



**Study Session**

**SS**

**Milwaukie City Council**



**MINUTES**  
MILWAUKIE CITY COUNCIL  
www.milwaukieoregon.gov

**STUDY SESSION**  
OCTOBER 23, 2014  
City Hall Conference Room

**Mayor Jeremy Ferguson** called the study session to order at 6:36 p.m.

Council Present: Council President Dave Hedges and Councilors Mark Gamba and Mike Miller

Excused: Councilor Scott Churchill

Staff Present: City Manager Bill Monahan, Administrative Specialist Scott Stauffer, City Attorney Dan Olsen, Community Development Director Steve Butler, Planning Director Denny Egner, and Engineering Director Jason Rice

**Medical Marijuana Facility Siting**

**Mr. Egner** reviewed previous Council discussion on siting medical marijuana facilities, and discussed buffer zones for schools and childcare facilities. He summarized that the Planning Commission had been working on a proposed ordinance that would prohibit marijuana facilities from co-locating with other businesses and would ban visible marijuana displays. He reported that Chief Bartol had recommended that the hours of operation be limited to avoid late night issues, and he asked for Council input on the proposed ordinance as drafted so far by the Planning Commission.

**Councilor Gamba** noted that medical marijuana was legal in Oregon and suggested medical marijuana facilities should be handled like drug or liquor stores. **Mr. Egner** discussed Oregon Liquor Control Commission (OLCC) regulation of liquor stores and distributed an example OLCC site evaluation form to Council.

**Councilor Miller** asked what "neighborhood commercial" meant, and **Mr. Egner** noted that such zones existed at Linwood Avenue and King Road and along 32<sup>nd</sup> Avenue.

The group discussed the possible negative effects of boarded-up medical marijuana facilities on the surrounding commercial areas.

**Council President Hedges** suggested the City consider the processes for siting recreational and medical marijuana facilities given the likelihood of voters legalizing recreational marijuana at the November General Election.

**Mayor Ferguson** summarized that Council supported enforcing the state's school buffer zone with the inclusion of former school sites where youth activities are conducted, and the ban on co-locating with other businesses.

**Councilor Gamba** suggested that banning a medical marijuana facility from co-locating with a business that sells marijuana accessories wouldn't make sense, and **Mr. Egner** suggested the accessory items could be part of the medical marijuana facility.

**Mayor Ferguson** said he would not want a 7-Eleven to co-locate with a medical marijuana dispensary and stated his support for limiting the hours of operation. **Councilor Gamba** concurred that limiting the hours of operation was reasonable.

**Councilor Miller** noted the youth activities that occur at the North Clackamas School District (NCSD) office building on Lake Road and suggested it be designated a school buffer zone. **Mr. Egner** noted NCSD's conversations with the City regarding the possible relocation of their offices to the commercial building on Freeman Way and said the NCSD offices could be a buffer zone. He summarized Council's input and reported that the Planning Commission would draft an ordinance for Council consideration.

**Council President Hedges** asked about how the 1,000 feet from schools were determined, and **Mr. Egner** reported that it was from the property line as spelled out in the Oregon Administrative Rules (OARs).

### **Right-of-Way (ROW) Presentation**

**Mr. Olsen** said the objective was to review how ROWs are created and controlled, and **Mr. Monahan** added that the request for a ROW review came from neighborhood district association (NDA) conversations about the Monroe Street Greenway project.

**Council President Hedges** discussed ROW concerns along 42<sup>nd</sup> and Home Avenues.

**Mr. Monahan** said the goal was to have common ground between staff and Council when talking to the public about City programs and projects.

**Mr. Olsen** discussed the legal definition of ROWs, the public's use of ROWs, utilities' access to ROWs, how the City Code defines a ROW, and by what authority the City and other jurisdictions control ROWs.

The group discussed how cities, counties, and the state co-manage different roads.

**Mr. Olsen** explained that ordinances define what can or cannot be in a ROW, and talked about how an unimproved street can lead to questions about where the ROW is located. He reviewed how ROWs are created and what agencies can do for the "benefit of the public" in a ROW, noting that the presence of utilities can complicate a situation. He said a City could take ownership of a ROW through adverse possession after 10 years of open or adverse use by hostile owners. He discussed what the public can and cannot do in ROWs and cited several common examples.

**Councilor Gamba** and **Mr. Olsen** discussed the government's responsibility to obtain a full independent appraisal of a property before purchasing a ROW and how to assess the value of a tree in the ROW.

**Mr. Olsen** provided several examples of cases where property owners have limited the public's access to a ROW, and **Council President Hedges** commented on the common expectation that the public has the right to use a ROW.

**Mr. Monahan** remarked on the City's enforcement of ROW encroachment and the City's potential liability in accidents in the ROW involving permanent structures.

**Council President Hedges** discussed how years of ROW use by the owner builds the expectation that the ROW property is theirs exclusively, and **Mr. Olsen** commented that it is sometimes important to survey the property to identify where ROW line is located.

### **Sidewalk Enhancement Program**

**Mr. Rice** said that the idea of a sidewalk enhancement program has come-up in conversations regarding different City programs, and he explained that staff wanted to review ongoing sidewalk projects, receive Council input on new sidewalk projects, and discuss how a sidewalk enhancement program would be set-up.

**Councilor Gamba, Mr. Monahan, and Mr. Rice** discussed how a local improvement district (LID) could be financed through the City, who could be included in the affected assessment area, and how the perception of receiving the benefit could change based on distance to the improved street. They agreed that a City fee LID would be the best approach, and they discussed different approaches to prioritizing street projects.

**Council President Hedges** commented on selling a LID fee to residents of improved streets and suggested following the Surface Street Maintenance Program (SSMP) model where everyone contributes would allow for all streets to be improved one day.

The group discussed creating incentives for all residents to support a citywide sidewalk enhancement program and how former Councilors had successfully promoted the adoption of the SSMP to the public. The group agreed that Council should take the lead in recruiting public support for a sidewalk enhancement program.

The group discussed different styles and types of sidewalks, and how to establish flexible standards so sidewalks can blend into the neighborhood. The group agreed that sidewalks should meet Americans with Disabilities Act (ADA) requirements.

**Council President Hedges** and **Mr. Rice** discussed prioritizing several streets that need to meet ADA requirements and support the proposed TriMet bus route changes.

The group discussed concerns about narrow arterial street sidewalks and working with utility companies and property owners to move poles for better pedestrian access.

**Mayor Ferguson** discussed enacting a citywide sidewalk enhancement program and the concerns residents with improved streets and sidewalks might express.

**Council President Hedges** expressed his concerns about pedestrian accidents occurring on privately owned sidewalks and the property owners' liability.

**Mr. Monahan** said a citywide program would be all inclusive and would cost more.

**Council President Hedges** and **Councilor Gamba** agreed that property owners would need to improve the sidewalk to a good condition before the City took ownership.

**Mayor Ferguson** excused himself from the meeting at 8:00 p.m.

**Councilor Miller** suggested that an incentive for property owners with sidewalks could be that the City would maintain the sidewalks going forward, and the group discussed how to sell the incentive to owners and the need to provide an analysis of the increasing cost of an aging infrastructure and the possible costs of a citywide sidewalk program.

**Councilor Gamba** and **Mr. Rice** discussed the feasibility of establishing a fee system to support hiring a three-person City crew to build and maintain all sidewalks. They cited concerns about creating a long-term program and not a one-time set of projects.

The group discussed ways for the public to help prioritize which streets to improve and it was noted that the Transportation System Plan (TSP) had identified priority projects.

**Council President Hedges** suggested that increasing the current SSMP fee or gas tax could be ways to support a sidewalk program through existing funding methods.

**Councilor Gamba** suggested that the first sidewalk projects could focus on the areas around schools, which he said would help Council sell the program to residents.

**Mr. Rice** said he would report back to Council based on their feedback on the City building new sidewalks and taking ownership of all sidewalks within the City.

#### **Riverfront Park Construction Update**

**Mr. Rice** discussed meeting with representatives of Clackamas County Water Environment Services (WES) regarding vehicle access points at Riverfront Park.

**Council President Hedges** and **Councilor Gamba** discussed the feasibility of eliminating the Washington Street exit and concerns about WES trucks and trucks pulling fishing boats turning left onto McLoughlin Boulevard.

**Mr. Rice** reported that WES liked the current Oregon Department of Transportation (ODOT) approved design and had suggested reviewing the design in 5 years. He expressed his concerns about trucks pulling fishing boats having to drive all over the parking lots and across the narrow bridge to go north at Washington Street.

**Councilor Gamba** inquired about the cost to build a pedestrian bridge between the parking lots, and **Mr. Rice** replied that the pedestrian bridge was in the permit but was not currently included in the project plans as it has become cost prohibitive and because of the possible completion of the Kellogg pedestrian and bike bridge.

**Councilor Gamba** suggested staff look into the design of a narrower pedestrian bridge.

**Council President Hedges** and **Mr. Rice** discussed the traffic safety concerns for the entire McLoughlin Boulevard corridor voiced by County Commissioner Paul Savas.

**Mr. Rice** reported that ODOT has refused to put in a traffic light at the new Riverfront Park access point next to the Kellogg Treatment Plant (KTP) unless the City removes the traffic light at Washington Street, which he noted the City cannot do as the number of TriMet buses on Washington Street is expected to increase with the opening of the Portland Milwaukie Light Rail (PMLR) line in 2015.

The group discussed how southbound traffic on McLoughlin Boulevard accesses downtown Milwaukie, the anticipated impact of additional buses on downtown street parking, and staff confirmed that direction signage will be installed around downtown.

**Mr. Rice** summarized that the Riverfront Park exit point at Washington Street will be pursued given the County's push-back and reviewed the additional costs associated with adding this back into the project plans. He discussed ODOT's additional traffic design requirements, noted that the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Marine Board (OMB) had provided funding for the additional change of orders costs, and added that the City had spent around \$30,000 of economic development funds on the Riverfront Park project. He reported that the City had about \$60,000 available for the project, and that the contractor had been working very hard with the City to save costs.

**Council President Hedges** commented on County Commissioner Savas' lack of support in the Board of County Commissioners (BCC) for a single access point.

