



**Work Session**

**WS**

**Milwaukie City Council**



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

**WORK SESSION**  
 JULY 7, 2015  
 City Hall Conference Room

**Mayor Gamba called the Work Session to order at 4:00 p.m.**

Council Present: Council President Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Finance Director Casey Camors, Court Operations Supervisor Carla Bantz, Interim Engineering Director Brad Albert, Planning Director Denny Egner, Community Development Director Alma Flores, and Associate Planner Vera Kolias

**City Manager's Report**

**Mr. Monahan** reviewed the Work and Regular Session agendas.

**Milwaukie Park and Recreation Board (PARB) Representative on the North Clackamas Parks and Recreation District (NCPRD) Advisory Board**

**Mr. Monahan** reported that Tony Anderson had stepped down as the PARB representative on the NCPRD Advisory Board and he suggested that Council recommend a replacement to the Clackamas Board of County Commissioners (BCC).

**Councilor Parks** expressed interest in serving in the position, **Council President Batey** offered to serve as the alternate, and **Councilor Churchill** noted that former Councilor Mike Miller may be interested in serving in the position.

**It was the Council consensus to make a decision about the PARB representative to the NCPRD Advisory Board at the July 21, 2015, Work Session, and it was agreed that Mr. Miller would be contacted to see if he was interested in serving.**

**Mr. Monahan** noted that a Joint Session with the Council and Planning Commission was scheduled for July 28, 2015, and he proposed that an Executive Session be scheduled for 5:00 p.m. that same day.

**Clackamas Cities Association (CCA) Meeting Schedule**

**Mr. Monahan** discussed the upcoming CCA schedule and related calendar issues.

**Summer Vacations**

The group discussed the meetings scheduled for August 18, 2015, and Council members' planned absences. Staff noted upcoming agenda topics.

**Audience Participation Follow-Up**

**Mr. Monahan** reported on topics raised during the June 16, 2015, Regular Session Audience Participation, including proposed upgrades to the electric charging station and supporting chemical free parks.

**Community Development Update**

**Ms. Flores** provided updates on economic development activities, and announced a workshop to be co-hosted by the City and Micro-Enterprise Services of Oregon (MESO) on July 28, 2015, at the Milwaukie Masonic Lodge.

**Mr. Albert** provided an update on the Railroad Avenue paving contract and the Stanley Avenue construction contracts.

**Council President Batey** commented on the possibility of identifying funds to connect the 17<sup>th</sup> Avenue project to the Springwater Corridor.

**Mr. Albert** reviewed final work items to complete the Adams Street Connector project.

**Mr. Egner** discussed Planning Commission activities including recent land use approvals and the upcoming Joint Session with Council. He noted several timelines related to the legalization of marijuana and related choices for Council to consider.

The group discussed medical marijuana facility signage, cohabitation, and taxation.

**Mayor Gamba** suggested that the City research the issue of taxing medical marijuana, and **Mr. Monahan** confirmed that the City Attorney would provide more information.

**Mr. Egner** announced that the City would host a Metro Policy Advisory Committee (MPAC) meeting on July 22, 2015, and he reported that the City may host a breakfast meeting on July 27, 2015, regarding the Monroe Street Neighborhood Greenway and Washington Street alignment option. He provided an update on the Transportation and Growth Management (TGM) program for the 19<sup>th</sup> Avenue Woonerf project.

#### Milwaukie Municipal Court – Court of Record

**Ms. Bantz** discussed the recently adopted Oregon House Bill 3399 that requires municipal courts to become a court of record. She explained that the City's court is not currently a court of record and she noted the process and costs for the City when a municipal court decision is appealed to the Clackamas County Circuit Court.

The group discussed the transcription software the City will have to acquire to become a court of record and the related use of municipal court staff time to use the software.

**Ms. Bantz** noted that court transcription records are only kept as long as required by the City Records Retention Schedule set by the State.

#### Electric Lightwave Franchise Agreement

**Ms. Camors** provided background information on franchise agreement negotiations with Electric Lightwave, Inc. (ELI). She reported that ELI and the City have had a good relationship and she reviewed the terms of the proposed ten year agreement.

**Councilor Churchill** asked if ELI has been pulling the necessary permits. **Ms. Camors** and **Mr. Albert** replied that ELI has pulled separate permits for work in the right-of-way (ROW), and it was noted that ELI does very little permit work in the City.

The group discussed annual franchise fees charged on a per linear foot basis.

**Mayor Gamba** asked if the City was precluded from being a competitor. **Ms. Camors** and **Mr. Monahan** said the City was not pre-empted from being a competitor.

**Ms. Camors** noted the bond coverage and insurance rates required by the agreement, and she reported that the City had 9 active franchises with 4 currently in negotiation.

The group discussed ways to capture revenue from franchise agreements and capital improvements made by franchisees. **Ms. Camors** noted that the City charges the maximum franchise fee amounts allowed, she discussed what other cities charge, and she cited laws regarding the abandonment of infrastructure.

**Council President Batey, Mayor Gamba, and Councilor Churchill** discussed how much of ELI's and other franchisee's lines are underground.

**Ms. Camors** noted that Council would consider adoption of the proposed ELI franchise agreement at the July 21, 2015, Regular Session.

### Parklet Program Review

**Ms. Kolias** provided a background report on the Parklet Program and noted that the original Council-approved pilot program will end in November 2015. She explained that Council is scheduled to discuss the future of the program in September 2015, and she asked for Council input on the proposed criteria and methods to evaluate the program. She reported that staff had compiled a list of possible changes should the program continue, and she asked for Council's input on public and private parklets.

**Councilor Churchill** expressed his appreciation to staff for addressing the Americans with Disabilities Act (ADA) access issues and for raising the public and private question.

**Council President Batey** remarked that she thought the proposed criteria were good and suggested that winter maintenance may be an issue to focus on.

**Ms. Kolias** reported that Wine:30 is the only business to participate in the program, and she noted other businesses who had expressed interest. She described how the City of The Dalles has partnered with businesses on a public/private parklet program.

**Mayor Gamba** reported conversations with out-of-town visitors who were drawn to explore downtown after noticing the parklet. He wondered how to capture the benefit of the parklet drawing visitors, and **Ms. Kolias** noted ways to capture those stories.

**Councilor Parks** and **Ms. Kolias** noted that Council would be deciding if the program would be permanent and whether a parklet could be left up year-round.

**Councilor Churchill** reported a lack of downtown parking on weekends due to the heavy use of the boat ramp at Riverfront Park, and he suggested that parklets may further reduce the number of parking spaces available downtown.

The group discussed off-site boat trailer parking for busy weekends at Riverfront Park.

**Councilor Parks** and **Ms. Kolias** summarized that staff was looking for Council input on program evaluation criteria. **Councilor Churchill** suggested that Council should consider charging parklet fees or share revenue.

The group discussed the challenges of uneven street surfaces for ADA accessibility.

### Riverfront Task Force (RTF) Update

**Mr. Nieman** introduced Gary Klein, Vice Chair of the RTF. He reviewed the Council Resolutions that had established the RTF and PARB, and **Mr. Monahan** noted that Council Resolutions provide information as to why the boards had been established.

**Mr. Nieman** explained that the discussion was meant to update Council on the roles of the RTF and PARB, and to get Council input on the Riverfront Park Phase III capital campaign and solutions to the geese issues. He introduced Dave Green, RTF Chair.

**Councilor Churchill** and **Mr. Nieman** discussed the amount of private donations raised for development of Riverfront Park and the results of the C3 consultant's study.

**Councilor Churchill** asked for an update on the donor outreach effort. **Mr. Green** reported that fundraising had never been a goal of the RTF and that a campaign committee was supposed to follow-up on the consultant's list of potential donors.

