COMPACTED TO 95% DENSITY PER A.P.W.A. SECTION 207.3.04B.

ATTENTION: ALL CONCRETE WORK IN THE CITY RIGHT-OF-WAY REQUIRES FORM AND SUB-GRADE INSPECTION AND APPROVAL BY PUBLIC WORKS PERSONNEL PRIOR TO POURING CONCRETE.

<p>CITY OF</p> <p>MILWAUKIE</p>	<p>CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.</p>												
<p>RESIDENTIAL SIDEWALK (CURBTIGHT W/TYPE "C" CURB)</p>													
<p>APPROVED</p>	<p>DRAWING NO.</p> <p style="font-size: 24pt; font-weight: bold;">Figure 8</p>												
<p>CITY ENGINEER</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">NO.</th> <th style="width: 65%;">REVISIONS</th> <th style="width: 10%;">DATE</th> <th style="width: 20%;">BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	REVISIONS	DATE	BY								
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Sidewalk design shall meet the requirements of the American Disabilities Act (ADA). The following sections summarize key elements of design to address ADA needs.

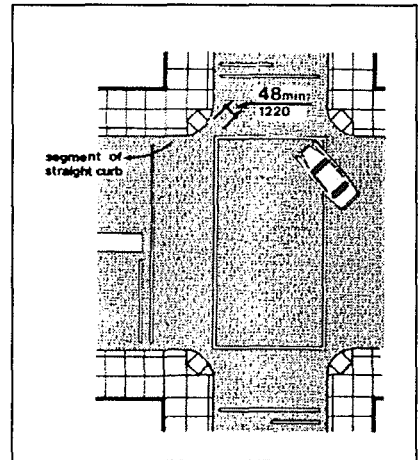
**Slope and clearance:** Sidewalks shall have a maximum slope equal to the slope of the roadway and a cross slope no greater than 1:50 where possible. Where steeply sloped roadways and constrained right-of-way result in steep slopes, the least possible slope shall be provided. All utilities with facilities in the sidewalk area shall locate their facilities to be in conformance with the 36 inch minimum horizontal clearance. A seven foot vertical clearance above the sidewalk shall be maintained.

**Sidewalk Ramps.** All intersections shall contain sidewalk ramps (for access) located within the curb return. Two (2) ramps per curb return are preferred. Locations of sidewalk ramps shall be designed with regard to storm water flows,

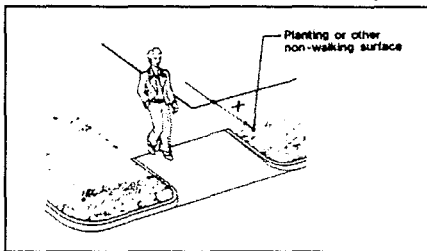
street grades, and pole locations. Other factors may also dictate sidewalk ramp location.

The minimum width of a curb ramp shall be three feet exclusive of flared sides.

If diagonal (single corner type) curb ramps are utilized, the bottom of diagonal curb ramps shall have 48 inch minimum clear space as shown .



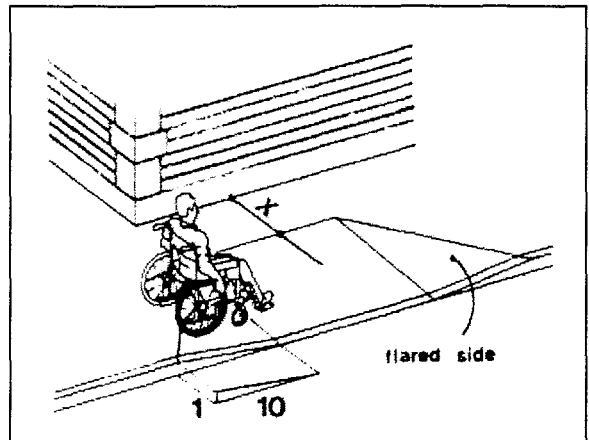
Where the sidewalk ramp is completely contained within a planting strip or other non-walking surface, so that pedestrians would not normally cross the sides, the curb ramp sides can have steep sides including vertical returned curbs.



Sidewalk ramps shall have flares with a maximum slope of 1:10. If the clearance for the landing at the top of the sidewalk ramp (measured from the top of the ramp to the edge of the walkway or closest

obstruction is denoted as "x") is less than 48 inches, then the slope of the flared side shall not exceed 1:12.

The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. Curb ramps and ramps to be constructed on existing sites or in



existing buildings or facilities where space limitations prohibit the use of a 1:12 slope (or less), slopes and rises are permitted as follows: a) a slope between 1:10 and 1:12 is allowed for a maximum rise of 6 inches; b) a slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

**Mail Boxes and Large Poles.** Where large poles, clustered mail boxes or other large objects are within the proposed sidewalk space, the new sidewalk design shall be widened to provide a minimum of four foot clear space.

**Crosswalks.** Crosswalk pavement markings shall only be used for intersections controlled by traffic signals, stop signs, or other locations approved by the City Engineer or designee. The sidewalk curb ramps shall be located wholly within the crosswalk marking limits (not including the wing flares).

#### 1.4.4 Bicycle Facilities

The City's Comprehensive Plan adopted the "Milwaukie Bicycle Master Plan" from the Transportation System Plan. This plan summarizes the City's policy and implementation strategies for bike facilities within the City and for connection with metropolitan bike facilities. The City's plan has adopted both AASHTO and ODOT standards and criteria as the minimum guidelines for bike facilities design, construction, and control.

The City's adopted guidelines for bikeways consist of the following:

1. AASHTO, "Guide to Development of Bicycle Facilities, 1999
2. ODOT, "Oregon Bicycle & Pedestrian Plan", 1995
3. Manual on Uniform Traffic Control Devices with Oregon supplements by Oregon Transportation Commission, 2000

**Design Criteria.** Bicycle lanes shall be six feet wide for new construction and five feet wide for street reconstruction projects. The required width for off-street shared bicycle/pedestrian trails shall be 12 feet (8 feet is the minimum width, acceptable in constrained design circumstances due to physical, topographic or environmental features).

All bike facilities shall have a minimum cross-slope of two percent (2%) and a maximum cross-slope of five percent (5%). On curved alignments, the cross-slope shall be to the inside of the curve.

Off-street bicycle path curvature will be based on a minimum design speed of 20 MPH. Grades shall be limited to a maximum of five percent (5%) for off-street bicycle paths.

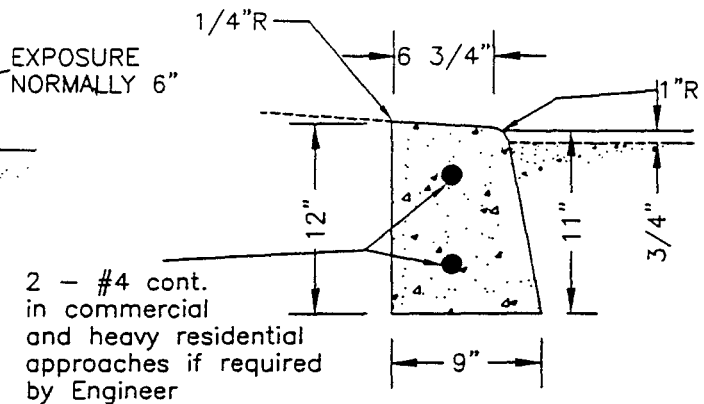
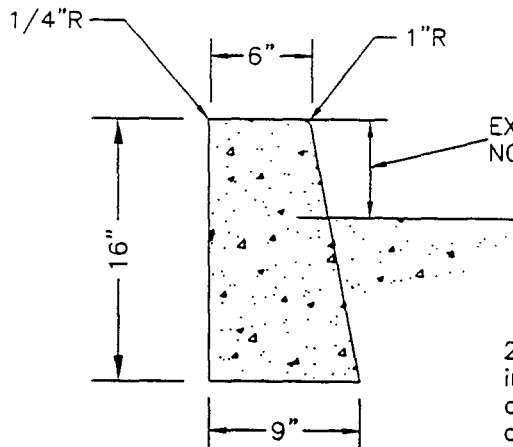
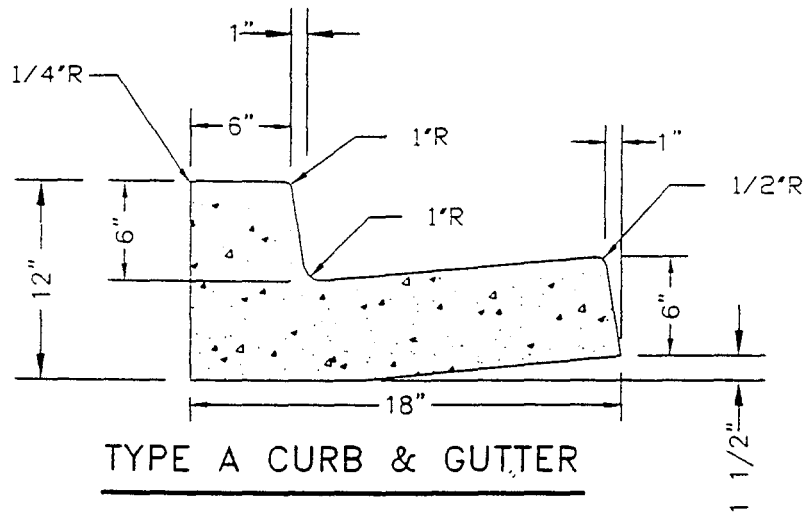
V. 88

Where topography dictates, grades over five percent (5%) are acceptable when a higher design speed is used and additional width is provided.

When culverts cross off-street bicycle paths or lanes, the ends of the pipe shall be no closer than five feet from the edge of the bike facility.

**1.4.5 Curbs**

Details for standard curbs are shown in Figure 9.



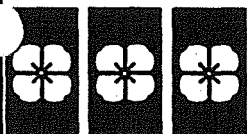
NOTES:

1. Curbs and gutters shown may be used with either A.C. or P.C.C. pavements.
2. Transitions from one type curb to another will be detailed on project plans as necessary.
3. Contraction joint to be installed every 15' of curb and shall extend at least 50% through the curb or curb and gutter. Felt expansion joint to be installed every 45' of curb.
4. 3500 p.s.i. concrete to be used for all curbs, 2"-4" slump

CURB QUANTITIES CU. YD. PER LIN. FT.	
TYPE	QUANTITY
A	0.04942
C	0.03085

CITY OF

CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.



CURB, TYPE A AND TYPE C

DRAWING NO.

Figure 9

APPROVED

NO.

REVISIONS

DATE

BY

MILWAUKIE

CITY ENGINEER

DATE

## **Chapter 2**

# **Transportation Impact Study Guidelines**

### **2.1 PURPOSE**

A Transportation Impact Study documents the adequacy of the transportation system to serve a proposed land use or development proposal and the expected impacts of the proposal on the surrounding transportation system. The transportation impact study guidelines establish uniform guidelines for conducting transportation impact studies for proposed development activities, whether new or existing, which require access or modification of access to the City's street system. These guidelines are used to ensure consistent and proper planning and engineering practices in conjunction with land use actions being considered in the City.

### **2.2 DETERMINING WHEN A TRANSPORTATION STUDY IS REQUIRED**

A threshold scoring approach will be utilized to assist in the determination of when a transportation impact study is required. The purpose of this approach is to:

- Assess the likelihood of potential adverse traffic and safety impacts of development based upon trip generation and conditions of the site and project impact area;
- Identify known traffic and transportation facility deficiencies in the impact area of the project;
- Identify transportation plans and projects anticipated in the project area; and
- Ensure traffic and transportation issues are identified and addressed prior to submission of a land use application.

#### **2.2.1 Timing**

Traffic and transportation issues will be identified in a pre-application conference to be held prior to submission of a land use application. The City Engineer will review project information, city records and other information as appropriate when applying the threshold scoring method. Vehicle trip generation rates are subject to approval by the City Engineer.

#### **2.2.2 Method**

Traffic and transportation parameters related to the project and the surrounding area including trip rates, land use, transportation plans and projects are assigned individual scores as shown in Table 3. These scores shall be used in determining when a traffic impact analysis is required for development and land use proposals. Scores are added

together to arrive at a total score. A traffic impact analysis is required when the total score is greater than 99 points.

**Table 3**  
**Threshold System Scoring Procedure**

Parameter	Points
Any change to a land use designation, zoning district, or development standard that increases development potential, density, or intensity of use.	100
Any use over 400 vehicle trips per day (vpd)	100
Any use 200-399 vpd	75
Any use 100-199 vpd	65
Any use less than 100 vpd	45
Community Service Overlay Use or Conditional Use in any residential zone or within 500' of a residential zone.	60
More than 25 through trips on a local street.	50
Intersection below city Level of Service standard within 500' of the project site.	30
Project site within 500' of a school walking route.	20
Project site within 500' of a Capital Improvement Project or Transportation System Development Charge Project.	15
Project site within 250 feet of a Transportation System Plan (TSP) bikeway, walkway, or other TSP project.	10

### **2.3 SCOPE OF THE TRANSPORTATION IMPACT STUDY**

The City Engineer shall approve the study area, intersections to be studied, trip rates, traffic distribution, and required content of the traffic study based on the following elements. The City Engineer may require the study to include elements not shown below when based on accepted practice or professional judgement.

#### **2.3.1 Preparation**

A neighborhood assessment, access study or transportation impact study shall be prepared and certified by staff and/or a registered Traffic or Civil Engineer in the State of Oregon. All costs for transportation studies and review shall be paid by the applicant in accordance with Milwaukie Municipal Code Chapter 19.1400.

### **2.3.2 Transportation Study Outline**

The study area for a transportation impact study shall be defined in the pre-application meeting and scoping process. Generally, the study area will consist of a zone within a ½ mile radius, as determined by the City Engineer. Project impacts greater than 10% above the existing traffic volumes may require a study area greater than ½ mile. A Transportation Impact Study shall include the following elements, unless waived by the City Engineer (Table 4 provides the checklist that will be utilized for each project to determine study content – it will also be used to check studies for completeness):

**Introduction and Summary.** Include trip generation, summary of transportation operation and mitigation.

**Existing Conditions.** This section should include a study area description and existing study area level of service.

**Impacts.** This section should include a brief review of the site plan including a site plan layout, project related trip analysis, and an evaluation of the project site plan. A figure showing the assumed Future Year roadway network (number and type of lanes at each intersection) should be provided.

**Mitigation.** Project specific and area-wide specific mitigation measures should be recommended.

**Appendix.** This section should include counts, capacity calculations, warrant analysis and any information necessary to convey a complete understanding of the technical adequacy

### **2.3.3 Transportation Impact Study Methodology**

**1. Neighborhood through-traffic impact assessment** as outlined in Milwaukie Municipal Code Chapter 19.1400.

**2. Project description** including site location map and characteristics as well as all existing and proposed land uses for the site.

**3. Study area description** including description of roadway (roadway classification, posted speed, ADT volumes, number of lanes, traffic control, width of road, pedestrian/bicycle facilities), transit stops and service, parking conditions, existing geometric deficiencies, collision data (vehicle, bicycle and pedestrian) at study area intersections<sup>1</sup>, and other pertinent features. Planned roadway improvements identified in the City's Comprehensive Plan and in the Metro Regional

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<sup>1</sup> An average of 2 collisions per year over the most recent 3 years at a particular intersection shall mandate further study of the intersection.

**Table 4: TRANSPORTATION IMPACT STUDY CHECKLIST**

Project Name: \_\_\_\_\_

City Reference Code: \_\_\_\_\_

Score

**THRESHOLD SCORING**

Transportation Impact Study Required with score of 99 or greater

Yes  No Study Required Comment: \_\_\_\_\_ Date: \_\_\_\_\_

**BACKGROUND INFORMATION**

Yes  No Oregon PE Stamp and Signature

**INTRODUCTION AND SUMMARY**

Yes  No

**EXISTING CONDITIONS**

- Yes  No Roadway Network - summary of roadway classifications and description of study area
- Yes  No Analysis Periods Correct ( AM,  Mid-day,  PM  Afternoon\_\_\_\_\_,  Saturday\_\_\_\_\_,  Other\_\_\_\_\_)
- Yes  No Existing Traffic Operations (Existing Level of Service, traffic volumes (new counts ), speeds , accident data )

**IMPACTS**

- Yes  No Trip Generation - Daily, peak hour trips generated by site development: ITE Trip Generation Manual /Survey
- Yes  No Level of Service Analysis - projected LOS with site build out, existing traffic, and background traffic growth
- Yes  No Future year 20 year analysis
- Yes  No Signal Warrant Analysis
- Yes  No Turn Lane Warrant Analysis
- Yes  No Access Spacing Standards
- Yes  No Analysis of sight distance at frontage road access point(s)
- Yes  No Neighborhood Traffic Analysis
- Yes  No Identify safe route to school or school bus stop (Contact with school district)
- Yes  No Analysis of safe pedestrian/bicycle access to nearest transit stop (if within 1/2 mile of project site)
- Yes  No Identify accessibility to public transit

**MITIGATION**

- Yes  No Identify need for right/left turn lanes, storage capacity and length
- Yes  No Identify possible corrections of any LOS deficiencies
- Yes  No Identify any access deficiencies (including transit/pedestrian/bicycle connections)
- Yes  No Identify any TDM measures

**FIGURES**

- Yes  No Vicinity Map
- Yes  No Site Plan
- Yes  No Existing peak hour turn movement volumes (counts conducted within previous 12 months)
- Yes  No Trip Distribution (%) including Added Project Peak Hour Traffic Volumes (see sample)
- Yes  No Approved Projects Peak Hour Traffic Volumes (see sample)
- Yes  No TSP Future Year turn movement volumes comparison
- Yes  No Programmed transportation improvements and transportation mitigation outlined in study

**TABLES**

- Yes  No Intersection Performance Existing Conditions
- Yes  No Project Trip Generation
- Yes  No Intersection Level of Service

**OTHER**

Yes  No Technical appendix - sufficient material to convey complete understanding of traffic issues (e.g. HCM analyses, trip generation calculations, signal warrant analyses, turn lane warrant analyses, etc.)

Completed By: \_\_\_\_\_

Date: \_\_\_\_\_

Transportation Plan should be identified. A figure showing the study area as well as a figure showing existing AM and PM peak hour intersection turn movement volumes should be provided along with estimates of bicycle, pedestrian and transit usage adjacent to the project site.

**4. Identification and statement of compliance with applicable policies of the Transportation System Plan and Comprehensive Plan.**

**5. Volumes** will be acceptable if collected within 12 months of acceptance of the transportation impact study.

**6. Analysis Scenarios** include existing conditions, existing + project and existing + project + other approved projects. For plan amendments and zone change projects or sites with non-conforming access, analysis using the currently available 20 year travel forecasts will be required.

**7. Peak Hour** shall include the morning and evening peaks. Additional peak hour analysis may be required by the City Engineer.

**8. Trip Generation** will be computed based upon the Institute of Transportation Engineers *Trip Generation (current edition)*. Evaluation of the average and formula trip rates shall be provided to the City Engineer prior to commencing the study. If the City Engineer determines that the data in *Trip Generation* is not adequate or available for the proposed land use, a survey of a directly comparable site as the basis of the trip generation will be required. The trip generation rate from such surveys will be approved by the City Engineer prior to application in the Transportation Impact Study. For comprehensive plan and zoning amendments, a table comparing trip generation between the existing zoning condition and the proposed project trip generation shall be provided.

**9. Intersection level of service** should be determined for study area intersections for the peak hours using the *2000 Highway Capacity Manual*<sup>2</sup> (or current edition). The level of service results shall be shown in a table.

**10. Project-related trip analysis** shall include expected trip generation, trip distribution, and trip assignment. A table should be provided identifying the type and size of each proposed land use, daily and peak hour vehicle trip rates<sup>3</sup> and the total number of daily and peak hour vehicle trips. A figure showing Project Trip Distribution (in percent) should be provided. Trip distributions shall be based upon 1) travel forecast model results; 2) analysis of site travel patterns document in the impact study; and/or 3) actual traffic counts or surveys of comparable uses.

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<sup>2</sup> Highway Capacity Manual, Transportation Research Board HCM 2000, 2000.

<sup>3</sup> Based upon Trip Generation, Institute of Transportation Engineers most current edition or actual similar site surveys/counts.

**11. An evaluation of the project site plan** should include site access locations, vehicle queue storage, left turn/right turn lane needs, pedestrian circulation and conflicts, parking, existing deficiencies, and efficiency of proposed vehicular circulation/facilities, and recommendations for on-site channelization and traffic controls.

**12. An evaluation of project impacts** on street operating conditions to include:

- a. An analysis of level of service and volume/capacity at study area intersections and project access points. The level of service results for study area intersections and access points should be shown in a table with the level of service calculation sheets provided in the appendix of the report. Approved projects should be those projects approved by the City yet not constructed. The City will provide a listing of approved projects (from their CIP or other funding programs).
- b. Operational analysis should include turning conflicts and queue spill-back locations which may adversely affect adjacent intersections or driveways. Turn lane warrants should be evaluated for project access points and all unsignalized study area intersections.
- c. Neighborhood street impacts will be assessed by estimating the number of vehicle trips that will travel to/from the proposed development through a residential local or neighborhood street. All such streets with greater than 10 vehicle trips per hour in any hour of the day will be identified and compared to existing traffic volumes on each street exceeding the threshold. Measures appropriate to minimize the impact of speeding, volume and noise to the neighborhood shall be identified.
- d. Assessment of pedestrian, bicycle and transit accessibility to the site.
- e. A discussion of traffic safety impacts:
  - i. Signal warrant analysis and Four-way stop analysis based on the *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD) should be conducted at study area unsignalized intersections. Traffic signals are intended for crossings of public streets for all modes of transportation. Their use shall be limited to those appropriate per the guidelines in OAR 731-020-300 and 731-020-400.
  - ii. Left turn lane requirements for different scenarios should utilize *A Policy on Geometric Design of Highways and Streets, (AASHTO) 1990, page 791 (or current edition)*. If storage lanes are required, the study will include the length of the storage lane needed and its storage capacity. Provision of turn lanes will be consistent with policy for arterial and collector streets.

- iii. Project access should be evaluated including sight distance requirements based on AASHTO (including but not limited to page 762).
- iv. Access spacing to adjacent driveways/public streets (including both sides of the street) shall be documented, as required in Chapter 1)
- v. Pedestrian and Bicycle safety issues. The study should address the safety of pedestrians leaving and entering the site. For residential projects it should address provision of a safe walking environment for students leaving the site and traveling to the nearest Elementary and Middle/Junior High Schools, or to the nearest school bus stop(s) serving these and High Schools. The study will also address when and where the school bus stop is provided. If school bus service is not provided, the walking path to the corresponding elementary and/or junior high schools shall be identified. The school district shall be contacted to discuss locations for bus pull-outs.<sup>4</sup> For all land uses, safe pedestrian and bicycle access to the nearest transit stop (if within 1/4 mile of the development) shall be identified.
- vi. Bicycle access for the site should be identified indicating the closest bicycle lane (existing or comprehensive plan) and their status in terms of connectivity within the City.
- vii. The transit accessibility of the project shall be described and evaluated. Planned transit system changes/modifications shall be documented including bus stop locations<sup>5</sup>.

**13. Other Issues** as determined in the pre-application meeting and scoping process (provided in writing by the City). These may include citizen issues, agency issues identified in scoping letters or other transportation related concerns specific to the project site.

**14. Statement of Assumptions** – The transportation impact study shall clearly describe all assumptions utilized in the analysis (this material can be documented in the appendix).

#### **2.2.4 Mitigation Requirement and Options**

Mitigation measures for site access and transportation system improvements shall be required when the standard for public facilities are not met. This may include the following (subject to rough proportionality and mitigation provisions of the Milwaukie Municipal Code Chapter 19.1400):

- The location, nature, and extent of all project specific and area-wide mitigation measures to achieve acceptable operating conditions for both the short-term and long-term study year shall be identified. Mitigation of both on-site and off-site

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<sup>4</sup> Contact North Clackamas School District Transportation Department Director.

<sup>5</sup> Contact Tri-Met Service Planning.

transportation deficiencies reasonably related to the impacts of the proposed development shall be identified for the safe and efficient flow of motor vehicles, bicycles, pedestrians, transit and freight. The study shall discuss whether the recommended improvements (both on-site and off-site) are reasonably related to and roughly proportional to the impacts of the development.

- Where performance standards noted above are not met, mitigation measures including but not limited to street connectivity, demand management, shared access permission, lane geometry, future streets, traffic control enhancement or other measures shall be identified to correct the deficiency.



To: Mayor and City Council

Through: Mike Swanson, City Manager  
 Scott Burgess, Community Development Director Pro Tem *MS*

From: Roosevelt Carter, Program Services Coordinator *RC*

Subject: Safeway Property Redevelopment

Date: September 7, 2001

Action Requested

Approve Resolution No. \_\_\_\_ Accepting the Terms and Conditions for a Fifteen-Year Loan from the Oregon Housing and Community Services (OHCS) Department to purchase the Safeway Property in Downtown Milwaukie and Exercise the City's Option to Purchase the Property from the Safeway Corp.

Background

City of Milwaukie Resolution No. 25-2001, adopted July 17, 2001, directed City staff to "take the necessary steps to acquire a CIF (Community Incentive Fund) loan . . ." from OHCS to purchase the Safeway property. Staff and legal counsel recently completed discussions with OHCS and the Oregon Attorney General's office on the loan terms and conditions. In particular, the loan terms provide for:

1. A fifteen(15) year term at one (01%) percent annual interest, payable once each year on the loan's anniversary.
2. Notification of OHCS within 15 days of any hazardous substance or other environmental problem or liability with respect to the property. The City, at its own cost and expense, shall take all actions necessary or advisable for clean up of the project, etc. **(No environmental hazards are anticipated, however a Level I environmental assessment will be undertaken as part of the City's due diligence purchase process.)**
3. No Transfer. Borrower (i.e., the City of Milwaukie) shall not sell, lease, convey or otherwise transfer or encumber any material or essential part of or interest in the Project, or permit such sale, lease, conveyance, or other transfer or encumbrance of the Project or any portion thereof, without the prior written consent of the Department, which consent the Department will not unreasonably withhold, condition or delay. **(OHCS has agreed to acknowledge by side letter that transfer to another entity may be**

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Council Staff  
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***necessary to the City's development purposes, however, the City must maintain not less than a fifty percent ownership in the property until such time as the loan has been paid off.)***

Concurrence

Legal Counsel  
Acting Community Development Director  
City Manager

Fiscal Impact

- The City will acquire a \$750,000 loan requiring repayment per terms of the loan agreement.
- The City must deposit \$50,000 in an escrow account upon notification of its intent to exercise its purchase option under the current lease-purchase agreement with the Safeway Corporation.
- The City must at its own expense conduct a Level I Environmental Assessment of the property.