**Mr. Rice** reported that County Commissioner Savas had said the problem was with the narrow bridge and had suggested the possibility of a partnership between the City, County, ODOT, and U.S. Army Corps of Engineers to widen and rehabilitate the bridge.

**Councilor Gamba** and **Mr. Rice** discussed the impact of the possible removal of the Kellogg Dam on the little park bridge, and the feasibility of draining the lake and using the concrete culvert at the bottom as a fish ladder.

**Council President Hedges** adjourned the Study Session at 8:32 p.m.

Respectfully submitted,



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Scott S. Stauffer, Administrative Specialist II



# SITE EVALUATION

Store: \_\_\_\_\_ Store Location: \_\_\_\_\_ Date: \_\_\_\_\_ District: \_\_\_\_\_

Exclusive

Non-Exclusive

Current Location Address

Proposed Location Address

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

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

CATEGORY	CURRENT SITE TOTAL	PROPOSED SITE TOTAL
1. EXTERIOR STORE APPEARANCE		
2. TRADE AREA		
3. TRAFFIC PATTERNS/ACCESSIBILITY		
4. VISIBILITY		
5. OTHER FACTORS		
6. COMMUNITY ACCEPTANCE OF LOCATION		
<b>GRAND TOTAL SCORE</b>		
<b>MAX. POINTS AVAILABLE</b>	296	296
<b>SITE % OF MAX.</b>		

\_\_\_\_\_  
District Manager

**SITE EVALUATION CRITERIA**

UNACCEPTABLE	0
IN NEED OF DEVELOPMENT	1
SATISFACTORY	2
GOOD	3
OUTSTANDING	4

**1. EXTERIOR STORE APPEARANCE**

CURRENT PROPOSED  
SITE SITE

Illumination		
Building Appearance		
Parking/Off Street		
Landscaping		
Siding Condition		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 3		

**2. TRADE AREA**

CURRENT PROPOSED  
SITE SITE

Sufficient Population Within 3 Miles of Site		
Growth Trend of Neighborhood		
No Barriers Dividing Trade Area		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 3		

**3. TRAFFIC PATTERNS/ACCESSIBILITY**

Site On Main Arterial - High Traffic Count		
Appropriate Stop Lights or Signs/Turn Lanes/Dividers		
Site On Going Home Side of Street		
Traffic Speed Past Site		
Amount of Congestion at Site		
Sufficient Walk-In Traffic		
Proper Curb Cuts		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 1		

**4. VISIBILITY**

Site Set Back on Property		
Site on Corner, Front-Line or Hidden		
Site Visible from Traffic Flow		
Roadside & Building Front Can Accommodate Lighted Sign		
Site Level With Street		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 3		

**5. OTHER FACTORS**

Site Acceptable Distance from Nearest Outlet		
Monthly Rent Less than 25% of Gross Compensation		
Appropriate Square Footage (Sales Floor/Stock Room)		
Rear Door for Freight Deliveries		
Site Air Conditioned/Appropriately Heated		
Sales Potential at Site		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 2		

**6. COMMUNITY ACCEPTANCE OF LOCATION**

City Leadership - Mayor/City Council/Police		
Schools		
Churches		
Other - (Neighborhood Associations, Etc.)		
SUBTOTAL		
CATEGORY TOTAL MULTIPLYING FACTOR 4		

# "Right-of-Way 101"



*A survey of how to form and use a city street*  
By Tim Ramis

# City of Milwaukie, Oregon City Council Study Session

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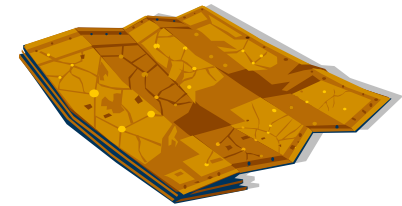
**October 23, 2014**

**Presented by:**

**Dan Olsen**

# Today's Road Map

- What is right-of-way?
- Who controls it?
- How is it created?
- What may occur there?
- Case study—Greenway Subdivision



# What is right-of-way?

- Legal right—ownership of “the dirt” isn’t needed.
- Provides public use of an access way.
- No prior permission needed to use the way.
- City code definition: “area that allows for the passage of people or goods.” The term includes all streets.

# Who controls right-of-way?



- City or County—by general power of govt.
- City or County—by ordinance
- Other agencies
- Edge of improvement often not the edge of ROW—survey info needed

# How to create a right-of-way



- Dedication: landowner shows intent to create public right of use. Owner does not transfer fee.
- Fee interest: Agency may purchase (or be given) fee title to land which it intends to use for right-of-way.
- Other methods: These exist but are seldom used.

# What activities can a public agency conduct within ROW?

1. Activities that flow from fee interest (e.g. power substation on train track)
2. Activities that flow from the purpose of dedication (e.g. street and sidewalk construction)
3. Facilities constructed within local improvement district (LID)
4. Case law construes dedication purposes both narrowly and broadly.
5. A city is not required to construct a street—unimproved streets can remain in a “state of nature”
6. Agency can “vacate” ROW; abutting owners hold underlying fee title (they “own the dirt”), so they obtain possessor’s right to exclude

# What activities may citizens conduct within rights-of-way?

## Not Permitted:

- Permanent improvements (e.g. houses and fences)
- Nuisances
- Other code violations (e.g. trailers)

## Permitted:

- Travel and street-related activities
- Franchised activity
- Access-permitted construction
- Temporary uses (by permit)

# Case Study:

We will examine:

1. Three items on plat:
  - Language of dedication
  - Ralph Road
  - "Alley"
2. What those features look today
3. How people and agencies view right-of-way

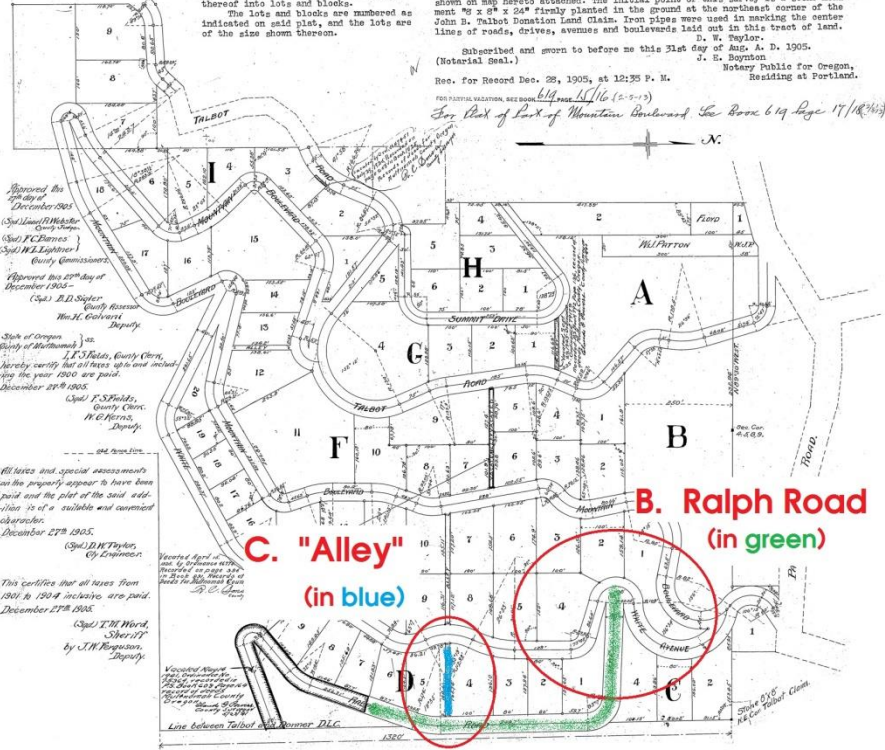
# Study Area

## MAP OF GREENWAY

July 1905 In Sections 4, 5, 6 and 9, T. 1 S. R. 1 E. W. 1 M. D.D. 1070a, Clatsop County, Oregon

**DESCRIPTION.**  
GREENWAY is located in the northeast quarter (1/4) of the John B. Talbot Donation Land Claim, and also includes a narrow strip of the John Dornier Donation Land Claim, occupied by Ralph Road; also two small tracts of land in the Thomas Carter Donation Land Claim, one being more particularly bounded and described as follows, viz.: Commencing at a point on section line between sections four (4) and nine (9), five (5) chains and nine (9) in Township one (1) South, Range one (1) East of the Willamette Meridian, and running thence north two (2) chains and four (4) links to the corner of the Patton County tract; thence south eighty-six (86) degrees thirty (30) minutes east two (2) chains and seven (7) links; thence southeasterly about twenty-eight (28) feet to the northeast corner of the West piece or lot of land, fifty (50) by one hundred (100) feet, sold by P. A. Marquand and wife to John A. McQuinn by deed dated March 30, 1889, and recorded on page 7217, Book 712, Record of Deeds of Multnomah County, State of Oregon, thence south along west line of said tract of land one hundred (100) feet to said section line; thence west one hundred and fifty (150) feet to place of beginning, the other tract being bounded and described as follows, viz.: Commencing at point on section line three (3) chains and fifty (50) links west of the northeast corner of section eight (8), Township one (1) South, Range one (1) East of the Willamette Meridian; thence west five (5) chains and thirty (30) links; thence north sixty-nine (69) degrees and seventeen (17) minutes east five (5) chains and sixty-eight (68) links; thence south two (2) chains to place of beginning.

**KNOW ALL MEN BY THESE PRESENTS:** That we, Martha J. Patton, Lena G. Patton, Mary W. Patton, William J. Patton, Thomas H. Prince and Charlotte Prince his wife, Antoine Meyer and Lizzie Meyer his wife, do hereby declare the accompanying plat to be a true and correct map of "Greenway", showing the subdivision thereof into lots and blocks. The lots and blocks are numbered as indicated on said plat, and the lots are of the size shown thereon.