The group discussed the status of the capital campaign, the role of the RTF in fundraising, and noted the arrival of Sherri Dow, RTF member.

**Mayor Gamba** asked the members of the RTF present if they were interested in fundraising. **Mr. Green** responded that the RTF wanted to be supportive of a capital campaign but that the RTF did not see fundraising as a part of their role. He briefly commented on private donations received to-date and he inquired about the status and financial support for a rejuvenated capital campaign.

**Council President Batey** and **Mayor Gamba** noted that Council had not discussed the capital campaign in the last 2 years. **Mr. Monahan** reported that the last capital campaign discussions had suggested that the City needed to provide funding for park improvements, which the City had done with Phase II, and he noted that this was the first conversation about Riverfront Park fundraising since Phase II was finished.

**Mr. Green** noted that the RTF had reached out to some potential donors around the time of the ground breaking, grand opening, and other park events. He acknowledged the community appreciation for the City's progress on improving the park.

**Mr. Nieman** noted that the capital campaign was organized by the consultant and has ceased to meet since the consultant's contract ended. He suggested that a professional fundraising consultant would be needed to raise the \$9 million to complete Phase III.

The group discussed the use of the last consultant's work to identify donors and the need to hire a consultant to restart and guide the capital campaign.

**Mr. Nieman** talked about the need to conduct a feasibility study to determine if the community has the capacity to raise the needed funds for Phase III.

The Council asked staff to research information about a campaign feasibility study.

**Mr. Green** reported that the capital campaign had expected to go outside Milwaukie to raise the funds needed to complete the park, he noted the regional use of the park, and he suggested that the feasibility study should include regional donors.

**Mayor Gamba** suggested that the RTF should look at conducting a feasibility study and a post-Phase II review to identify issues that may be corrected in Phase III. He noted the near-term need to consider planting in the large grass areas. **Mr. Green** and **Mr. Klein** noted that the RTF has not had a chance to discuss the planting issue.

**Mr. Nieman** reported that the PARB had started to discuss short-term geese mitigation solutions with the idea that the RTF would work on long-term issues.

The group noted the arrival of Nick Loomis, RTF member.

**Mayor Gamba** and **Mr. Monahan** asked if the addition of plantings at the park would require Planning Commission involvement. **Mr. Egner** replied that it would depend on how much the new plantings differed from the master plan, and he added that interim plantings would not require Planning Commission approval. **Mayor Gamba** noted the need to have decisions about plantings made in time for the next planting season.

**Mayor Gamba** asked if the RTF had other items to report to Council, and **Mr. Green** inquired where Riverfront Park Phase III ranks in the City's priorities.

**Councilor Churchill** commented that City funding for Phase III would have to be balanced with other community needs.

**Mayor Gamba** commented that Phase III's priority level would depend on the findings of the feasibility study.

**Mr. Klein** suggested that a Phase IV could be added to make Phase III less expensive.

**Mayor Gamba** asked the RTF to consider ways that Phase III could be broken out into smaller steps and he expressed his support for conducting a feasibility study.

**Council President Batey** commented on the financial cost of Phase III compared to what else could be done in the City for the same amount of money and she expressed her interest in seeing what a feasibility study would have to say about Phase III.

**Mr. Green** and **Councilor Churchill** noted creative ways to fund park improvements.

**Mr. Green** asked about Council's plans regarding the Kellogg Creek dam removal. **Mayor Gamba** reported that it was one of Council's top goals but currently lacked a funding source, and he suggested that a group may be convened to look at funding possibilities for the project and to re-engage the Portland Harbor Superfund group.

**Councilor Churchill** suggested that as the RTF conducts the feasibility study they should look for smaller \$1-2 million projects. **Mr. Klein** noted that both Phases I and II were cut into smaller sections, and **Council President Batey** commented on the ability to break the Kellogg Creek project into phases.

**Mr. Nieman** summarized that Council would like the RTF work plan to include a campaign feasibility study and an interim geese mitigation plan.

The group noted the recent installation of picnic tables at Riverfront Park and creative ways to keep geese away, and **Mayor Gamba** asked that additional picnic tables and public art be considered as ways to mitigate the geese issues.

**Councilor Churchill** urged the RTF to consider ways to segment Phase III projects.

The group discussed the uncertainty between the RTF and PARB regarding their decision making role for Riverfront Park projects and planning. Staff noted the need for the RTF, PARB, and NCPRD to work together on certain projects. **It was the group consensus that the PARB would deal with driving away the geese while the RTF handles how the park looks and changes.**

**Mr. Green, Mr. Nieman, and Councilor Churchill** discussed the need to engage professional designers and fundraisers for Phase III planning. **Mr. Monahan** suggested that the NCPRD be asked to help with park planning and modifications.

**Mr. Nieman** reported that the "Don't Feed Wildlife" signs had been posted at Riverfront Park, and that additional signage and curb painting is being considered.

**Council President Batey and Ms. Dow** noted the recent installation of "Don't Feed the Wildlife" signs being installed at Scott Park.

**Mayor Gamba adjourned the Work Session at 6:00 p.m.**

Respectfully submitted,



Scott S. Stauffer, Administrative Specialist II

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RESOLUTION NO. 105-2011

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
CREATING A RIVERFRONT TASK FORCE.**

**WHEREAS**, the Riverfront Board was appointed by City Council in 1998 "for the purpose of advising and making recommendations to the City Council and providing for long term continuity and short term problem solving in the successful completion of the Riverfront."; and

**WHEREAS**, the Board has made a great deal of progress toward the design and construction of Riverfront Park and would like to see the project through to completion; and

**WHEREAS**, City Council feels that the Board's scope of work would be best accomplished if the Board members were transitioned to Task Force, and

**WHEREAS**, the Board agrees that transitioning to a Task Force would benefit the work they have done to date;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

- 1) Creates the Riverfront Task Force for the purpose of advising and making recommendations to the City Council and providing for long term continuity and short term problem solving in the successful completion of the Riverfront.
- 2) Appoints five members of the former Riverfront Board, namely Gary Klein, Dave Green, Jason Loomis, Roger Thompson and Mike Stacey, to fill the positions on the new Riverfront Task Force and directs that the Task Force continue to function with five member positions into the future.
- 3) Approves the use of the attached by-laws for the Riverfront Task Force, and
- 4) Designates that the Task Force will cease to function upon completion of construction of the 8.5-acre Riverfront Park unless Council chooses to extend or modify their scope of work.


Introduced and adopted by the City Council on December 20, 2011.

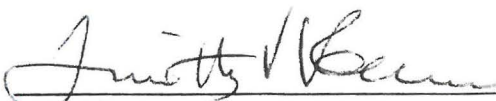
This resolution is effective on December 20, 2011.

  
\_\_\_\_\_  
Jeremy Ferguson, Mayor

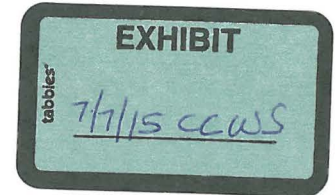
ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

**CHAPTER 2.12**  
**PARK AND RECREATION BOARD\***

**Sections:****2.12.010 Established—Purpose****2.12.020 Membership—Qualifications**

\* Prior ordinance history: Ord. 1696.

**2.12.010 ESTABLISHED—PURPOSE**

The City of Milwaukie is a part of the North Clackamas Parks and Recreation District (NCPRD), created in 1990 by a vote of the Service District Residents. NCPRD is responsible for operation and maintenance of the City's parks and recreation programs under an intergovernmental agreement signed in 1992 and amended in 2008.