Work Load Impacts

Work is being distributed amongst the following staff as necessary:

- Program Development Coordinator
- Neighborhood Services Manager
- Engineering Director
- Planning Director
- Management and Council oversight

Alternatives

- Adopt the staff recommendation.
- Reject the Proposed Loan documents in whole or in part and direct the staff accordingly.

Attachments:           -Resolution No. \_\_\_\_\_  
                                  -OR Housing & Community Services' Loan Documents:

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE TERMS AND CONDITIONS OF A LOAN FROM THE OREGON HOUSING AND COMMUNITY SERVICES (OHCS) DEPARTMENT TO PURCHASE THE SAFEWAY PROPERTY IN DOWNTOWN MILWAUKIE.**

**WHEREAS**, Resolution No. 25-2001, adopted by the Milwaukie City Council on July 17, 2001, directed City staff to take the necessary steps to acquire a Community Incentive Fund (CIF) loan from the Oregon Housing and Community Services Department for the purpose of purchasing the Safeway property in downtown Milwaukie; and

**WHEREAS**, Agreement has been reached with the Oregon Housing and Community Services Department on the Terms and Conditions of a Community Incentive Fund loan for such purchase; and

**WHEREAS**, The City's current lease agreement with the Safeway Corporation provides an "Option to Purchase the Premises" clause;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie accepts the terms and conditions of the Community Incentive Fund Loan per the attached loan documents and directs its staff to deposit necessary funds into an escrow account per the terms and conditions of the loan agreement and further directs its staff to proceed with all other necessary actions to complete purchase of the Safeway property in downtown Milwaukie.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on \_\_\_\_\_.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

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


\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager  
Scott Burgess, Community Development Director Pro Tem

From: Roosevelt Carter, Program Services Coordinator 

Subject: Safeway Property Redevelopment

Date: September 14, 2001

Enclosed are "draft" loan documents to be attached to the above staff report and resolution. These documents are being submitted in lieu of final documents from the Oregon Attorney General's office. Final documents are expected to be available prior to the Council meeting on September 18, 2001.

Enclosures: - Loan Agreement;  
- Promissory Note;  
- Security Agreement;  
- Deed of Trust;  
- "Proposed Loan Document Revisions" by the City; and  
- "Response To Proposed Loan Document Revisions" from OR Housing and Community Services and the Attorney General'.

**DRAFT**

**STATE OF OREGON  
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
COMMUNITY DEVELOPMENT INCENTIVE FUND PROGRAM**

**LOAN AGREEMENT**

This Community Development Incentive Fund Program Loan Agreement (the "Agreement") is made and entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (the "Department" or "Lender") and [NAME OF BORROWER ~] (the "Borrower"). The Department hereby, in return for certain performance from Borrower and subject to the terms and conditions hereof, is making a loan to Borrower from the Community Development Incentive Fund (the "Fund") in the amount of [AMOUNT SPELLED OUT ~] Dollars (\$[AMOUNT ~]) (the "Loan") to meet a portion of the costs of [CONSTRUCTION ~] of a [TYPE OF PROJECT ~] project in [CITY ~], Oregon known as [PROJECT NAME ~] (the "Project").

**RECITALS**

WHEREAS, pursuant to ORS 458.705 through 458.740, Lender is authorized to administer the Community Development Incentive Fund Program (the "Program"); and

WHEREAS, as part of the Program, Lender is authorized to make loans from the Fund to help finance certain costs of appropriate community development projects; and

WHEREAS, the Borrower desires that the Department provide the Loan to it in the amount and for the purposes specified herein; and

WHEREAS, the Department is willing to provide such Loan from the Fund to Borrower, subject to the terms and conditions of the Program and of this Agreement; and

WHEREAS, the Program includes, without limitation, ORS 458.705 through 458.740 (the "Act"), any administrative rules, orders, policies or procedures adopted by the Department pursuant thereto, as amended from time to time, and any other applicable laws; and

WHEREAS, the Borrower is willing to comply with the terms and conditions of this Agreement, including its requirement of compliance with the Program; and

WHEREAS, the Department has reviewed the Borrower's loan application (the "Application") and determined therefrom that the Project, as accepted by the Department and as hereinafter more fully detailed, is feasible and merits financing;

NOW, THEREFORE, for good and valuable consideration, including the terms and conditions herein, the parties agree as follows:

**SECTION 1.**

DEFINITIONS

As used in this Agreement, capitalized terms have the following meanings or the meanings previously given above:

**DRAFT**

- 1.01. Adjacent Property. “Adjacent Property” means any real property that is within 1,000 feet of any border of the Project.
- 1.02. Bankruptcy Code. “Bankruptcy Code” means the United States Bankruptcy Code, as amended, 11 U.S.C. 101, et seq.
- 1.03. Begin Production. “Begin Production” means the point in time when [construction, acquisition ~] begins on the Project.
- 1.04. Closing Date. “Closing Date” means the date of the Note.
- 1.05. Disabilities Laws. “Disabilities Laws” means all applicable federal, state, and local laws and regulations related to usability of and accessibility to the Project by people with disabilities. The term “Disabilities Laws” includes, but is not limited to, the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990 and all regulations adopted thereunder.
- 1.06. Environmental Law. “Environmental Law” means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 USC §§ 9601-9675, the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended, 42 USC §§ 6901-6992 and ORS Chapters 465, 466, 468A, and 468B, and any similar federal, state or local law, statute, ordinance, rule, or regulation to and including those related to land use and zoning, energy and industrial facilities siting or occupational safety and health.
- 1.07. Event of Default. “Event of Default” means any Event of Default described in Section 6 hereof.
- 1.08. Financing Statements. “Financing Statements” means the Uniform Commercial Code financing statements, if any, required to be filed in order to perfect the security interests in personal property granted to the Department under the Security Instrument in accordance with the requirements of the Uniform Commercial Code as adopted in Oregon statutes.
- 1.09. Governmental Authority. “Governmental Authority” or “Governmental Authorities” means any federal, state, regional, county or municipal governmental agency, board, commission, officer or official whose consent or approval is required or whose regulations must be followed as a prerequisite to (a) the commencement or continuation of the Project, (b) the continued operation and occupancy of the Project, or (c) the performance of any act or obligation or the observance of any agreement, provision or condition of whatever nature contained in this Agreement or the other Loan Documents.

- 1.10. Hazardous Substances. “Hazardous Substances” means and includes all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, petroleum products or crude oil or any fraction thereof, asbestos, polychlorinated biphenyls, radioactive materials; explosives - except such explosives as are used during construction in accordance with law, and raw materials which include hazardous constituents), or other similar substances, or materials which are included now or in the future under or regulated by any Environment Law and including, without limitation, as designated pursuant to 40 CFR Part 302, 40 CFR §261.3, 40 CFR Part 355, 29 CFR § 1910.1200(c), 40 CFR Part 372, 49 USC §§ 1801-1819, 49 CFR Part 172, Section 311 of the Clean Water Act – 33 USC §§1251-1387 (33 USC § 1317), ORS 466.005(7), and amendments, orders or other rules promulgated pursuant to such laws and regulations.
- 1.11. Loan. “Loan” means the Loan described above and further detailed in Section 2.01 hereof.
- 1.12. Loan Documents. “Loan Documents” means this Agreement, the Note, the Security Instrument, the Financing Statements (if any), and all other instruments and agreements required to be executed in connection with the Loan, and any amendments or supplements to any such documents.
- 1.13. Note. “Note” means the promissory note or notes issued pursuant to Section 2.02 hereof.
- 1.14. Obligations. “Obligations” means the performance requirements, liabilities, covenants, representations, warranties, agreements and other obligations of Borrower as contained in the Loan Documents.
- 1.15. Permitted Encumbrances. “Permitted Encumbrances” means, at any particular time, (a) liens for taxes, assessments or governmental charges not then due and payable or not then delinquent, (b) liens created or contemplated by the Loan Documents, and (c) the liens, encumbrances and restrictions on the Project which are otherwise approved in writing by the Department.
- 1.16. Person. “Person” means any individual, firm, corporation, trust, association, partnership, limited liability company, joint venture, tribunal, Governmental Authority or other entity.
- 1.17. Project. “Project” means the Project described above including, without limitation, all real and personal property related thereto, the acquiring, designing, constructing, equipping, furnishing, operating and maintaining of same, and as further detailed in Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- 1.18. Security Instrument. “Security Instrument” means the deed of trust, security agreement or other security instrument securing payment of the Note and performance of the other Obligations of the Borrower including, without limitation, the Obligations under this Agreement and the other Loan Documents.
- 1.19. Other Definitions. Capitalized terms that are not defined above, but are defined elsewhere in this Agreement, shall have the same meanings given them in such provisions of this Agreement. Capitalized terms that are not defined in this Agreement, but are defined in the Security Instrument or other Loan Documents, shall have the same meanings as are given them in the Security Instrument or other Loan Documents as the context requires.

**SECTION 2.  
THE LOAN**

Section 2.01. Amount, Interest and Term of Loan. The Loan shall be a non-revolving loan and shall be in the principal sum as provided above and in the Note. The Loan shall bear interest on the total principal sum of the Note from the date of the Note and otherwise pursuant to the terms of the Note. The Loan shall mature and be subject to payment on the dates and terms specified in the Note, which Note is incorporated herein by reference.

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Section 2.02. Note. The Loan shall be made, evidenced by, and repayable in accordance with the Note, payable by Borrower to the order of Lender at Lender's office, dated the Closing Date, in the principal amount provided above and in the Note, and duly executed and delivered on behalf of Borrower.

Section 2.03. Late Payments. If payment of any installment required under this Agreement, the Note, the Security Instrument or under any of the other Loan Documents is delinquent more than fifteen (15) days, Borrower shall pay a late charge of two percent (2%) of the delinquent installment the first month and an additional charge of one percent (1%) per month thereafter for the duration of the delinquency in addition to any further installments then due.

Section 2.04. Application of Payments. Lender may apply any payments to amounts then due, first to outstanding charges or costs, if any, then to outstanding accrued interest, and then to outstanding principal, or in such other order or priority as to the Lender seems appropriate.

Section 2.05. Disbursement of Loan; No Interest; Conditions Precedent. Lender will disburse the Loan to Borrower within thirty (30) days after receipt by Lender of this Agreement and the Note, both duly executed and delivered on behalf of Borrower. Lender has no obligation to pay interest to Borrower on Loan funds prior to, on, or subsequent to the date of disbursement. Notwithstanding any other provision herein, any disbursement of Loan funds by Lender is specifically conditioned upon and subject to the following conditions precedent:

(a) Representations. The representations contained in Section 4 hereof shall be true and correct on and as of the date(s) of Loan disbursement with the same force and effect as if made on and as of such date.

(b) No Default. No Event of Default shall have occurred prior to or be continuing on the date(s) of Loan disbursement.

(c) Insurance. Borrower has obtained and is currently maintaining as of the Closing Date and thereafter effective fire, casualty, general liability, and other insurance policies as are required by and satisfactory to the Department.

(d) Statutory Compliance. If Borrower is a public entity then it shall be in compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and other applicable laws that are incorporated by reference herein.

(e) Availability of Funds. Monies currently are appropriated and available to the Department within the Fund to finance the Loan.

(f) Proceedings and Documents. All proceedings taken by Borrower in connection with the Loan shall be in form and substance satisfactory to the Department and its counsel, and the Department shall have received from Borrower: (i) executed original Loan Documents; (ii) properly certified resolutions, duly authorizing the execution and delivery of the Loan Documents, and the consummation of the transaction contemplated thereby; (iii) such authorizations and other documents as the Department, in its sole discretion, may require; and (iv) such authenticated copies of any other documents as the Department may reasonably request.

(g) Environmental Disclosure Statement. If requested by the Department, Borrower shall have provided to the Department a completed environmental disclosure statement satisfactory to the Department.

(h) Environmental Audit. If requested by the Department, Borrower shall have provided to the Department at Borrower's expense a Phase I audit acceptable to the Department from an environmental engineer satisfactory to the Department. If requested by the Department, each exception noted in the audit shall be remedied by Borrower at Borrower's expense with satisfactory evidence or certification thereof, acceptable to the Department, provided to the Department prior to the Closing Date.

(i) Legal Description. Borrower shall have furnished to the Department for its approval a complete legal description of the Project.

Zoning. Borrower shall have furnished to the Department evidence, satisfactory to the Department, that the relevant real property is duly and validly zoned for the construction, maintenance and operation of the Project.

### SECTION 3. SPECIAL CONDITIONS OF LOAN

Section 3.01. Project Commencement; Completion; Use of Loan. Borrower specifically agrees, warrants, and covenants that:

(a) Borrower shall Begin Production of the Project no later than four months from the date of this Agreement unless an extension of this condition is approved in writing by the Department at its sole discretion.

(b) Borrower shall complete the Project to the Department's satisfaction no later than [COMPLETION DATE ~ (typically, "one year from the date of this Agreement.")]

(c) Borrower shall use the Loan for no purpose other than to pay appropriate costs incurred to complete the Project.

(d) Borrower shall submit to the Department such documentation, satisfactory to Lender in form, content and timing, that the above conditions have been satisfied. At a minimum, such documentation shall include copies of all invoices of expenses paid with Loan monies.

Section 3.02. Prepayments. Borrower shall have the right from time to time to prepay the Loan in whole or in part. All payments may be applied first to unpaid charges, if any, next to unpaid and accrued interest, and the balance, if any, to unpaid principal.

Section 3.03. Place of Payments. All payments and prepayments of principal and interest to Lender hereunder will be made to Lender at its office located at PO Box 14508, Salem, Oregon 97309-0409, or at such other place designated by Lender in writing to Borrower.

**SECTION 4.  
BORROWER'S REPRESENTATIONS AND WARRANTIES**

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Borrower further represents, warrants, and agrees as follows:

Section 4.01. Existence and Power. Borrower has full power and authority to transact the business in which it is engaged, and full power, authority, and legal right to execute this Agreement and the other Loan Documents, and to incur and perform its obligations hereunder and under the other Loan Documents and shall provide prior to execution hereof, if required by the Department, an opinion letter of legal counsel, in form and substance satisfactory to the Department, affirming same.

Section 4.02. Authority, No Contravention. The making and performance by Borrower of this Agreement and of the other Loan Documents, and the borrowing by Borrower hereunder: (a) have been duly authorized by all necessary action of Borrower; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Borrower's articles of incorporation, organizational certificate, or bylaws; and (c) do not and will not result in the breach of, or constitute a default or require any consent under, or result in the creation of any lien upon any properties or assets of Borrower pursuant to any other agreement or instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected.

Section 4.03. Binding Obligation. This Agreement and the other Loan Documents have been duly executed and delivered by Borrower and will constitute the legal, valid, and binding obligations of Borrower, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 4.04. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Borrower of this Agreement, or of the other Loan Documents, or for the borrowing hereunder.

Section 4.05. Misleading Statements. No representation or warranty by Borrower in this Agreement or on any written statement, including information, data, exhibits, and other materials submitted in connection with the Loan, furnished to Lender pursuant to this Agreement, or the other Loan Documents, or in connection with the transactions contemplated by this Agreement, when taken together, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements not misleading.

Section 4.06. No Material Change. Since Borrower applied to the Department for the Loan, there has been no material adverse change in the financial condition of Borrower.

Section 4.07. Sole Borrower; Ownership. Borrower is the sole borrower under the Loan.

Section 4.08. No Litigation. No litigation or proceeding is pending or, to the knowledge of the Borrower, threatened against the Borrower or its general partners, if any, or with respect to the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by the Loan Documents or which in any way would adversely affect the validity or enforceability of the Loan, the Loan Documents, or the ability of the Borrower to perform its obligations under this Agreement or the other Loan Documents.

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Section 4.09. Conformance With Law. The Project conforms in all material respects with all applicable zoning, planning, building and Environmental Laws, Disabilities Laws, and ordinances, orders and regulations of Governmental Authorities. All necessary utilities are available to the Project. The Borrower will obtain all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the Project. The Borrower has obtained all licenses, permits and approvals necessary for the ownership, operation and management of the Project, including all approvals essential to the transactions contemplated by the Loan Documents and any other documents contemplated hereby or thereby.

Section 4.10. No Event of Default. No event has occurred and no condition exists with respect to the Borrower or the Project that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice or both, would become an Event of Default.

Section 4.11. Insurance. If requested, Borrower shall have in force and shall have delivered to the Department any policies of insurance reasonably required by the Department.

## SECTION 5. COVENANTS OF BORROWER

Borrower covenants and agrees to all of the following:

Section 5.01. Performance of Obligations. Borrower shall pay its debts and perform all other Obligations under the Loan Documents when due.

Section 5.02. No Discrimination. The Project shall be developed, maintained and operated in compliance with applicable law and shall be open to all persons without discrimination as to race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or local residency, unless otherwise specified by law or the Loan Documents.

Section 5.03. Unexpended Funds. Any Loan monies disbursed to Borrower, or any interest earned by Borrower on the Loan monies, that are not used as set out herein or which remain after the Project is complete or which are not needed for the Project shall immediately be returned to Lender, unless otherwise directed by Lender.

Section 5.04. Public Notification. Borrower shall reasonably acknowledge in one or more public ways acceptable to the Department, such as on project signs, training materials and in public statements, that the Project was funded in part with Community Development Incentive Fund moneys administered by the Department.

Section 5.05. Compliance With Laws. Borrower will comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, except to the extent and

only for so long as an order of a Governmental Authority is contested in good faith and by proper proceedings.

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Section 5.06. Books, Inspection. Borrower shall keep proper books of account and records of all activities associated with the Loan and the Project, including, but not limited to, invoices and canceled checks documenting the use of the Loan and reports as may be required by Lender. Borrower will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records at least until three (3) years from the date the principal balance of the Loan is zero. Borrower shall permit Lender, the Secretary of State of the State of Oregon, and their duly authorized representatives, to inspect the Project upon reasonable notice to the Borrower, and to review and make excerpts and transcripts of its books of account and other records in any way related to the Project or the Loan. Borrower shall cooperate fully with the Department, the Secretary of State, and their representatives, as requested by them, in such reviews and inspections. Access by the Department, the Secretary of State, and their representatives to these books of account and records shall not be limited to the retention period, but shall be permitted for as long as the records are maintained.

Section 5.07. Taxes. Borrower shall pay and discharge all taxes, assessments, and governmental charges or any levies imposed upon it or upon its income or profits or upon any property belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien upon its property, provided that it shall not be required to pay any such tax, assessment, charge, levy, or claim the payment of which is being contested in good faith and by proper proceedings and in respect of which it is maintaining adequate reserves.

Section 5.08. Insurance. At all times, Borrower shall have in full force and effect the policies of insurance with respect to the Project as may be reasonably required by the Department. Policies of insurance, if any, reasonably requested by the Department shall be in form, substance, amount and with companies satisfactory to the Department and shall contain any endorsements requested by the Department. All losses payable under such policies of insurance shall be payable to the Department pursuant to a loss payable clause in form and substance satisfactory to the Department. The originals or certified copies of all such policies of insurance shall be deposited with the Department if so requested by the Department. Each insurer shall agree by endorsement upon requested policies of insurance issued by it, and/or by independent instruments furnished to the Department, that it will give the Department not less than ten (10) days' prior written notice before any such policy of insurance shall be altered or canceled, and that no act or default of Borrower or any other Person shall affect the right of the Department to recover under any such policy of insurance in case of loss or damage.

Section 5.09. Damage or Destruction. If any portion of the Project is damaged or destroyed by flood, earthquake, fire, wind, other acts of God, by Borrower, any other persons, or by any other means, the, unless the Department applies insurance proceeds otherwise or directs Borrower in writing to the contrary, Borrower shall restore the Project to the condition in which it was in prior to such damage or destruction as soon as is reasonably possible.

Section 5.10. Liens. Borrower shall not, without the prior written consent of the Department, create or suffer to be created, any mechanic's, materialmen's, laborer's, tax, statutory, construction, or other lien or charge upon the Project or any part thereof, except liens, security interests or charges approved in writing by the Department and liens for taxes or assessments not yet payable

Section 5.11. Absence of Hazardous Waste. Borrower shall (1) prevent any person or entity from releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping any Hazardous Substance into waters or onto the Project or from the Project to Adjacent Property and otherwise comport with environmental requirements under the Loan Documents, and (2) immediately notify the Department (and not later than within 15 days) in writing should Borrower become aware of Hazardous Substance or other environmental problem or liability with respect to any of Borrower's property, including but not limited to the Project. At the Department's request, Borrower, at its own cost and expense, shall take all actions as shall be necessary or advisable for the clean-up of any such property, including but not limited to the Project, including but not limited to all removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to the Department) and shall further pay or cause to be paid at no expense to the Department all clean-up, administrative, and enforcement costs of applicable governmental authorities which may be asserted against the Project. The Department also may require other performance from Borrower consistent with the Loan Documents.

Section 5.12. Indemnification of the Department. Borrower shall (consistent with ORS chapter 180) indemnify, defend and hold harmless the Department and its officers, directors, employees, representative, agents and assigns, from any and all claims, liability, loss, damage or expense (including but not limited to reasonable attorney fees and disbursements incurred before, at trial, on appeal or in the event of threatened litigation) asserted against the Department by any person, entity, or governmental authority or arising out of or in connection with the Loan, the Loan Documents, or the development, sale or use of the Project or any part thereof, including but not limited to (1) any violation of any applicable laws and regulations, including but not limited to Environmental Laws or Disabilities Laws with respect to the Project, or any governmental or judicial claim, order or judgment with respect to the Project, or any governmental or judicial claim, order or judgement with respect to the cleanup of Hazardous Substances or any investigatory or remedial action at or with respect to the Project and (2) any breach of any of the warranties, representations, agreements or covenants contained in this Agreement. The Department may appear in any action or proceeding to defend itself against such claims, and all costs incurred by the Department in connection therewith, including but not limited to reasonable attorney fees, shall be paid by Borrower to the Department upon request without any requirement of waiting for ultimate outcome of any litigation, claim or other proceeding. Borrower shall pay such liability, losses, claims, damages and expenses to the Department as so incurred within thirty (30) days after notice from the Department itemizing the amounts incurred to the date of such notice. The Department, at its sole option, shall be entitled to settle or compromise any asserted claim against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. Payment thereof by the Department or the payment by the Department of any reasonable attorney fees, judgment or claim successfully asserted against the Department shall constitute an additional principal advance under the Loan, shall bear interest at the default rate applicable to the Loan, and shall be payable upon demand.

This indemnification covenant is in addition to and not in lieu of any other indemnification provisions in this or in any other Loan Document, shall survive the repayment of the Loan and the delivery of a deed in lieu of foreclosure to the Department or any successor of the Department and shall survive any foreclosure, whether judicial or nonjudicial, of the Project by the Department or any successor of the Department, and shall be for the benefit of the Department, and any successor to the Department, as holder of any security interest in the Project, in the Loan, or otherwise, or as owner of the Project or any property of Borrower following foreclosure or the delivery of a deed in lieu of foreclosure.

Section 5.14. Information. Borrower shall: (1) give the Department written notice with ten (10) days after Borrower first receives notice of (A) any litigation or claims of any kind which might subject Borrower to any liability, whether covered by insurance or not, and (2) all complaints and charges filed by any governmental authority or any other person or entity affecting the Project or Borrower or its business which may delay or require changes in construction of the Project or the security of the Department or adversely affect any of the Department's rights under this Agreement; (2) promptly notify the Department of any condition or event which constitutes a breach or Event of Default under any of the Loan Documents or any other agreement or instrument executed by Borrower in connection with the Project or of any materially adverse change in the financial condition of such Borrower; and (3) furnish to the Department promptly such data and information, financial or otherwise, concerning Borrower, as from time to time may reasonably be requested by the Department.

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Section 5.15. Maintenance of Legal Existence. Borrower shall maintain its present legal structure in good standing and shall not amend, modify or terminate its constituent documents, true and correct copies of which Borrower represents have been provided to the Department, without prior written approval of the Department.

Section 5.16. Expenses. Borrower shall pay to the Department upon the Department's demand: (1) all reasonable legal expenses incurred by the Department consist with the terms of the Loan Documents.

Section 5.17. Additional Acts. Borrower, at any time upon request of the Department, shall do, make execute and deliver all such additional and further acts, instruments or papers as the Department may require to assure the Department its rights hereunder and to the Project and its proceeds or other proceeds. The Department, at any time and at its option without further authorization from Borrower, may file copies of this Agreement as a financing statement.

## SECTION 6. NEGATIVE COVENANTS OF THE BORROWER

Borrower further covenants and agrees that, without the express prior written approval of the Department:

Section 6.01. No Transfer. Borrower shall not sell, lease, convey or otherwise transfer or encumber any material or essential part of or interest in the Project, or permit such sale, lease, conveyance, or other transfer or encumbrance of the Project or any portion thereof, without the prior written consent of the Department, which consent the Department will not unreasonably withhold.

Section 6.02. Disposition of Personal Property. Borrower shall not sell, assign, dispose of, or otherwise transfer or encumber any personal property of the Project, including rents, or pay out any money except for reasonable operating expenses and necessary repairs. This subsection does not prohibit the sale or other reasonable disposition of personal property replaced by Borrower in the ordinary and prudent operation of the Project.

Section 6.03. Waste. Borrower shall not cause or allow any waste, destruction, demolition, diminution or abandonment of the Project.

Section 6.04. Use. Borrower shall not cause or allow any use of the Project for any purposed except those uses as originally approved by the Department.

Section 6.05. Debt or Other Obligations. Borrower shall not incur any obligations on behalf of the Project to any of Borrower's officers, directors, stockholders, members, trustees, partners, beneficiaries under a trust, or any of their nominees or relations (natural, legal, or in-fact).

Section 6.06. Substitution or Withdrawal. If Borrower is a limited partnership or a limited liability company, no general partner or principal member respectively may voluntarily withdraw from or be substituted by the partnership or company.

## SECTION 7. EVENTS OF DEFAULT

Any of the following events shall constitute an Event of Default, namely:

(a) If Borrower fails to perform or observe any of its covenants, warranties, representations, agreements, or other Obligations contained herein or in the other Loan Documents; or

(b) If any representation or warranty with respect to current or historical information made to the Department herein or in any certificate, notice, report, or other instrument or document furnished to Lender hereunder or in connection herewith proves to have been incorrect in any material respect when made; or

(c) If any authorization, consent, license, approval, filing, or registration now or hereafter necessary to enable Borrower to comply with its Obligations hereunder or under the other Loan Documents fails to be timely issued or granted, or expires or lapses and is not forthwith renewed or extended, or is revoked, withdrawn, withheld or modified so as to materially interfere with such compliance; or

(d) If Borrower (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

(e) If a proceeding or case is commenced, without the application or consent of Borrower seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed; or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Borrower is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or

(f) If, except as may be permitted under the Loan Documents, Borrower effects a change of ownership, a change of control of its business, or relocates its business conducted at the Project location without the prior written consent of Lender.