## A. Language of dedication

We hereby dedicate to the use of the public forever all roads, drives, avenues and boulevards shown as such on said plat.  
IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 21st day of December A. D. 1905.  
In presence of:  
D. E. Keasey.  
J. O. Melzman.  
STATE OF OREGON,  
County of Multnomah )  
Martha J. Patton (seal)  
Lena G. Patton (seal)  
Mary W. Patton (seal)  
William J. Patton (seal)  
Thomas H. Prince (seal)  
Charlotte Prince (seal)  
Antoine Meyer (seal)  
Lizzie Meyer (seal)

**THIS CERTIFIES,** that on the 21st day of December A. D. 1905, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Martha J. Patton, Lena G. Patton, Mary W. Patton, William J. Patton, Antoine Meyer and Lizzie Meyer his wife, who are known to me to be the identical persons described in and who executed the within instrument, and they acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.  
In testimony whereof, I have hereunto subscribed my hand and Notarial Seal the day and year last above written.  
Eugene P. White  
Notary Public for Oregon,  
Residing at Portland.  
STATE OF OREGON,  
County of Multnomah )  
I, D. W. Taylor, being first duly sworn, depose and say that I have correctly surveyed and marked with proper monuments the lots and blocks in "Greenway" as shown on map hereto attached. The initial point of this survey is a stone monument known to me to be the identical persons described in and who executed the within instrument, and they acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.  
D. W. Taylor,  
(Notarial Seal.)  
Notary Public for Oregon,  
Residing at Portland.

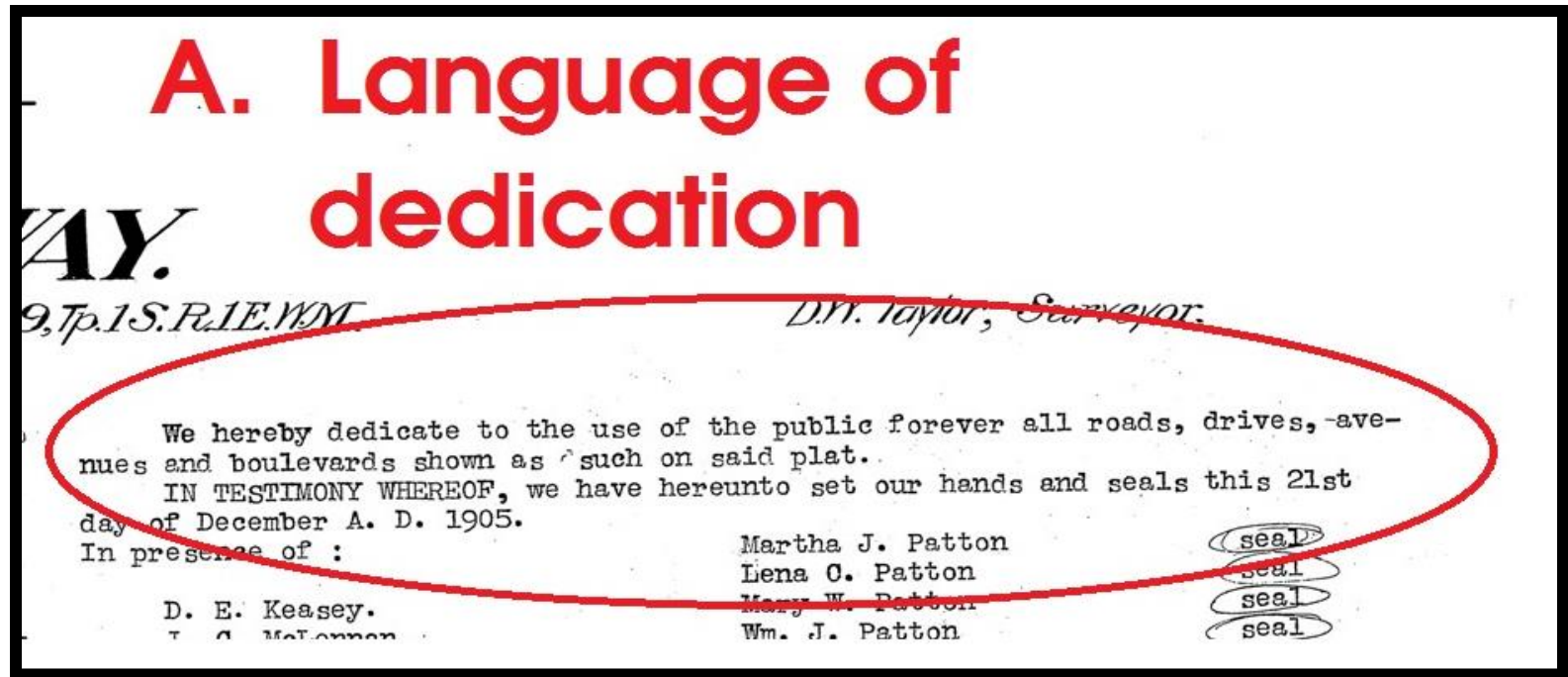
Subscribed and sworn to before me this 21st day of Dec. A. D. 1905.  
J. E. Boynton  
Notary Public for Oregon,  
Residing at Portland.  
Rec. for Record Dec. 28, 1905, at 12:35 P. M.  
FOR FURTHER VALIDATION, SEE BOOK 614, PAGE 44 (2-2-13)  
For Book of Lock of Mountain Boulevard See Book 614 Page 17 (1/2/13)

Features A through C will illustrate some principles we have been discussing

## B. Ralph Road (in green)

## C. "Alley" (in blue)

# Close-up: language of dedication



Questions:

- To which kinds of developed features could this apply in 1905? Today?
- What public uses could the dedicators (owners) have intended to allow?
- What unique forms of access, transportation, or city services, might the future hold?

**Let's see what happened . . .**





# Let's walk down "Ralph Road"



Questions:

Would you evaluate a path as "public use" of a dedicated road? Why or why not?  
Does it matter who beat down/constructed the path?

# About 30 feet down the path we are greeted by this sign!



Questions (note: sign says “Private Land”)

- If a homeowner posted this, what might he or she have intended?
- Does it matter if the city posted this sign?
- Do you sense that a private owner may exclude persons from dedicated right-of-way?
- If dedicated “right-of-way” is a right, and owner holds title to the “dirt,” isn’t the sign somewhat valid?
- Assume there are lots back here (there are). Couldn’t the city (or a developer) eventually build a road? (looks steep but stranger things have happened)

# Questions?



*Tim Ramis*  
503.598.7070  
[tim.ramis@jordanramis.com](mailto:tim.ramis@jordanramis.com)



## MILWAUKIE CITY COUNCIL STUDY SESSION

City Hall Conference Room  
10722 SE Main Street  
www.milwaukieoregon.gov

**REVISED AGENDA**  
**OCTOBER 23, 2014**

A light dinner will be served.

Page  
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### **6:00 p.m. Executive Session**

Prior to convening the Work Session, the City Council will meet in Executive Session pursuant to ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection.

- |           |                  |   |           |
|-----------|------------------|---|-----------|
| <b>1.</b> | <b>6:20 p.m.</b> | <b>Medical Marijuana Facility Siting</b><br>Staff: Denny Egner, Planning Director     | <b>1</b>  |
| <b>2.</b> | <b>6:40 p.m.</b> | <b>Right-of-Way Presentation</b><br>Staff: Dan Olsen, City Attorney                   |           |
| <b>3.</b> | <b>7:00 p.m.</b> | <b>Sidewalk Enhancement Program</b><br>Staff: Jason Rice, Engineering Director        | <b>22</b> |
| <b>4.</b> | <b>7:20 p.m.</b> | <b>Riverfront Park Construction Update</b><br>Staff: Jason Rice, Engineering Director |           |
| <b>5.</b> | <b>8:00 p.m.</b> | <b>Adjourn</b>  |           |

### **Meeting Information**

The time listed for each item is approximate; the actual time each item is considered may change due to the length of time devoted to the previous item. The Council may vote in Work Session on non-legislative issues.

### **Public Notice**

Executive Sessions: The Milwaukie City Council will meet in Executive Session immediately following adjournment pursuant to ORS 192.660(2). All Executive Session discussions are confidential and those present may disclose nothing; representatives of the news media may attend as provided by ORS 192.660(3) but must not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) at least 48 hours prior to the meeting.



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**SS 1.**  
**10/23/14**

To: Mayor and City Council  
Through: Bill Monahan, City Manager

Subject: **Medical Marijuana Facility Zoning Text Amendment**

From: Dennis Egner, Planning Director

Date: October 10, 2014, for October 23, 2014, Study Session

**ACTION REQUESTED**

No formal action is requested. The study session is intended to give the Council an opportunity to review and help shape a draft zoning text proposal to allow medical marijuana facilities in the City. A final draft proposal is needed prior to initiating the public hearing process before the Planning Commission.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**April 15, 2014:** Consistent with state law, the Council extended the moratorium on medical marijuana facilities from December 31, 2014 to April 15, 2015.

**February 25, 2014:** The City Council enacted a temporary ban through the end of 2014 on medical marijuana facilities to allow additional time to consider proper zoning and other regulations for the facilities.

**September 2, 2014:** The City Council voted to impose a 10% tax on recreational marijuana product sales. No tax was imposed on medical marijuana products.

**BACKGROUND**

On July 22<sup>nd</sup> and August 26<sup>th</sup>, the Planning Commission held work sessions to develop a draft proposal for zoning text amendments to allow medical marijuana facilities in Milwaukie. The Commission staff reports and background materials are attached to this report. In addition, a map of the areas to be considered eligible for medical marijuana facilities under the Planning Commission's proposal is also attached.

A summary of the Planning Commission's proposal follows:

Land Use/Locational Issues

- The Planning Commission proposed that consistent with state requirements, the City enact a 1000-ft buffer from schools and from other medical marijuana facilities.
- The Planning Commission proposed that a 1000-ft buffer be provided around the former Wichita and Hector Campbell school sites since they are still under the control of the school district and house youth-related activities.