The Park and Recreation Board is established for the purpose of advising and making recommendations to the City Council regarding Milwaukie's recreation programs and facilities. The City Council, or its designee, shall advise the North Clackamas Parks and Recreation District (NCPRD) Advisory Board and the Board of County Commissioners on these programs and facilities in the City. The Park and Recreation Board shall be responsible for, but is not limited to, the following activities:

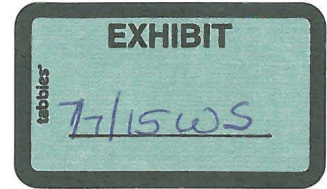
- A. Surveying recreation and leisure time needs of City residents through the neighborhood associations and recommending the roles the City and the NCPRD should or ought to pursue in meeting such needs;
- B. Serving in an advisory capacity to the City Council and the NCPRD, through their regular master planning and capital improvement plan process, on the location, service areas, siting, standards, class, number and needs for existing and future parks within the community;
- C. Identifying desirable future park locations consistent with established plans and standards;
- D. Ensuring the development of a master plan for each park site;
- E. Exploring, along with NCPRD staff, the feasibility of meeting community park and recreation needs through consolidating grounds and programs with local public and private entities;
- F. Identifying park acquisition and development priorities and recommending current or potential locations and financing methods to the City Council and NCPRD;
- G. Participating in planning and development processes for regional park and recreation programs or facilities which provide services benefiting Milwaukie citizens;
- H. Establishing, evaluating and monitoring maintenance standards of City parks and advising Council and NCPRD of the status; and
- I. Such other activities as the Council may assign. (Ord. 2009 § 1, 2009; Ord. 1801 § 3 (part), 1996)

**2.12.020 MEMBERSHIP—QUALIFICATIONS**

The Board shall consist of seven (7) members, representing the geographic diversity of the City, appointed by the Council, all of whom must be City residents. Whenever possible, persons will

2.12.020

be appointed who have demonstrated interest, experience or expertise in some area of parks, recreation or related services. (Ord. 2009 § 1, 2009; Ord. 1801 § 3 (part), 1996)



## Memorandum

**To:** City Council  
**From:** Alma Flores, Community Development Director  
**CC:** Bill Monahan, City Manager  
**Date:** July 7, 2015  
**Re:** Community Development Department Projects - City Council Update for 7/07/15 Work Session

### Parks & Sustainability

- **Milwaukie Riverfront Park**
- **Four Parks Master Planning**
- North Clackamas Parks & Rec. District
- Sustainability Plan
- Tree City USA
- Public/Government Access

### Engineering

- Adams Street Connector
- 17<sup>th</sup> Avenue Multiuse Trail
- Clay Pipe Replacement
- Stanley Avenue Stormwater
- **Railroad Avenue Paving**
- **17<sup>th</sup> Avenue Waterline Project**

### Planning

- **Land Use and Development Review**
- **Moving Forward Milwaukie: Enhancing Our Commercial Districts**
- Annexations
- **Miscellaneous**

### Community Development

- Kellogg Ped/Bike Bridge
- **Monroe Street Neighborhood Greenway**
- **Economic Development**
- Residential Parking Permit Program
- **Grants**

### Building

- **IGAs with other communities**

### Parks & Sustainability

#### **Milwaukie Riverfront Park**

- Working to close-out the project by completing remaining punchlist items and finalizing the Change Orders caused by the ODOT work in McLoughlin.
- A traffic regulation has been recorded requiring boat trailer parking in the long stalls and no parking in the drive isles. Staff is working with Public Works to post signs and paint curbs.

#### **Four Parks Master Planning**

- The application for 3 of the park master plans (Balfour, Bowman-Brae, and Kronberg Parks) is tentatively scheduled for a public hearing before the Planning Commission on August 11, 2015. The date for a public hearing with City Council will be set soon.

### Engineering

#### **Railroad Avenue Paving**

- Staff has scheduled for a Resolution for award of contract to be before Council on July 7<sup>th</sup>.
- A pre-construction meeting has been scheduled for Thursday July 9.
- The contractor will provide a schedule of construction at the pre-construction meeting at which time the project page on the website will be updated.

#### **17<sup>th</sup> Avenue Waterline**

- Staff performed a punch list walk through on June 30.
- The contractor has a minimal amount of work and cleanup to perform from the punch list.
- Staff anticipates that all punch list items will be complete by the end of this week and the project will be final.

## **Planning**

### **Land Use and Development Review**

- Approvals:
  - Type III approval of Phase II of the Spring Park master plan (restoration of the natural area) by the Planning Commission on June 23.
- Public Hearings:
  - July 28 - Planning Commission hearing for Willamette Greenway review for a residential addition on Riverway Lane.

### **Moving Forward Milwaukie: Enhancing Our Commercial Districts**

- Phase 1 - Downtown: The fourth City Council public hearing is scheduled for July 21. Effective date of the amendments will be 60 days from adoption.
- Phase 2 - Central Milwaukie: The Planning Commission will hold the fifth public hearing to address the Central Milwaukie plan and code amendments on July 14. City Council worksessions are tentatively scheduled to begin in late July.
- Phase 3 - Neighborhood Main Streets: Planning Commission worksessions are tentatively scheduled to begin in July, and public hearings are tentatively scheduled to begin in September.

### **Miscellaneous**

- HB 3400 – Recreational Marijuana: Last week the governor signed HB 3400 into law and it includes two deadlines that should be considered by the Council:
  - October 1, 2015: HB 3400 allows the sale of recreational marijuana in limited amounts out of medical dispensaries. Cities may prohibit these "early" sales by council action without a vote of their citizens.
  - December 24, 2015: This legislation allows cities to "opt out" of allowing commercial marijuana. For Milwaukie, the Council could take action to place a temporary moratorium on commercial marijuana operations and call for a City vote on the issue at the November 2016 general election. If the Council would want to consider the moratorium, it must do so by Dec 24, 2015.
  - Miscellaneous
- July 22 MPAC Meeting in Milwaukie: The Metro's Metropolitan Policy Advisory Committee will hold its regular meeting in Milwaukie on July 22. The meeting will begin at 5 PM with a guided walking tour of downtown Milwaukie and will include a presentation at City Hall by Joe Minicozzi, an Asheville, NC consultant who specializes in the economic benefits of downtown development. All Council members, planning commissioners, and neighborhood association chairs are encouraged to attend.

## **Community Development**

### **Monroe Street Neighborhood Greenway**

- An additional public meeting focused on the Washington St bikeway component of the greenway is being scheduled for late July or early August. Staff hopes to return to a Council worksession on August 18 or as soon as possible in September.

### **Economic Development**

- Study Session presentation to City Council on the development of an Economic Development Strategy and Urban Renewal Plan.
- Partnered with Microenterprise Services of Oregon and the Small Business Administration to bring an Access to Capital event Milwaukie on July 28 from 7:30-9 a.m. (see attached Flyer)
- Developing Marketing Flyers for several state, county, and local tools for business development in the city—eligible New Market Tax Credit areas, Enterprise Zone, Strategic Investment Program/Zones, Clackamas County resources for homeowners and businesses, food carts, and others (a couple of examples attached).

### **Grants**

- 19<sup>th</sup> Street Woonerf: The State TGM Program is in the process of contracting with OTAK, a Portland engineering and urban design firm, to provide the City with design consulting services for the proposed 19<sup>th</sup> Street Woonerf.

## **Building**

- IGA between Happy Valley and the Milwaukie Building departments is on the consent agenda for the regular session on July 7<sup>th</sup>.