**SECTION 8.  
REMEDIES UPON AN EVENT OF DEFAULT**

If an Event of Default shall occur and continue for 30 days or for such lesser period as the Department may provide by written notice or as otherwise allowed in the Loan Documents, the Department or a trustee appointed pursuant to the Loan Documents may, without further notice, exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available at law, in equity, or pursuant to the Loan Documents or otherwise:

- (1) Acceleration. The Department may declare all or any portion of the Obligations immediately due and payable.
- (2) Receiver. If the Loan is secured by a trust deed on the Project in favor of the Department, the Department may have a receiver appointed for the Project. The Department shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Project exceeds the amount of the indebtedness secured by the Trust Deed. Employment by Trustee or the Department shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at the Department's option and waives any and all defenses to such an appointment.
- (3) Possession. If the Loan is secured by a trust deed on the Project in favor of the Department, the Department may, either through a receiver or as a lender-in-possession, enter and take possession of all or any part of the Project and use, operate, manage, and control it as the Department shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Project to the Department or any receiver appointed under this Agreement or otherwise under the Loan Documents.
- (4) Rents. If the Loan is secured by a trust deed on the Project, the Department may revoke Borrower's right to collect the rents, and may, either itself or through a receiver, collect the same. The Department shall not be deemed to be in possession of the Project solely by reason of exercise of the rights contained in this subsection (4).
- (5) Specific Performance or Other Relief. The Department may bring an action for specific performance, for injunction, for the appointment of a receiver to take over and operate the Project, or for any other appropriate relief with respect to the Loan, the Project, any of the Loan Documents, or otherwise.

**SECTION 9.  
MISCELLANEOUS**

Section 9.01. No Implied Waiver, Cumulative Remedies. No failure on the part of Lender to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right,

power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 9.02. Governing Law; Venue; Consent to Jurisdiction. This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. The courts of the State of Oregon (and to the degree possible, the courts of the State of Oregon in Marion County) shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement, under the other Loan Documents, or otherwise with respect to the Loan or the Project. The Borrower hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto.

Section 9.03. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the Department or the Borrower:

To the Department: Oregon Housing and Community Services  
1600 State Street  
PO Box 14508  
Salem, Oregon 97309-0409  
Attention: Housing Resources Section

**DRAFT**

To the Borrower: name  
address  
city/state  
Attention: xxxxxxxx

Section 9.04. Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties. Such written modification will be made a part of this Agreement and subject to all other provisions of this Agreement.

Section 9.05. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.06. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Borrower, and their respective successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Lender.

Section 9.07. Titles and Subtitles. The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 9.08. Counterparts. This Agreement may be executed in more than one counterpart, which, taken together, shall constitute one and the same instrument, and either party hereto may execute this Agreement by signing any such counterpart.

Section 9.09. Entire Agreement. This Agreement, the other Loan Documents and any agreements, instruments or exhibits executed pursuant thereto, constitute the entire agreement between the parties. Any waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given.

Section 9.10. Time is of the Essence. Borrower agrees that time is of the essence under this Agreement.

Section 9.11. Governing Powers.

**DRAFT**

**STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE DEPARTMENT AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS, WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.**

Borrower acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**LENDER**

STATE OF OREGON acting by and through its  
HOUSING and COMMUNITY SERVICES DEPARTMENT

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON            )  
  )ss:  
County of Marion        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001, by \_\_\_\_\_, who is a \_\_\_\_\_ of the Department, on behalf of the Department.

\_\_\_\_\_  
Notary Public for the State of Oregon

My commission expires: \_\_\_\_\_

BORROWER:

By:

Title:

**DRAFT**

STATE OF OREGON            )  
  )ss:  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001, by  
\_\_\_\_\_, who is a \_\_\_\_\_ of \_\_\_\_\_, on behalf of  
the Borrower.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My commission expires: \_\_\_\_\_

**DRAFT**

**Exhibit A**

**Project Description**

**Project legal description**

# DRAFT

STATE OF OREGON  
 OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
 COMMUNITY DEVELOPMENT INCENTIVE FUND PROGRAM  
 PROMISSORY NOTE

\$(AMOUNT OF LOAN ~)

[Date ~]

FOR VALUE RECEIVED, [Name of Borrower ~], an Oregon [Entity Type ~] ("Borrower") promises to pay to the order of the State of Oregon, acting by and through its Housing and Community Services Department ("Lender" or "Department"), at 1600 State Street, Salem, Oregon 97301-4246, or at such other address as Lender may specify in writing, the principal sum of [Amount Longhand ~] Dollars (\$ Amount ~), together with interest thereon as set forth herein (the "Loan").

**1. AMORTIZATION**

Interest shall accrue on the unpaid principal balance of this Promissory Note from the above date at the rate of one percent (1%) per annum. Principal and interest are payable in equal yearly installments of [Installment Amount Longhand ~] Dollars (\$[Amount ~]) commencing [First Payment Date ~] and due the [Date Longhand ~] of each succeeding year and payable in full, if not sooner paid, on [Note Maturity Date ~].

All payments on this Promissory Note shall be applied first to the payment of any late charges due hereunder, then to the payment of any accrued interest, and then to the reduction of principal, or in such other order or manner as the Department, in its sole discretion, may require.

**2. PREPAYMENT**

Borrower may prepay principal and interest in whole or in part at any time without penalty. All prepayments will be applied first to late charges due hereunder, then to the payment of any accrued interest, and then to the reduction of principal, or in such other order or manner as the Department, in its sole discretion, may require. Partial prepayments will not affect the obligation of the Borrower to pay the yearly installments provided for above or to perform any other obligation under this Promissory Note.

**3. RESTRICTION AGAINST UNAPPROVED TRANSFERS**

The interest rate on this Promissory Note is subsidized by public funds and is below the prevailing market rate for similar loans obtainable from private lenders, and is intended solely for the public benefit of the initial Borrower or for successors as may be approved by the Department. The Borrower also understands that the Loan is not intended to be of a direct benefit to the Borrower or to any transferee as the result of a subsequent transfer. It is, therefore, intended that no sale or transfer of any of the real or personal property securing this Note shall be made without prior written approval of the Department.

**4. DUE ON UNAPPROVED SALE OR TRANSFER**

THIS NOTE AND ANY SUMS SECURED BY THE SECURITY INSTRUMENT EXECUTED IN CONJUNCTION WITH THIS NOTE MAY BE DECLARED BY THE DEPARTMENT TO BE DUE AND PAYABLE IMMEDIATELY UPON ANY UNAPPROVED SALE OR TRANSFER (OR ANY SUCH ATTEMPTED SALE OR TRANSFER) OF ALL OF, OR ANY INTEREST IN, THE REAL PROPERTY OR OTHER COLLATERAL SECURING THIS NOTE OR ANY PART THEREOF. FOR PURPOSES OF THE PRECEDING SENTENCE, THE "REAL PROPERTY" INCLUDES INTERESTS IN REAL PROPERTY, OF WHATEVER NATURE, WHICH SECURE THIS NOTE.

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**DEFINITION**

As used herein, sale or transfer of all, or any interest in, the real property or other collateral shall include, without limitation, within its meaning any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the Loan by a transferee of the Borrower, any assignment for the benefit of creditors, any assignment or transfer of the rents, issues, or profits, any lease whereby the lease contains an option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any assignment or transfer of any partnership interest in the Borrower if the borrower is a partnership, any sale or transfer (whether in one transaction or a series of transactions) of a controlling membership interest in a limited liability company, economic or voting interest in stock of the Borrower if the Borrower is a corporation, any corporate dissolution, or any dissolution or winding-up of partnership affairs. Included within the above meaning is any attempt to sell or transfer. The terms sale or transfer shall not include any attempt to sell or transfer. The terms of sale or transfer shall not include any transfer by way of subordinate encumbrance, or by way of a lease that does not contain an option to purchase.

**5. DELINQUENT PAYMENTS**

If any installment, or portion thereof, due hereunder shall be delinquent for more than fifteen (15) days, there shall be due, in addition to any other sums due hereunder, a late charge of two percent (2%) of the delinquent amount the first month and an additional one percent (1%) of the delinquent amount per month thereafter.

All unpaid late charges shall be secured by the Security Instrument securing this Note and shall, along with accrued interest, become due and payable concurrently with any or all of the principal balance of the original debt becoming due and payable.

**6. OTHER CHARGES**

If the Borrower breaches any covenant or other Obligation in the Security Instrument securing this Note or in any of the other Loan Documents executed in conjunction with the Note including, but not limited to any breach for failure to timely and properly pay any tax, lien, assessment, charge, or insurance premium when due, the holder of this Note shall have the option to pay the same, including the payment of other Obligations necessary to cure said breach, and the amount of any such payment made shall be added to the principal balance of this Note and shall be secured by the Security Instrument securing this Note, and such amount shall bear interest at the rate provided in the first section ("AMORTIZATION") of this Note as part of the principal balance. No payment pursuant to the preceding sentence shall be a waiver of any default or of any of the Department's remedies.

**7. ATTORNEY FEES**

In case suit or action is instituted to collect the Note or any portion hereof, the party who substantially prevails shall receive from the losing party in such suit or action such additional sum as the

court may adjudge reasonable as attorneys' fees, expenses, and costs in said suit or action, or on any appeal therefrom, including, but not limited to, those fees and expenses permitted or defined by statutory law, and including without limitation, all fees and expenses incurred before trial, at trial, on appeal, on petition for review, for arbitration, for mediation, or for bankruptcy proceedings. Further, in the event of default in any payment, whether or not suit or action is instituted, the Borrower promises to pay all reasonable costs, including attorney fees, of collecting such delinquent payment and late charges even though no suit or action is instituted or no sale of the property has been directed under the Security Instrument securing these Obligations. Such fees and costs may, at the option of the Note holder, be added to the principal balance of this Note.

#### 8. DEFAULT; ACCELERATION

If default occurs in the payment of any installment due under this Note, and such default is not cured within thirty (30) days, or if a default otherwise occurs under this Note or any other of the Loan Documents, and such default is not cured within the time required by the Loan Documents, or upon discovery by the Department of either a failure by the Borrower to disclose any fact material to the making of the Loan or material to any other agreement, or of any misrepresentation by, on behalf of, or for the benefit of the Borrower, or upon the insolvency of the Borrower, or the commencement by it, or on its behalf, of a proceeding under the Federal Bankruptcy Act as now or hereafter enacted, the entire remainder of the unpaid balance, including principal, accrued interest and other charges (including, but not limited to attorneys' fees), if any, shall, at the option of the holder of this Note, become due and payable without notice.

#### 9. INTEREST AFTER JUDGMENT

If this Note is reduced to judgment, any judgment will bear interest on the unpaid balance at the rate that the law permits for interest on judgments, or at the rate of twelve percent (12%) per annum, whichever is greater.

#### 10. ADDITIONAL PROVISIONS

- (a) Nothing herein contained shall be deemed to allow or require an interest rate which would be prohibited by law. If at any time Borrower pays interest in an amount greater than the amount required by the rate in effect pursuant to this Note at the time of such payment, any excess amount paid shall, at the sole option of the Department, or other holder hereof, either be refunded promptly to Borrower or be credited to Borrower's next payment due.
- (b) The Department shall notify Borrower in writing of sale, assignment or transfer of this note within 30 days of the date of such sale, transfer or assignment, but failure to give such notice shall not affect the Obligations of Borrower hereunder, except for amounts thereafter paid to the Department.
- (c) This Note is the Note referred to in the other Loan Documents. Capitalized terms not defined herein shall have the meanings otherwise ascribed to in other Loan Documents.
- (d) All parties to this Note, whether principal or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.
- (e) This Note shall be the joint and several obligation of all makers and endorsers, and shall be binding upon them and their successors and assigns.
- (f) This Note shall be governed by and construed in accordance with the laws of Oregon without regard to principles of choice or conflicts of law.

- (g) The exclusive venue for any and all litigation with respect to this Note or of any of the other Loan Documents shall be the Circuit Court of the State of Oregon for the County of Marion, except and only where necessary, in the U.S. District Court for the District of Oregon. The Borrower and any endorser of the Note specifically waive any objections or defense to the exclusive jurisdiction of such courts.
- (h) Payment of this Note is secured by a Security Instrument of the same date, the terms of which are by this reference, incorporated herein together with the terms of all other Loan Documents.
- (i) Time is of the essence of this Note.
- (j) In construing this Note, it is understood that the reference to any party include singular or plural, individual or other entity, as the case may be and includes successors and assigns. This clause does not, however, empower the Borrower to assign its rights or to delegate its duties.

**DRAFT**

Governing Powers.

**STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.**

**BORROWER:**

By:

By: \_\_\_\_\_

\_\_\_\_\_

STATE OF OREGON  
HOUSING AND COMMUNITY SERVICES DEPARTMENT  
COMMUNITY DEVELOPMENT INCENTIVE FUND PROGRAM  
SECURITY AGREEMENT

**DRAFT**

This Community Development Incentive Fund Program Security Agreement (the "Security Agreement") is made and entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (the "Department" or "Lender") and [NAME OF BORROWER ~] (the "Borrower"). The parties enter into this Security Agreement in conjunction with and pursuant to the Loan Agreement between them of even date with respect to the [TYPE OF PROJECT ~] project in [CITY ~], Oregon known as [PROJECT NAME ~] (the "Project"), and agree that this Security Agreement is the Security Instrument identified in such Loan Agreement and incorporated therein by reference.

**RECITALS**

WHEREAS, the Borrower desires that the Department provide a Loan to the Borrower pursuant to the Department's authority under ORS 458.705 through 458.740 for financing of the Project; and

WHEREAS, the Department is willing to provide such Loan consistent with the terms of the Loan Agreement, including without limitation, the execution of this Security Agreement; and

WHEREAS, the Borrower is willing to execute this Security Agreement and, hereby, convey to the Department the security interests and pledge of funds herein described,

NOW, THEREFORE, for good and valuable consideration, including the terms and conditions herein, the parties agree as follows:

**SECTION 1.  
SOURCE OF LOAN REPAYMENT**

The Loan to Borrower from the Department further described in the Loan Agreement and other Loan Documents shall be payable from any revenues (the "Revenues") derived or derivable by the Borrower from the [SOURCE OF FUNDS (i.e., general fund) ~] of the Borrower and shall be a full faith and credit obligation of the Borrower which is payable from any taxes that the Borrower may levy within the limitations of Article XI of the Oregon Constitution.



\_\_\_\_\_ of the Housing and Community Services Department of the State of Oregon, on behalf of the Department.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My commission expires: \_\_\_\_\_

**DRAFT**

**BORROWER:**

[NAME ~]

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON)

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2001, by \_\_\_\_\_, who is \_\_\_\_\_ of [BOWWER ~], on behalf of the Borrower.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My commission expires: \_\_\_\_\_

**WHEN RECORDED MAIL TO:**  
Oregon Housing & Community Services Department  
Attn: Housing Resources Manager  
P.O. Box 14508  
1600 State Street  
Salem, Oregon 97301-0409

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATE OF OREGON  
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
COMMUNITY DEVELOPMENT INCENTIVE PROJECT FUND PROGRAM  
DEED OF TRUST,  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT,  
AND FIXTURE FILING**

THIS DEED OF TRUST is made this [NUMBER ~] day of [MONTH ~], 2001, among the Grantor [NAME ~], whose address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein "Grantor" or "Borrower"), the Trustee [NAME ~], whose address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein "Trustee"), and the Beneficiary, the State of Oregon, acting by and through its Housing and Community Services Department, whose address is:

Oregon Housing & Community Services Department  
Attn: Housing Resources Manager  
P.O. Box 14508  
1600 State Street  
Salem, Oregon 97301-0409

(herein "Lender" or "Department").

WHEREAS, the Department is willing to make a loan of [AMOUNT LONGHAND ~] Dollars (\$[AMOUNT]) (the "Loan") to Borrower to be evidenced by a promissory note of even date (the promissory note, including as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Note") and a loan agreement of even date (the loan

agreement, including as amended, extended or replaced from time to time is referred to below as the "Loan Agreement"); and

WHEREAS, as a condition of the Loan to Grantor, the Department has required, and Grantor has agreed, *inter alia*, to execute and deliver this Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (which, including as amended, modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Trust Deed").

NOW, THEREFORE, for good and valuable consideration including, but not limited to the Loan, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations of Grantor described herein, Borrower irrevocably grants, conveys, assigns and transfers to Trustee, in trust for the benefit and security of the Department, with power of sale and right of entry and possession, and mortgages and grants a security interest to the Department in and to all of Grantor's present and after-acquired right, title, and interest in and to the following described property located in the County of [NAME ~], State of Oregon, and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property");

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to the Department to collect and apply such rents) with respect to the Property, all of which are assigned to Beneficiary, and, subject to the terms of this Trust Deed, Beneficiary is authorized to collect and receive such proceeds, to give proper receipts and acquittances for the proceeds, to give proper receipts and acquittances for the proceeds, and to apply them to the Obligations;

All of the above, i.e., the Property, the improvements, and additional security together with proceeds and products of all the foregoing, is sometimes referred to below as the "Trust Property" or "Project"; and

TO HAVE AND TO HOLD the Trust Property by Trustee and its successors and assigns for the benefit of the Department and its successors and assigns, forever.

PROVIDED HOWEVER, that if all the Obligations are paid, performed and satisfied in full, together with all other covenants and commitments to be performed by Grantor in the Loan Documents (as defined below), then Trustee shall execute and deliver to Grantor, without warranty, a reconveyance of the Trust Property.

The transaction documents of even date, including this Trust Deed, the Note, the Loan Agreement, and all other agreements or instruments executed at any time in connection therewith, as they may be amended or supplemented from time to time are sometimes collectively referred to below as the "Loan Documents." The terms of the other Loan Documents are hereby incorporated herein by reference.

TO PROTECT THE SECURITY OF THIS TRUST DEED AND TO ASSURE REPAYMENT OF THE LOAN AND PERFORMANCE OF ALL OBLIGATIONS BY

BORROWER UNDER THE LOAN DOCUMENTS, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1

PARTICULAR COVENANTS AND WARRANTIES OF GRANTOR

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1.01 Obligations Secured. This Trust Deed secures the following, collectively referred to as the "Obligations":

- (1) The payment of the Note, the final maturity date of which is \_\_\_\_\_, including but not limited to principal and interest; and
- (2) The payment and performance of all other debts and obligations in the Trust Deed, and the other Loan Documents, including reimbursement of security protection payments or advances made, and costs and expenses incurred by the Department which Obligations, together with those Obligations identified below in subsection (3), are not subject to automatic waiver under the terms of the Note, but which also may be waived by the Department at its sole discretion; and
- (3) The payment and performance of any and all other debts and obligations of Grantor to the Department of any nature whatsoever that relate to the Project, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, and whether or not reflected in a written agreement or instrument (including the Loan Documents).

1.02 Payment of Indebtedness; Performance of Covenants and Warranties. Grantor shall duly and punctually pay and perform all of the Obligations. If payment of any amounts required under the Loan Documents is delinquent more than fifteen (15) days, Borrower shall pay a late charge of two percent (2%) of the delinquent amount the first month and an additional one percent (1%) per month thereafter in addition to the delinquent amount.

1.03 Property. Grantor warrants that it holds good and marketable title to the Trust Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in Exhibit B. Grantor covenants that it shall forever defend the Department's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

1.04 Further Assurances; Filing; Refiling; Etc.

- (1) Grantor shall execute, acknowledge, and deliver, from time to time, such further instruments as the Department or Trustee reasonably may require to accomplish the purposes of this Trust Deed including UCC financing statements to perfect the security interest in personal property.

(2) Grantor, immediately upon the execution and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded (and filed) in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.

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(3) Grantor shall pay all filing, recording and re-recording fees, and all incidental expenses and taxes. Grantor also shall pay the premium for any loan policy of title insurance obtained to insure the validity and priority of this Trust Deed.

1.05 Compliance with Laws. Grantor further represents, warrants, and covenants that:

(1) The Property has been developed, or will be developed, and all improvements, if any, have been constructed, or will be constructed, and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and

(2) Grantor and its operations upon the Trust Property currently comply, and will hereafter comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance.

(1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§ 9601-9675, the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §§ 6901-6992 and ORS Chapters 465, 466, 468A and 468B, and any similar federal, state or local law, statute, ordinance, rule, or regulation to and including those related to land use and zoning, energy and industrial facilities siting or occupational safety and health.

(2) For the purposes of this section, "Hazardous Substance" includes without limitation:

(a) All "hazardous substances" as designated pursuant to 40 CFR Part 302 or any similar regulation now existing or hereafter promulgated;

(b) All "hazardous wastes" within the meaning provided in 40 CFR § 261.3 or any similar regulation now existing or hereafter promulgated;

(c) All "extremely hazardous substances" as listed in 40 CFR Part 355 or any similar regulation now existing or hereafter promulgated;

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- (d) All "hazardous chemicals" as defined under 29 CFR § 1910.1200(c) or any similar regulation now existing or hereafter promulgated;
  - (e) All "toxic chemicals" listed in 40 CFR Part 372 or any similar regulation now existing or hereafter promulgated;
  - (f) Those substances defined as "hazardous" or "toxic" in the Hazardous Materials Transportation Act, 49 USC §§ 1801-1819 or in any amendment thereto, or listed in 49 CFR Part 172 or any similar regulation now existing or hereafter promulgated;
  - (g) All materials, wastes, and substances that are designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 USC §§ 1251-1387 (33 USC § 1321) or listed pursuant to Section 3076 of the Clean Water Act (33 USC § 1317);
  - (h) All "hazardous wastes" as defined in ORS 466.005(7), in any amendments thereto and in any rule or order promulgated pursuant thereto;
  - (i) All materials, substances, and wastes that are or which contain (A) asbestos; (B) polychlorinated biphenyls; (C) explosives, except such explosives as are used during construction in accordance with law; (D) petroleum, and any fractions thereof, or (E) radioactive materials; and
  - (j) Such other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.
- (3) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Trust Property or the Trust Property's groundwater, or transport to or from the Trust Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that reasonably may be used in the construction of the Improvements and in the ordinary course of Grantor's business in operating the Trust Property in accordance with the Loan Documents and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.
- (4) Grantor will keep and maintain the Trust Property in compliance with, and shall not cause or permit all or any portion of the Trust Property, including groundwater, to be in violation of any Environmental Law.
- (5) Grantor shall give prompt (and not later than within 15 days) written notice to the Department of:
- (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any

Hazardous Substance on the Trust Property or the migration of any Hazardous Substance from or to other premises;

- (b) All known claims made or threatened by any person against Grantor or with respect to the Trust Property relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
- (c) The existence of any Hazardous Substance on or about all or any portion of the Trust Property; or
- (d) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Trust Property that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Trust Property under any Environmental Law.

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(6) Grantor shall promptly (and not later than within 15 days) provide to the Department copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. The Department shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Trust Property in connection with any Environmental Law and have its reasonable attorney fees in connection with such an action paid by Grantor, if the Department determines that such participation is reasonably necessary to protect its right, title or interest in the Trust Property.

(7) If, at any time, the Department has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Trust Property has occurred or is threatened, or if the Department has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Trust Property, the Department may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Grantor shall promptly provide to the Department a complete copy of any environmental assessment obtained by Grantor.

(8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Trust Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Trust Property, Grantor shall, within 30 days after written demand by the Department for Grantor's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such

Remedial Work shall be paid by Grantor including, without limitation, the Department's reasonable attorney fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Grantor shall fail to timely commence, or cause to be commenced, such Remedial Work, the Department may, but shall not be required to, cause such Remedial Work to be performed. All costs and expenses incurred by the Department in connection with the Remedial Work may be added by the Department to the Obligations secured by this Trust Deed and shall bear interest until paid at the rate provided in the Note.

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(9) Grantor shall (consistent with ORS Chapter 180) hold the Department, its officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Grantor's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Trust Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Trust Property, the preparation and implementation of any closure, remedial or other required plans, reasonable attorney fees and costs (including but not limited to those incurred in any proceeding, including bankruptcy and arbitration proceedings, and in any review or appeal), fees, penalties, and fines.

(10) Grantor represents and warrants to the Department, except in those matters excused in writing by the Department following prior written notice from Grantor, that:

- (a) Neither the Trust Property nor Grantor is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
- (b) Grantor has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
- (c) To the best of Grantor's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Trust Property in violation of any Environmental Law.

(11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Grantor shall not permit all or any part of the Trust Property to be removed, demolished, or materially altered without the Department's prior written consent; provided, however, that Grantor may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Grantor's business, if the removal or material alteration does not materially detract from the operation of the

Grantor's business and if all improvements that are demolished or removed are promptly replaced with Improvements of like or greater value and quality. Grantor shall maintain every portion of the Trust Property in good repair, working order, and condition, except for reasonable wear and tear of Improvements, and shall at the Department's election restore, replace, or rebuild all or any part of the Trust Property now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below). Grantor shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property. Grantor's obligation to provide additional funding for casualty or Condemnation restoration, replacement or rebuilding shall only be amounts necessary after application of available casualty insurance or Condemnation proceeds.

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1.08 Liens. Grantor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property, provided that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto, or the existence of a tax or statutory lien, shall not constitute a violation of this section if payment is not yet due under the contract that is the foundation thereof or under applicable law, as the case may be, subject to the provisions of Section 1.09 with respect to the right to contest certain liens, and the provisions of this Section, Grantor shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

1.09 Impositions.

(1) Grantor shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and non-governmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property (including, without limitation, levies or charges resulting from Covenants), or on the lien or estate of the Department or Trustee (collectively, the "Impositions") provided that Grantor may pay annual real and personal property taxes in installments in accordance with ORS 311.505. In the event of the passage or promulgation after the date of this Trust Deed of any applicable law or regulations, creating or providing for any tax, assessment, charge or other Imposition levied or assessed upon the Department with respect to the transaction evidenced by the Note and this Trust Deed, which may not lawfully be paid by the Grantor, the Indebtedness secured hereby, together with interest due thereon, shall, at the option of the Department, become immediately due and payable, pursuant to the terms of this Trust Deed.

(2) Grantor may, at its expense and after prior written notice to the Department, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lien, and may, with the written permission of the Department (which permission the Department may give or withhold at its sole discretion), withhold payment of the same pending completion of such proceedings if permitted by law,

provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so in the event of Grantor's failure to prevail in the contest; (c) neither the Department nor Trustee shall, by virtue of such permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; and (d) Grantor shall have furnished to the Department cash, corporate surety bond, or other additional security in respect to the claim being contested or the loss or damage that may result from Grantor's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Grantor shall promptly (and not later than within 10 days) satisfy any applicable final judgment.