- The Planning Commission proposed that consistent with state law, the City allow medical marijuana facilities in areas zoned for commercial, mixed use, and industrial purposes. The draft proposal would allow medical marijuana facilities in the following zones provided the property is not located within a buffer area for a school:
  - General Commercial – C-G
  - Neighborhood Commercial – N-C
  - Limited Commercial – C-L
  - Community Shopping – C-S
  - Manufacturing – M
  - Business Industrial – BI
  - Tacoma Station Area Manufacturing - M-TSA
  - Downtown Office – D-O (two small areas currently zoned D-O fall outside of the 1000-ft buffer for the high school. These properties are being considered for downtown mixed-use zoning as part of the Moving Forward Milwaukie project)
- The Planning Commission did not propose additional buffers be provided around parks, youth facilities, or daycare and preschool facilities. The Commission's rationale for excluding buffers around these uses included:
  - A belief that there would be low demand for medical marijuana facilities in Milwaukie.
  - The only youth facility is located in the downtown and falls inside the buffer for the high school.
  - Daycare and preschool facilities are allowed in limited locations – downtown commercial zones, the business industrial zone, and residential zones. Almost all of the downtown is within the 1000-ft buffer for the high school, so there is little opportunity for any conflict in this area. In the business industrial zone, daycare and preschool facilities are allowed as an accessory use, intended for the children of employees. Given that parents will be on-site, the Commission believed any conflict with nearby medical marijuana facilities could be managed. In residential zones, daycare/preschool facilities are only allowed through the community service use process following a public hearing before the Planning Commission. It is possible that medical marijuana facilities and daycare/preschool facilities could be located in relatively close proximity in locations where residential zones abut commercial or industrial area. The Commission believed that this would not present a significant conflict because parents and caregivers generally drop-off and pick-up children at daycare preschool facilities.

### Operational Issues

- The Planning Commission proposed that co-located medical marijuana facilities be prohibited. The facilities would be required to be standalone operations and not be located inside of another business such as a convenience store or a head shop.
- The Planning Commission proposed that any display of marijuana products that are visible from outside of the enclosed sales area be prohibited.
- The Planning Commission proposed that hours of operation be limited to the hours between 9:00 AM and 7:00 PM.

## **DISCUSSION**

The Planning Commission's proposal is a starting point; it is not the Commission's final recommendation to the Council for zoning text amendments. At this point in the process, staff is looking for City Council input to modify or confirm the Planning Commission proposal so that a draft ordinance can be prepared and taken through the formal process to amend the text of the zoning ordinance. Key issues for Council discussion include:

- Do the issues addressed by the Commission proposal adequately address community needs?
- Should buffers around park properties be considered?
- Should buffers be provided around daycare/preschool facilities? If so, should buffers work in a reciprocal manner, i.e., should they prevent daycare/preschool facilities from locating close to existing medical marijuana facilities?
- Should options be taken to the public hearing?

## **CONCURRENCE**

The City Attorney's office will review the proposed amendments prior to adoption hearings.

## **FISCAL IMPACTS**

The amendments will have minimal direct fiscal impacts.

## **WORK LOAD IMPACTS**

Staff estimates that the code amendment project can be accommodated with existing staffing levels.

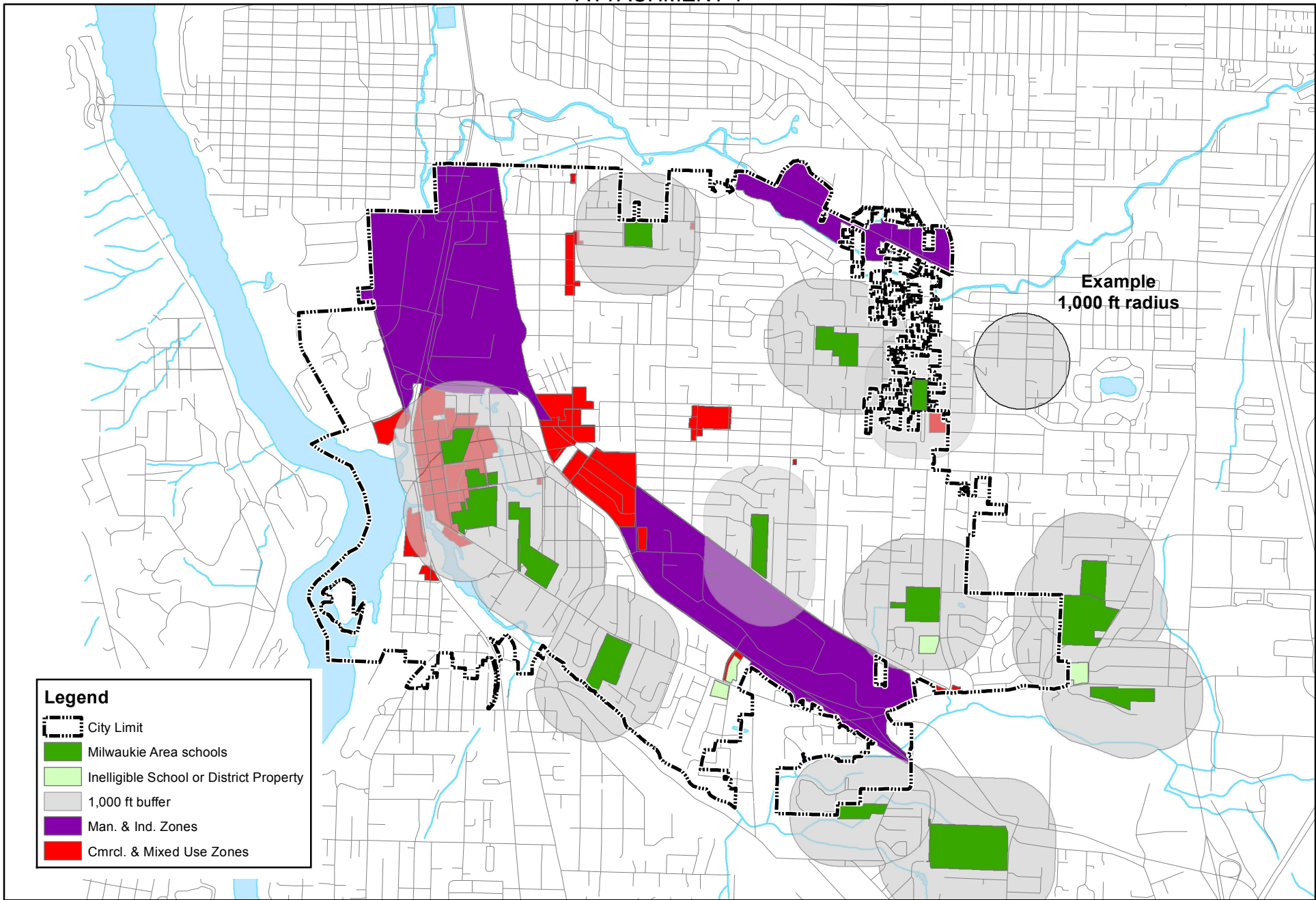
## **ALTERNATIVES**

City Council has the following options:

- Accept the Planning Commission proposal for preparation of a draft ordinance that will be taken to the public hearing.
- Modify the Planning Commission proposal.
- Direct staff to prepare an ordinance with options for consideration during the hearing process.

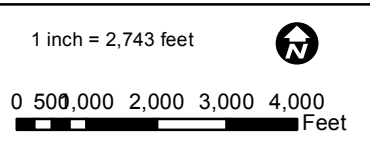
## **ATTACHMENTS**

1. Map of Areas Eligible for Medical Marijuana Facilities
2. August 26, 2014 Planning Commission Staff Report (and attachments)
3. July 22, 2014 Planning Commission Staff Report (and attachments)



# Medicinal Marijuana Eligible Areas

Milwaukie Planning Dept.  
 Data: City of Milwaukie GIS;  
 Metro RLIS  
 Date: 8/18/2014



The information depicted on this map is for general reference only. The City of Milwaukie does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission  
**From:** Dennis Egner, Planning Director  
**Date:** August 18, 2014, for August 26, 2014, Worksession  
**Subject:** Zoning Amendments for Medical Marijuana Facilities

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## **ACTION REQUESTED**

Staff is seeking general direction on options to regulate medical marijuana facilities in Milwaukie.

## **SUMMARY**

State law allows the City to adopt "reasonable regulations" to govern the location and operation of medical marijuana facilities. On July 22, 2014, the Planning Commission held its first worksession on the topic. This memorandum responds to questions raised at the worksession. Based on Commission direction at the August 26 worksession, staff will prepare a draft ordinance for a public hearing

## **DISCUSSION AND ANALYSIS**

The Commission's July 22 recommendations and questions are listed below. A staff response is provided for each issue. If Commissioners would like to review a copy of the July 22 staff report you can download a copy at <http://www.milwaukieoregon.gov/planning/planning-commission-108>.

### **Land Use Issues**

**School Buffers** – The Commission recommended that 1,000-ft buffers be provided around the two closed schools in Milwaukie (Wichita and Hector Campbell) since these schools still house some school and youth-related activities. State law requires that no medical marijuana facility be allowed within 1,000 feet of a school (kindergarten to high school). In addition, state law requires a 1,000-ft buffer from other medical marijuana facilities.

*Response:* A new map is attached with buffers depicted around the schools.

August 26, 2014

**Park Buffers** – The Commission proposed that no buffers be provided around City parks. In general, Commissioners believed that there would be low demand for these facilities in Milwaukie and it would be unnecessary to provide buffers around parks.

*Response:* Buffers are not depicted on the attached map.

**Youth Facilities** - The Commission proposed that buffers be considered for youth facilities and locations where minors congregate. Based on a web search, staff found only one youth organization facility in Milwaukie – the Milwaukie MOVE center at 11097 SE 21st Avenue. This facility is in the downtown, close to Milwaukie High School. No medical marijuana facilities will be permitted downtown because of the 1,000 foot buffers around the high school and the Waldorf School. Some churches in the community sponsor youth activities but in most cases, churches are in residential districts and separated from the commercial or industrial areas where medical marijuana facilities can locate.

*Response:* No buffers are proposed for youth facilities.