MICROENTERPRISE SERVICES OF OREGON (MESO)  
AND THE  
CITY OF MILWAUKIE INVITE YOU TO AN



# ACCESS TO CAPITAL WORKSHOP

## JOIN US!

**Date:** July 28, 2015

**Time:** 7:30 –9 a.m.

**Location:** Masonic  
Lodge, 10636 SE  
Main Street

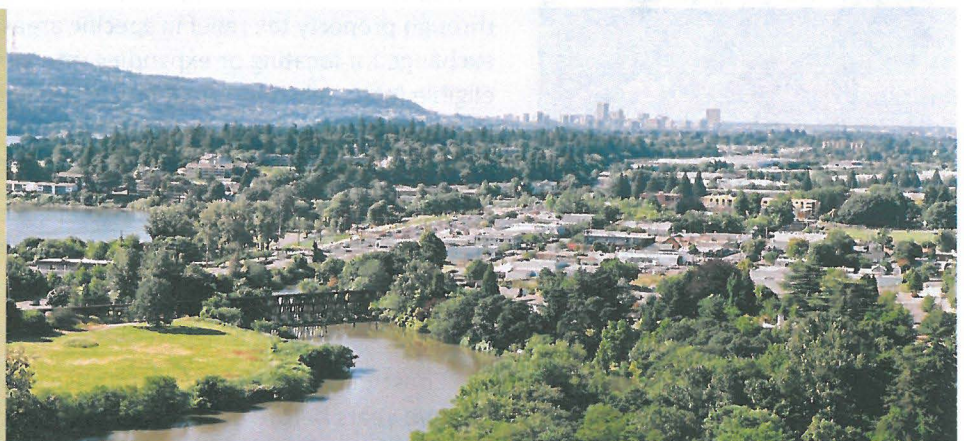
Coffee and light refreshments  
will be provided.

FREE AND OPEN TO THE  
GENERAL PUBLIC

Please RSVP by July 27:

[koliasv@milwaukieoregon.gov](mailto:koliasv@milwaukieoregon.gov)  
or call Vera Kolias at  
503-786-4653

[TWITTER](#)  
[FACEBOOK](#)



The Milwaukie Community Development Department has partnered with Microenterprise Services of Oregon (MESO) and the Small Business Administration (SBA) to provide you with information on available capital and resources for your business needs.

We invite you to join us on July 28, 2015 at the Masonic Lodge at 10636 SE Main Street for information on capital products for your small business.

- ◇ The current capital landscape,
- ◇ Best practices in securing a loan,
- ◇ Special financing opportunities,
- ◇ Economic development and business growth programs, and
- ◇ Answer financial questions from local businesses.



MICRO ENTERPRISE  
SERVICES OF OREGON



# ENTERPRISE ZONES

Designated North Clackamas County Areas for Tax Abatement

Clackamas County Enterprise Zones encourage investment through property tax exemption for new or expanding non-retail businesses that strive to hire local and create additional above minimum wage jobs.



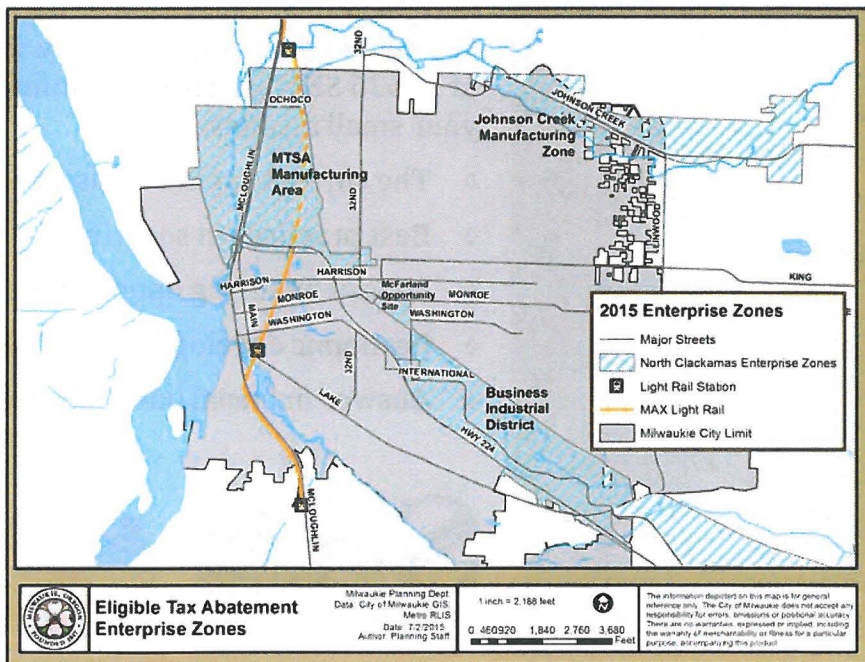
Enterprise Zones

Enterprise Zones are designed to encourage business investment through property tax relief in specific areas of the state. In exchange for locating or expanding into an Enterprise Zone, eligible (generally non-retail) businesses receive total exemption from the property taxes normally assessed on new construction and equipment, for a period of three to five years.

Standard incentives are available to eligible businesses locating in an enterprise zone, subject to authorization timely filings, and criteria.

Standard incentives include:

- Construction-in-Process Enterprise Zone Exemption—up to two years before qualified property is placed in service, it can be exempt from local taxes. For most authorized businesses this provides broader benefit than the regular exemption for commercial facilities under construction.
- Three to five consecutive years of property tax exemption on qualified property, after it is in service.



## BUSINESS ELIGIBILITY

Prior to building construction/improvements or equipment installation activities begin on-site, the zone manager must receive and approve an Application For Authorization, which contains pertinent process information.

Eligible businesses include manufacturers, processors, shippers, and a variety of operation that serve other organizations, as well as call centers and headquarter-type facilities. Hotel/resort businesses are not eligible in the Milwaukie Enterprise Zones; nor are retail, construction, financial, or other certain defined activities.

## QUALIFIED PROPERTY

A new building/structure, structural modifications or additions, or newly installed machinery and equipment qualify for exemption. Nonqualified items include land, previously used property value, and miscellaneous personal items.

## CRITERIA FOR QUALIFYING PROJECTS

For the basic, **three-year enterprise zone exemption**, the business should meet the following criteria:

- Increase full-time permanent employment by 10%
- Pay employees at least 150% of the State minimum wage (benefits can be used to reach this pay level)
- Maintain minimum employment level during the exemption period
- Enter into a first-source hiring agreement with local job training providers
- Pay an application fee of 0.1% of the proposed total investment.

Criteria for the extended tax exemption (for a maximum of a **five-year exemption**) the business should meet the criteria for the three-year enterprise zone exemption as well as the following:

- Compensation of new workers must be at or above 150% of the County average wage (benefits can be used to reach this pay level)
- There must be local approval by written agreement with the local zone sponsor
- The company must meet any additional requirements that the local zone sponsor may reasonably request.

## APPLICATION

Businesses or developers interested in locating or expanding in Enterprise Zones within Milwaukie can obtain the State application online at <http://www.oregon.com/gov/dor/PTD/docs/303-029.pdf> or from Alma Flores at [aflores@MilwaukieOregon.gov](mailto:aflores@MilwaukieOregon.gov) or (503)-786-7652.

Investment must occur within eligible Clackamas County designated Enterprise Zones (see map on reverse).

Alma Flores  
Community Development Director  
Phone: 503-786-7652  
Fax: 503-774-8236  
[aflores@MilwaukieOregon.gov](mailto:aflores@MilwaukieOregon.gov)





# NEW MARKET TAX CREDITS

A Map of Eligible Sites for New Market Tax Credits

As of 2010, the city of Milwaukie was designated for New Market Tax Credit eligibility in certain census tracts.

New Market Tax Credits are a program that provides tax incentives to investors who make investments in low-income communities or areas of economic stress.