(3) Grantor shall furnish to the Department, promptly upon request (and not later than within 10 days), satisfactory evidence of the payment of all Impositions, including receipts for payment of same. The Department is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions. Grantor's timely deposit of escrow payments with the Department as required pursuant to the Operating Documents will satisfy Grantor's duty to pay that portion of any Imposition for which the escrow is established.

1.10 Books and Records; Inspection of the Property. Grantor shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied. Grantor shall permit Trustee, the Department, and their authorized representatives to enter and inspect the Trust Property, and to examine and make copies or extracts of the records and books of account of the Grantor with respect to the Trust Property, all at such reasonable times (taking into account any notice period Grantor must provide to any of its tenants) as the Department or Trustee may choose. The Trustee, the Department, and their authorized representatives shall have no duty to make any such inspections and shall not be liable to the Grantor or any person in possession if it makes such an inspection or examination and copying of records.

1.11 Limitations of Use. Grantor shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Trust Property without the prior written consent of the Department.

1.12 Insurance.

(1) Property and Other Insurance. Grantor, at its own expense, shall obtain and maintain in full force and effect, for the benefit of the Department, during the term of this Trust Deed: (a) all-risk property insurance, including but not limited to fire, flood, earthquake and extended coverage, together with endorsements for replacement cost, inflation adjustment, vandalism, malicious mischief, and sprinkler damage coverages, all

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in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; (b) comprehensive general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to the Department and as it may require from time to time, and in no event less than \$1,000,000 combined single limit coverage; and (c) unless the Department otherwise agrees in writing, rent loss or business interruption insurance in an amount not less than the total due for six months worth of the rents provided for in all leases for the Trust Property. In addition, Grantor shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as the Department may require from time to time.

(2) Insurance Companies and Policies. All insurance shall be written by a company or companies reasonably acceptable to the Department with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of the Department with loss proceeds under any policy payable to the Department, subject to the terms of this Trust Deed; shall require 30 days' prior written notice to the Department of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against the Department; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. The Department shall be named as additional insured on all policies. The Grantor shall pay all premiums on all insurance at least ten (10) days prior to the date the premium on said policy shall become due and payable. Grantor shall forward to the Department, certificates evidencing the coverages required under this Trust Deed and copies of all policies.

(3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and the Department are insured under such policy in the proper designated amount.

(4) Insurance Proceeds. All proceeds from any casualty insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

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**WARNING**

Unless you (the Grantor) provide us (the Department) with evidence of the insurance coverage as required by this Trust Deed, we (the Department) may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral (the Trust Property) becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your loan balance. If the cost is added to your loan balance, the interest rate on the underlying loan will apply to this added amount. The

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effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage covered or any mandatory liability insurance requirements imposed by applicable law.

1.13 Assignments of Policies upon Foreclosure. In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Grantor in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Beneficiary and its successors or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration.

(1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Grantor shall give prompt written notice of the casualty to the Department, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property, as well as appropriate notice, including by mail, to the insurance carrier. The Department may make proof of loss if it is not made promptly and to the Department's satisfaction by Grantor.

(2) Grantor assigns to the Department all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. The Department may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in such order as the Department may determine, whether or not such obligations are then due, or apply all or any portion of the insurance proceeds to the cost of restoring and rebuilding the portion of the Trust Property that was damaged or destroyed. In the event that the Department elects to apply the insurance proceeds to rebuilding and restoration, the Department shall be entitled to hold the proceeds, and the proceeds shall be released only on such terms and conditions as the Department shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No proceeds shall be released if Grantor is in default under this Trust Deed.

(3) The Department is hereby authorized in the event of loss or casualty to compromise and to settle all claims on any policy on such terms as it deems appropriate. The Grantor shall furnish promptly to the Department a copy of any proof of loss given to the insurance carrier. The Department will consult with Grantor, or make reasonable efforts to consult with Grantor, prior to compromising or settling any or all claims.

(4) The Department, at its sole discretion, may tender such insurance proceeds, less any legal costs, fees or other expenses incurred by the Department, to Grantor to pay for the restoration of the improvements, provided that the Department determines at its sole

discretion that such restoration is economically and legally feasible. Any such tender of insurance proceeds by Department or the application of same by Grantor for restoration of the improvements shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such default or notice.

1.15 Grantor's Duty to Pay Utilities. The Grantor will pay or cause to be paid before becoming delinquent or subject to interest or penalties, all charges made by utility companies, public or private, for electricity, gas, heat, water or sewer furnished to or used in connection with the Trust Property and, upon written request by the Department, will promptly deliver to the Department receipts for the payment of such charges.

1.16 Reserves for Impositions, Insurance and Other Charges. To protect more fully the security of this Trust Deed, the Grantor, together with and in addition to the regular payments of interest, of principal and interest, or of principal, interest and other Indebtedness, as the case may be, under the terms of the Note and other Loan Documents, if requested by the Department, will pay the Department, or such other agent of the Department, as the Department directs in writing, the following sums:

(1) Commencing on such date as the Department, in its discretion, shall designate to Grantor, and thereafter together with and in addition to the yearly payments required by the Note and other Loan documents, a sum equal to the land lease payments, if any, next due, plus the premiums that will next become due and payable on the policy or policies of insurance covering the Property, plus taxes, assessments and other Impositions next due on the Trust Property (all estimated by the Department, and less all sums already paid therefor). These sums may be held by the Department or its agent in escrow to pay said land lease payments, premiums, taxes, special assessments and other Impositions.

(2) If the sums so paid are insufficient to satisfy any Imposition, including land lease payments, or insurance premiums when due, Grantor shall pay any deficiency to the Department or its agent upon demand. The reserves may be commingled with the Department's other funds, and the Department shall not be required to pay interest to Grantor on such reserves. The Department shall not hold the reserve in trust for Grantor, and the Department shall not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

(3) All payments required to be made by Grantor pursuant to this Section and all payments to be made under the Note and other Loan Documents shall be added together and the aggregate amount thereof shall be paid each year in a single payment to be applied by the Department (unless otherwise specifically provided by the Department in a signed writing) to the following items in the following order of priority: (i) land lease payments, taxes, special assessments, other Impositions, fire and other insurance premiums, penalties, account deposits due under the Loan Documents, Obligations other than Note principal and interest; (ii) interest on the Note; and (iii) amortization of the principal of the Note.

1.17 Use of Mortgaged Property.

(1) Grantor will use the Trust Property in a manner consistent with the representations in its application to the Department for the Loan. The Grantor will keep the Trust Property, including improvements now or hereafter erected on the Property in good repair and condition, ordinary depreciation excepted. The Grantor will not do any act or thing which would jeopardize any subsidy payable with respect to the occupancy of all or any portions of the Trust Property, and will not abandon the Trust Property. In the event of the failure of the Grantor to maintain the Trust Property in good repair or operation, the Department may make such repairs or undertake such other action at Grantor's expense as in the Department's sole discretion it may deem necessary for the proper operation and preservation thereof, and any and all sums paid for such repairs, verification or enforcement shall bear interest from the date of payment at the rate specified in the Note, shall constitute an Obligation and shall be due from and payable by the Grantor on demand, and shall be fully secured by this Trust Deed.

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(2) The Property is not currently used for agriculture, timber or grazing purposes. Grantor understands and agrees that this Trust Deed is, and will constitute, a commercial deed of trust and not a residential trust deed under Oregon for family or household purposes.

1.18 No Sale or Lease. It is hereby expressly agreed by Grantor that Grantor shall not sell, lease (except to Occupants) or otherwise encumber or transfer the Trust Property without the express written consent of an authorized officer of the Department. If the Department is willing to give its express written consent to a transfer, such consent may be conditioned upon payment to the Department by the Grantor of an administrative fee not to exceed 1% (one percent) of the original note principal amount, which fee shall constitute additional Obligations hereunder.

1.19 Actions to Protect Trust Property.

(1) If the Trust Property is sold under foreclosure or is otherwise acquired by the Department after default, any remaining balance of the accumulations under Section 1.16 hereof shall be applied in reduction of the Obligations as of the date that the Trust Property is sold or is acquired.

(2) Any funds accumulated under Section 1.16 hereof remaining after payment of the items therein specified shall be credited against subsequent payments due on the Note or, of the same items required thereunder.

(3) If Grantor shall fail to obtain the insurance required by Section 1.12, fail to make the payments required by Section 1.09 (other than payments that Grantor is contesting in accordance with Section 1.09(2)), or fail to perform or observe any of its other covenants or agreements under this Trust Deed, the Department may in addition to all other remedies, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy or to investigate such failure. The Department, without limitation, is hereby entitled to obtain such insurance as the Department deems necessary

for the protection of the Trust Property and the Grantor shall be obligated to pay the premium therefor. The Grantor irrevocably authorizes and empowers the Department to enter upon the Trust Property as the Grantor's agent and, in the Grantor's name or otherwise, to perform any and all covenants and agreements to be performed by the Grantor as herein provided. The Department shall, at its option, be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by the Department under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Trust Deed. Nothing contained in this paragraph shall require the Department to incur any expense or do any action hereunder, and the Department shall not be liable to the Grantor for any damages or claims arising out of action taken by the Department pursuant to this Section. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of the Department's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall (together with interest thereon at the rate provided in the Note) constitute Obligations, shall be secured by this Trust Deed, and shall be paid by Grantor upon demand.

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(4) Upon a default, the Department will have the right to complete any construction, repair or replacement of the Trust Property and to operate and lease the Trust Property.

1.20 Estoppel Certificates. Grantor, within five days of the request, shall furnish Trustee and the Department with a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. Trustee and the Department shall limit requests for such written statements to not more than once annually without good cause for a more frequent request. If Grantor shall fail to furnish such a statement within the time allowed, the Department shall be authorized, as Grantor's attorney-in-fact, to execute and deliver such statement. Upon request, Grantor also shall use its best efforts to obtain and deliver to the Department a written certificate from each lessee of all or any portion of the Property that its lease is in effect, that there are no defaults by the lessor under the lease, and that rent is not paid more than 30 days in advance. Grantor may satisfy this best efforts requirement by mailing said certificates to all lessees with return postage prepaid.

1.21 Financial Information. Grantor shall promptly furnish to the Department any and all such financial information relating to Grantor or the Project as the Department shall reasonably request from time to time.

## ARTICLE II

### Condemnation

2.01 Condemnation.

(1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar

manner (a "Condemnation"), or should Grantor receive any notice or other information regarding such action, Grantor shall give immediate notice of such action to the Department.

(2) Grantor hereby irrevocably assigns to the Department, and the Department shall be entitled to, all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations.

(3) Grantor shall file and prosecute in good faith and with due diligence what otherwise would be its claim in any condemnation award or payment and will cause the same to be collected and paid over to the Department. However, the Department shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation or by reasons of sale under threat thereof, or in anticipation of the exercise of the right of Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at the Department's election, shall become immediately due and collectible. The Department will make reasonable efforts to consult with Grantor prior to any prosecution of a claim under this Section.

(4) The Department may, at its sole option, apply the Condemnation Proceeds to the reduction of any outstanding Obligations, including reasonable costs expenses, including attorneys' fees, which may have been incurred by the Department in the collection thereof, as well as in such order as the Department may determine, apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Trust Property. In the event that the Department elects to apply any of the Condemnation Proceeds to restoration and improvement, the proceeds shall be held by the Department and shall be released only upon such terms and conditions as the Department shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No Condemnation Proceeds shall be released if Grantor is in default under this Trust Deed.

(5) The Department, at its sole discretion, may tender such insurance proceeds, less any legal costs, fees or other expenses incurred by the Department, to Grantor to pay for the restoration of the Trust Property, provided that such restoration, in the Department's sole discretion, is economically and legally feasible. Any such tender of condemnation proceeds by Department or the application of same by Grantor for restoration of the Trust Property shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such default or notice.

### ARTICLE III

#### Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Grantor assigns and transfers to the Department (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter

arising, and relating to the occupancy or use of all or any portion of the Trust Property, including without limitation all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits now or hereafter derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). This assignment is intended by Grantor and the Department to create a present and unconditional assignment to the Department, subject only to the license set forth in Section 3.04 below.

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3.02 Rights of the Department. Subject to the provisions of Section 3.04 below giving Grantor a revocable, limited license, the Department shall have the right, power, and authority to:

- (1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to the Department and that all Rents are to be paid directly to the Department, whether or not the Department shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not the Department has taken possession of the Trust Property and whether or not a receiver has been appointed;
- (2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to the Department;
- (3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Grantor or the Department, with respect to any and all Leases and Rents; and
- (4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. The Department shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of the Department, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, insurance and reserves. After the payment of all such costs and expenses, and after the Department shall have set up such additional reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, the Department shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as the Department shall determine. The exercise or failure by the Department to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Grantor under this Trust Deed, the Note, or any of the other Loan Documents.

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- 3.04 License. The Department hereby grants to Grantor a revocable license to collect and receive the Rents. Such license may be revoked by the Department, without notice to Grantor, upon the occurrence of any event of default under this Trust Deed, including any default by Grantor of its covenants in this Article III. Unless and until such license is revoked, Grantor agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, reserves, and other obligations in connection with the Trust Property, and to the maintenance of the Trust Property, before using such proceeds for any other purpose. Grantor agrees to (1) observe and perform every obligation of Grantor under the Leases; (2) enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases; (3) promptly give notice to the Department of any default by any such lessee or other party under any of the Leases, and promptly provide the Department a copy of any notice of default given to any such lessee or other party; (4) not further assign or hypothecate any of the Leases or Rents; (5) except with the Department's prior written consent, not waive, release, or in any other manner discharge any lessee or other party from any of its obligations under any of the Leases; (6) except with the Department's prior written consent, not modify or amend any of the Leases; (7) except with the Department's prior written consent, not cancel, terminate, or accept surrender of any of the Leases unless Grantor shall have entered into a Lease for the space to be vacated on terms at least as favorable to Grantor, commencing within 30 days after such cancellation, termination, or surrender; (8) obtain the Department's prior written approval as to the form and content of all future leases and any modifications of any present or future leases; (9) deliver copies of all present and future leases to the Department promptly; and (10) appear in and defend, at Grantor's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.
- 3.05 Limitation of the Department's Obligations. Notwithstanding the assignment provided for in this Article IV, the Department shall not be obligated to perform or discharge, and the Department does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon the Department, or to make the Department responsible for any condition of the Project. The Department shall be accountable to Grantor only for the sums actually collected and received by the Department pursuant to this assignment. Grantor shall (consistent with ORS Chapter 180) hold the Department fully harmless from, indemnify the Department for, and defend the Department against any and all claims, demands, liabilities, losses, damages, and expenses, including, without limitation attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against the Department on account of this assignment or any obligation or undertaking alleged to arise therefrom.
- 3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Grantor to the Department shall cease and terminate.

3.07 Attorney-in-Fact. Grantor irrevocably constitutes and appoints the Department, and each of its officers, successors and assigns as its true and lawfully attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Grantor, and Grantor ratifies and confirms any and all such actions that may be taken or omitted to be taken by the Department, its employees, agents, and attorneys.

#### ARTICLE IV

##### **Security Agreement and Fixture Filing**

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To secure the Obligations, Grantor grants to the Department a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien; (2) all personal property that is used or will be used in the construction of any improvements on the Trust Property; (3) all personal property that is now or will hereafter be placed on or in the Trust Property or improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code-Secured Transactions statutes of the State of Oregon. The mailing address of Grantor and the address of the Department from which information may be obtained are set forth in the introductory paragraph of this Trust Deed. The Grantor will from time to time, at the request of the Department, execute any and all financing statements covering such personal property and fixtures (in a form satisfactory to the Department) which the Department may reasonably consider necessary or appropriate to perfect its interest. The Grantor will pay to the Department, on demand, the amount of any and all costs and expenses (including reasonable attorneys' fees and legal expenses whether or not an action is filed; preliminary to and at trial, and on appeal) paid or incurred by the Department in connection with the exercise of any right or remedy referred to in Article VI hereof.

#### ARTICLE V

##### **No Discrimination; Inspection; Reamortization**

5.01 No Discrimination. So long as this Trust Deed and the Note secured hereby are held by the Department, Grantor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Property on the basis of race, creed, color, religion, sex, marital status, financial status, national origin, age or status with regard to

public assistance or disability or local residency, except as provided by law and allowed in the Loan Documents in order to effect the purposes of ORS chapter 458.

- 5.02 Reamortization. At the option of the Department, the payment Obligations may be reamortized within the original term of the Loan on terms acceptable to the Department if: (i) a partial prepayment results from an award in condemnation in accordance with provisions of Section 2.01 hereof, or from an insurance payment made in accordance with provisions of Section 1.12 hereof, and (ii) there is a resulting loss of income from the Trust Property.

## ARTICLE VI

### Events of Default; Remedies

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- 6.01 Events of Default. Each of the following shall constitute an event of default (“Event of Default”) under this Trust Deed and under each of the other Loan Documents:

- (1) Nonpayment. Failure of Grantor to pay any of the Obligations by the due date, except that nonpayment of any installment of principal and interest shall constitute an event of default thirty (30) days after the due date.
- (2) Failure of Insurance. A responsible title insurance company fails duly to issue a policy of title insurance to or for the benefit of the Department, free from exceptions for mechanics' and material persons' liens and other exceptions not previously approved by the Department, insuring this Trust Deed to be a valid first lien (subject only to those exceptions, if any, indicated in the Title Insurance Policy accepted by the Department) on the Property and related real property interests and the Trust Property in an amount not less than the stated principal amount of the Note; or, if issued, any such policy or commitment is repudiated or revoked or is not being duly performed.
- (3) Breach of Warranty of Title. Any warranty of title made by the Grantor in this Trust Deed is breached.
- (4) Breach of Other Covenants. Failure of Grantor to perform other Obligations when due.
- (5) Misinformation. Falsity when made in any material respect of any representation, omission, warranty, or information furnished by Grantor or its agents to the Department in or in connection with any of the Obligations.
- (6) Other Default. The occurrence of any other event of default under the Note or under any of the other Loan Documents.
- (7) Other Indebtedness, Secondary Financing. Grantor's default beyond the applicable grace periods in the payment of any other indebtedness owed by Grantor to any person, if such indebtedness is secured by all or any portion of the Trust Property.

(8) Bankruptcy. The occurrence of any of the following with respect to Grantor, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.

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(9) Transfer; Due-on-Sale; Due-on-Encumbrance. Any sale, gift, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Trust Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without the Department's prior written consent, shall constitute an event of default. For the purpose of clarification, and without limiting the generality of the foregoing, the occurrence at any time of any sale, conveyance, assignment, or other transfer of, or the grant of a pledge of or security interest in, any shares of the capital stock of Grantor or change in the ownership of the Grantor shall be deemed to be a Transfer in violation of this paragraph. The provisions of this subsection (9) shall apply to each and every Transfer, regardless of whether or not the Department has consented or waived its rights in connection with any previous Transfer. The Department may attach such conditions to its consent under this subsection (9) as the Department may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and reasonable legal fees and costs incurred by the Department.

(10) Certain Taxes. For purposes of this subsection (10), State Tax shall mean:

- (a) A specific tax on mortgages, trust deeds, secured indebtedness, or any part of the Obligations secured by this Trust Deed.
- (b) A specific tax on the grantor of property subject to a trust deed that the taxpayer is authorized or required to deduct from payments on the trust deed.
- (c) A tax on property chargeable against the Department or Trustee under a trust deed or holder of the note secured by the trust deed.
- (d) A specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Obligations or on payments of principal and interest made by Grantor.

If any State Tax is enacted after the date of this Trust Deed applicable to this Trust Deed, enactment of the State Tax shall constitute an event of default, unless the following conditions are met:

- (a) Grantor may lawfully pay the tax or charge imposed by the State Tax without causing any resulting economic disadvantage or increase of tax to the Department or Trustee, and
- (b) Grantor pays or agrees in writing to pay the tax or charge within 30 days after notice from the Department or Trustee that the State Tax has been enacted

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6.02 Remedies in Case of Default. If an Event of Default shall occur, the Department may, without notice (with respect to a payment Event of Default) or upon 30 days notice, or such lesser period as the Department may provide by notice in writing (with respect to other Events of Default), exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or pursuant to the Loan Documents or otherwise:

- (1) Acceleration. The Department may declare all or any portion of the Obligations immediately due and payable.
- (2) Receiver. The Department may have a receiver appointed for the Trust Property. The Department shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or the Department shall not disqualify a person from serving as receiver. Grantor consents to the appointment of a receiver at the Department's option and waives any and all defenses to such an appointment.
- (3) Possession. The Department may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as the Department shall deem appropriate in its sole discretion. Upon request after an Event of Default, Grantor shall peacefully relinquish possession and control of the Trust Property to the Department or any receiver appointed under this Trust Deed. Any receiver acting pursuant to this subsection may serve without bond to the extent permitted by law.
- (4) Rents. The Department may revoke Grantor's right to collect the Rents, and may, either itself or through a receiver, collect the same. The Department shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (4). If Rents are collected by the Department under this subsection (4), Grantor hereby irrevocably appoints the Department, its successors and assigns, as Grantor's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Grantor and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Grantor and this power shall terminate.
- (5) Power of Sale. The Department may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and sale under applicable law.

(6) Foreclosure. The Department may judicially foreclose the security interests granted in this Trust Deed and obtain a judgment foreclosing Grantor's interest in and or any part of the Trust Property and giving the Department the right, to the extent permitted by law and to collect any deficiency remaining due after disposition of the Trust Property.

(7) Fixtures and Personal Property. With respect to any Improvements and other personal property subject to a security interest in favor of the Department, the Department may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

(8) Abandonment. The Department may abandon all or any portion of the Trust Property by written notice to Grantor.

6.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as the Department may elect, without regard to the right of Grantor, any person claiming under Grantor, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Grantor, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including the Department, its officers, agents, and employees, may purchase at any such sale. The Department and each of its officers, successors and assigns are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, the Department and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Department or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Department, for such purpose.

6.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by the Department to cure under Section 1.20 or otherwise shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

6.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Trustee, the Department, or a receiver may:

(1) Management. Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.

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(2) Rents and Revenues. Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.

(3) Construction. At its option, complete any construction or rehabilitation in progress on the Trust Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

(4) Additional Indebtedness. If the revenues produced by the Trust Property are insufficient to pay expenses, the Department, Trustee, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, shall constitute Obligations hereunder and repayment of such sums shall be secured by this Trust Deed.

6.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 6 shall be applied as follows:

(1) Costs and Expenses. To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 7.07 below.

(2) Indebtedness. To pay all Obligations, in such order as the Department shall determine in its sole discretion.

(3) Surplus. The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons with liens recorded with the county regarding real property and to the person or persons with liens properly recorded with the appropriate Secretary of State regarding personal property, with any remainder to the Grantor.

6.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Section 6 shall be deemed to relieve Grantor of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations. If the proceeds of a sale, a collection, or other realization of or upon the Trust Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Grantor and any assignees or successors shall remain liable for any deficiency to the fullest extent permitted by law.

6.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Grantor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

- 6.09 Forbearance Not a Waiver; Rights and Remedies Cumulative. Any delay by the Department in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order) or concurrently, and as often as the occasion therefor arises. The Department's taking action or receiving proceeds, awards or damages under terms of this Trust Deed shall not impair any right or remedy available to the Department under any of the provisions of this Trust Deed.

## ARTICLE VII

### General Provisions

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- 7.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.
- 7.02 Reconveyance by Trustee. At any time upon the request of the Department, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.
- 7.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by telephonic facsimile (FAX), by hand, or mailed by first class, registered, or certified mail, return-receipt-requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address or FAX number for such notices from time to time upon 30 days written notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the third day after the date of mailing; notices given by FAX or by hand shall be deemed to have been given when actually received.
- 7.04 Substitution of Trustee. In the event of dissolution or resignation of the Trustee or at the discretion of the Department, the Department may substitute one or more trustees to execute the trust hereby created, and the new Trustee(s) shall succeed to all of the powers and duties of the prior Trustee. When any such substitution has been filed for record in the office of the County Clerk of the County in which the Property herein described is situated, it shall be conclusive evidence of the appointment of such trustee or trustees.
- 7.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Grantor, Trustee, and the Department. If the Trust Property or any portion thereof shall at any time be vested in any person other than Grantor, the Department shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such

manner as the Department deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

- 7.06 Indemnity. Grantor shall (consistent with ORS Chapter 180) hold the Department and Trustee and their respective directors, officers, employees, agents, and attorneys, successors and assigns, harmless from and shall indemnify them for and defend them from any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or the Department's interest under this Trust Deed, except Grantor shall not be liable for acts performed by the Department or Trustee in violation of applicable law or the Loan Documents.
- 7.07 Expenses and Attorney Fees. If the Department refers any of the Obligations to an attorney for collection or enforcement or seeks legal advice following a default; if the Department is the prevailing party in a substantial manner in any litigation instituted in connection with any of the Obligations; or if the Department or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, under arbitration, or in connection with any state or federal tax lien), and an attorney is employed by the Department to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce the Department's interests, then in any such event Grantor shall pay reasonable attorney fees, costs, and expenses incurred by the Department or its attorney(s) in connection with the above-mentioned events or any appeals or arbitrations related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.
- 7.08 Applicable Law; Venue. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed and the other Loan Documents shall be governed by the laws of the state of Oregon without regard for principles of conflicts of law. Furthermore, the parties hereby agree that any suit or proceeding relating to or arising from this Trust Deed or the other Loan Documents shall be brought and maintained exclusively in the Circuit Courts of the State of Oregon, or if necessary, in the U. S. District Court for the District of Oregon. Grantor specifically hereby submits itself to the IN PERSONUM jurisdiction of such courts.
- 7.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.
- 7.10 "Person" Defined. As used in this Trust Deed, the word "person" shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

- 7.11 Severability and Controlling Language. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed. The Department may declare all or any portion of the Obligations immediately due and payable (i) if the Grantor brings any proceeding to challenge the validity, legality or enforceability of any provision of this Trust Deed or of any of the other Loan Documents, or (ii) if any provision of this Trust Deed or of any of the other Loan Documents otherwise is determined to be invalid, illegal or unenforceable. To the extent, if any that the terms in this Trust Deed directly conflict with the terms in the other Loan Documents, the terms in this Trust Deed shall control.
- 7.12 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained herein shall be binding or valid.
- 7.13 Commercial Property. Grantor covenants and warrants that the Property and improvements of the Project are used by Grantor exclusively for business and commercial purposes. Grantor also covenants and warrants that the Trust Property is not now, and at no time in the future will be, occupied as the principal residence of Grantor, Grantor's spouse, or Grantor's minor or dependent child.
- 7.14 Miscellaneous Rights of the Department. The Department may at any time and from time to time, without notice, release any person liable for the payment of any Obligations; extend the time or agree to alter the terms of payment of any Obligations; release any property securing any Obligations; consent to the making of any plat or map of the Trust Property or the creation of any easement thereon or any covenants restricting use or occupancy thereof; appoint a successor Trustee without limitation as to the reason for appointing such a successor Trustee; or agree to alter or amend the terms of this Trust Deed or other Loan Documents in any way, all without in any way affecting the liability of any persons (other than the person so released) or the validity or priority of this Trust Deed (except as it covers property so released). Any personal property remaining upon the Trust Property, after the Trust Property has been possessed or occupied by the Department or its agent following foreclosure of this Trust Deed, or under any deed in lieu of foreclosure, shall be conclusively presumed to have been abandoned by the Grantor, and the Grantor covenants that Grantor will upon written request of the Department execute a warranty bill of sale transferring title to such personal property to the Department.
- 7.15 Other Debt. Obligations, as defined herein also includes, all other advances heretofore or at any time hereafter made to the Grantor by the Department respecting the Trust Property and all other indebtedness of every type and description now or hereafter owed under the Trust Deed by the Grantor, unless (in case of any such advance or indebtedness) the Department has otherwise agreed in writing. The Department shall not

**DRAFT**

be obligated to make any such advance or to permit or to suffer the creation of any such indebtedness.