**Daycare and Preschool Facilities** – The Commission proposed that buffers be considered for daycare and preschool facilities. The zoning ordinance permits daycare and preschool facilities as follows:

ZONING CATEGORY	PERMITTED
R- Residential Zones	Community Service Use subject to public hearing before the Planning Commission
Downtown Commercial Zones	Limited Use – No greater than 3,000 feet in size
BI – Business Industrial Zone	Accessory use for children of employees
Other Commercial and Manufacturing	Not Permitted

Except for in the BI zone, where daycare and preschool facilities are allowed only as an accessory use for the children of employees, daycare and preschool facilities are allowed only in the areas where medical marijuana facilities are prohibited (they are not allowed in residential areas and the downtown is within the buffers of the high school and the Waldorf School). The zones boundaries should provide for adequate separation in most instances. Another factor to consider is that parents or caregivers pick-up and drop-off children at daycare and preschool facilities.

*Response:* No buffers are proposed for daycare and preschool facilities.

August 26, 2014

**Commercial, Mixed Use, and Industrial Zones** – State law limits the siting of medical marijuana facilities to areas designated for commercial, industrial, or mixed use zones. The facilities are prohibited in residential zones. The maps provided at the July 22 worksession did not differentiate between commercial, mixed use, and industrial areas. At the worksession, there was some discussion regarding whether medical marijuana facilities should be allowed in industrial areas but there was no clear direction to staff regarding the Commission's preference. It can be argued that given the retail nature of the facilities, that they should be limited to the commercial/mixed use zones rather than the employment-focused industrial zones. It can also be argued that the uses should be allowed in the industrial areas because these areas tend to be separated from residential districts.

*Response:* The attached map depicts industrial zones in purple and commercial/mixed use areas in red. The Commission will be asked for direction regarding which zones to include in the draft proposal.

### **Operational Issues**

**Customer Access** – There was a question at the July worksession regarding access to the medical marijuana facilities. Based on the Oregon Health Authority (OHA) administrative rules, only medical marijuana patients, caregivers, facility operators/workers, and OHA inspectors are allowed in facilities where marijuana is sold or prepared for sale. Rules state that no one under the age of 18 is permitted and no consumption on-site is permitted. In addition, grow operations are not allowed in the same location as a dispensary.

*Response:* No local regulations are required.

**Co-Located Businesses** – There are no OHA rules preventing a medical marijuana facility from being housed within another business. In theory, a medical marijuana facility could be located in the back room of a head shop, convenience store, or any retail establishment. OHA does have security and monitoring rules that must be followed.

*Response:* The Commission may want to consider whether local regulations are needed for co-located businesses.

**Window Displays** – There are no OHA administrative rules regarding window displays. Rules state that during operating hours, marijuana must be stored in a "locked, secured area". If a window display is provided, it would need to be "locked and secured". When facilities are closed, usable marijuana is required to be stored in a locked safe and immature plants are to be kept in a locked room. Given that the only customers allowed in a marijuana sales area are patients and caregivers, it would follow that window displays should be limited. An additional issue to consider is that in commercial retail areas, the City encourages window displays in order to create a pedestrian friendly environment.

*Response:* The Commission may want to consider a local regulation stating that the display of marijuana products is prohibited from view outside of the sales area of the dispensary. If window displays are limited, how can we still encourage a pedestrian friendly storefront environment?

August 26, 2014

**Hours of Operation** – At the July 22 worksession, the Commission discussed potential limits on hours of operation. The Commission preferred that the facilities be given the flexibility to determine the hours of operation that best suit their customers' needs.

*Response:* No local regulations are required.

**Facility Name** – At the July 22, worksession there was a question as to whether the City could review and approve business names. This question was posed to the City Attorney who responded that this was a free speech issue and that it was not the type of regulation that could be easily defended.

*Response:* No local regulations are recommended.

**Police Issues** – Commissioners asked if the police chief had any comments or recommendations.

*Response:* At the time of the preparation of the staff report, the Police Chief had not responded.

### Issues for Commission Discussion

- Should facilities be prohibited or limited in industrial areas (manufacturing and business-industrial districts)?
- Are regulations needed for co-located businesses?
- Are regulations needed for window displays?
- Are there any other locational or operational regulations that should be considered?

### **STAFF RECOMMENDATION**

There is no staff recommendation at this time.

### **ATTACHMENTS**

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

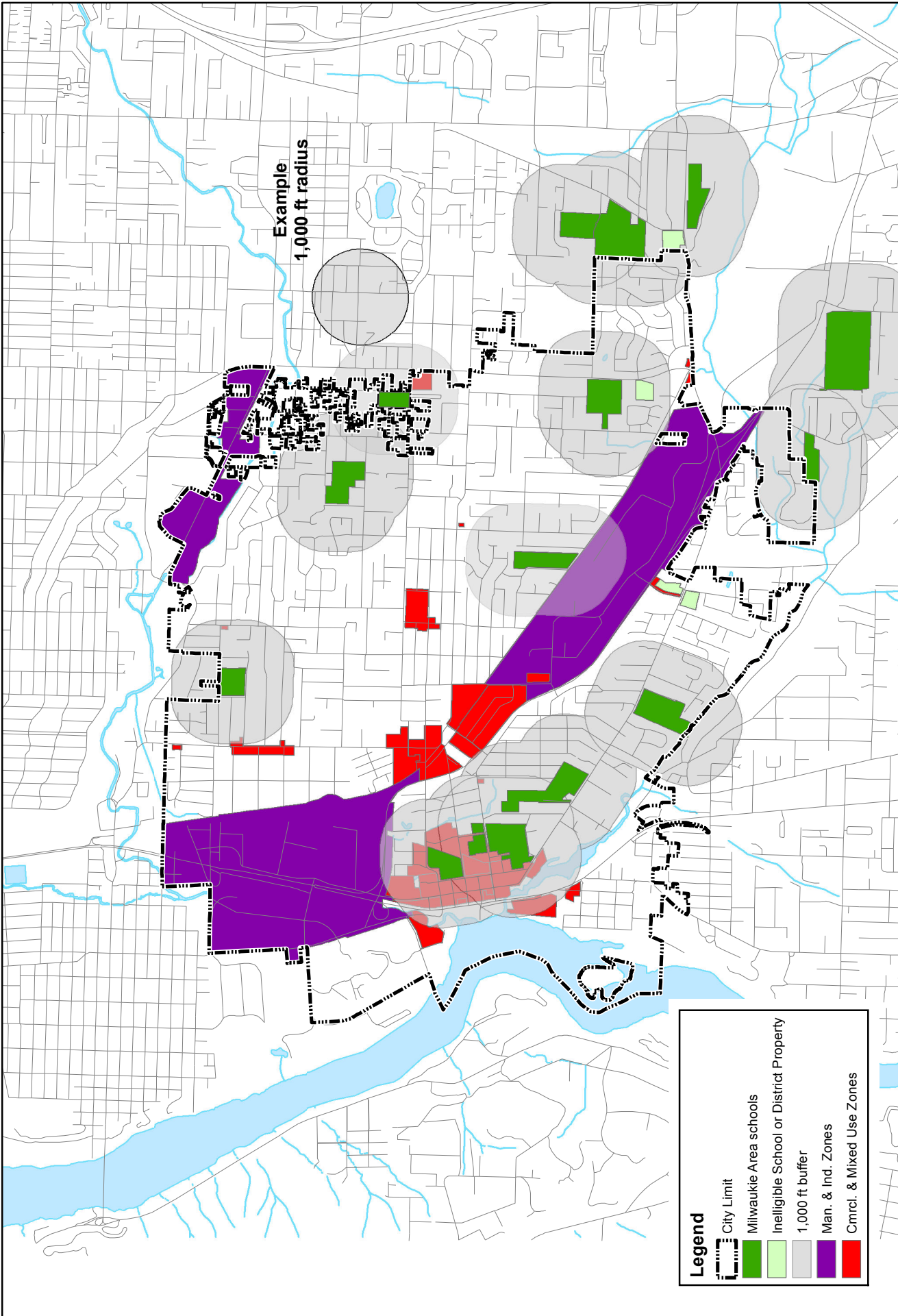
	PC Packet	Public Copies	E-Packet
1. Medical Marijuana Eligible Areas Map: 8-18-14 version	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

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# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission  
**From:** Dennis Egner, Planning Director  
**Date:** July 15, 2014, for July 22, 2014, Worksession  
**Subject:** Zoning Amendments for Medical Marijuana Facilities

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## **ACTION REQUESTED**

Staff requests that the Planning Commission provide direction on options to regulate medical marijuana facilities in Milwaukie.

## **SUMMARY**

State law sets forth the procedures and general regulations for the siting of medical marijuana facilities in Oregon. ORS Section 475.314 requires that the facilities be located in commercial and industrial areas at least 1000 feet from schools and 1000 feet from any other medical marijuana facility. The 2014 legislature provided clarification regarding the degree to which local governments can regulate the facilities and amended ORS Section 475.314 to allow locally-adopted "reasonable regulations" that address the location and hours of operation of facilities. The local regulations may also address the manner in which a facility may dispense medical marijuana.

**Note:** Oregon law only addresses medical marijuana facilities. There are currently no provisions for the sale or dispensing of marijuana for recreational use. According to news reports, it is likely that there will be a state ballot measure in November that addresses recreational marijuana.

## **BACKGROUND INFORMATION**

In 2013, the Oregon state legislature adopted HB 3460 (ORS Chapter 475.300 et. seq.) which allows the establishment and licensing of medical marijuana facilities in Oregon. On March 3, 2014, the Oregon Health Authority (OHA) began accepting applications for operation of medical marijuana dispensaries. In response, many communities, including Milwaukie, enacted temporary bans preventing the facilities within their jurisdictional boundaries. Given that there was some ambiguity in HB 3460 and the range of local government response, the 2014 Oregon Legislature found it necessary to provide clarification.

July 22, 2014

On March 19, 2014, Governor Kitzhaber signed SB 1531, which places limits on the ability of cities and counties to regulate medical marijuana facilities and outlines “reasonable regulations”. These include the hours of operation, where the facilities may locate within the zones allowed by law, and the manner in which a facility may dispense medical marijuana. SB 1531 also allowed cities and counties to enact a moratorium on the operation of registered medical marijuana facilities until May 1, 2015. On April 15, 2014, the City Council enacted a temporary ban on medical marijuana facilities to allow additional time to consider proper zoning and other regulations for the facilities. The ordinance established a city moratorium until April 30, 2015. The Council action on April 15 extended a ban that the Council had previously adopted on February 25, 2014.