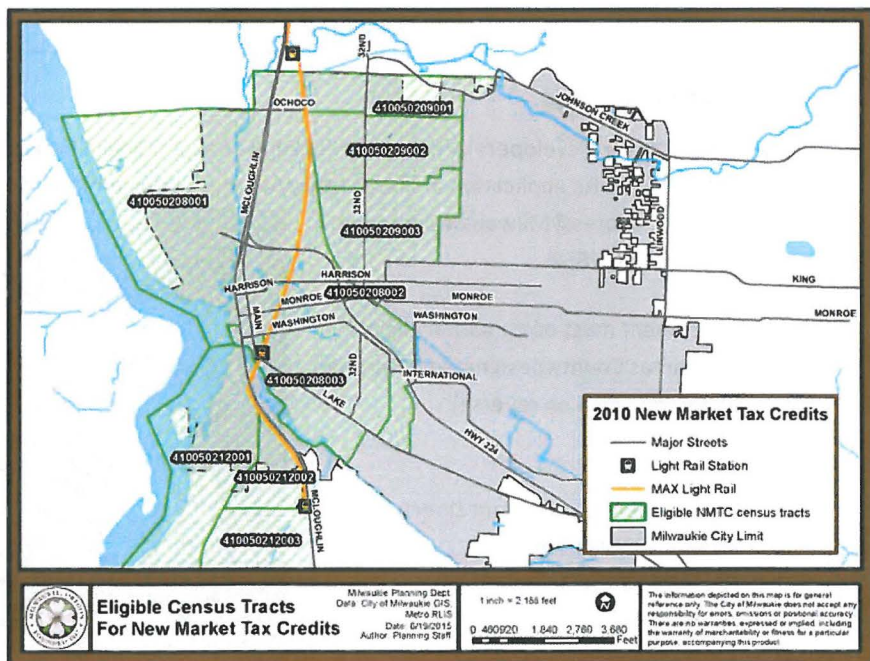


**New Market Tax Credits (NMTCs)** are a proven, cost-effective tool that supports job creation and encourages small businesses to expand. NMTCs allow developers to enjoy subsidized rates on debt or receive additional tax credit equity if investors fulfill Community Reinvestment Act (CRA) objectives.

In 2011 the State of Oregon passed HB 817, a statewide NMTC program, which was designed to leverage a modest investment of State funding to spur significant private job creation and rehabilitation in underserved communities.

NMTC projects have ranged from an elementary school in Portland, OR, to a domestic violence shelter in Harlem, NY. In each case, NMTC allocations have helped facilitate the completion of vital local projects that otherwise would not have moved forward. Through the program, NMTCs bridge financing gaps and provide a cushion against cash flow obstacles as projects reach stabilized operations.

New Market Tax Credits



## TAX CREDITS

NMTC investments generate tax credits equal to 39% of total Qualified Equity Investments (QEI) made in a Community Development Entity (CDE). Credits are realized over a seven year period, five percent during the first three years, and six percent in the four remaining years (totaling 39%).

For example, \$10,000,000 of qualified equity investments made into a CDE would receive \$3,900,000 in total tax credits allocated over 7 years. This would be \$500,000 in each of the first three years, and \$600,000 in years four through seven.

In order to receive New Market Tax Credits, a competitive application must be filed by a CDE with the New Market Tax Credit Program. Due to the large number of applicants, typically only 1/3 of projects receive funding. Investments that are redeemed, or sold off from the CDE, before the seven year term is completed must pay back all of the tax credits with interest.

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## COMMUNITY DEVELOPMENT ENTITIES

All NMTC projects must be made through investments in Community Development Entities. However, these projects can meet a wide variety of community development objectives as well as several other criteria (see below).

Competitive applications must show that the CDE will be working in an economically distressed community or otherwise underserved communities. They also must be able to show demonstrable community development objectives as well as meaningful engagement with community stakeholders in deciding CDE investments.

Community development objectives can include job creation, jobs accessible to low-income persons, financing minority owned businesses, offering goods or services to low-income communities, offering community goods or services to low-income communities, offer flexible lease rates to future tenants, or create housing units available to low-income persons or within low-income communities.

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## APPLICATION

Businesses or developers interested in using New Market Tax Credits as part of their developments within Milwaukie can obtain the State application online at <http://nmtccoalition.org/allocation-materials/> or from Alma Flores at [aflores@MilwaukieOregon.gov](mailto:aflores@MilwaukieOregon.gov) or (503)-786-7652.

Investment must occur within the City of Milwaukie eligible New Market Tax Credit census tracts (see map on reverse).

Alma Flores, Community Development Director  
Phone: 503-786-7652  
Fax: 503-774-8236  
[aflores@MilwaukieOregon.gov](mailto:aflores@MilwaukieOregon.gov)





## MILWAUKIE CITY COUNCIL WORK SESSION

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

**AGENDA  
JULY 7, 2015**

A light dinner will be served.

### Work Session

	<b>Page #</b>
<b>1. 4:00 p.m. City Manager's Report</b> Staff: City Manager Bill Monahan A. Clackamas Cities Association Meeting Schedule B. Milwaukie Park and Recreation Board Representative on the North Clackamas Parks and Recreation District Advisory Board	
<b>2. 4:30 p.m. Milwaukie Municipal Court – Court of Record</b> Staff: Court Operations Supervisor Carla Bantz	<b>1</b>
<b>3. 4:45 p.m. Electric Lightwave Franchise Agreement</b> Staff: Finance Director Casey Camors	<b>3</b>
<b>4. 5:00 p.m. Parklet Program Review</b> Staff: Community Development Director Alma Flores	<b>14</b>
<b>5. 5:30 p.m. Riverfront Task Force Update</b> Staff: Assistant to the City Manager Mitch Nieman	
<b>6. 5:45 p.m. Adjourn Work Session</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.
- Executive Sessions: The Milwaukie City Council may 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 are allowed to attend Executive Sessions 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.
  - Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503-786-7555. During meetings the Council asks that all pagers and cell phones be set on silent mode or turned off.



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **WS 2.**  
Meeting Date: **July 7, 2015**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Court of Record Ordinance**  
From: Carla Bantz  
Date: June 19, 2015

**ACTION REQUESTED**

Discuss and adopt an ordinance authorizing the Milwaukie Municipal Court to become a court of record by recording all court proceedings.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

January 2015 – Judge Kimberly Graves and City Prosecutor Rhett Bernstein met with City Manager Bill Monahan to discuss the Municipal Court becoming a court of record. The City Manager authorized the court to move forward with implementation.

**BACKGROUND**

Since 1903, the Milwaukie municipal government has operated a judicial branch to enforce local statutes and regulations. With the adoption of a new City Charter in 1944, a formal Municipal Court was established and the Office of the Municipal Court Judge was created as an independent entity appointed by the City Council.

The Municipal Court Judge hears all court cases. Currently, the proceedings are not recorded and the only record is a computer file and paper citation signed by the Judge.

In recent months, the Court has seen an increase on appealed court cases to Clackamas County Circuit Court. If the defendant does not agree with the Judge's decision, statute allows the defendant to have his or her case re-heard in the Circuit Court but requires the City Prosecutor and the Officer to appear for the new trial. The Circuit Court charges the defendant a court fee for hearing the case.

Recently, the Oregon State Legislature introduced House Bill 3399 which will require all municipal courts to record court proceedings. The bill has passed by the House on May 5, 2015 and repassed by the House on June 11, 2015. If this becomes law, the Court will need to have some recording device in place, therefore becoming a court of record would be a preemptive step and to our advantage.

**CONCURRENCE**

Judge Kimberly Graves, City Prosecutor Rhett Bernstein, Finance Director Casey Camors and City Manager Bill Monahan all concur that approving this ordinance would be beneficial to the operation of the Court.