7.16 Cross Default. Events of Default hereunder also shall constitute Events of Default under the other Loan Documents. Events of Default under the other Loan Documents also shall constitute Events of Default hereunder.

7.18 Interest After Judgment.

**DRAFT**

If this Trust Deed is foreclosed, any judgment or decree will bear interest on the unpaid balance at the rate: (1) that the law permits for interest on judgments; or (2) that is specified in the Note, whichever of these is greater.

**STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE LENDER AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS, WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.**

BY SIGNING BELOW, Borrower accepts and agrees tot he terms and covenants contained in this Trust Deed and in any rider(s) executed by Borrower and recorded with it.

**BORROWER:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DRAFT**

STATE OF OREGON            )  
  : ss  
County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me, the undersigned Notary Public, in and for the county and state aforesaid, personally appeared the within named \_\_\_\_\_, and being first duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, an Oregon \_\_\_\_\_, and that he/she executed the foregoing Trust Deed on behalf of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me, the undersigned Notary Public, in and for the county and state aforesaid, personally appeared the within named \_\_\_\_\_, and being first duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, an Oregon \_\_\_\_\_, and that he/she executed the foregoing Trust Deed on behalf of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**PROPOSED LOAN DOCUMENT REVISIONS**  
**Community Development Incentive Fund Loan**  
**Safeway Property Project**

**Loan Agreement**

**Section 5.11**

This section should be amended by deleting present clause “(2)” and replacing it with the following:

“(2) immediately notify the Department (and not later than within 15 days) in writing should Borrower become aware of any Hazardous substance or other environmental problem or liability with respect to the Project.”

As previously written, this clause would require the City to conform its dealings with all City properties to the environmental requirements of the Loan Agreement and other loan documents. This is overreaching, as the City should be permitted to engage in activities regarding those properties, and any environmental issues that may arise with regard to those properties, without having to involve the Housing and Community Services Department.

**Section 6.01**

This section should be amended by deleting the period at the end of the current first sentence, substituting a comma in its place, and adding the words: “condition or delay.” In addition, the following sentence should be added to this section:

“Notwithstanding the foregoing, the Department acknowledges and understands that Borrower will examine the feasibility of development of the Project through the use of partnerships or other form(s) of joint action with other public and private agencies and entities. Accordingly, the City may, without the prior consent of the Department, convey all or any part of its interest in the Project to one or more public or private entities or agencies established by the Borrower to provide for development of the Project, and in which the Borrower shall have a not less than fifty percent (50%) ownership interest.”

**Section 8**

This section should be amended by changing the initial sentence to read as follows:

“If an Event of Default shall occur and continue for 30 days after written notice of such default from the Department to Borrower, or if the default is of a nature that a cure thereof cannot be accomplished within 30 days, if Borrower shall have failed to commence a cure of the noticed default within the said time, or shall fail to diligently

## VI. A. 57

prosecute a cure of the noticed default to completion, the Department or a trustee appointed pursuant to the Loan documents may, without further notice, exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available at law, in equity, or pursuant to the Loan Documents or otherwise:"

### **Promissory Note**

#### **Section 3**

This section should be amended to bring it in line with the changes noted above to Section 6.01 of the Loan Agreement. Accordingly, the same new sentence recommended for addition to Section 6.01 of the Loan Agreement should be added at the end of the existing language.

### **Security Agreement**

#### **Section 2.**

This section should be amended to conform with the license to collect and apply revenues set forth in Section 3.04 of the Deed of Trust. Accordingly, the following should be added at the beginning of the first sentence: "Subject to the provisions Section 3.04 of the Deed of Trust which is part of the Loan Documents, ...".

### **Deed of Trust**

#### **Section 1.20**

This section currently requires the City to furnish estoppel certificates within five (5) days of request. This is too short a time, and the time period for response should be amended to provide at least 10 business days.

#### **Section 6.01 (9)**

This section contains a very restrictive due on conveyance clause, even more restrictive than as set forth in the Loan Agreement (which at least provided that consent to a conveyance would not be unreasonably withheld). This section must be amended to bring it in line with the Loan Agreement, and to provide the City with more flexibility to establish an entity or entities for development of the Project. Accordingly, the following changes to this section must be made:

1. The last sentence must be deleted and replaced by the following: "The consent of the Department will not be unreasonably withheld, conditioned or delayed."

2. The same additional sentence set forth in the comment to Section 6.01 of the Loan Agreement should be added at the end.

The foregoing are my comments to the draft loan documents. Upon your review, please call me with any questions or comments you may have. You should than appraise your contact of the requested changes, and I should also contact the State Attorney General's office to discuss the requested changes with the attorney involved in this transaction.

**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

**FACSIMILE TRANSMISSION COVER SHEET**

THIS COMMUNICATION MAY CONSIST OF ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE

**DATE:** August 29, 2001

**CLIENT NO.:** 65021-06

**TO:** Roosevelt Carter

**FAX NO.:** (503) 774-8236

**TELEPHONE NUMBER.:** (503) 786-7600

**FROM:** Dominic Colletta

**DESCRIPTION OF DOCUMENT TRANSMITTED:** Response from AG's office.

**COMMENTS:** This is the response from the AG's office regarding our proposed loan changes. Please feel free to contact me with your comments.

**3 PAGE(S) TO FOLLOW, EXCLUDING COVER SHEET.**

**IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL THE UNDERSIGNED AT (503) 222-4402 IMMEDIATELY. THANK YOU.**

**SIGNED:** Lori Stalker

AN ORIGINAL IS BEING MAILED

AN ORIGINAL IS AVAILABLE UPON REQUEST

[D: VI. A. 60

Document Revisions

Page 1

**From:** <d.carlson@doj.state.or.us>  
**To:** ORCCB\_DOMAIN.ORCCB\_PO(DGC)  
**Date:** 08/28/2001 11:05 AM  
**Subject:** CIF Loan Document Revisions

Mr. Colleta,

I have reviewed your proposed changes with Housing. We are willing to make the changes as reflected in the attachment. If you have any questions or comments, please feel free to contact me directly.

Thanks.

Dee Carlson  
Assistant Attorney General  
Oregon Dept. of Justice  
(503) 378-6060

**CC:** ORCCB\_DOMAIN.GWIA("betty.markey@state.or.us","debl...

**RESPONSE TO PROPOSED LOAN DOCUMENT REVISIONS**  
**Community Development Incentive Fund Loan**  
**Safeway Property Project**

**Loan Agreement**

**Section 5.11**

We agree to your suggested change to the first sentence of clause "(2)." However, the balance of clause (2) will remain, except that the next sentence will begin as follows: "At the Department's request, Borrower, at its own cost and expense, shall take all actions as shall be necessary or advisable for the clean up of the Project, including but not limited to all removal, containment and remedial actions in accordance with all ...."

**Section 6.01**

We agree to add the words "condition or delay" to the end of this section, with the provision that we may, however, charge a reasonable transfer fee. We will not add the balance of the language to the Loan Agreement because we retain the right to review and approve transfers on their individual merits, but are willing to acknowledge by side letter that the transfer to such an entity in which Borrower maintains not less than a fifty percent ownership is not *per se* unreasonable.

**Section 8.**

We do not accept your revised language, but agree to conform this section to the similar provision found in Section 6.02 of the Trust Decd so that they are consistent. That section reads as follows:

"If an Event of Default shall occur, the Department may, without notice (with respect to a payment Event of Default) or upon 30 days notice, or such lesser period as the Department may provide by notice in writing (with respect to other Events of Default), exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or pursuant to the Loan Documents or otherwise:"

**Promissory Note**

**Section 3.**

We will be willing to address this by side letter as discussed above in Section 6.01 of the Loan Agreement.

**Security Agreement**

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**Section 2.**

We accept this additional language.

**Deed of Trust**

**Section 1.20**


We accept this change to ten business days.


**Section 6.01(9)**

Again, we accept the first proposed sentence with the provision that we may charge a reasonable transfer fee. The balance of the proposed change will not be accepted as such, but may be addressed by a side letter consistent with our previous discussion above.



To: Mayor and City Council

Through: Mike Swanson, City Manager 

From: Scott A. Burgess, Community Development Director Pro Tem 

Subject: Water Shut Off Policy

Date: September 5, 2001

#### Action Requested

Adopt ordinance and resolution amending the City policies on utility notification and shut-offs for delinquent accounts.

#### Background

The City of Milwaukie provides utility services to its residents and businesses, and charges fees for these services. The policy is for the utility rates and fees to cover the cost of operation, maintenance, and, when possible, capital improvements.

The City bills its customers every two months, half the City residents one month and the other half the next month. Of the approximately 6500 residential and business utility bills sent monthly (1/2), 525 bills are past due, on average. The City shuts off water service to about 65 customers monthly for non-payment after follow up notices and bills. Handling delinquent accounts adds to the cost of providing service.

In the past, the City has provided additional notification to businesses and has not shut off their service. However, earlier this year, the City did cut off water service to several businesses with, in some cases, repeatedly delinquent accounts. The City Manager asked staff to review the shut-off policy for consistency, equity and cost-recovery. Staff has reviewed the current policy and is proposing changes. The notification and fee changes affect all utilities but water service is shut off only for delinquent water fees (however, the entire delinquent utility bill and fees must be paid before water service is restored). See attached memo for additional background.

## VI. B.

2

Off Policy

September 5, 2001

Page 2 of 3

### Summary of changes:

- Provide additional notice via door hanger for delinquent residential accounts 24 hours prior to shutting off water service.
- Following notice, shut off water service for delinquent residential and business accounts which receive City water.
- Add a \$5.00 past due notice fee.
- Limit after hour times when water service will be restored.
- Charge an additional \$25 if after hour service restoration is requested
- Add language in the sanitary sewer code section allowing the City at its option to shut off water (assuming that service is provided) for nonpayment as it is in the stormwater code section.
- Amend language to the sewer service section that allows the City to charge 10% per year on all accounts that remain delinquent for more than three months to cover interests and collection costs. This is important in cases where the water cannot be shut off to insure compliance and the costs associated with delinquency continue.

### Concurrence

Representatives of the Departments of Community Development and Finance have developed the proposed changes. The proposed changes have been reviewed and approved by the City Manager. The City Attorney has prepared the ordinance and resolution.

### Fiscal Impact

The current or proposed fees may not cover all cost associated with handling delinquent accounts. The proposed changes will recover additional costs (past due notice and after hours restoration of service fees) and add additional costs (door hanger notice to residences). However, the additional notice may reduce the number of shut-offs (saving time and costs) and proposed fees are consistent with those of other jurisdictions. Staff recommends implementing and monitoring the effects of the changes to determine the need for additional cost recovery.

### Work Load Impacts

There will be additional time and costs in Finance and Water associated with the additional notice. These may be offset with better response, i.e., quicker payment and fewer services shut off.

Water Shut Off Policy  
September 5, 2001  
Page 3 of 3

Alternatives

The alternatives are:

- Continue the existing policy and fees.
- Increase the fee for past due notice and/or after hour restoration of service but do not change the historical practice of notification and shutting off residences but not businesses for non-payment.

The problems with the alternatives are 1) continuing to charge all customers for more of the additional costs of those who do not pay their bills on time and 2) continuing the inequity between how the City deals with residential and business customers.

ORDINANCE NO. \_\_\_\_\_  
MILWAUKIE, OREGON

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON AMENDING SECTIONS 13.04.110, 13.04.120, 13.12.070 AND 3.14.060 OF THE MILWAUKIE MUNICIPAL CODE RELATING TO UTILITY FEES AND WATER SERVICE SHUTOFF.

WHEREAS, the City Council wishes to provide greater notice for water service shutoff for nonpayment of fees; and

WHEREAS, changes in the Milwaukie Municipal Code are needed to provide greater notice;

NOW, THEREFORE THE CITY OF MILWAUKIE, OREGON ORDAINS AS FOLLOWS:

Section 1: Section 13.04.110 of the Milwaukie Municipal Code shall be amended to read as follows:

**Water charges—When delinquent.**

- A. The City shall prepare and mail billings for water service on the last business day of each month. Payment is due by the fifteenth of the month following the billing date. An account is delinquent if the City does not receive full payment by five p.m. on the last business day of the month immediately following the billing date.
- B. The City shall send a past due notice to all water customers who have not paid in full within one month of billing. The past due notice shall be sent on the first business day after the account becomes delinquent. The past due notice shall state the overdue amount and shall state the amount of delinquent fees. The past due notice shall also provide a deadline for payment. The deadline for payment shall be the Monday before the third Thursday of the month in which the past due notice is sent.
- C. If payment has not been received by the date specified in the past due notice, the City shall on the following day provide notice of water service termination to the consumer by providing written notice left at the property where the service is provided. The written notice shall state that water service will be discontinued unless full payment is made by five p.m. on the next day. If full payment, including delinquent fees, is not made as required in the notice, the City shall shut off water service on the third Thursday of the month in which the past due notice was sent.
- D. The city council may by resolution establish one or more delinquent fees to be charged on past due accounts.

- E. The finance director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and C of this section in de minimis or extenuating circumstances.
- F. The City shall not shut off water service as provided in subsection C if the City has been provided written notice that shutting off service creates a health or welfare risk. The written notice must specify the circumstances creating the risk.

Section 2: Section 13.04.120 (B) of the Milwaukie Municipal Code shall be amended to read as follows:

- B. When the water service has been discontinued pursuant to this chapter and thereafter turned on again at the request of the consumer, a restoration fee shall be charged. The amount of the restoration fee shall be set by City Council resolution.

Section 3: Section 13.12.070 of the Milwaukie Municipal Code shall be amended to read as follows:

**Sewer service charges.**

- A. Users of sanitary sewer service shall be charged such fees as are established by resolution of the City Council.
- B. When a sewer system user has industrial or commercial waste of unusual strength or character, the City reserves the right to reject the application for service, to require certain pretreatment of such waste or require the sewer system user to pay such charges as may be fixed by the City for such waste disposal.
- C.
  1. The City shall prepare and mail billings for sanitary sewer services on the last business day of each month. Payment is due by the fifteenth of the month following the billing date. An account is delinquent if the City does not receive full payment by five p.m. on the last business day of the month immediately following the billing date.
  2. A delinquent fee in an amount established by resolution of the City Council shall be added to all delinquent accounts.
  3. The City shall charge a fee of ten percent per year on all accounts that remain delinquent for more than three months to cover interest and collection costs.
  4. The finance director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in paragraphs 2 and 3 of this subsection in de minimis or extenuating circumstances.

5. The City may require deposits prior to providing sanitary sewer service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the user of the system or not, that they will be ultimately liable for the user charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement. The lien attaches to real property and may be enforced pursuant to Section 13.04.130.
6. In addition to other lawful remedies, the finance director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the sanitary sewer service fees are delinquent or unpaid, following the procedures and standards for shutting off water service for non-payment of water bills as provided in Chapter 13.04. However, the finance director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

Section 4: Section 13.14.060 of the Milwaukie Municipal Code shall be amended to read as follows:

**Stormwater charges--When delinquent.**

- A. The City shall prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the fifteenth of the month following the billing date. Accounts are delinquent if the City does not receive full payment by five p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, shall be added to all delinquent accounts.
- C. The finance director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the finance director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for non-payment of water bills as provided in Chapter 13.04. However, the finance director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

Section 5: The City Council determines that the fees authorized by this Ordinance are not taxes subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2001

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

G:\muni\Milwaukie\watershutofford

RESOLUTION NO. \_\_\_\_\_  
CITY OF MILWAUKIE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING DELINQUENT FEES FOR WATER, SANITARY SEWER, AND STORMWATER SERVICES; CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION; AND AMENDING RESOLUTIONS 17-2001 AND 8-2000.

WHEREAS, the City has adopted a policy to provide greater notice of delinquent water, sanitary sewer, and stormwater accounts and will incur additional costs in providing additional notice; and

WHEREAS, the City Council reviewed the proposed delinquent fees to be charged to pay the city's costs of providing past due notices and notices of impending water shutoff; and

WHEREAS, fees are set by City Council resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON:

Section 1: Resolution 17-2001 is hereby amended by amending Exhibit A thereto as follows:

The lines entitled "Delinquent Account – Service Turn Off/On" and "Delinquent Account – Service Turn Off/On (after hours) on page 10 of Exhibit A to Resolution 17-2001 are deleted.

The following new lines are added to Exhibit A to Resolution 17-2001 under the heading "Water Fees and Charges" and under the subheading "Miscellaneous":

Delinquent Account -- Past Due Notice	\$5
Delinquent Account – Notice of Termination	\$25
After Hours Restoration of Service (Monday-Friday 5:00pm – 8:00pm; Saturday and Sunday 8:00 am – 5:00 pm)	\$25

Section 2: Resolution 8-2000 is hereby amended to add a new Section 8 to read as follows:

DELINQUENT FEES:

If any account remains delinquent more than 3 months, a fee of ten percent per year shall be added to the outstanding balance to pay the City's interest and collection costs.

Section 3: The revisions to Exhibit A to Resolution 17-2001 and to Resolution 8-2000, are effective on January 1, 2002.

Section 3: The fees established by this resolution are in addition to the fees established by Resolutions 8-2000, 9-2000, 17-1997, and 17-2001, all of which remain in effect except to the extent modified by this resolution.

Section 4: 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 \_\_\_\_\_, 2001

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## Interoffice Memorandum

To: Mike Swanson

From: Scott Burgess

CC: Carla Atwood, Jay Saatkamp and Dennis Lively

Date: September 5, 2001

Re: Milwaukie Water Shut Off Policy

---

On February 20, you charged a staff committee to investigate the City's existing business water shut off policy and determine if the policy should remain the same or changed. That committee consisted of Carla Atwood, Jay Saatkamp, Jerry Baker and Dennis Lively. I became involved upon my arrival. If you agree with the recommendations below, let me know and I will work with the City Attorney to prepare the necessary resolutions and ordinances, and schedule the item for Council.

A survey of 10 other cities in the region was made to determine the prevailing practices with regard to the timing of the water shut off and whether or not the businesses were exempt from being shut off from the water system. The results of that survey are attached.

The committee has reviewed the survey and after much thought and consideration submit the following recommended residential and business water shut off policy for approval and inclusion in the City's policy procedures.

To provide equity, ease of administration, and compliance, the following schedule of events is proposed (changes noted in **Bold**) for residential and business customers:

**Schedule of events for Past Due Accounts (Shut Off):**

Original Billing

On the last day of the month:

- Bill printed and mailed
- Balance is due on the 15<sup>th</sup> of the month

Past Due Notice

On the 1<sup>st</sup> business day of the following month:

- Past due notice printed and mailed

- **Add proposed** Past Due (Delinquent) Fee of **\$5.00** on accounts over \$25.00 to recover additional administrative costs of past due notice.
- Balance due on the Monday before the 3<sup>rd</sup> Thursday of the month

## Door Hanger Notice

On Tuesday before 3<sup>rd</sup> Thursday of the month:

- An additional \$25.00 Past Due (Delinquent) Fee assessed on accounts over \$25.00 with no exceptions (e.g. prior arrangements, first bill, no prior history or health/welfare issues on file\*).
- **Proposed** Door Hanger (prior notice before shut off) printed on all accounts without prior arrangements, first bill, no prior history or health/welfare issues on file\* – due (original bill plus \$5.00 plus \$25, if applicable) by 5:00 PM Wednesday before 3<sup>rd</sup> Thursday of the month
- **Proposed** Door Hanger delivered by crew to residents and businesses

## Shut Off

On 3<sup>rd</sup> Thursday of the month:

- List of all residential and business accounts past due provided to crew to be shut off
- Meter turned off by crew
- Account must be paid in full (original bill plus \$5.00 plus \$25, if applicable) to restore service

**\*Health/Welfare Issues Requirements:**

Utility Billing, Water Supervisor and Accounting Supervisor should review Health/Welfare Issues for Residential and Commercial before termination of water due to a Past Due Balance.

If a customer indicates a Health/Welfare issue, a medical statement or proof of Health/Welfare issue must be on file at Utility Billing and comments will be entered on the Utility Billing account. In addition, the customer will be notified that proper authorities will be notified if the account is always Past Due (for example, Clackamas County will be notified if Daycare Providers, Adult Foster Care, etc. are always on Shut Off).

**After Hours to Restore Service by On Call City Employee:**

**Proposed** after hours calls from dispatch to restore service to accounts shut off, should be changed from anytime after hours to the following:

Monday through Friday - 5:00 PM to 8:00 PM

Saturday & Sunday - 8:00 AM to 5:00 PM

The following is a reference to existing Ordinances that allow a delinquent fee to be assessed:

(City Ordinance 13.04.110 Water charges – Delinquent when. – Section B, City Ordinance 13.12.070 Sewer service charges. – Section C. – 2., City Ordinance 13.14.060 Stormwater charges – When delinquent. – Section B.) “A delinquent fee, in an amount established by resolution of the city council, shall be added to the outstanding charges on the sixteenth calendar day from the date of billing.”

If approved, these Ordinances will need to be updated from the sixteenth calendar day to the first business day of the month following the billing and the fee established by resolution. This change is necessary to accommodate the proposed changes (delinquent fees, door hanger, and shut off) for all accounts. In addition, prior notification of the new past due charge in the Pilot and an insert should be included in Cycle 1 & Cycle 2.

#### Summary of Policy and Changes

- City of Milwaukie did treat residences and businesses differently, e.g., businesses were not shut off, normally
- A recent change from “normal practices” brought this issue to light, i.e., several businesses with persistent delinquent accounts were shut off.
- Issues addressed include equity among customers, consistency of enforcement, and the cost of utility should be borne\* by the customers who receive benefits, including delinquent accounts (exceptions).
- The proposed changes include:
  - Same procedure for businesses and residences.
  - Imposition of a \$5.00 (new) charge for the delinquent notice (re-billing).
  - Advance Notification Door hanger (new) provided to businesses and residences
  - Door hanger provides additional notice (2<sup>nd</sup>) 24-hours prior to actual shut-off to allow homeowner and business owner time to pay prior to shut-off. This requires additional field crew staff time but some savings may occur because the first trip is just to hand out door hangers (no bill collection), and more bills may get paid before a shut-off (and subsequent re-connection) is necessary.
  - Ordinance changes are necessary to change the delinquent fee imposition date.
  - A resolution will be necessary to implement the proposed changes.

\* NOTE: The \$25 delinquent charge (existing) does not cover all the costs of door hangers and/or re-connection. However, the fee is not proposed to be raised at this time pending more data in implementing the proposed changes.

From: Sears, Ronelle  
 To: Saatkamp, Jay  
 Subject: H2O Turn on/Turn off disposition by Districts  
 Date: Wednesday, February 21, 2001

Jay,

This is the information requested on water shut-off and turn-on procedures, and billing.

Oak Lodge #503-654-7765 Turn-off...yes \$10...business hours. \$20...5 pm to 10 pm. They do not accept Bank-cards. After the late notice they have 8 to 10 days to pay before they will receive a door hanger. After the door hanger they will have 48 hours to pay before being shut off. Businesses are not shut off.

Clackamas River Water #503-656-0668 Turn-off...yes \$10...business hours. \$50...after hours anytime. They do not accept Bank-cards. No irrigation deductions. After the late notice they will receive a phone call 2 days before they receive a door hanger. After the door hanger they have 1 day to pay before being shut off. They do not collect payments in the field. Businesses are shut off.

Gladstone #503-557-2771 Turn-off...yes \$20...business hours. No after hours turn-on. They do not accept Bank-cards. Irrigation deducts for commercial only. They charge \$1.00 for late notices. After late notice they have 10 days to pay before they get the door hanger. After the door hanger they have 3 days to pay before being shut off. Businesses are shut off.

Sunrise Water Authority #503-761-0220 Turn-off...yes \$25...business hours. \$75...after hours anytime. Yes, they accept Bank-cards. They do not collect for sewer and storm. After late notice they have 8 to 10 days before they receive another door hanger (and a \$10.00 charge) then they receive another door hanger on shut off day. Businesses are shut off.

Oregon City #503-657-8151 Turn-off...yes \$25...business hours. No after hours turn-on. Yes, they accept Bank-cards. They are working on irrigation deducts for commercial only. After late notice they have 10 days before they receive a door hanger on the same day as shut offs. Businesses are not shut off.

West Linn #503-656-4261 Turn-off...yes \$30...business hours. No after hours turn-on. They do not accept Bank-cards. They do irrigation deducts for both commercial and residential. After late notice they have 10 days before they receive a door hanger on the same day as shut offs. Businesses are not shut off.

Wilsonville #503-682-1011 Turn-off...yes \$27.50...business hours.(until 3:30) \$44...3:30pm to 5:00pm They do not accept Bank-cards on water. After late notice they have 20 days before they receive a door hanger that gives them 72 hours before being shut off. Businesses are shut off.

Tigard #503-639-4171 Turn-off...yes \$25...business hours. \$35...after hours anytime. They do not accept Bank-cards for water. They do irrigation deducts for both commercial and residential. After late notice they have 2 weeks before they receive a door hanger with a 48 hour notice before being shut off. They do not shut businesses off and try to work with them by giving them up to 2 hours to pay.

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Tualatin #503-692-2000 Turn-off...yes \$10...business hours. No after hours turn-on. They do not accept Bank-cards for water. They use a winter rate system for irrigation. After late notice they have 10 days (with a 2 day grace) before they receive a door hanger with a 5 day notice. Some businesses are shut off.