A copy of ORS Sections 475.300 and 475.314 are included as **Attachment 1**. **Attachment 2** includes Section 2 of SB 1531 which was adopted this spring by the state legislature. Earlier this year, the Oregon Health Authority adopted administrative rules governing medical marijuana facilities. The section of the rules addressing facility location is included as **Attachment 3**. A full copy of the rules can be found at the following website:

<https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/MedicalMarijuanaProgram/Documents/OARs.pdf>

## ANALYSIS AND DISCUSSION

**Analysis Maps** - Three maps are provided as attachments to assist with analysis of the issues. **Attachment 4** is a copy of the Zoning Map. **Attachments 5 and 6** present two options for the local regulation of medical marijuana facilities. State law (ORS 475.314) requires that medical marijuana facilities:

- Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;
- Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and
- Must not be located within 1,000 feet of another medical marijuana facility.

The options depicted in **Attachments 5 and 6** both comply with state law. Attachment 5 depicts the minimum regulation set forth by state law. Attachment 6 adds a buffer from park land and from school district property.

The maps include the following details:

- Areas in red are the following zones: downtown zones, excluding Downtown Open Space; Commercial General; Commercial Limited; Commercial Neighborhood; Commercial Community Scale Shopping Center; Business Industrial; Manufacturing; Tacoma Station Area Manufacturing; Residential-Business Office Zone (R-1-B) and Residential Office Commercial. These are the zones that meet the requirement that the facility be located in a commercial, industrial or mixed use zoned area.

July 22, 2014

- Sites in dark green with the 1,000-foot buffer are active public or private elementary, secondary or career schools. The source data comes from Metro’s RLIS GIS library. There may be other sites in or near Milwaukie which may contain an elementary, secondary or career school that would require a 1,000-foot buffer.
- Sites in light green on **Attachment 5** are included in the school data from RLIS, but are either administrative offices, preschools (which are not considered elementary schools), or sites without an active school. The 1,000 ft buffer (diagonal lines) is applied to these sites in the map included as **Attachment 6**.
- **Attachment 6** includes a green pattern for public parks. A 1,000-foot buffer (diagonal buffer) is applied to the parks. The buffer from park land was suggested by City Council members at a work session on February 20, 2014.
- The sample 1,000-foot circle illustrates the area surrounding a dispensary from which a second dispensary would be excluded.

**Land Use and Zoning** – State law permits medical marijuana facilities in commercial, industrial, and mixed use districts. SB 1531 allows local jurisdictions to apply "reasonable regulations". This could include further limitations on where retail sales of medical marijuana is allowed and whether it is appropriate in zones designated for manufacturing or industrial uses.

A medical marijuana facility is a retail use. It is a location where registered medical marijuana cardholders can purchase medical marijuana that has been grown at authorized medical marijuana grow sites. (The cardholder does not need to have a direct connection with a grow site to obtain the medical marijuana, as was the case with Oregon’s prior medical marijuana law.) This type of buyer/seller relationship is retail trade which is defined in the zoning ordinance as "... the sale, lease, or rental of new or used products to the general public. Typical uses include, but are not limited to, grocery stores, specialty stores, **drugstores** (*emphasis added*), bookstores, jewelry stores, and video stores." A medical marijuana facility is a location where one particular drug is purchased by authorized users, which is akin to a traditional pharmacy or drugstore.

The following table lists relevant City of Milwaukie zones and indicates the zones in which retail trade is allowed:

<b>ZONE</b>	<b>RETAIL TRADE</b>
Commercial General	Allowed outright
Commercial Limited	Allowed outright
Community Shopping Commercial Zone	Allowed outright
Downtown Storefront	Allowed outright
Downtown Commercial	Allowed outright
Downtown Office	Allowed, with size limitations
Downtown Residential	Allowed, as part of mixed use development including residential

July 22, 2014

Manufacturing and M-Tacoma Station Area	Allowed, as an accessory use
Business Industrial	Retail limited, likely not allowed
Commercial Neighborhood	Not allowed outright or conditionally
Residential –Business-Office R1B	Not allowed outright or conditionally
Residential Office Commercial with Mixed Use Overlay	Undeveloped sites, would need to be part of a development conforming with the Town Center Master Plan, not likely approvable as a standalone use

Note: This listing of zones is not definitive, as a medical marijuana facility may have operating characteristics different from what is assumed above, and could be combined as an accessory use to another allowed use.

**Key Observations** - Key observations regarding the maps and zoning include:

- Under the minimum limits set forth by state law, no medical marijuana facilities can be located in downtown Milwaukie. There would be no limitation on siting facilities other commercial and industrial sites within the community.
- If a 1000-foot buffer is added for parks and school sites, roughly half of the industrially designated land in the city would not be eligible for siting medical marijuana facilities.
- If medical marijuana facilities are only allowed in zones where drugstores are permitted as a retail use, facilities would be limited to the northern portion of the Central Milwaukie commercial area, the King Road shopping center area, and the limited commercial area along 32<sup>nd</sup> Ave.

**Issues for Commission Discussion:**

- Should a buffer be applied to parks and other school-owned property?
- Should facilities be prohibited or limited in industrial areas (manufacturing and business-industrial districts)?
- Should buffers be applied to pre-schools or day care centers? How should day care homes be addressed? Would buffers also preclude a new pre-school or day care center from locating within 1000-feet of an established medical marijuana facility?
- Are any additional locational limitations needed?
- Are there operational limitations that should be considered?
  - Hours of operation?
  - Limit evening hours? Closed after 8:00 or 9:00 PM?

**STAFF RECOMMENDATION**

There is no staff recommendation at this time.

**ATTACHMENTS**

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E- Packet
1. ORS Sections 475.300 and 475.314: Oregon Medical Marijuana Act	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Excerpt from Section 2 of SB 1531 relating to marijuana facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Oregon Health Authority Administrative Rules Section 333-008-1110 Locations of Medical Marijuana Facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Milwaukie Zoning Map	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Medical Marijuana Eligible Areas Map: Option 1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. Medical Marijuana Eligible Areas Map: Option 2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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**ORS SECTIONS 475.300 AND 475.314****OREGON MEDICAL MARIJUANA ACT**

**475.300 Findings.** The people of the state of Oregon hereby find that:

- 1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;
- 2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;
- 3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and
- 4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 §2]

**Note:** 475.300 to 475.346 were enacted into law but were not added to or made a part of ORS chapter 475 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

**475.314 Medical marijuana facility registration; qualifications; inspections; revocation; rules; fees.**

- 1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:
  - (a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
  - (b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.
- 2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:
  - (a) The name of the person responsible for the medical marijuana facility;
  - (b) The address of the medical marijuana facility;
  - (c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;
  - (d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and
  - (e) Any other information that the authority considers necessary.
- 3) To qualify for registration under this section, a medical marijuana facility:
  - (a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;
  - (b) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;
  - (c) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;
  - (d) Must not be located within 1,000 feet of another medical marijuana facility; and

- (e) Must comport with rules adopted by the authority related to:
  - A. Installing a minimum security system, including a video surveillance system, alarm system and safe; and
  - B. Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.
- 4) (a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.
- (b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.
- (c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.
- 5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.
- 6) (a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.
- (b) A registered medical marijuana facility shall maintain:
  - A. A copy of each authorization form described in paragraph (a) of this subsection; and
  - B. Documentation of each transfer of usable marijuana or immature marijuana plants.
- 7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.
- 8) The authority may inspect:
  - (a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and
  - (b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.
- 9) (a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
- (b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable

marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

- 10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.
- 11) The authority shall adopt rules to implement this section, including rules that:
  - (a) Require a medical marijuana facility registered under this section to annually renew that registration; and
  - (b) Establish fees for registering and renewing registration for a medical marijuana facility under this section. [2013 c.726 §2]