**FISCAL IMPACTS**

Purchase of equipment and software totaling \$4937. Eliminate need and expense of City Prosecutor and Officers to appear on appeal cases to Clackamas County Circuit Court.

**WORK LOAD IMPACTS**

Staff will need to be trained in the software and how to operate the equipment.

**ALTERNATIVES**

Retain current system

**ATTACHMENTS**

1. None.



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

**WS 3.**  
**July 7, 2015**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Electric Lightwave, LLC Franchise Agreement**  
From: Casey Camors  
Date: July 7, 2015

**ACTION REQUESTED**

Adoption of ordinance granting to Electric Lightwave, LLC a limited liability company, qualified to do business in the State of Oregon, a franchise to construct, operate and maintain a telecommunications network within the City of Milwaukie Oregon.

**BACKGROUND**

Electric Lightwave (ELI), dba Integra Wholesale, is a Delaware limited liability company with headquarters in Vancouver Washington. ELI has had franchise agreements with the City for many years with the most recent agreements expiration in October of 2013. ELI has continued to operate under the terms of the most recent agreement since its expiration in good faith.

Founded in 1996, Integra (ELI's parent company) currently employs 1,800 employees and serves more than 85,000 customers across 11 western United States, including: Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah and Washington.

Integra is one of the largest facilities-based providers of communication and networking services in the western United States. Integra serves businesses of all sizes with networking, communications and technology solutions in 35 metropolitan markets. Integra owns and operates a system consisting of a 6,400-mile long-haul fiber-optic network, 3,000 miles of metropolitan fiber and a nationwide IP/MPLS network. Their fiber network connects directly to more than 2,300 enterprise buildings and data centers. Through their Ethernet-over-copper footprint, they can deliver high-bandwidth services to more than 400,000 businesses.

Integra offers a full range of products and services over a scalable and secure network, including data networking solutions, managed services, colocation, cloud services and a suite of voice products. Integra has developed solutions tailored to address the healthcare, government, education, and professional services sectors. They have also developed solutions to address the broader needs of the marketplace, including business continuity, collaboration, communications, connectivity and security.

Over the previous agreement term, the following has taken place:

1. The City and ELI have honored the agreement and enjoyed a good working relationship.
2. ELI has been a good partner in working in the City's right-of-way.
3. The City has received prompt franchise fee payments.

Over the past year, the City and ELI have negotiated the proposed telecommunications agreement in good faith and the agreement has been redrafted to be in compliance with current laws and regulations. The proposed agreement is effective as of September 1, 2015 with a ten (10) year term expiring on September 1, 2025.

All current telecommunication franchise agreements held by the City will remain in place and the addition of this agreement should provide customers with some additional competitive options.

In compliance with the Comcast franchise agreement, this ELI franchise agreement offers terms and conditions that are reasonably comparable to those set forth in the Comcast franchise agreement effective June 15, 1999.

#### **CONCURRENCE**

The telecommunications franchise agreement has been reviewed and approved by the City Attorney and the City Engineer.

#### **FISCAL IMPACTS**

The City of Milwaukie will be compensated for continuing to grant permission to ELI for use of the streets and public ways of the City for construction, operation and maintenance of the system. Compensation will be the greater of 7% of the gross revenues or \$3 per lineal foot of communication facilities.

#### **WORK LOAD IMPACTS**

Telecommunications companies typically require city engineering permits, from time to time, to construct and repair facilities in the right-of-way. It is the policy of the City for the Engineering Department to process franchise-related engineering permits at no cost to the franchisee (usually \$150), increasing the Engineering work load a small amount but not requiring additional resources.

#### **ALTERNATIVES**

Not granting this franchise would limit ELI's ability to operating in Milwaukie, Oregon and would discontinue franchise fees received from ELI.

#### **ATTACHMENTS**

1. Ordinance granting Electric Lightwave, LLC a franchise to construct, operate and maintain a telecommunications network with the City of Milwaukie
2. Telecommunications Franchise Agreement between Milwaukie, Oregon and ELI, LLC

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

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING ELECTRIC LIGHTWAVE, LLC. A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A TELECOMMUNICATIONS PROVIDER WITHIN THE CITY OF MILWAUKIE AND AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH ELECTRIC LIGHTWAVE LLC. IN SUBSTANTIALLY THE FORM OF EXHIBIT A.

WHEREAS, Electric Lightwave LLC. d/b/a Integra Wholesale, a Delaware limited liability company, with headquarters at 18110 SE 34th Street, Vancouver, WA 98683 ("ELI") has been providing telecommunication services within the City of Milwaukie pursuant to the franchise that expired on October 31, 2013;

WHEREAS, the City has the authority to regulate the use of rights of way within the City and to charge for the use of those rights of way; and

WHEREAS, the City and ELI both desire ELI to continue to provide telecommunications service within the City of Milwaukie and to establish the terms by which ELI shall use rights of way within the City;

NOW THEREFORE, THE CITY OF MILWAUKIE DOES HEREBY ORDAIN:

The City hereby grants to ELI a non-exclusive franchise on the terms and conditions in the attached Exhibit A, for a period of ten (10) years from the effective date of this ordinance, to provide telecommunications service within the City of Milwaukie and authorizes the City Manager to sign a franchise agreement with ELI in substantially the form of Exhibit A ("Agreement").

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

Read the second time and adopted by the Council on \_\_\_\_\_.  
Signed by the Mayor on \_\_\_\_\_

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

\_\_\_\_\_

**Exhibit A**  
**Franchise Agreement between**  
**Milwaukie, Oregon and Electric Lightwave LLC.**  
**September**  
**2015**

**Section 1. Rights Granted**

A. The City of Milwaukie ("City") grants to Electric Lightwave, LLC. d/b/a Integra Wholesale, a Delaware limited liability company, with headquarters at 18110 SE 34th Street, Vancouver, WA 98683 ("ELI"), its successors and assigns, a nonexclusive franchise to operate as a competitive telecommunications provider as defined by ORS 759.005 within the City as it now exists or may be extended in the future. The franchise includes the privilege to install, maintain and operate poles, wires, fixtures, equipment, and underground circuits necessary to supply telecommunications services, upon, over, along, under, and across the streets, alleys, roads and other public ways, parks and places. Nothing in this Agreement limits the City from granting others the right to carry on activities similar to, or different from, the ones described in this Agreement.

B. All facilities in possession of ELI currently located within rights of way are covered by this Agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in Section 7 of this Agreement.

**Section 2. Term**

This Agreement shall be effective as of September 1, 2015 and shall remain effective through September 1, 2025 unless sooner terminated as provided in this Agreement.

**Section 3. Construction Work**

A. Before ELI conducts work involving excavation, new construction, including placement of new wires or major relocation work in public rights of way, property or places, ELI shall first notify the City Engineer and shall comply with any special conditions relating to scheduling, coordination and public safety as determined by the City Engineer. Special conditions would include work being done in the right of way by the City or other third parties and may include a requirement that the facility be placed underground. Grantee shall obtain all necessary City of Milwaukie permits for such excavation and construction and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by the City, such plans: (1) are to be evaluated by the most current public works standards at the time of receiving the permit applied to the construction within the Public Ways in the City, and (2) shall be maintained by the City as confidential and exempt from public disclosure to the maximum extent allowed by law, with such provision constituting an official request for such confidentiality under Oregon's public records laws. Work could include open cuts, boring, excavations, digging new pole holes in streets or sidewalks in the right of way. In emergencies, ELI may conduct emergency work at any time and must provide the City Engineer with written or oral notice of

emergency work as soon as reasonably possible, but no later than one (1) business day after the emergency work has commenced.