Lake Oswego #503-635-0265 Turn-off...yes They have a \$10 delinquency fee. \$30...business hours. Normally no turn-on after hours but \$80 if totally necessary to do so. They do not accept Bank-cards for water but they do have automatic debit from checking for their clients. They have no irrigation deducts. After late notice they have 15 days before they receive a door hanger with 1 week notice. Businesses are shut off but not apartments.

Is this sufficient information, Jay? If not, let me know.

Ronelle

City of Milwaukie #503-786-7525 Turn off. . . yes \$25 past due (delinquent fee. . . during business hours) Additional \$25.00 After hours fee - meters turned on anytime after hours. Accept debit & credit cards in person or by telephone. Past Due Notices are mailed a minimum of 10 days prior to Shut Off Day with Due Date the Wednesday before 3<sup>rd</sup> Thursday of the month by 5:00 PM. Shut Off Day - 3<sup>rd</sup> Thursday of each month (exception November & December - normally no shut off). On Shut Off Day, Past Due (Delinquent Fee) of \$25.00 is added to all accounts with a minimum balance of \$25.00 with the exception of first billing. Door Hanger & Shut Off occur with the exception of prior payment arrangements or no prior history. Businesses are not shut off but a door hanger is printed and Water crew takes the door hanger in and makes contact with the manager to call Utility Billing and/or make the payment by 3:00 PM at City Hall.

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, MAY 8, 2001

**COMMISSIONERS PRESENT**

Tracy Cook, Chair  
Judith Borden  
Barbara Cartmill  
Donald Hammang  
Mike Miller

**STAFF PRESENT**

Alice Rouyer,  
    Planning Director  
Ken Kent,  
    Associate Planner  
Shirley Richardson,  
    Hearings Reporter

**COMMISSIONERS ABSENT**

Howard Steward

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- April 24, 2001

**Mike Miller** moved to approve the minutes of April 24, 2001, as presented.

**Barbara Cartmill** seconded the motion. MOTION CARRIED 5-0.

Ayes: Cook, Borden, Cartmill, Hammang, Miller; Abstentions: None; Nays: None.

4.0 INFORMATION ITEMS

4.1 City Council Worksession Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

6.1 Applicant: North Clackamas School District  
Owner: North Clackamas School District  
Location: 11250 SE 27<sup>th</sup> – Milwaukie Elementary School

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Minutes of May 8, 2001

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Proposal: Construct a new parking lot and make improvements to the bus loading area. A modification to the natural resource boundary is also included in the request.

File Numbers: CSO-01-02/NR-01-02

NDA: Historic Milwaukie

**Chair Cook** opened the public hearing on Community Service Overlay CSO-01-02 and Natural Resource Review NR-01-02 to allow parking lot reconstruction, related landscaping and relocation of outdoor paved play area. The request also incorporates a modification of the Natural Resource Boundary. The criteria to be addressed are found in Sections 320-Residential Zone R-7; 321-Community Service Overlay Zone; 322-Natural Resource Overlay Zone; 500-Off Street Parking and Loading; and 1011.3-Minor Quasi-Judicial Review.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare. There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; three hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

**Ken Kent** reviewed the staff report with the Commission. This application by the North Clackamas School District is to reconstruct the parking area along the south side of Milwaukie Elementary School. The goal of this project is to improve parking and circulation at the school to separate school bus loading and unloading from the street as well as from the vicinity of parent drop-off areas. The current on-site parking does not provide adequate turning radius within the parking lot for busses and parent pickup. It is not designed to handle these two activities together.

This proposal involves widening the driveway from existing 13 feet to 24 feet. This would include installing a 6-foot retaining wall on the north side of the driveway. The existing building along the south property line will be removed. The applicant is proposing a chain-link fence with screening landscaping to provide a buffer between the parking area and the residential uses to the south. A paved play area on the east side of the existing parking lot will be relocated.

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This proposal will provide a storm drainage system in the parking lot with catch basins that will connect to the City's storm drain system. As conditioned, staff finds that this proposal would be in the general public interest and the benefit would outweigh possible adverse impacts.

The Milwaukie Elementary site is designated a natural resource property. The applicant is asking that the boundary of this zone be modified. The parcels of the site are not included in the natural resource mapping. This site, however, is included on the list of natural resource properties in the Comprehensive Plan. There is no record of any inventory or site study that identifies this property as having natural resource amenities on it. Therefore, staff is requesting that the boundary be modified to remove this area from the mapped Natural Resource properties.

Staff finds that the proposal meets the approval criteria for the Community Service Overlay application and that the Natural Resource Boundary review and recommends approval of the application.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE RECEIVED -- None.

APPLICANT PRESENTATION

Speaking: Rick Givens, Planning Consultant, North Clackamas School District (NCSD)

**Mr. Givens** commended staff on their thoroughness of the staff report in that all the relevant points have been addressed. Overheads were displayed of the subject site and surrounding area. A drawing was presented that showed the fencing and landscaping proposed along the property line. The circulation system is a vast improvement and provides for better circulation and bus loading. It gives a much more fluid traffic flow.

**Mr. Givens** stated that the School District would like to maintain the current sidewalk system. They would like the students to stay out of the vehicular flow as much as possible. There will be vision impairment by placing a walkway along the retaining wall because of its height. It is best to keep students out of that area. If this sidewalk is required, it will result in widening of the intersection and removal of a Dogwood tree. They would like to retain the tree.

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An overhead was shown of the grading plan. The School District is asking for an increase in the number of parking stalls to try and get as much parking and traffic off of 27<sup>th</sup> Avenue as possible.

**Mr. Givens** introduced Gary Kryszak, Project Manager, Clackamas School District; and Bruce Goldson, Compass Engineering.

Speaking: Bruce Goldson, Compass Engineering

**Mr. Goldson** stated that his firm will be the site engineers for this project. They propose to keep the storm water on site by bringing the public system up to the site and make a connection. All of the catch basins are trap catch basins; there is a pollution control manhole near the upper part of the site; and a trench drain near the driveway approach to capture all of the water that comes down the last part of the driveway entrance. They have effectively captured all of the water from the site to the public system.

There is continuous retaining wall from the pedestrian approach of the school around the tree. There are no other solutions to save the tree and protect the grading in that area.

QUESTIONS FROM THE COMMISSIONERS

**Mike Miller** asked what is the plan for moving the backstop so that the field can continue to be used? Mr. Goldson stated the field is being relocated.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FROM THE COMMISSIONERS

**Barbara Cartmill** asked if comments had been provided from the Public Works or Fire Departments? **Ken Kent** stated that the Engineering Department had comments and they were incorporated in Conditions of Approval #7 and #8 as

CITY OF MILWAUKIE PLANNING COMMISSION  
Minutes of May 8, 2001  
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stated on page 8 of the staff report. The Fire Marshal has reviewed the circulation and it complies with all requirements.

**Mike Miller** voiced concern about students being in the bus pick-up and drop-off area that are not taking the bus. Can the students be split so that the ones not riding the bus can go out the front door?

Speaking: Gary Kryszak, North Clackamas School District Project Manager

**Mr. Kryszak** reported that they addressed this issue in detail. There is a split dismissal with the students. The students that ride the bus will be dismissed through the side doors. The students that do not ride the bus will go out the front door. Students will be directed to go out the front or side door depending on whether they ride the bus. Students will not be allowed to go down the driveway.

**Barbara Cartmill** noted that there were two parcels within the Natural Resource area. She asked if the boundary relocation put these two parcels outside the Natural Resource area? **Ken Kent** stated that the boundary was relocated. This would eliminate the actual parcel numbers. The boundary change will remove any development issues on this site.

APPLICANT CLOSING COMMENTS -- None.

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Donald Hammang** commended the applicants on the clear, precise drawings provided with the application.

**Judith Borden** moved to approve CSO-01-02 and NR-01-02 by North Clackamas School District and adopt recommended Findings and Conditions of Approval.

**Barbara Cartmill** seconded the motion. THE MOTION CARRIED 5-0.

Ayes: Cook, Borden, Cartmill, Hammang, Miller

Nays: None.

7.0 WORKSESSION -- None.

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8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

Budget Committee Update. **Alice Rouyer** reported that Budget Committee and City Council met last night and the budget was presented to the Council. The Planning Department Budget is status quo. There is no money this fiscal year going to the riverfront or park development. It is hoped that involvement with North Clackamas Parks District could address the park development concerns.

Martha Bennett Leaving the City of Milwaukie. **Alice Rouyer** announced that Martha Bennett is leaving the City of Milwaukie to take the position of Executive Director of the Columbia River Gorge Commission. She will be leaving June 8<sup>th</sup>.

Transit Center Update. **Alice Rouyer** reported that there have been a number of meetings with staff, NDAs, and various agencies in an effort to present Milwaukie's priorities relative to Light Rail and other transit options in Milwaukie. Once a transit option is decided, staff's next step is to work on a draft Environmental Impact Statement. **Alice Rouyer** announced that on May 31<sup>st</sup>, staff, neighborhood leaders, and Council will host a South Corridor Design Workshop. Tri-Met and Metro will be invited to attend and review all the alignment options. Staff will let the Commission know of the exact time and agenda items of this workshop.

Downtown Design Guidelines Committee. **Alice Rouyer** announced that the Design and Landmarks Commission will sponsor a meeting on Thursday night at 6:00 p.m. in the City Hall Conference Room to begin developing Downtown Design Guidelines. This will be the kick-off meeting to get the project started. Don Arambula will be there to participate in the discussion.

Upcoming Issues.

May 22, 2001

TSP Project Update

June 12, 2001

(1) Proposal to construct a parking area in the NR Zone along on Johnson Creek Blvd.

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- (2) St. Johns Elementary School – Community Service Overlay
- (3) Variance and TPR application on Ochoco Street

**Barbara Cartmill** announced that she will not be at the May 22, 2001, Commission meeting. **Judith Borden** stated that she would not be at the June 12, 2001, meeting.

- 11.0 NEXT MEETING -- May 22, 2001
- 11.1 TSP Project Update
- 11.2 Subdivision Ordinance Amendments

**Mike Miller** moved to adjourn the meeting of March 13, 2001. **Barbara Cartmill** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 7:35 p.m.

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Tracy Cook, Chair

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Shirley Richardson, Hearings Reporter

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CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, MAY 22, 2001

COMMISSIONERS PRESENT

Tracy Cook, Chair  
Judith Borden  
Donald Hammang  
Mike Miller

COMMISSIONERS ABSENT

Barbara Cartmill  
Howard Steward

STAFF PRESENT

Alice Rouyer,  
Planning Director  
John Gessner,  
Associate Planner  
Shirley Richardson,  
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- May 8, 2001

**Judith Borden** moved to approve the minutes of May 8, 2001, as presented. **Donald Hammang** seconded the motion. MOTION CARRIED 4-0.

Ayes: Cook, Borden, Hammang, Miller; Nays: None.

4.0 INFORMATION ITEMS

4.1 City Council Worksession Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS -- None

7.0 WORKSESSION

7.1 Transportation System Plan Project Update

**Chair Cook** opened the meeting to discussion on the Transportation System Plan. **John Gessner** passed out an information packet on the Transportation System Plan to the Commissioners. He explained that it was a working document used by the Technical Advisory Committee and it represents the structure of the project. Everything that is needed to accomplish the objectives of the project is included in the Impact Assessment.

Because of legal requirements, there is capital planning and development review elements to the project. In order to have an integrated and comprehensive approach, policies should be adopted in the Transportation System Plan regarding adequacy of public facilities and acceptable levels of service for local streets. This is in response to protecting the neighborhoods.

An administrative mechanism is needed to coordinate projects that are identified in the Comprehensive Plan. This mechanism would identify the impact areas and focus the investigation for the traffic impact study on the sensitive sites creating actual linkages in terms of mitigation between the development and the project. A site map was presented that showed existing levels of service and projected levels of service based on the 2015 Transportation System Plan analysis. There are intersections that you can predict will have level of service problems. Potential development can be linked to these projected service problems and staff will be able to determine which mitigation efforts would be most appropriate. Capital improvement programming, the Comprehensive Plan and Transportation System Plan will help identify sensitive areas.

**Donald Hammang** asked if there is a layer in the GIS system that tracks all the projects. **John Gessner** stated that a layer would be created. Staff would like to have separate layers for the planning periods.

**John Gessner** stated that there are five mitigation options:

1. The developer provides the needed improvements.
2. An in-lieu fee is paid to the City to be put in an account for a period of time. As a City project comes up that involve this location, the money comes out of the fund to pay for the improvement.
3. Reduce the amount of trips generated by the development. This can only be done with some types of development. Traffic demand management is a way of reducing the impact by reducing the number of trips.
4. If there is an opportunity to improve off-site deficiency within an impact area that is not substantially related to the impacts of the projects, credits can be issued to the developer to correct the deficiency.
5. A developer provides improvements in excess of what is needed, credit will be given to the developer.

**John Gessner** stated that depending on comments received tonight, the consultants would be directed to write code.

**Mike Miller** asked when this issue would go to Council as an agenda item for approval? **John Gessner** stated that tentatively staff is hoping for an August 14<sup>th</sup> Planning Commission hearing. A Council meeting will follow in September or October. **Alice Rouyer** stated that the code would go into effect 30 days after approval.

**Mike Miller** asked if there were any retroactive mitigation requirements? **John Gessner** stated that projects have to be reviewed under the regulations that are in effect at the time they are heard and decided. There are no provisions for retroactive mitigation.

**John Gessner** reported that there is a requirement in the Regional Transportation Plan to identify contiguous parcels of vacant or undeveloped property of five acres or more and prepare conceptual roadmaps for those parcels.

**Donald Hammang** asked for the definition of "undeveloped." **John Gessner** stated that the Regional Transportation Plan (RTP) definition of underdeveloped as a site which has 10 percent or less of its area in permanent structures. Metro has not clarified whether permanent structures include parking lots.

The RTP would like to see cities to think about future connections for large development properties. Cities are required to adopt a map that lays out connections and adjoining street system of proposed development. Development must take into consideration the street system and develop the connections to the existing street network. Provisions must be made for bicycle and pedestrian connections through the site for enhanced bike/ped connections.

Staff will be coming back to the Commission with the actual sites identified with connections shown for Commission direction.

**Donald Hammang** asked if developing a road system through industrial areas would reduce the size of lots needed for industrial use? **John Gessner** stated that the map does not require that the roads be built as indicated; it is only a guideline. The emphasis is on connections. No decisions would be made that would impede the ability to develop the industrial base that is contemplated in the Comprehensive Plan.

**Donald Hammang** asked if there is a way to balance the neighborhood issues with a traffic study? **John Gessner** stated that several he presented several examples of development projects using the threshold-scoring model, which determines when a study is required. Using the model, previous projects such as the Educational Service District, Rowe Middle School improvements, Providence Hospital, Oregon Dental Service renovation, and Linwood School would have required traffic impact studies.

**John Gessner** reported that the traffic consultant suggested using 200 trips per day as the threshold for requiring a traffic study. Staff does not feel 200 is the right threshold to use for Milwaukie. Beaverton has a three-tier approach; however, there is a lot of discretion

involved. They require a traffic study for any project with 400 or more trips. Staff decides if a study is required for 200 trips or more.

**Mike Miller** asked why residential condos and townhouses are rated half as many trips per unit as single-family residences. He feels that the same numbers of cars are used by the townhouses as single-family homes. **John Gessner** explained that this is published data from the Institute of Traffic Engineering (ITE). Typically, the townhouses are smaller units with a smaller family.

**John Gessner** stated that another worksession is planned in June. Since there have been no objections tonight, the consultants will be directed to start drafting code based on the information passed out tonight. The City has the authority to prove the appropriateness of the ITE trip rate and specify which trip rate would be acceptable to use. This will allow usage of data that is closer to Milwaukie statistics.

#### 8.0 DISCUSSION ITEMS

**Mike Miller** commended staff on their Council presentation on the appeal of the Weagant property. As a result of the presentation, Council backed-up and reinforced the decision of the Planning Commission. This sets a precedent for the next time someone decides not to follow the process.

**Mike Miller** asked if the Commission could have a copy of what was approved on the dentist office property.

#### 9.0 OLD BUSINESS -- None

#### 10.0 OTHER BUSINESS/UPDATES

##### 10.1 Matters from the Planning Director

State Grant for Transportation Study. **Alice Rouyer** stated that Monday staff submitted a \$100,000 grant to the State for a Transportation Growth Management Grant for the North Industrial Land Use/Transportation Study.

Transit Options for the South Corridor Study. **Alice Rouyer** reported that a meeting is scheduled on May 31, 2001, for the Design workshop to look at different transit alignments. Council members, Planning Commission members, Tri-Met, and neighborhood association chairs are invited to attend. Notice will be given on the exact time and place of the meeting.

City Manager Search. **Alice Rouyer** reported that City Council is meeting tonight in Executive Session to narrow down the number of candidates for City Manager. It is hoped that some finalist will be chosen for June 1<sup>st</sup> interviews.

Design and Landmark Commission Report. **Alice Rouyer** reported that the Design and Landmarks Commission had their first session for the downtown design guidelines on May 10th. There was a small turnout, but a very good discussion period. It was important to this group that Milwaukie is known as a water town. This is part of our heritage and they want historical components built into the design guidelines. The intent is to take all the comments and turn them into guidelines for downtown development.

Accessory Retail in Industrial Zones. **Alice Rouyer** reported that a presentation was made to Council on accessory retail in industrial zones. Council agreed with the Planning Commission and wanted to make sure that accessory retail is allowed only for manufacturing facilities. Accessory retail is not intended for distribution facilities.

11.0 NEXT MEETING -- June 12, 2001

11.1 NR-01-01 -- Dr. Shannon Application for a dentist office.

11.2 CSO-01-03 – St. Johns Catholic Church for an extended daycare facility.

11.3 VR-01-04/TPR-01-02 – Stankewitsch for a variance to the landscaping standards.

**Mike Miller** moved to adjourn the meeting of May 22, 2001. **Donald Hammang** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 7:17 p.m.

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Tracy Cook, Chair

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Shirley Richardson, Hearings Reporter

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, JUNE 12, 2001

**COMMISSIONERS PRESENT**

Tracy Cook, Chair  
Barbara Cartmill  
Donald Hammang  
Mike Miller  
Howard Steward

**COMMISSIONERS ABSENT**

Judith Borden

**STAFF PRESENT**

Alice Rouyer,  
Planning Director  
John Gessner,  
Associate Planner  
Ken Kent,  
Associate Planner  
Lindsey Nesbitt,  
Assistant Planner  
Gary Firestone,  
City Counsel  
Shirley Richardson,  
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- May 22, 2001

**Mike Miller** moved to approve the minutes of May 22, 2001, as presented.  
**Donald Hammang** seconded the motion. MOTION CARRIED 3-0 with two abstentions. Barbara Cartmill and Howard Steward were not at that meeting.  
Ayes: Cook, Hammang, Miller; abstentions: Cartmill, Steward; Nays: None.

4.0 INFORMATION ITEMS

- 4.1 City Council Work session Minutes
- 4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

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## JKIE PLANNING COMMISSION

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### 6.0 PUBLIC HEARINGS

- 6.1 Applicant: Father Francis Chun  
Owner: St. John's Catholic Church  
Location: 10955 SE 25th  
Proposal: Add a childcare and extended care program to the Parish Center.  
File Numbers: CSO-01-03  
NDA: Historic Milwaukie

**Chair Cook** opened the public hearing on Community Service Overlay CSO-01-03 to allow the addition of extended care and a day care facility in the St. John's Catholic Church. The criteria to be addressed are found in Sections 307 - Residential-Business-Office-Commercial Zone; 321 - Community Service Overlay Zone; 500 - Off-Street parking; and 1011.3 - Minor Quasi-Judicial Review.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare?. There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; four hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

### STAFF REPORT

**Lindsey Nesbitt** reviewed the staff report with the Commission. This is a proposal by St. John the Baptist Catholic Church and School to add extended care program and a day care facility (Mary's Day Care) in the parish center basement.

Staff feels that the four key issues of the application have been met:

- This program provides a benefit for the children and families that live in the area. This is a growing need in communities today.
- After review by the building inspector it was determined that two forms of egress were needed. It was determined that the day care could be used for up to six months with a temporary occupancy as long as the temporary dividers were not used. After six months, the second egress must meet ADA Standards.

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- Findings have been revised and were distributed to the Commission.  
(1) The applicant is requesting that the number of children be increased from 25 to 39; and (2) There was also a request to increase the number of staff members required on the premises at all times.

Staff is recommending approval of this application based upon the review of the approval criteria.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE RECEIVED -- None.

APPLICANT PRESENTATION

Speaking: Cheryl Johnson, 4964 SE Mason Lane, Milwaukie

**Ms. Johnson** stated that she was here on behalf of St. Johns. They are proposing a child care facility in the lower level of the Parish Center. The main goal is to have one classroom of ten children full-time and extended care for kindergartners who get out at noon, starting in September, and for the after school program from 3:00-6:00 p.m. The childcare will be open from 7:30 a.m. to 6:00 p.m., Monday through Friday, year-round. One pre-school class is planned for up to 14 children three days a week, 9:00 a.m. to 11:30 a.m. The pre-school class will be in session only on the days that North Clackamas School District is in session.

Plans were to open on June 18<sup>th</sup>, however, due to several building improvements, they have decided to open in September. This will allow time during the summer to complete the upgrades required. A doorway and ADA handicap needs to be added. Plumbing, wall, and floor improvements will also be done. The play area in the back will be fenced.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR

Speaking: Ed Zumwalt, 10888 SE 29<sup>th</sup>, Milwaukie

**Mr. Zumwalt** stated that he is the chair of the Historic Milwaukie Neighborhood Association. Ms. Johnson came to their meeting on May 10<sup>th</sup> and made a presentation about the proposed day care. Usually, the neighborhood

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association's main concern is traffic. They are confident, however, that this is under control. It was the consensus of the Association that this day care is something that the neighborhood needs and approve of the use.

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF -- None.

APPLICANT'S CLOSING COMMENTS -- None.

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Howard Steward** moved to approve Application CSO-01-03 for St. John the Baptist extended care and day care facility, thereby authorizing year round child care of 39 school aged children Monday through Friday from 7:30 a.m. to 6:00 p.m. and adopt recommended Findings as revised tonight and Conditions of Approval. **Mike Miller** seconded the motion. THE MOTION CARRIED 5-0.  
Ayes: Cook, Cartmill, Hammang, Miller, Steward  
Nays: None.

6.2 Applicant: Vic and Kathy Stankewitsch  
Owner: Vic and Kathy Stankewitsch  
Location: 2467 SE Ochoco  
Proposal: Authorize construction of a manufacturing building and reduce required landscape buffers.  
File Numbers: VR-01-01/TPR-01-01  
NDA: Lewelling

**Chair Cook** opened the public hearing on Transportation Plan Review TPR-01-01 and Variance Request VR-01-01 to allow a reduction in landscape buffer requirements, construction of a manufacturing building, and site improvements. The criteria to be addressed are found in Sections 314 - Manufacturing Zone; 400

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- Supplementary Regulations; 500 - Off-Street Parking and Loading; 700 - Variances, Exceptions, and Home Improvements; 1011.3 - Minor Quasi-Judicial Review; and 1400 - Transportation Planning, Design Standards, and Procedures.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; two hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

#### STAFF REPORT

**John Gessner** reviewed the staff report with the Commission. A copy of the site plan was displayed. Based on the dimensional requirements of parking regulations, the site is undevelopable at the level of intensity requested. The site is only 50-feet wide and because of the need to maneuver vehicles and provide adequate parking, any use of the site would require the same type of variance. The building is over 48 feet; however, as conditioned the building can be widened so that the western building line will meet the requirements of Section 408. The Applicant has provided parking based on the square footage requirements for manufacturing uses and has taken advantage of a 10% discount for proximity to transit.

Based upon a review of the approval criteria, staff recommends approval of this application.

**Mr. Gessner** reported that the adjacent property owner, Mr. Anderson, came in and wanted to look at the application. There were no adverse comments to the application and he indicated that he supported the application and welcomed the Stankewitschs' to the neighborhood.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE RECEIVED -- None.

#### APPLICANT PRESENTATION

Speaking: Kathy Stankewitsch, 15202 SE 142<sup>nd</sup> Avenue, Clackamas

**Ms. Stankewitsch** stated that it is their intent to put up a manufacturing building for a business that they own. They plan on meeting all the requirements that are imposed. There have been no negative responses from the neighbors regarding this proposed use.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR -- None

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

**Mike Miller** asked for clarification of the buffers required on each side of the property. **John Gessner** stated that two of the buffers do not meet the six-foot requirement. The purpose of the variance is to require a lesser standard.

**Mike Miller** asked if there were any requirements for shielding headlights for this application? **John Gessner** reported that Section 500 does not require shielding. Consideration was given to whether there should be some mitigation because of the deficient width. However, staff did not feel this would be a problem because of the nature of the businesses on each side of the site. The Commission could condition the application with additional landscaping in the buffers to mitigate the shielding of headlights.

APPLICANT'S CLOSING COMMENTS -- None.

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Mike Miller** moved to approve Applications TPR-01-01 and VR-01-10 authorizing a reduction in landscape buffer requirements, construction of a manufacturing building, and site improvements, and adopt recommended Findings and Conditions of Approval. **Barbara Cartmill** seconded the motion. THE MOTION CARRIED 5-0.

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Ayes: Cook, Cartmill, Hammang, Miller, Steward  
Nays: None.

- 6.3    Applicant:            Dr. Tim Shannon  
         Owner:              Allied Chemist Building  
         Location:            4450 SE Johnson Creek Blvd  
         Proposal:            Increase the size of the parking for adjacent to a Natural  
   Resource Area to accommodate a dental office.  
         File Numbers:        NR-01-01  
         NDA:                    Lewelling

**Chair Cook** opened the public hearing on application NR-01-01 to allow the revision of an approved parking lot plan to provide an additional 6 parking spaces. The criteria to be addressed are found in Sections 314 - Manufacturing Zone; 322 - Natural Resource Overlay Zone; 500 - Off-Street parking and Loading; and 1011.3 - Minor Quasi-Judicial Review.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; four hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

**Ken Kent** reviewed the staff report with the Commission. This proposal includes a new parking lot to the south of the existing building which provided 8 parking spaces, the minimum necessary for a professional office use. A condition of approval requires that the existing parking lot to the north of this building be removed to minimize impacts related to Johnson Creek in a trade-off for the new parking lot that will be constructed to the south.

The applicant is proposing to modify the approved plan to increase the number of parking spaces from the approved 8 spaces up to 14 spaces. The basis of the request is to provide the required parking for a dental office. This plan provides a

setback of 35 to 60 feet from Johnson Creek, which is the natural resource feature on the site.