**Note:** 475.314 becomes operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013.

**Note:** See note under 475.300. 475.314 was added to and made a part of 475.300 to 475.346 by legislative action.

**475.315** [1977 c.636 §2; 1979 c.674 §2; repealed by 1993 c.571 §30]

**SB 1531 (excerpt):** Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

**SECTION 2.** Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

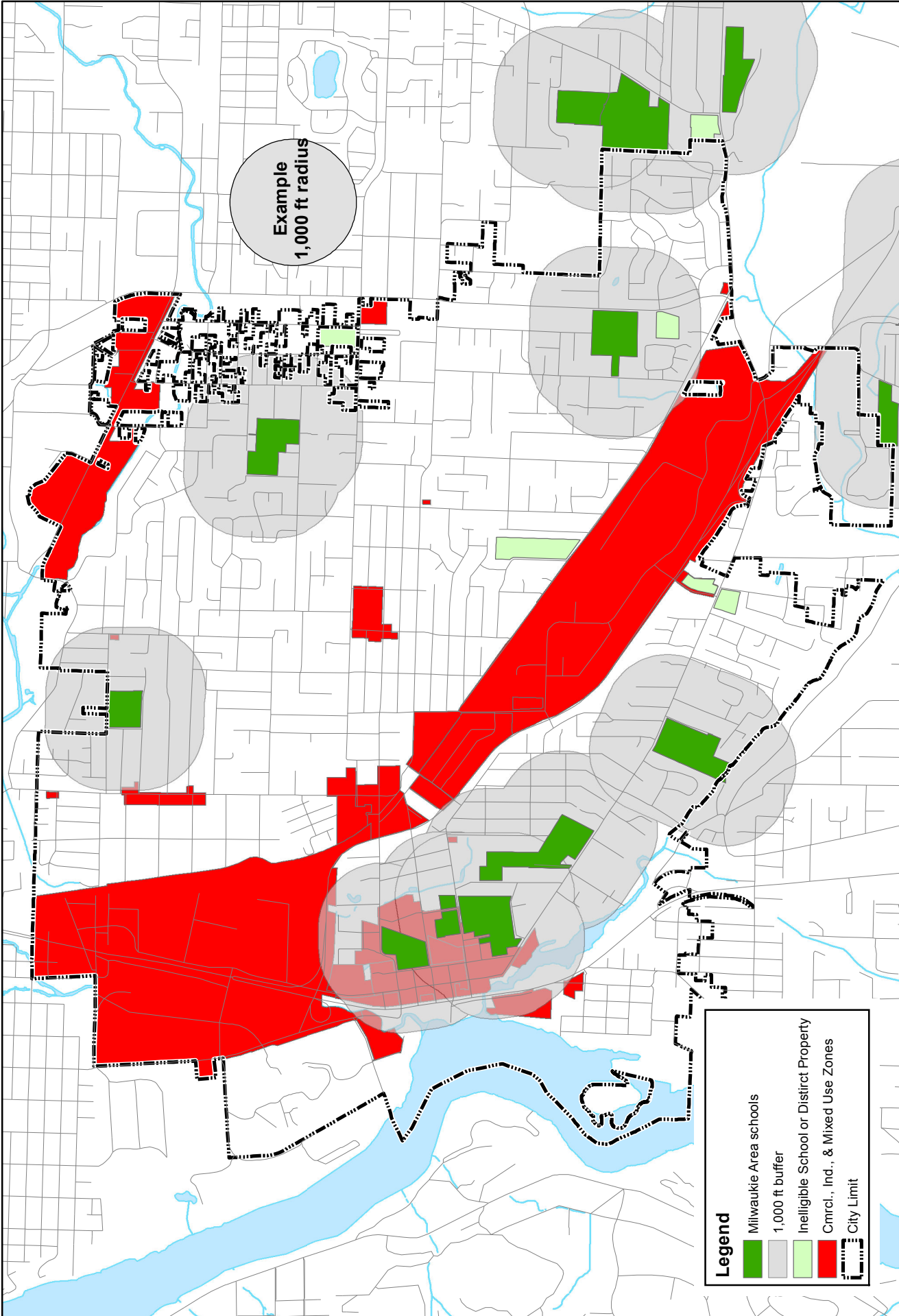
**Oregon Health Authority Administrative Rules****333-008-1110****Locations of Medical Marijuana Facilities**

- (1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
- (2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
- (3) A facility may not be located:
  - (a) At the same address as a registered marijuana grow site;
  - (b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
  - (c) Within 1,000 feet of another medical marijuana facility;
- (4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.
- (5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.
- (6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising a registered facility.
- (7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14



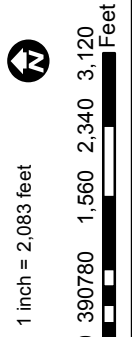
**Legend**

- Milwaukie Area schools
- 1,000 ft buffer
- Ineligible School or District Property
- Cmrc'l., Ind., & Mixed Use Zones
- City Limit

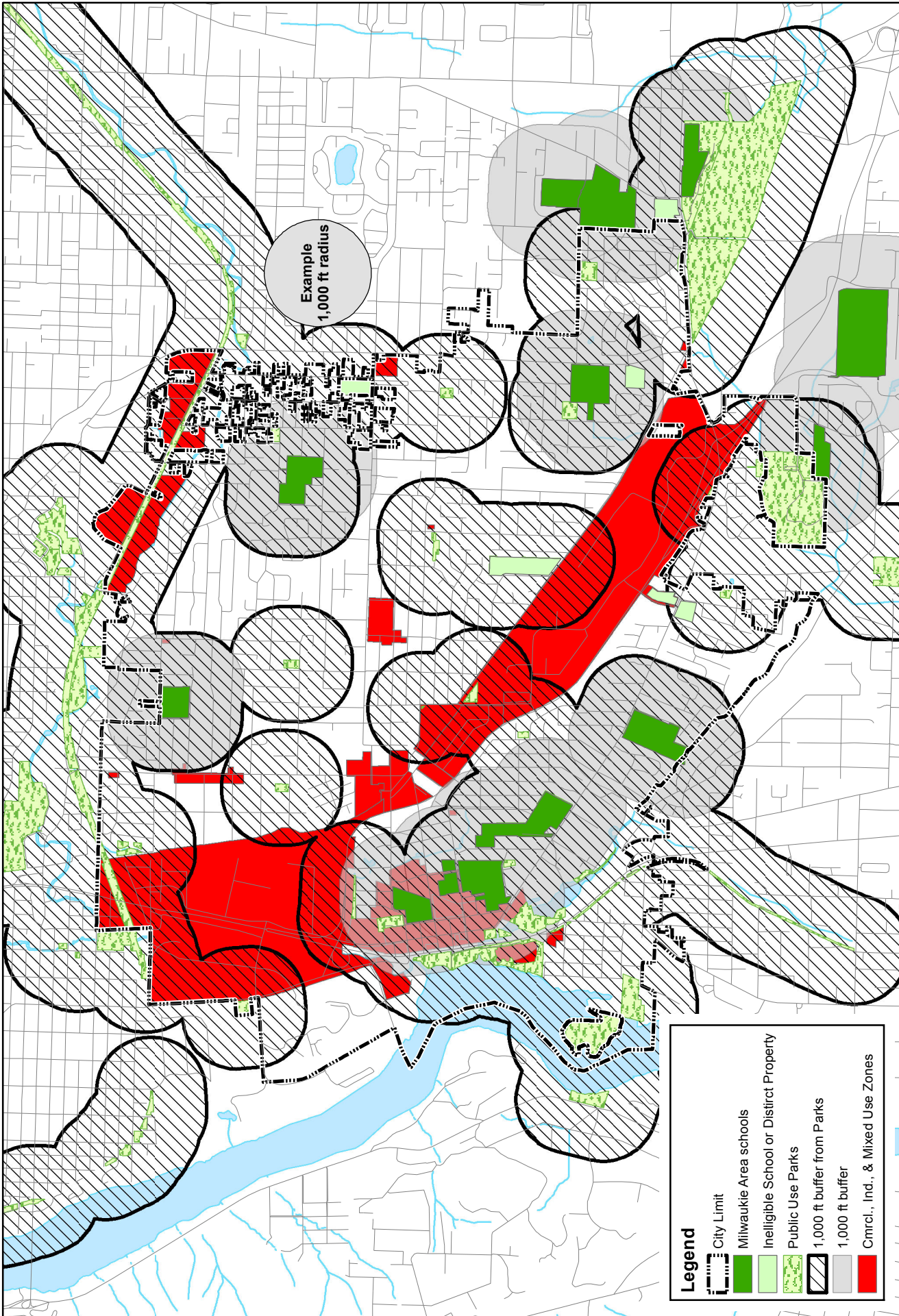


# Medicinal Marijuana Eligible Areas

Milwaukie Planning Dept.  
 Data: City of Milwaukie GIS;  
 Metro RLIS  
 Date: 1/10/2014



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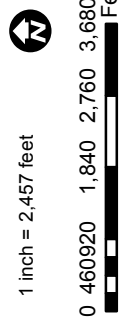
**Legend**

- City Limit
- Milwaukee Area schools
- Ineligible School or District Property
- Public Use Parks
- 1,000 ft buffer from Parks
- 1,000 ft buffer
- Cmrc., Ind., & Mixed Use Zones

Example  
1,000 ft radius

Milwaukee Planning Dept.  
Data: City of Milwaukee GIS;  
Metro RLIS  
Date: 3/3/2014

# Medicinal Marijuana Eligible Areas



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**MILWAUKIE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Agenda Item: **SS 2.**  
Meeting Date: **10/23/14**

Title: **Sidewalk Enhancement Program Check-in**

Prepared By/: Jason Rice, Engineering Director

Department Approval: Steve Butler, Community Development Director

City Manager Approval: Bill Monahan

Approval Date: October 14, 2014

**ISSUES BEFORE COUNCIL**

The intent of this discussion is to gauge whether Council desires to intensify the City's current rate of completing sidewalk projects.

**STAFF RECOMMENDATION**

If it is Council's goal to increase the number sidewalk projects achieved, Staff recommends that Council discuss and decide upon a preferred funding approach for moving forward.

**KEY FACTS & INFORMATION SUMMARY**

Over the past ten years the City has been successful with the completion of sidewalks: on 22<sup>nd</sup>, 40<sup>th</sup> and 42<sup>nd</sup> Avenues, Logus Road, Lake Road, Stanley Avenue, Home Avenue, near the Quiet Zones and Light Rail crossings. In addition to these completed projects, Staff is currently working towards the completion of: the Adams Street Pedestrian Connector, the Planning Phase of Monroe Street Neighborhood Greenway, the Kellogg Bike/Ped Bridge, and the 17<sup>th</sup> Avenue Multi-Use Path.

Recently, there has been growing public interest in accomplishing even more pedestrian facilities; however, with current funding levels this effort would be impossible.

Staff has compiled a map (Attachment 1) of projects that could be accomplished sooner with additional funding. Also attached to this report are the foundations of what a program could look like if Council desired.

**CITY COUNCIL GOALS**

Allocate resources within the Capital Improvement Plan to improve livability in the neighborhood:

Conduct an analysis of a possible sidewalk maintenance/improvement fee program – considering sidewalk walkability in neighborhoods and designation of safety corridors in school zones

**FISCAL NOTES**

To intensify the current sidewalk "program", an additional funding source will need to be identified.