B. ELI shall file preliminary maps or drawings of its proposed construction work within the City with the City Engineer showing the location of the construction, extension or relocation of its facilities and services in public rights of way, property or place of the City. No facility may be placed other than in a location approved by the City, except in the event of an emergency.

C. Reasonable care. All work by ELI within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using City rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. Any work within the right of way may be inspected by the City and its officers to determine whether it has been placed in its approved location. If emergency work has been done and is determined to be in a place not approved by the City, the City will notify ELI and give sixty (60) days for the work to be corrected once the emergency has passed.

#### **Section 4.     **Supplying Maps****

ELI shall maintain maps and data pertaining to its facilities located as described in Section 1 (A) in the City on file at their Vancouver, Washington office. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, ELI shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of any electrical system facilities, but not other proprietary information, used in operating ELI's transmission and distribution facilities within the City's Urban Growth Boundary area served by ELI. The City will not sell or transmit ELI maps or data to third parties unless permitted by ELI. The City will make available to ELI any City-prepared maps or data.

#### **Section 5     **Excavation****

Subject to Sections 3 and 6 of this Agreement, ELI may make all necessary excavations within any right of way for the purpose of installing, pairing or maintaining any facility. Assuming sufficient right of way, all poles shall be placed between the sidewalk and the edge of the right of way unless another location is approved by the City Engineer. ELI shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

#### **Section 6.     **Restoration after Excavation****

Except as otherwise provided in this section, ELI shall restore the surface of any right of way disturbed by any excavation by ELI to the same condition it was in prior to its excavation. In the event that ELI's work is coordinated with other construction work in the right of way, the City Engineer may excuse ELI from restoring the surface of the right of way, provided that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to

any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within thirty (30) days, or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case ELI shall pay the City for the cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

## **Section 7. Relocation**

A. **Permanent Relocation – General.** In accordance with ORS 221.420, City may, by written order, require ELI to move any facility in the right of way. If the relocation is the result of a public project, ELI shall be responsible for the costs of relocation. If the relocation is required to accommodate a private party development or project, ELI shall have the right to seek reimbursement from the private party. In such event, the City shall not be responsible for the costs of relocation of any of ELI's facilities.

B. **Permanent Relocation - Under grounding.** As permitted by law, administrative rule, or regulation, the City may require ELI to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to ELI's engineering and safety standards. The expense of such a conversion shall be paid by ELI, and ELI shall recover its costs from its customers in accordance with state law, administrative rule, or regulation. Nothing in this paragraph prevents the City and ELI from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis.

C. **Temporary Relocation at Request of Third Parties.** Whenever it is necessary to temporarily relocate or rearrange any facility of ELI to permit the passage of any building, machinery or other object, ELI shall perform the work on thirty (30) business days' written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) bear the approval of the City Engineer; (2) detail the route of movement of the building, machinery, or other object; (3) provide that the person requesting the temporary relocation shall be responsible for ELI's costs; (4) provide that the requestor shall indemnify and hold harmless the City and ELI from any and all damages or claims resulting from the moving of the building, machinery or other object or from the temporary relocation of ELI facilities; and (5) be accompanied by a cash deposit or other security acceptable to ELI for the costs of relocation. ELI, in its sole discretion, may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by ELI to cover ELI's costs of temporary relocation and restoration.

D. **Temporary Relocation at Request of City.** In accordance with ORS 221.420, the City may require ELI to remove and relocate transmission and distribution facilities maintained by ELI in any public rights of way, property, or place of the City by giving notice to ELI. Prior to such relocation the City agrees to provide a suitable location which includes a minimum or maximum square footage set by ELI and the required easements from private property owners for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by ELI; however when the City requires

more than one temporary relocation and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of ELI and subsequent relocations occurring less than two (2) years after the initial relocation shall be at the expense of the City. In the event that any relocation is requested by or is to accommodate a private party, ELI shall seek reimbursement from the private party and not from the City. The City and ELI agree to cooperate to minimize the economic impact of such temporary relocation on each party.

E. **Notice.** The notice required by Section 7 (A), (B), (C) and (D) shall be in writing and shall be provided at least thirty (30) business days before the date that ELI is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and ELI from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that ELI fails to comply with a notice to relocate and the City and ELI have not reached agreement on a schedule for relocation, the City may remove or relocate ELI's facilities that were the subject of the relocation notice at ELI's expense.

F. **Location for Relocated Facilities.** The City shall attempt to provide ELI with a suitable location in existing right of way sufficient to maintain service for all facilities required to be relocated pursuant to Section 7 (A), (B), and (D).

**Section 8. City Public Works and Improvements**

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

**Section 9. Payment by ELI for Use of Rights of Way**

A. In consideration for its use of rights of way and for the City's administration of the rights of way, ELI agrees to pay the City the greater of:

1. a minimum annual fee of \$3.00 per lineal foot of communication facilities. This amount shall remain fixed from the Effective Date of this Franchise through the fifth (5th) year. Beginning the sixth (6th) year of this Franchise, the fee shall be adjusted annually based on the CPI-U index for the previous year. City shall calculate the escalated per foot fee by November 1st of each year and notify ELI of the per foot fee prior to implementation of such fee.

2. an amount equal to seven percent (7%) of Gross City Revenues. Gross City Revenue is defined as any and all revenues derived by ELI for the provision of any and all products, services, or charges originating or terminating in Milwaukie, Oregon, billed to a circuit, switch, or address in Milwaukie, Oregon, including revenues from dedicated private networks. Gross Revenues shall include any and all revenues from leases for the Milwaukie portion of ELI's

system. Gross Revenues may be adjusted for the net write-off of uncollectible amounts of such revenues. In the event any law or valid rule or regulation applicable to this Franchise Agreement limits franchise fees below the seven percent (7%) of Gross Revenues required herein, ELI agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible franchise fee, then ELI shall pay the higher franchise fee up to the maximum allowable by law.

B. ELI shall pay the franchise fee quarterly on or before forty five (45) days after the preceding quarter. Payments shall be accompanied by a statement of how the total due amount was calculated. ELI shall have the right, without prior City approval, to lease capacity or bandwidth to its customers; provided that ELI shall, upon request from City, provide City with a list of the customers leasing space on the Milwaukie portion of ELI's system. Interest on late payments shall accrue from the due date at a rate equal to nine percent (9%) per annum and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until after the discovery of the error by ELI or receipt by ELI of notice of the error.

C. The City may audit ELI at any time while this Agreement is in effect to determine the accuracy of the reporting of gross revenues. ELI shall make all records available to the City and any auditor retained by the City on demand. Any difference of payment due the City following audit shall be payable within thirty (30) days after written notice to ELI, and shall bear interest at the rate of nine percent (9%) per annum. In the event the audit discloses that ELI has underpaid by more than three percent (3%) of its annual payment obligation, ELI shall pay the City's expenses of performing the audit.

D. The City shall retain the right, as permitted by Oregon Law, to charge a privilege tax in addition to the franchise fee set forth herein. The City agrees to notify ELI of the privilege tax in writing, sixty (60) days' prior to the date the tax goes into effect.

E. In consideration of ELI's agreement to pay the franchise fee and the City's Public Utilities Privilege Tax, if implemented, the City shall not impose other business license fees or taxes on ELI during the term of this ordinance. This provision does not exempt the property of the company from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges that are generally applicable to businesses within the City as required by City ordinance.

F. The obligation to pay the franchise fee imposed by Section 9 (A) shall survive expiration of this Agreement as long as ELI continues to exercise the rights granted in Section (1). In the event this Agreement is terminated before expiration, ELI shall pay the City the appropriate fee for use of the City's right of way as determined by Section 9 (A) of this Agreement through the date of termination within ninety (90) days of the termination date.