Staff finds that the increased impervious surface with the additional parking area for this proposed parking lot, along with the reduction in the setback from the previous 35-foot minimum down to 30-foot would not provide adequate protection to the resource. Staff is recommending an alternative to minimize impact to Johnson Creek by limiting the parking spaces to 12 instead of the proposed 14. This will reduce the total impervious surface and provide a greater setback between the creek and the parking area. Staff is also recommending that additional plantings of native species be included in the area between the parking lot and the banks of the creek. This will enhance the buffer and minimize impacts of the parking area on the creek.

Comments were submitted from the Lewelling Neighborhood District Association to relocate the driveway to the southern portion of the site. An overhead was shown of the subject site and surrounding area.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE RECEIVED -- None.

#### APPLICANT PRESENTATION

Speaking: Timothy Shannon,

**Dr. Shannon** stated that he has been practicing in the City of Milwaukie for the past four years. He purchased the practice from a business that has been in dentistry here in Milwaukie for 30 years. This site is good for him because it has adequate space for a dental practice and a natural environment. It was also important that he provide safe parking for his staff and patients.

This building has 2080 square feet; sufficient for a dental office. He is in agreement with the findings and conditions. The additional plantings requested by staff and the removal of the existing parking lot will improve and enhance the site overall. Removal of the existing drain in the existing parking lot and changing the drainage in the new parking lot into Johnson Creek Blvd. sewer system is also a nice feature. The 8-foot buffer around the entire parking lot provides many more plants and trees than proposed. This provides aesthetic value

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to the site and natural habitat for animals. The buffer zone will also be planted and non-native species will be removed.

**Dr. Shannon** stated that he accepts the condition of approval regarding the parking spaces. One of his day-to-day concerns is the safety and well being of his staff and patients. There are six people who work in his office and the six additional spaces proposed will be for staff. The seven additional spaces and one handicap space would then be available to patients.

**Dr. Shannon** stated that he has spoken to the neighborhood association the land use chair three times and comments have always been positive. He has no problems with moving the driveway. There is also a bus stop on that corner and water works building close to the proposed driveway. He stated that he is willing to work with the location of the driveway.

**Dr. Shannon** stated that he has talked with a consultant about the site plan and it was suggested to make 2 or 3 of the parking spots, #12, #13, and #14 compact spaces. This will reduce the encroachment onto the natural area.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR

Speaking: Jean Michel, Lewelling NDA Land Use Chair

**Mr. Michel** stated that he chairperson of the Lewelling Neighborhood Association. He has spoken several times with Dr. Shannon and he and other members have gone down and visited the site.

It is the consensus of the Association that the driveway entrance should be moved further south. People who are coming from the north on Johnson Creek Blvd., that would be making a left-hand turn into the doctor's office parking lot, would have a much better chance of more line-of-sight to the corner. This configuration would meet all the requirements of the code. They feel that there is adequate buffer for the additional parking spaces.

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS OR COMMENTS -- None.

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TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

**Mike Miller** asked when the Title 3 regulations would be adopted? **Gary Firestone** stated that these regulations would be adopted at some point in the future, but not at this time.

**Barbara Cartmill** asked if consideration was given to the queuing of cars from the corner and the proposed driveway? **Ken Kent** stated that there was discussion between the Planning Commission and the applicant indicating that by locating the parking lot on this side, it would move the driveway further away from the intersection reducing conflicts with vehicles that back up from the traffic signal. This is one of the benefits of providing the parking lot on this side; it makes it further from the intersection.

**Donald Hammang** asked how the applicant's last suggestion about parking space sizes would affect the buffer. **Ken Kent** stated that this proposal could result in a savings of 2-1/2 feet in length and 2 feet in width. Fifty (50) percent of the parking spaces could be compact. This may reduce the setback 2-1/2 feet and increase the buffer.

APPLICANT'S CLOSING COMMENTS -- None.

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Donald Hammang** stated that he feels the applicant can have the number of parking spaces he wants provided the spaces area is small as possible to maximize the setbacks.

Suggested changes were:

- Finding #2, changed to read: "To minimize the amount of impervious surface adjacent to Johnson Creek, a condition of approval requires that the applicant incorporate compact parking spaces within their parking plan to reduce the area of the parking lot."
- Finding #4, changed to read: "As conditioned, the proposal will result in mitigation to natural resource impacts through the addition of native

plantings and eradication of non-native plant species between the proposed use and Johnson Creek to enhance the natural resource.”

- Revised Condition #8(e) to read: “A maximum of 14 parking spaces shall be provided.”
- A new Condition #8(f) to read: “A modified parking lot design moving the driveway further south to be consistent with the Lewelling Neighborhood District Association comments shall be provided.”
- A new Condition #8(g) to read: “A modified parking lot design to include compact spaces as a means to increase the natural resource buffer.”

**Donald Hammang** moved to approve NR-01-01 with recommended modified Findings and additional Conditions of Approval as indicated at tonight’s hearing. The proposal at 4450 SE Johnson Creek Boulevard includes revision of an approved parking lot plan to provide an additional 6 parking spaces. **Howard Steward** seconded the motion. THE MOTION CARRIED 5-0.

Ayes: Cook, Cartmill, Hammang, Miller, Steward

Nays: None.

7.0 WORKSESSION -- None.

8.0 DISCUSSION ITEMS

Discussion followed on which Commissioners would not be at the next meeting. If a quorum becomes an issue, staff will keep the Commissioners updated on whether the meeting is cancelled.

9.0 OLD BUSINESS -- None

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

Planning Commission Opening **Alice Rouyer** reported that no one has applied yet for the open position on the Planning Commission. She asked if the members might know of anyone that would be a good candidate.

APA Award Nomination for the Milwaukie Downtown Plan **Alice Rouyer** reported that she has been working with Don Arambula and George Crandall to put together a package for The American Planning Association, Oregon Chapter, award nomination for the Downtown Plan. The state conference will be held in October.

City Employee Update **Alice Rouyer** announced that the selection is down to two candidates for the City Manager position. This Friday, department heads and neighborhood leaders will be interviewing the candidates with a follow-up interview with City Council on Saturday.

**Alice Rouyer** announced that it was Martha Bennett's last day Friday. Scott Burgess, former City Manager at West Linn, is filling in half time in the Community Development Director position.

**Alice Rouyer** reported that Dennis Lively has been hired as the new Engineer Director/City Engineer. Dennis comes to the City with 17 years of experience, with his last employer being the United Sewerage Agency (USA) in Beaverton.

Design Workshop **Mike Miller** reported on the design workshop that was held in a joint work session with neighborhood leaders, Tri-Met, and City Council. There was a large turnout of residents. The presentation resulted in two final options for the light rail and two options for the bus. One light rail option had the station in the industrial area with a commuter route that goes behind the junior high. The other option has the light rail at the junior high site and at the end of Main Street and 21<sup>st</sup> Avenue. The bus option put the buses and the light rail at the same terminal at the north of town near the Hannah Harvester site. This would still leave bus access to downtown Milwaukie and cut down on the number of buses having to go into downtown Milwaukie because the transfer would be made at the station. There will be another meeting at the end of July.

**Barbara Cartmill** reported that the Gentle Dental site received an award from the North Clackamas Chamber of Commerce special recognition for design and architecture of building placement. The Credit Union also received recognition.

**Barbara Cartmill** asked when the Safeway sign would be coming down? **Alice Rouyer** stated that the sign belongs to Safeway and the Council will be considering whether the City will purchase the site at this time. The sign pole belongs to Safeway and they probably want to have it remain as long as possible.

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The City has applied for a grant for the Safeway site that might get transferred into a loan to purchase the property.

Design and Landmark Commission Report     **Alice Rouyer** reported that there was a community workshop on downtown design guidelines to kick off the project. Discussion centered on what they would like to see reflected in the design guidelines. The meeting on May 23<sup>rd</sup> was a discussion of educating the new members on the downtown plan.

Other Business

A member of the audience came forward and asked the Commission if they were aware that there was an earthquake fault in the City? She asked where it was located in the area of 28<sup>th</sup> Avenue and Van Water and whether the City was going to do anything about it? **Alice Rouyer** stated that there is a City map that shows the earthquake fault locations. She invited the resident to come to the office and talk with the Planning staff.

- 11.0 NEXT MEETING -- June 26, 2001
- 11.1 TSP Project Update

**Mike Miller** moved to adjourn the meeting of June 12, 2001. **Donald Hammang** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 8:07 p.m.

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Tracy Cook, Chair

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Shirley Richardson, Hearings Reporter

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, JULY 24, 2001

COMMISSIONERS PRESENT

Tracy Cook, Chair  
Judith Borden  
Barbara Cartmill  
Donald Hammang  
Mike Miller

STAFF PRESENT

Alice Rouyer,  
Planning Director  
Lindsey Nesbitt,  
Assistant Planner  
Shirley Richardson,  
Hearings Reporter

COMMISSIONERS ABSENT

Howard Steward

1.0 CALL TO ORDER

The meeting was called to order at 6:37 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- June 12, 2001

**Mike Miller** moved to approve the minutes of June 12, 2001, as presented. **Barbara Cartmill** seconded the motion. MOTION CARRIED 4-0 with one abstention. Judith Borden was not at that meeting.  
Ayes: Cook, Cartmill, Hammang, Miller; abstentions: Borden; Nays: None.

4.0 INFORMATION ITEMS

4.1 City Council Worksession Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

10.01a SIGN REQUEST -- LINWOOD SCHOOL

**Chair Cook** opened the meeting to discussion of the sign request for Linwood School. She announced that she was the former chair of the Linwood Neighborhood Association and was involved with this sign request. She excused

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herself from participating in this item. **Mike Miller** noted that he was a close friend with the person making the presentation on this item. He stated that he too would not participate in this discussion item.

**Vice Chair Borden** took the chair and asked for a report from staff. **Lindsey Nesbitt** reported that Linwood Elementary School is seeking Planning Commission approval for a reader-board sign. The proposed sign is 8 feet high by 6 feet, 2 inches wide with a display area of 6 feet, 2 inches by 4 feet, with a total display area of 24.66 sq.ft. The sign will be externally lit.

Staff feels that the sign height of 8 feet is appropriate because of existing bollards at the driveway corner that would block view of a lower height sign. Staff is asking for approval for the proposed sign.

**Vice Chair Borden** asked the applicant if they had any comments.

Speaking: Lisa Tamlyn, 14190 SE Rolling Meadows Drive, Portland

**Ms. Tamlyn** stated that she and Wanda Drendel were pleased to present this proposal to the Commission. They have been working on this project for a long time.

Speaking: Art Ball from the Lewelling Neighborhood Association

**Mr. Ball** asked if asked where the sign would be mounted? **Ms. Tamlyn** stated that the sign would be placed in the grass 42 feet from Linwood Avenue.

**Mr. Ball** asked if the proposed sign was within the requirements of the Sign Ordinance? **Alice Rouyer** stated that the sign is outside the guidelines for signs in residential zones. The maximum sign height in the residential zone is 6 feet and the proposed sign is 8 feet. Because of the placement of the bollards at the driveway, the requested sign is 8 feet so that it will be more visible from the street. It is within the Planning Commission's authority to approve this height.

**Donald Hammang** moved to approve the Community Service Overlay sign request for Linwood Elementary School. **Barbara Cartmill** seconded the motion.

Ayes: Borden, Cartmill, Hammang; Abstentions: Cook, Miller; Nays: None

6.0 PUBLIC HEARINGS

- 6.1 Applicant: City of Milwaukie
- Owner: N/A
- Location: N/A
- Proposal: This proposed amendment is to allow small accessory retail establishments (up to 4,000 sq.ft.) to be located in the Business Industrial (BI) Zone, when they are in conjunction with an established industrial use already permitted in the zone.
- File Numbers: ZA-01-01
- NDA: All

**Chair Cook** opened the public hearing on Zoning Amendment ZA-01-01, an action amending the Zoning Map and Comprehensive Plan for the Business Industrial (BI) zone to allow for limited accessory retail uses. The criteria to be addressed are found in Sections 900 and 1000 of the Zoning Ordinance and Chapter 2 of the Comprehensive Plan Review and Amendment Process.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare. There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; four hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

**Alice Rouyer** reported that the request is on behalf of at least one property owner who has an interest in locating a small, retail, factory outlet store in the Business Industrial Zone. Currently zoning only allows for limited retail and service uses that don't serve the general public, but serve the population in that zone. Any type of small retail establishment that serves the general public is not permitted.

Over the past months, staff has found two or three small factory outlet-type stores in this zone where items that are manufactured are sold at the site in a small store in front of the facility. These outlets are not legal. This amendment, based on one-property owner's request to do something similar. As a result of this request, staff has worked on an amendment to the BI Zone that addresses the concerns of

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the Planning Commission and City Council. It is the general feeling that we need to keep these types of uses limited.

**Alice Rouyer** read an amendment drafted for page two of the staff report in Section Four, "Retail outlets associated with manufacturing uses outlined in Section 19.324.2A.2 above. Products sold at the accessory retail outlet shall be primarily those assembled or manufactured on site. The accessory retail outlet shall be within the associated manufacturing building and may occupy up to a maximum of 25% percent of the floor area or 4,000 sq.ft., whichever is less."

The amendments were made to limit the size and limit the items sold in the accessory retail to primarily those items that are manufactured on-site. Staff is recommending that the Planning Commission forward a recommendation for approval to City Council subject to the findings and conditions listed in the staff report.

CORRESPONDENCE RECEIVED -- None.

TESTIMONY IN FAVOR -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FROM THE COMMISSIONERS

**Mike Miller** asked how this primarily was assessed? **Alice Rouyer** stated that this was left flexible to allow for discretion. In the event of an enforcement problem, a determination can be made.

**Judith Borden** asked if any of the existing accessory uses exceeded the specified limits of Section 4? **Alice Rouyer** stated that she is fairly certain that they are under the 4,000 sq.ft. limit.

**Barbara Cartmill** asked if there was a possibility of the accessory use being owned by an outside person thereby not keeping the connection of the manufacturing outlet? **Alice Rouyer** stated that a stand-alone building could create non-conformity. Language can be drafted to insure that the outlet and manufacturing is done within or attached to the existing building.

**Alice Rouyer** suggested changing the revised language to read, "Retail outlets associated with manufacturing uses outlined in the section 19.324.24.2 above, products sold at the accessory retail outlet shall be primarily those assembled or manufactured on-site. The accessory retail outlet shall be in the manufacturing building and may occupy up to a maximum of 25% percent of the floor area of the building or 4,000 sq.ft., whichever is less."

#### DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Barbara Cartmill** moved to recommend to City Council approval of Zone Amendment ZA-01-01, Zoning Ordinance text amendment to the Business Industrial (BI) Zone to allow for limited access retail uses with the findings and conditions as outlined in the staff report and with the amended language proposed tonight by staff. **Judith Borden** seconded the motion. THE MOTION CARRIED 5-0.

Ayes: Cook, Borden, Cartmill, Hammang, Miller; Nays: None.

#### 7.0 WORKSESSION

##### 7.1 South Corridor Study Update

**Chair Cook** opened the meeting to discussion on the South Corridor Study. **Alice Rouyer** reported that the community has been working with Tri-Met and Metro on providing feedback and community dialogue on the South Corridor project to evaluate different transit alternatives that might run through Milwaukie. These alternatives include light rail, bus-way, and bus rapid transit. A number of alternatives have been considered over the months.

There was a large town hall meeting held on May 31<sup>st</sup> and another one is planned for July 26, 2001. This meeting will allow an opportunity for feedback on the project. Tonight staff would like to introduce the Commission to the project to let them know what is going on in the community. As the project progresses, the Commission will be involved in making land use decisions that relate to the alternative selected.

Speaking: Michelle Gregory, Neighborhood Services Manager, City of Milwaukie

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**Ms. Gregory** introduced Michael Fisher, Tri-Met; Dave Unsworth, Metro; and neighborhood leaders that are available to participate in the discussion should there be questions or comments.

From 1980 to about now the south corridor exceeds the transportation network capacity. There is a need to increase efficiency in the transit system. After the November, 1998, election it was found that many people felt that other alternatives were not given serious consideration. In the spring of 1999, Metro initiated a collaborative study of the south corridor through a partnership of City of Milwaukie, Clackamas County, Oregon City, Portland, ODOT, and Tri-Met.

A policy group made up of elected representatives from each agency was created. They make recommendations to the Metro Council via JPAC. Three citizens working groups were set up representing three corridors: Milwaukie to Portland, Milwaukie to Clackamas County, and Milwaukie to Oregon City. These groups were responsible for making recommendations to Metro Council.

A technical group was set up with representatives from each agency. Their job was to crunch data to make reports and present the policy group and community with different options. A public information group was also set up to insure outreach and share information.

In the fall of 1999 a background document was developed that summarized all the conclusions and data that had been gathered. A wide range of alternatives were published in a report. The study addressed river transit, commuter rail, high occupancy toll lanes, high occupancy vehicle lanes, bus-way, bus rapid transit, and a no-build option.

From winter, 1999, to fall of 2000, all of the alternatives were studied, evaluated and narrowed. Updates were being provided at open houses, public meetings, community meetings, and public comment periods.

Citizen's working groups issued their recommendations regarding further study. 17 meetings of these three groups resulted in a package of recommendations for further study.

The Policy Group received staff and citizen working group reports in December of 2000 and narrowed the options for further study to: bus rapid transit, bus-way, and high occupancy vehicle lanes. The Policy Group voted to add light rail to the study for the Portland to Milwaukie segment.

In April 2001, the Neighborhoods issued a memo to Milwaukie City Council detailing 14 points, which gave the key criteria for success of the south corridor. A lot of comments dealt with light rail due to pressure from Portland, because they want light rail back into the picture. The County came out with a recommendation that they would prefer a bus-way. In May a policy group met to discuss which options would move forward for the Supplemental Draft Environmental Impact Statement (SDEIS). This assessment was deferred until an I-205 light rail line might be feasible for inclusion in the study. A joint work session between City Council and the Milwaukie neighborhoods reviewed 11/12 alternatives and narrowed it down to the current alternatives.

In June, 2001, the Policy Group met to refine options for study in the SDEIS and voted to include light rail alignment from Gateway to Clackamas TC via I-205. This group also suggested a process for narrowing SDEIS alternatives be postponed until further public process can occur in Milwaukie.

Today they are seeking Planning Commission feedback. This Thursday is a town hall meeting discussing background information and explaining the alternatives that are on the table. The neighborhood will be explaining their 14 key points and feedback will be collected from the community at large.

In August the Policy Group will meet again with a status report on the project and provide staff with direction on the beginning element of the SDEIS. Milwaukie will host a follow-up Open House on August 13<sup>th</sup> at 7 p.m. at St. John's Episcopal Church. During August, staff will be coordinating on the work plan and outreach plan for the SDEIS portion of the project.

In September, the Policy Group will meet to make the official decision on which alternative alignments will go into the SDEIS. This project is expected to be completed in September 2002. Once the study is completed, it goes to the Federal Transit Administration (FTA) for review. After that review, it will be published and there will be a 45-day public comment period.

The challenges that are faced as a community are:

- The feasibility for all of the alignment options have yet to be assessed
- Impacts to be mitigated
- Stakeholders to be reached
- Public feedback to be gathered

- Local policy to be made
- Federal funding cycles to be met and matched
- Project costs to be fully flushed out
- Partnerships to be forged and maintained

Additional background information was handed out.

Speaking: Michael Fisher, Manager of Corridor Design for Tri-Met

**Mr. Fisher** stated that he is the lead person at Tri-Met for the design team for the conceptual design. There were five options drafted at the City Council work session and he displayed the maps for the audience. All five of the options have a Tacoma Street Station that includes a park-and-ride garage with access to and from the interchange with McLoughlin Blvd and Johnson Creek. The proposal is to have 1000 spaces in the garage to serve commuters in the Highway 224 Corridor. All five options have an ending point in downtown Milwaukie. The options vary in terms of track alignment, how many stations, where the stations are, the placement of the transit center, and how many additional park-and-ride stations are included beyond the Tacoma Street Station. He detailed the five options to the audience:

- Option A-3 – The alignment between Tacoma Street and downtown Milwaukie that runs along between Main Street and McLoughlin Blvd. The McLoughlin Transit Center Terminus is north of Scott Street. There will be a station and park-and-ride at and on the old Southgate Cinema site.
- Option B-1 – From Tacoma Street, this option follows an alignment alongside the existing freight railroad track (Tillamook Branch) to a terminus behind the Junior High School. There will be a 13-bay bus transit Center at this terminus. This will not affect the historic building, but will need about half of the Annex to create the transit center. There will be a bus-only street between Harrison Street and Monroe Street. This option can be modified to include an additional station in the industrial area at Mailwell Drive.
- Option B-2 Mod A -- This option is identical to B-1 except it extends the alignment all the way to a terminus at Lake Road. A light rail station would be located right next to the freight tracks. In addition, there is a park-and-ride structure proposed on site bound by Main Street to the east, Washington Street to the north, and McLoughlin Blvd to the west. The garage would include commercial uses on the ground floor on the Main Street side. Access is proposed from both Washington Street and McLoughlin. The intent was to

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add more park-and-ride facilities to the project to reduce the pressure on the Junior High site for parking.

- Option B-2 Mod B -- This option has the same alignment as Mod A, along the Tillamook Branch line to a terminus at Lake Road with a parking structure. The difference is that there is no transit center at the Junior High School site, it is outside of downtown Milwaukie on the north side of Highway 224 next to the Hanna site. This includes the bus transit center and a park-and-ride garage and new off-ramps from Highway 224. A return ramp will be reached via Main Street. This allows access to a park-and-ride without coming into the neighborhoods.
- Option A-B-1 -- This option uses the Main Street alignment to the Southgate site where there will be a bus transit center and a park-and-ride structure. It runs diagonally across the industrial area to hook into an alignment along side the Tillamook Branch and continue to have a station at the Junior High site without the transit center and a terminus station at Lake Road with the park-and-ride.

**Mike Miller** asked if there was an alignment being considered that would end at the Junior High site? **Mr. Fisher** stated that there could be a terminus at the Junior High site but you would lose potential of the park-and-ride.

Option B-1 has the least number of stations and is the lowest in cost of all the options. The entire alignment into downtown Portland carries an overall project cost of \$390 million. Option A-3 would add \$12 million more. Option B-2 adds \$25 million to the cost of the project. Modification B, with the Hanna site, adds \$63 million to the project. Option A-B-1 adds \$53 million to the base cost.

**Barbara Cartmill** asked what percent of dollars is available from the Federal government? **Mr. Fisher** stated that 50% of funds are available.

Speaking: Dave Unsworth, Metro Planner

**Mr. Unsworth** explained that a bus-way looks like a road, however, it is 30-feet wide. Busses use this going and coming in both directions. This is a separate right-of-way that is out of general-purpose traffic. Signalization gives the bus priority. This follows closely the light rail alignment, just different technology.

The bus-way alignment will leave downtown Portland using the Hawthorn Bridge, stopping at OMSI, two/three stops in southeast Portland, continuing down the railroad lines near the trees to a station near Bybee, a station at Tacoma Street

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with bridges to the Ardenwald neighborhood, and coming into downtown Milwaukie to a transit center. As it leaves downtown Milwaukie, it will run along the north side of Highway 224 and continue on out towards Lake Road/Linwood Avenue south of Harmony Road to 80<sup>th</sup> Avenue and then connect to Monterey to the transit center.

The Bus Rapid Transit (BRT) is an improvement to the intersections so that buses can get by the cues of cars that are backed up at traffic signals by turning the light green quicker and providing a cue bypass lane on the right side lane.

**Mr. Unsworth** stated that there has been a lot of concern expressed about a lot of buses going on Harrison Street. They are proposing putting bus-only ramps on the north and south side of Highway 224 from Main Street up to and over the Union Pacific Railroad tracks. The BRT will extend all the way down to Oregon City.

The light rail alignment to Milwaukie uses the Hawthorn Bridge and parallels the Union Pacific line down to Milwaukie. The I-205 light rail alignment will follow right-of-way set aside when Oregon Department of Transportation (ODOT) constructed I-205 down to south of Foster Road. New right-of-way is being created on the west side of I-205.

Where is the transit center located with the bus-way alternatives? There were three original choices, the Safeway site, the McLoughlin Transit Center location, and the Southgate Transit Center location. The Safeway Site was dropped from further consideration. With a bus-way coming from Tacoma, the busses would use Main Street. The Southgate Transit Center would have a park-and-ride of about 600 spaces. The busses would continue down to Oregon City or out to Clackamas Town Center. There are some regional buses that will not come into Milwaukie. There is local service with this transit center, but you don't get the regional service from the east with the Southgate site. Transit centers need to be available to both pedestrians and car drivers. The McLoughlin Transit Center doesn't impact the Safeway site. It does require the displacement of a few businesses between Main Street and McLoughlin Blvd.

The McLoughlin site would be .3 million dollars less than the Safeway site. The Southgate site, because of the structured park-and-ride, is about \$15 million more. Because the major busses don't have to go all the way into downtown Milwaukie, the travel time is shorter from downtown Portland. More property is being lost at the Southgate site.

The pedestrian connections in downtown Milwaukie are stronger with the McLoughlin station than with the Southgate site. The McLoughlin site gets regional busses from Clackamas Town Center that come into downtown Milwaukie.

**Mike Miller** asked how many busses an hour would be using the site? **Mr. Unsworth** stated that there would be 22 busses an hour using Main Street.

**Barbara Cartmill** asked why there was no regional service with the Southgate Center? **Mr. Unsworth** stated that it would require more busses in the neighborhoods, which is something that is not wanted. The fast service/trunk service buses are trying to get to the transit center as quickly as possible. Trunk service is high-capacity, frequent, and reliable service that runs on its own right-of-way. The local buses will still be available in the neighborhoods.

Bus-way maps were shown and **Mr. Unsworth** pointed out alternatives being considered for at-grade and below-grade routes. The bus rapid transit does not use a separate right-of-way, but it has traffic signals identified that hold the light green longer to allow the bus to go through. The right-turn lane would be expanded or lengthened to allow buses to get by the cars that are cuing up.

Considerations of the below-grade routes prove to be the most expensive. The route from downtown Milwaukie transit center to the Linwood park-and-ride will cost about \$104 million. The surface line is approximately \$67 million. The bus rapid transit is the least expensive at \$20 million. The bus-way and the below-grade have good speed and good reliability. The bus rapid transit at some point will be stuck in traffic. There are about 10 residential/commercial displacements associated with both of the bus-way options. There may be a piece of right-of-way required along Highway 224 as a result of the bus rapid transit solution.