**ATTACHMENTS**

1. Potential Program Map
2. Potential Program Outline
3. City Funded/ Local Improvement District Funded Outlines

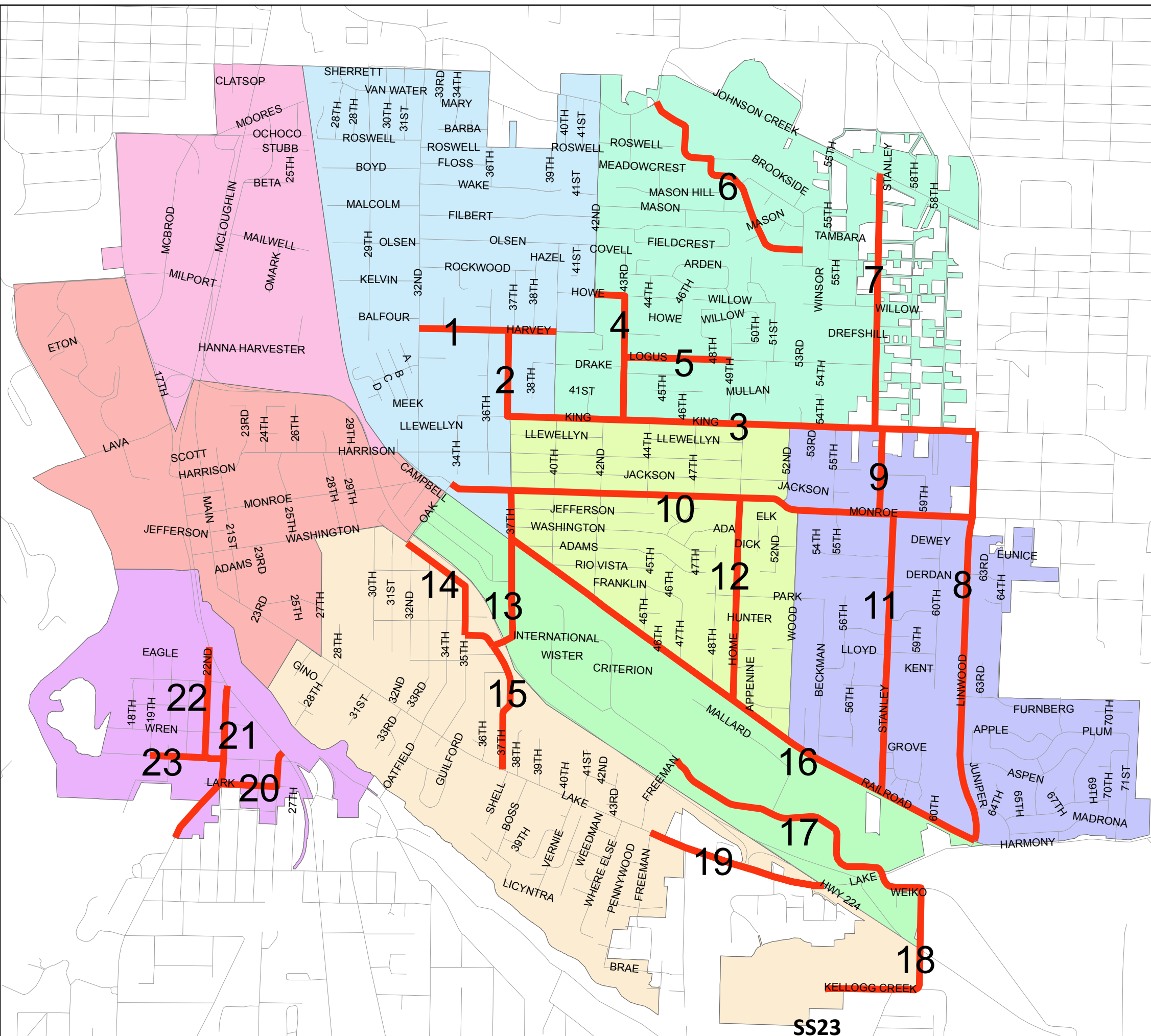
**Attachment 1**

**Potential Sidewalk Improvement Program**

**Project ID and Estimated Cost:**

1. Harvey St.	\$2,000,000
2. 37th Ave. #1	400,000
3. King Rd.	5,250,000
4. Howe St./43rd Ave.	2,000,000
5. Logus Rd.	750,000
6. Regents Dr.	2,000,000
7. Stanley Ave. #1	1,500,000
8. Linwood Ave.	2,500,000
9. Stanley Ave. #2	400,000
10. Monroe St.	4,000,000
11. Stanley Ave. #3	1,750,000
12. Home Ave.	1,750,000
13. 37th Ave. #2	300,000
14. 35th/Washington	2,000,000
15. 37th Ave. #3	400,000
16. Railroad Ave.	5,000,000
17. International Way	1,500,000
18. Rusk Rd.	750,000
19. Lake Rd.	1,000,000
20. 26th/Lark	750,000
21. River Rd.	600,000
22. 22nd Ave.	500,000
23. Sparrow St.	400,000

**Total Program Cost \$37,500,000**



## Attachment 2

### Sidewalk Enhancement Program Outline October 2012

#### Outline

1. Inventory all sidewalks Citywide(Spatial, GIS)
  - a. Current Sidewalks
    - i. Meet ADA
    - ii. Does not meet ADA
    - iii. Does it meet correct width standards as set in the PW Standards
  - b. Current ADA Ramps
    - i. Meet ADA
    - ii. Does not meet ADA

*The City would need to inventory all sidewalks. This would be quite an arduous task. One tactic that was discussed is performing a minimal inventory on arterial and collectors with input on local streets from citizens during the open house. The inventory might also want to be minimal depending on the direction of priority of sidewalks that are to be constructed/replaced.*

2. Prioritize (Possible Point System)
  - a. Safer Routes to School
  - b. Street Classification
  - c. Transit Routes
  - d. Public Destinations (ie Library, Shopping, PSB, Hospital, etc.)
  - e. Current Right of Way
  - f. In-Fill
  - g. Replacement

*Where does the City want to focus the effort on sidewalk construction/replacement? Should this program follow SSMP and focus on the major streets (arterials, collectors, and neighborhood routes)? Should we be focusing in on schools first like ODOT's Safe Routes to Schools program?*

3. Funding
  - a. Bonds
  - b. Utility Fee
  - c. Amend SSMP
  - d. WSMP funds shifted to this program
  - e. Use FILOC to leverage larger grant funds (CDBG, ODOT, etc.)
4. Public Outreach
  - a. Open House for each neighborhood
  - b. NDA Meetings
  - c. PSAC Meetings
  - d. Surveys (Online, Mailers, etc.)

## **Major Concerns with constructing sidewalks:**

ROW – Does the selected location for sidewalks have enough right of way width? Would this program acquire right of way or would we move onto the next location on the list? Acquiring right of way is very costly and would probably expend most of the funds without being able to construct sidewalk.

Stormwater Runoff – Would the City look at constructing stormwater facilities for treatment and detention with sidewalk projects or would we use pervious concrete? The trigger for requiring stormwater treatment is 500 SF of new impervious area. Pervious concrete is a cheaper option than standard concrete with a stormwater facility. Pervious concrete would require routine cleaning to maintain the porosity and standard concrete does not require any maintenance.

Existing Topography – Many streets in Milwaukie have challenging topography to build sidewalks. Topography on streets would require retaining walls to be built and driveways reconstructed. This would reduce the amount of sidewalks that could be constructed with the amount of funding available.

# Attachment 3

## LID Sidewalk Construction Approach October 2012

### Outline

- A. Receive direction from property owners
  - Owners in favor of construction
  - Owners in opposition of construction
  - Owners are neutral
  
- B. What is the existing condition of the proposed construction site
  - Right of way
  - Stormwater collection/treatment
  - Sidewalk connectivity
  - Topography
  - ADA Compliance
  - Adjacent properties
  
- C. Sidewalk program prioritization
  - Determine if the project is feasible
  - Provide a cost estimate to abutting property owners
  - Set up the Local Improvement District (LID) with property owners

Under an LID project approach, the property owners would be giving the direction of where to construct new sidewalk in the City. A majority of property owners would need to agree to pay for the construction of the new sidewalk. Only the property owners abutting the new sidewalk would be assessed the cost of construction.

The Engineering Department would assess each location of proposed new sidewalk construction. In house surveying may be performed to check grades and to receive a better sense of project scope. Once the scope and initial project limits are determined, a project cost will be presented to the property owners for consideration.

The LID approach would not require a funding mechanism to construct new sidewalks. As stated above, the property owners would share in the full cost of constructing the new sidewalk. The Engineering Department would be able to undertake the initial project scope, surveying, and cost estimate in house.

## City Funded Sidewalk Construction Approach

### Outline

- A. Receive direction from citizens citywide
  - Open House for each neighborhood
  - NDA Meetings
  - PSAC Meetings
  - Surveys (Online, Mailers, etc.)
  - City Council
  
- B. Prioritize (Possible Point System)
  - a. Transportation System Plan (TSP) Pedestrian Master Plan
  - a. Safer Routes to School
  - b. Street Classification
  - c. Transit Routes
  - d. Public Destinations (ie Library, Shopping, PSB, Hospital, etc.)
  - e. Current Right of Way
  - f. In-Fill
  
- C. Select projects
  - Depends on funding
  - Equitability between neighborhoods
  - Do projects match the recommendations on the TSP Ped Master Plan

Major items to consider with this program:

- A. Funding
  - a. Bonds
  - b. Utility Fee
  - c. Amend SSMP
  - d. WSMP funds shifted to this program
  - e. Use FILOC to leverage larger grant funds (CDBG, ODOT, etc.)

Under the City funded sidewalk construction approach, the City would take on the burden of funding the projects. The City would need to set up a funding mechanism for construction of sidewalks. The cost burden would most likely be placed on every citizen in the community in one fashion or another.

The City should use the TSP Pedestrian Master Plan as the basis of the priority projects. The projects are listed in Chapter 5 of the TSP and include 50 identified projects. The projects are rated on a low, medium, and high priority basis. The Plan identifies the funding level needed for each project.

**Major Concerns with constructing sidewalks (either approach):**

ROW – Does the selected location for sidewalks have enough right of way width? Would this program acquire right of way or would we move onto the next location on the list? Acquiring right of way is very costly and would probably expend most of the funds without being able to construct sidewalk.

Stormwater Runoff – Would the City look at constructing stormwater facilities for treatment and detention with sidewalk projects or would we use pervious concrete? The trigger for requiring stormwater treatment is 500 SF of new impervious area. Pervious concrete is a cheaper option than standard concrete with a stormwater facility. Pervious concrete would require routine cleaning to maintain the porosity and standard concrete does not require any maintenance.

Existing Topography – Many streets in Milwaukie have challenging topography to build sidewalks. Topography on streets would require retaining walls to be built and driveways reconstructed. This would reduce the amount of sidewalks that could be constructed with the amount of funding available.