The below grade will have the most impact on eco and wetland issues. The stations should be at-grade for a visual standpoint. The bus below-grade would have no traffic impacts. The surface bus-way option would have impact because of the cues being fixed on the signals. There is a safety concern about the cuing the Union Pacific railroad crossings. The bus rapid transit is not as fast as the bus-way (1 minute 20 seconds slower) between the transit center in Milwaukie and the Linwood park-and-ride.

The memo to City Council regarding 14-points of concern indicated that the Lake Road park-and-ride would be eliminated. The intention was to have bus-way line south of Harmony with a Lake Road/Linwood park-and-ride. The Policy Group concluded that that this should be carried forward in the DEIS. Also to be considered will be the removal of the Linwood park-and-ride option and having the bus-way still go out to Clackamas Town Center; however, the Policy Group did not feel this was feasible.

Other options were considered:

- Having the bus-way going down to K-Mart and turn up towards Clackamas Town Center via Johnson Road or west of 82<sup>nd</sup> Avenue. This was not forwarded into the environmental impact statement.
- Delete the Lake Road park-and-ride. A Johnson Road park-and-ride is being carried forward into the DEIS. Some buses will go to the K-Mart facility and the rest will go up on the bus-way to Clackamas Town Center.
- Bus Rapid Transit on Harmony Road with an associated park-and-ride on Lake Road. A second bus rapid transit scenario was added that removes the Lake Road park-and-ride and adds a Johnson Road park-and-ride.

**Chair Cook** voiced concern about the narrowness of Harmony Road. **Mr. Unsworth** stated that Clackamas County has an urban renewal district that goes from 82<sup>nd</sup> Avenue to Fuller Road. They have in near-term plans to expand Harmony Road from 2/3 lanes to 5 lanes. Other plans are being considered to expand Harmony Road from Fuller Street to Lake Road, which would include a grade separation near the Union Pacific Railroad.

**Alice Rouyer** noted that the Planning Commission has voiced concern about the McLoughlin area for quite some time. Staff has applied for a TGM Grant with the State Transportation and Growth Management Grant. The grant is for \$100,000. There has been a lot of support from the region to do this and it is hopeful that the grant will be awarded. Pieces of the grant application have been included in the staff report. The impacts that the light rail will have on the north industrial area are a subject to be addressed in this grant. The funds from the grant will be used to study what would be the land use demand from a market standpoint, examine the existing transportation infrastructure that would be needed to accommodate the redevelopment anticipated in the area, develop a plan to provide the infrastructure in the future, and seek input from property owners in the area.

**Donald Hammang** stated that several years ago there was a lot of talk about station community planning. He asked where this stood in the project? He also asked what happened to the concept of light rail from downtown Milwaukie to Clackamas Town Center? **Mr. Unsworth** stated that Clackamas County feels that there should be a seamless ride from Clackamas Town Center to downtown Portland. The bus-way would fit what they see as a seamless ride. When the policy group opened the door for light rail, they were very clear that it be to Milwaukie and not to any further to the east.

**Alice Rouyer** stated that in 1997, the Planning Commission requested that land use conditions be studied for possible mixed use for stations that might be in the previous north/south light rail alignment. This was stopped because the voters decided not to move forward with light rail.

**Mr. Unsworth** stated that the neighborhood groups have asked if there are other ways to expand light rail, possibly south into Oregon City, Oregon City up I-205, etc.

Speaking: Art Ball, Chair for the Lewelling Neighborhood Association

**Mr. Ball** stated that the 14 points mentioned are key issues that the seven neighborhood chairs drafted because of concerns of the community. When light rail resurfaced, there was a lot of talk about how it would impact Milwaukie and the neighborhoods. There is a lot of concern about the standard of livability in the neighborhoods, the characteristics of the neighborhoods, and the detriment to the neighborhoods. The residents wanted to make their concerns know, so the memo was drafted. They wanted the stakeholders to know what Milwaukie did not want to happen. Number two on the list was high density at the transit stations. He asked that the Commissioners read the memo and acquaint themselves with the concerns. It is hoped that it will help in the evaluation of the light rail situation.

**Mike Miller** stated that he has read the 14 points and has attended a number of the meetings. It was his understanding that if light rail came into Milwaukie it would be a single track that terminated at the Junior High School. There would be no park-and-ride. Now tonight it was explained that there is a double track and no option of ending at Milwaukie Junior High, but rather at Lake Road. He feels that the community is beginning to creep from what was originally proposed to what is currently being proposed. The residents don't want Milwaukie to become the light rail pass-through. **Mr. Unsworth** stated that they are concerned about

Milwaukie at this time. The extension of the light rail line beyond Milwaukie is not being considered at this time.

Speaking: Dave Ashenbrenner, Chair of the Hector Campbell Neighborhood Association

**Mr. Ashenbrenner** suggested that in the future there be a joint session with the Planning Commission and the neighborhood chairs to share information and ask questions. When south corridor information went to the policy group, Milwaukie to Portland group made it admit that light rail had to be an issue for them. They were not willing to accept anything but light rail from Tacoma to downtown Portland. That is one of the reasons for drafting the 14 points. If the terminus is going to be Tacoma, it should serve Milwaukie too. The Junior High is a key point in the 14 points.

The future expansion of light rail outside of Milwaukie will require a separate environmental impact statement, funding scenario, and an entirely different program. In the 14-point memo, there is a point made about studying I-205. Some people took that to mean that the residents wanted light rail on I-205. This is not necessarily true. If anything, the Milwaukie light rail line or bus-way line would have to be the first piece of the puzzle. If there is a choice between I-205 and Milwaukie, the only choice is Milwaukie. The City has made connections with some neighborhoods in Portland and working on connections with Clackamas County. Meetings are being held to get these 14 points out.

**Barbara Cartmill** asked if consideration had been given to the fact that Milwaukie may sell to someone other than Tri-Met? **Mr. Unsworth** stated that this is a City decision and thus far there has not been a final decision. If Milwaukie sells to the other person, they will have to be contacted to see if the transit center can still occupy the site. The downtown stations fold into the redevelopment of downtown.

**Mr. Unsworth** stated that no decisions are being made at this time, they are only narrowing down the options available. The information collected will be studied about a year and half from now. This is just what is to go forward to be studied.

Speaking: Rob Kappa, Co-Chair of Lake Road Neighborhood Association

**Mr. Kappa** stated that it is apparent to the region that Milwaukie came together and made recommendations on how to resolve the issues. One is that Southeast Uplift definitely wants light rail and they are going to push that option. When it

comes to the borders of Milwaukie, there becomes a creeping issue. He suggests taking a pro-active approach and voice to others what it will take to work in the City of Milwaukie. These 14 points are the issues that Milwaukie does not want to see in its City. This opinion has resulted in a better working relationship with Southeast Uplift, Tri-Met, and Metro. The neighborhoods are very much committed to supporting each other. Island Station is concerned about the traffic signal on McLoughlin. Ardenwald has concerns about the pass-through traffic on any parking area on Tacoma Street. Lake Road expresses the same concerns. Cedar Crest has the issue of expanding a road that comes right to the City limits. There are several issues in the City that need to be resolved. This is why it is so important to find out where the transit line will go if it comes to Lake Road or the Junior High site. The doors need to remain open.

**Mr. Kappa** asked that the Planning Commission read the 14 points and when they are reviewing the Transportation System Plan on August 14<sup>th</sup>, that they try to incorporate them or be sensitive to them and leave some options open to re-examine.

Speaking: Edie Kerbaugh, Acting Chair, Linwood Neighborhood Association

**Ms. Kerbaugh** reported that Dolly Macken-Hambright was very instrumental in getting the point in the 14 points about no Linwood Park and Ride. They are concerned about increased traffic near Linwood Elementary School. The other concern is the bus-way on Harmony would be on the side of the street that is going to be the District Park. Funding has just been made for an east/west berm trail and it will be built this summer. This will mean that there will be a trail right next to the bus-way.

Cedar Crest is a 400-house development and there is a small pocket park. With this many houses, there is a need for a place for the kids to play. They have been looking forward to this District Park for the kids to play. Now a five-lane highway and a bus-way are being proposed between the development and the District Park. She is very disappointed about the whole thing. Bus rapid transit is one thing, bus-way is a whole different ballgame. She asked that the needs of this neighborhood be considered. She has been working very diligently to make this District Park happen.

**Alice Rouyer** asked the commission for their input on the different options of bus route to transit, bus-way, and light rail. It was the consensus of the Commission that they needed more time to process the information that they heard tonight.

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It was decided that this issue would be discussed again in a work session at the August 28, 2001, Planning Commission meeting. **Mr. Unsworth** stated that they would be happy to come back and discuss this with the Commission again at that work session.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

Election of Officers **Alice Rouyer** reported that election of officers took place this time last year and asked if the Commission wanted to elect new officers.

**Chair Cook** opened the meeting to nominations of Chair. **Barbara Cartmill** nominated Tracy Cook for the office of Chair. **Judith Borden** seconded the motion. THE MOTION CARRIED UNANIMOUSLY.  
Ayes: Borden, Cartmill, Hammang, Miller; Nays: None.

**Chair Cook** opened the meeting to nominations of Vice Chair. **Mike Miller** nominated Judith Borden for the office of Vice Chair. **Barbara Cartmill** seconded the motion. THE MOTION CARRIED UNANIMOUSLY.  
Ayes: Borden, Cartmill,  
Hammang, Miller; Nays: None.

Design and Landmark Commission Report **Barbara Cartmill** reported that things are progressing well with the Design and Landmark Commission. Mr. Arambula has been doing a good job processing the information that is being discussed at the meetings. A tour is planned to review existing architecture and design in the City of Portland. **Alice Rouyer** invited the Commissioners to come join the tour. It begins at 5:00 p.m. at the Johnson Creek Office.

11.0 NEXT MEETING -- August 14, 2001

11.1 NR-01-03/WG-01-01 – Gary & Sharon Klein – 10795 SE Riverway Lane

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11.2 CAP-01-02/ZA-01-02 - City of Milwaukie Transportation System Plan Implementation

**Mike Miller** moved to adjourn the meeting of July 24, 2001. **Donald Hammang** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 9:05 p.m.

\_\_\_\_\_  
Tracy Cook, Chair

\_\_\_\_\_  
Shirley Richardson, Hearings Reporter

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, AUGUST 14, 2001

COMMISSIONERS PRESENT

Tracy Cook, Chair  
Judith Borden  
Barbara Cartmill  
Donald Hammang  
Mike Miller

STAFF PRESENT

Alice Rouyer,  
Planning Director  
John Gessner,  
Senior Planner  
Kenneth Kent,  
Associate Planner  
Shirley Richardson,  
Hearings Reporter

COMMISSIONERS ABSENT

Howard Steward

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- July 24, 2001

**Barbara Cartmill** moved to approve the minutes of July 24, 2001, as presented.

**Mike Miller** seconded the motion. MOTION CARRIED 5-0.

Ayes: Cook, Cartmill, Hammang, Miller; abstentions: Borden; Nays: None.

4.0 INFORMATION ITEMS

4.1 City Council Work session Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

6.1 Applicant: Gary and Sharon Klein  
Owner: Same  
Location: 10795 SE Riverway Lane  
Proposal: Applicants are requesting approval to remodel and add on to a single-family residence located on the Natural

Resource and Willamette Greenway Overlay zones. A Natural Resource Review and a Willamette Greenway Conditional Use permit are requested.

File Numbers: NR-01-03 and WG-01-01  
NDA: Historic Milwaukie

**Chair Cook** opened the public hearing on Natural Resource Review NR-01-03 and Willamette Greenway Conditional Use Permit WG-01-01, an action that will allow for an 869 square foot addition to the footprint of an existing single-family residence at 10795 Riverway Lane. The criteria to be addressed are found in Milwaukie Zoning Ordinance Sections 302 - Residential Zone R-2; 322 - Natural Resource Overlay Zone; 320 - Willamette Greenway Zone WG; 600 - Conditional Use; and 1011.3 - Minor Quasi-Judicial Review.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. **Chair Cook** asked if any member of the Planning Commission visited the site; three hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

#### STAFF REPORT

**Kenneth Kent** reviewed the staff report with the Commission. He reported that the applicant is proising to add approximately 869 sq.ft. to the existing residence. The home will be remodeled adding a new roof structure increasing the overall height up to a total of 24 feet and adding the second floor area. The proposed additions include a 6-foot expansion along the front of the house to the north and a 14-foot expansion to the east side of home partially behind the garage.

The natural resource features for this property include the Willamette River and Johnson Creek. The resource boundary and the NR zone are defined as the 100-year floodplain. The proposed addition will extend the building further to the east. The addition will be 30 feet from the resource boundary, up to 210 feet from the normal bank of Johnson Creek.

It is staff's opinion that the development has been designed to have the least amount of impact on the natural features/values of the site. The project site has been dedicated to a residential use and maintains an adequate setback from the

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river. The project site currently has a vegetative buffer that extends from 50 to 60 feet from the ordinary high water line to the level portion of the lot where the home and surrounding improved yard are located.

Staff finds that the proposal is consistent with the applicable criteria of the Milwaukie Zoning Ordinance and recommends approval with recommended findings and conditions of approval.

QUESTIONS FROM THE COMMISSIONERS

**Mike Miller** asked for clarification of the 50% rule as indicated in the staff report. **Ken Kent** stated that the applicant has not requested approval of the 50% rule as it applies to the removal of trees. Removal of trees in the natural resource zone would require an additional review. If any of the mature trees along the Willamette River are to be removed, the Planning Commission must review it.

CORRESPONDENCE RECEIVED -- None.

APPLICANT TESTIMONY

Speaking: Gary Klein, 3115 NE 58<sup>th</sup>, Portland

**Mr. Klein** reported that his property is located at 10795 SE Riverway Lane. He thanked Ken for a very thorough report. He stated that he is aware that if a certain number of trees are to be removed, they must be replaced. He has no plans for removing any trees at this time.

**Mr. Klein** stated that he plans on following all the criteria and requirements of this application. The six-foot addition on the north side of the house is the farthest away from the natural resource area. The backside of the garage addition is a combination of like uses in the home. The second floor will not change the look of the home.

TESTIMONY IN FAVOR -- None.

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

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ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FROM THE COMMISSIONERS

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Mike Miller** asked that staff make a statement about the 50% rule on tree removal. **Alice Rouyer** stated that this rule is outlined on Page 9 of the staff report. The statement applies to the fact that not more than 50% of the trees will be removed. Any tree removal, however, will require the applicant to come back before the Planning Commission for review.

**Barbara Cartmill** moved to approve Natural Resource application NR-01-03 and Willamette Greenway WG-01-01 for an 869 square foot addition to the footprint of an existing single-family residence at 10975 Riverway Lane and adopt recommended Findings and Conditions of Approval as stated in the staff report.

**Judith Borden** seconded the motion. THE MOTION CARRIED 5-0.

Ayes: Cook, Borden, Cartmill, Hammang, Miller; Nays: None.

- 6.2 Applicant: City of Milwaukie  
Owner: N/A  
Location: N/A  
Proposal: A Zone Amendment and Comprehensive Plan Amendment to adopt adequate public facility and transportation impact analysis requirements and adopt various other provisions to implement the Transportation System Plan (TSP) in accordance with a grant from the State of Oregon.  
File Numbers: ZA-01-02 and CPA -01-02  
NDA: All

**Chair Cook** opened the public hearing on applications Comprehensive Plan Amendment CPA-01-02 and Zoning Amendment ZA-01-02, an action that will allow Zoning Code amendments, changes to the Subdivision Ordinance, Municipal Code amendments, Comprehensive Plan revisions, and a new Transportation Design Manual.

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**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare? There were none.

## STAFF REPORT

**John Gessner** reviewed the staff report with the Commission. This project was funded by a grant from the State. He introduced the other staff members who worked on the project: Randy McCourt, DKS Associates (Traffic Engineering Consultant); Mary Dorman (Code Writing Consultant); Paul Roeger, Civil Engineer; Dennis Lively, City Engineer; and Brion Barnett, Associate Engineer.

The key elements of this project:

- The Zoning and Subdivision Ordinances will be consolidated into the Municipal Code.
- Builds upon existing adequate public facilities requirements. Public facilities requirements have been modified so that a payment or deferral of actual construction is provided when associated with a capital improvement project.
- Adoption of level of service performance standards for intersections. The Planning Commission under a land use application would review these standards when a traffic impact study is required.
- A Traffic Impact Analysis will be required when there is a score of 100 or more using the proposed method to determine threshold when a study is required.
- There are legal limitations on the extent of improvements that may be required by the city. There must be a direct relationship between the impact created by the development and the improvement required. Also, the scale of the improvement must be roughly proportional to the impacts created by the development.
- The distance area for administrative decisions has been increased to 300 feet.
- Staff is proposing that the City Council adopt a Transportation Design Manual. **Brion Barnett** stated that there have not been any guidelines in the past that allowed staff to get the improvements that were needed. This will help bring to the forefront any traffic impacts that may affect the neighborhoods. This is a draft of the manual and minor revisions will be made in the future.

**John Gessner** stated that the decision as to whether or not a project requires a traffic impact study should be objective and consistent. Staff is proposing a scoring method that achieves this goal. No one else in the metropolitan area is

using this scoring process; however, it has been tested through a number of projects that have already been approved. The model is operating as staff was expecting.

Staff was requested to draft flexible regulations that do not involve too much process. The results of the request were new regulations that address the business community needs and assurance that there are administrative ways to grant minor adjustments or exceptions.

These revisions will protect the neighborhoods from traffic impacts of non-residential traffic.

1. Any project that results in 25 or more through trips will be required to do a neighborhood study.
2. The traffic impact analysis that reaches the threshold will require an analysis of how trips from a given site are distributed.

The Planning Commission will review any application that requires a traffic impact analysis. This will allow the neighborhood residents the opportunity to comment on the impact study.

Input has been received from stakeholders. One response from Mr. Whitlow requesting that the city consider a system development charge credit. Developers could have the opportunity to make all the improvements necessary and get a credit back from the city for the cost in excess of what their rough proportional cost would be. Staff will be asking City Council if this is something that they want pursued. These revisions can be approved without this development credit in the Code.

Another response was received by Dave Hamilton, Norris and Stevens, with a concern about the inequity of how smaller projects trigger application requirements different than larger projects. Staff feels that the \$100,000 threshold may not be appropriate. By raising the threshold, it would reduce concerns about the inequity. Staff is asking that a recommendation be sent to City Council in support of this threshold being increased to \$200,000 rather than the \$100,000 as indicated on Page 6.2 (20) of the staff report.

Staff has done an analysis on the approval criteria in the Comprehensive Plan and Zoning Ordinance and find that the regulations are consistent and requests that a favorable recommendation be made to City Council. A public hearing is scheduled for September 18, 2001.

#### QUESTIONS FROM THE COMMISSIONERS

**Barbara Cartmill** asked if the system development charge credit could be made separate from these revisions and be subject to review and decision at another time? **John Gessner** stated that it would be appropriate.

**Chair Cook** asked for clarification of what sections of the code the increase in project dollar amount would be found. **John Gessner** stated that it could be found in Sections 1404.1 and 1405.

**Mike Miller** asked if these revisions would result in the elimination of developer agreements related to sidewalks and streets. **John Gessner** stated that the revisions eliminate developer agreements for providing required improvements within the right-of-way. It has been replaced with an option to provide payment in lieu of construction. The money would be held by the City to do the improvements if the developer does not construct them.

TESTIMONY IN FAVOR -- None.

#### QUESTIONS OR COMMENTS

Speaking: Teresa Bresaw, 12744 SE Weedman Court, Milwaukie

**Ms. Bresaw** stated that she is with the Lake Road Neighborhood Association. She stated that she had several questions.

1. Because some streetlights are being placed in the middle of the block rather than at the corners, she asked if these revisions address this new process?
2. Will the public right-of-way be changed or remain as stated in the staff report: street, curb to curb; green space for trees; and sidewalk on both sides of the street? Her neighborhood has street, sidewalk, and public right-of-way extending into yards about four and a half feet.
3. Will the stubbed streets be opened up to traffic if there are more than 20 homes in the neighborhood?
4. The staff report indicates that new development shall be connected to a collector or arterial by a paved street. Does new development mean more than one house and does this mean that a new one-home development cannot have a non-paved driveway?

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

**Brion Barnett** stated that Section 1.3.5 of the draft Design Guidelines, on Page 6.2 (119), indicates that the City has adopted the standards for the American National Standard Practice for Roadway Lighting. The location is based on a functional classification that requires certain foot-candles based on class.

**Mike Miller** asked if there is a standard that calls for the distance between streetlights? **Brian Barnett** reported that the city does not have lighting guidelines. **Randy McCourt**, DKS Associates, stated that the standard goes by coverage of lighting rather than placement. All new development will be held to that standard of coverage. Individual development is currently responsible for providing the safe level of the standard.

**Mike Miller** asked what is the process for a resident if they feel their street lighting is inadequate? **Brian Barnett** stated that he would talk to someone in the Engineering Department about the adequacy of lighting on her street. A measurement will be taken and the results reviewed to bring the lighting up to adequate levels.

**Brion Barnett** put the diagram on Page 6.2 (189) on the overhead projector. He reviewed with the audience the right-of-way requirements. What is shown on the diagram is what the city would like to see in the future.

**Donald Hammang** asked if consideration was given to the saving of trees with the right-of-way street designs? **John Gessner** stated that the regulations apply uniformly over the city. There is reasonable discretion given to insure that valuable resources can be saved.

**John Gessner** stated that the provision requiring closed-end street systems connection through an existing street was adopted the spring of 1998 when the Functional Plan Compliance was done. The provision applies only to development created after the adoption date. These revisions will not force the streets to be pushed through.

In regards to the question about new development needing a paved driveway, **John Gessner** stated that this is an old provision of the subdivision regulations. These revisions would not require the paving of existing gravel driveways. The

Zoning Ordinance today requires that driveways be paved. New development must have paved driveways.

**Ms. Bresaw** stated that she feels the streetlights make more sense at the corners. This is where there is more of a chance of an accident. She voiced concern that the standards may always be minimum standards and maybe not always the best in every situation. **Brion Barnett** stated that there are standards in place now where there were none before. The intersection lighting requirements generally double the requirement for a normal block way.

#### QUESTIONS FROM THE COMMISSIONERS

**Judith Borden** asked for clarification of the memo, Summary of Miscellaneous Provisions, point 2, for substantial redevelopment. **John Gessner** stated that it is the building that is subject to permit, not just buildings in general in the neighborhood. The language will be revised to make it clear that it is in reference to the site building or buildings.

**Mike Miller** asked if this reference was to one of multiple buildings or a single building that occupies the entire site? **John Gessner** stated that the intent is to get to the value of improvements on the property. The level of existing investment is used as a gauge to apply the requirements for public improvements. The value of on-site improvements against the need for public improvements in the street. This applies to all buildings. **Alice Rouyer** stated that County Assessor data is broken down to all improvements on the lot, not just building. The language of the definition will be revised.

**Mike Miller** asked if this revision puts the greater burden for the application process on those that have the lower valued area? **John Gessner** stated that there are exemptions for single-family residences. The definition of substantial improvement does not apply to single-family residences.

#### DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

**Judith Borden** moved to recommend to City Council approval of applications Comprehensive Plan Amendment CPA-01-02 and Zoning Amendment ZA-01-02 for the Transportation System Plan Implementation Project with the revisions

discussed tonight for Sections 1404.1C, 1405B, and changes of language in the Summary of Miscellaneous Revisions, Number Two found in Chapter 19.103 - Definitions for the definition of Substantial Redevelopment. **Mike Miller** seconded the motion. THE MOTION CARRIED 5-0.

Ayes: Cook, Borden, Cartmill, Hammang, Miller; Nays: None.

**Mike Miller** commends John Gessner for all of the good work he has done on this project and for staying on task for so long. The rest of the Commission concurred.

7.0 WORKSESSION -- None.

8.0 DISCUSSION ITEMS

**Barbara Cartmill** expressed interest in consideration of the system development credit as mentioned by staff. If the right development came along that established a precedent for forwarding the money to complete a project, the idea that there is a mechanism for recovery somewhere down the line, she feels the city would benefit from the improvement. This may bring more development into Milwaukie.

**Judith Borden** stated that it is a good idea to encourage developers to bear the cost to do some of these improvements in hopes of getting some sort of credit.

**John Gessner** stated that he feels this is something that should be reviewed and would probably not induce growth. It will give the city another tool to help get the improvements that the City needs. The City of Gresham, Washington County, and other agencies are using this form of reimbursement.

**Mike Miller and Chair Cook** also stated that they were in favor of this concept. **Alice Rouyer** stated that John Gessner would forward to City Council as a comment that the Planning Commission is in favor of the idea of the development charge credit.

Discussion followed on how the development charge credit would apply. This would apply only if a developer went over and above what the Commission or Council requires as part of their application.

9.0 OLD BUSINESS -- None

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10.0 OTHER BUSINESS/UPDATES  
10.1 Matters from the Planning Director

John Gessner/Senior Planner **Alice Rouyer** announced that John Gessner was promoted to Senior Planner effective August 1, 2001. Congratulations were given by the Commission.

**Alice Rouyer** announced that Gary Firestone is in Europe and Dana Krawczak will be sitting in for him until he returns. Ms. Krawczak has experience in municipal law and comes well qualified.

North Industrial Grant Award **Alice Rouyer** announced that Milwaukie was awarded the North Industrial Grant. Staff will be working with Oregon Department of Transportation (ODOT) on the scope of work and the process of hiring a consultant for the project.

Building Department Report **Alice Rouyer** reported that she now manages the Building Department. The service will not change and they will continue to work with Happy Valley. In time, the city is considering taking over the electrical program completely.

Flag Lot Standards **Alice Rouyer** reported that in June, City Council asked staff to address the flag-lot standards. One of the requests was to see if the flag-lot standards could be eliminated. There is nothing in the Metro Functional Plan that requires the city to have flag-lot standards; however, from a legal standpoint, it would be very difficult to eliminate them. After a Council worksession, there was support in having the Planning Commission work on tightening up the standards.

At the next work session, staff will be bringing the first draft of Phase I of the subdivision re-write. This will include re-plat standards, lot-line adjustment standards, as well as some new and improved lot design standards.

Design and Landmark Commission Report **Barbara Cartmill** reported that the Commission went on a field trip to downtown Portland and reviewed mixed-use examples, office mix with retail, and different types of architecture. She leaned to appreciate window placement, rooflines, etc. It was a good experience for all the Commissioners.

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- 11.0 NEXT MEETING -- August 28, 2001
- 11.1 Continuation of South Corridor discussion from July 24, 2001
- 11.2 Review draft Subdivision Ordinance amendments

**Barbara Cartmill** moved to adjourn the meeting of July 24, 2001. **Mike Miller** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 8:05 p.m.

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Tracy Cook, Chair

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Shirley Richardson, Hearings Reporter