G. ELI shall be responsible for all costs associated with its work and facilities in the right of way, except as otherwise specifically provided in this Agreement.

H. The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new business undertaking of ELI that is operated within the City.

I. In the event ELI allows another telecommunications carrier to use ELI's facilities within the City, ELI shall require such carrier to represent that it has all necessary permits and licenses as required by the City.

**Section 10. Performance Bond**

ELI shall provide the City with a performance bond of \$25,000 as security for the full and complete performance of this franchise, including costs, expenses, damages or loss the City pays or incurs because of any failure attributable to ELI to comply with any codes, ordinances, rules, regulations, administrative rules or permits of the city.

**Section 11. Vacation of Right of Way**

Whenever the City initiates any proceeding to vacate any rights of way within which ELI has a facility, the City will notify ELI. The City will, where practicable, maintain a public utility easement for ELI's facility, if requested by ELI.

**Section 12. Use of ELI Facilities by Wireless Communications Facilities**

ELI shall allow third parties to place wireless communications facilities on ELI poles provided that (1) the placement will not interfere with ELI's operations, (2) the placement and operations of the wireless communications facilities will be consistent with all safety and other applicable regulations, and (3) ELI agrees to the amount of compensation from the third party. The third party shall be contractually responsible for compliance with all safety and other applicable regulations. ELI may extend any existing pole to allow such co-location, consistent with the City's regulations of wireless communications facilities. The City shall have no liability arising from the co-location of third party facilities on ELI poles.

**Section 13. Termination**

A. **By City for Nonpayment.** City may terminate this Agreement and ELI's franchise if ELI fails to pay the franchise fee. The City shall provide thirty (30) days' notice of termination prior to any termination for non-payment. This Agreement shall not be terminated if ELI pays the full amount, including interest, within thirty (30) days of the notice.

B. **By City for Cause.** If ELI ceases to maintain its facilities and the lack of maintenance increases the risk of personal injury or property damage, the City may terminate this Agreement by providing ELI thirty (30) days' notice of termination.

This Agreement shall not be terminated if ELI substantially eliminates such risk within thirty (30) days of the notice.

**Section 14. Sale of Franchise**

ELI shall not sell or assign this franchise without the prior written consent of the City. ELI shall notify the City not later than sixty (60) days' prior to any intended transfer and the City will not unreasonably withhold any consent required. Notwithstanding the foregoing, ELI may

assign this Agreement to (a) any affiliate of ELI, or (b) any person that purchases all or substantially all of the assets of ELI, or any other person formed by or surviving the merger or consolidation of ELI.

**Section 15. Removal of Facilities**

If this Agreement is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, ELI and the City shall, by mutual agreement, decide whether ELI's facilities are to be removed or remain in place. In the event that ELI and the City are unable to reach agreement on the disposition of ELI facilities after termination, the City Engineer may issue an order requiring removal at ELI's expense and the property upon which the facilities were used restored by ELI to the condition it was in before installation.

**Section 16. Hold Harmless**

ELI shall indemnify and hold harmless the City, its officers, employees, agents, and representatives against any and all claims, damages, costs and expenses to which they may be subjected as a result of any negligent or wrongful act or omission of ELI, or any act or omission of ELI that is alleged to be negligent or wrongful, under this Agreement or otherwise arising from the rights and privileges granted by this Agreement. The obligations imposed by this section are intended to survive termination of this Agreement.

ELI agrees to forever indemnify City, its officers, employees, agents, and representatives, from and against any claims, costs, and expenses of any kind, whether direct or indirect, pursuant to any state or federal law, statute, regulation, or order, for the removal or remediation of any leaks, spills, contamination, or residues of hazardous substances, directly attributable to ELI's facilities. Hazardous substances has the meaning given by ORS 465.200.

**Section 17. Insurance**

ELI shall, as a condition of the franchise grant, secure and maintain the following liability insurance policies insuring ELI and its employees and shall provide City an endorsement naming City, its officers, employees, and agents as an additional insured:

1. Comprehensive general liability insurance with limits not less than:
  - a. Three million dollars for bodily injury or death to each person;
  - b. Three million dollars for property damage resulting from any one accident; and,
  - c. Three million dollars for all other types of liability.
2. Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars for each accident.
3. Workers' compensation within statutory limits and employers' liability insurance with limits of not less than one million dollars.
4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.
5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other

period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities.

**Section 18.    Limitation on Privileges**

All rights and authority granted to ELI by the City are conditioned on the understanding and agreement that the privileges in the rights of way are not to operate in any way so as to be an enhancement of ELI's properties or values or to be an asset or item of ownership in any appraisal thereof.

**Section 19.    Effect of Invalidity of a Portion of this Agreement**

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

**Section 20.    Definitions**

A.    "Facility" includes any poles, guy wires, anchors, wires, fixtures, equipment, conduit, circuits, vaults, ground mounted switch cabinets, ground mounted mineral oil filled transformers, ground mounted secondary junction cabinets, and other property necessary or convenient to the supply of electric energy owned or operated by ELI within the City.

B.    "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration.

C.    "Install" means to erect, construct, build, replace or place.

Authorized Signature: The City of Milwaukie

Authorized Signature: Electric Lightwave, LLC

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

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

Subject: **Parklet Program review**

From: Alma Flores, Community Development Director  
Vera Kolias, Associate Planner

Date: June 30, 2015, for July 7, 2015 Regular Session

**ACTION REQUESTED**

Council decision regarding criteria to be used to evaluate the City's parklet program.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Staff first presented the concept for a parklet pilot program to Council in late spring 2014. The Council discussed and ultimately approved a pilot program for seasonal parklets for a 2-year period. In October 2014 a request to allow an existing parklet to remain through the winter was denied. The pilot program expires in November 2015.

**BACKGROUND**

In Milwaukie, use of parking spaces for seating has been done informally in the past for specific special events (First Friday, etc.). In the spring of 2014, the City was approached by a few downtown businesses interested in using parking spaces for seating on a regular basis. A meeting was held at City Hall with these businesses to talk about what they would like to do and to share some research on parklets. After this small group meeting, the concept was discussed with the Downtown business community (and property owners). Staff received a positive response to the proposed parklet program and made a presentation to Council seeking approval.

After Council approved the 2-year Parklet Pilot Program on May 22, 2014, one application for a parklet was submitted, approved, and constructed – Wine:30. The grand opening of the Wine:30 parklet was on September 19, 2014.

*Outdoor seating has been shown to positively add to a downtown, pedestrian-friendly environment. As William H. Whyte, a noted urbanist once wrote: When it comes to good urban spaces, "...supply creates demand. A good new public space builds a new constituency. It stimulates people into new habits."*

Wine:30 owner Jesse Canelos requested approval to continue the use of the Wine:30 parklet through the winter, rather than disassemble and remove it at the end of November. The discussion regarding the request included input from several residents and business owners and resulted in a Council decision to deny the request. The parklet was disassembled as required and re-installed in April 2015. To date, the Wine:30 parklet is the only parklet to be installed under the pilot program.

Questions and concerns that have been raised about the parklet program include ADA accessibility. The City Building Official had determined that accessibility requirements have been met if accessible seating is provided adjacent to the parklet deck. While this interpretation meets the requirements of the ADA code, additional requirements may be desired, such as that the deck structure itself must be ADA accessible.

Staff has researched the following list of pros and cons regarding parklets to aid the Council in its discussion:

**Pros:**

- Observed activities at parklets promote community interaction, i.e. talking, and eating/drinking
- Parklets increase business sales
  - (Observed 20% increase in University City district of Philadelphia, even during a usually slow time of year<sup>1</sup>)
- Women consider parklets to be safe public places<sup>2</sup>
- The largest attractor to parklets is other people
- Supplying parklets seems to create demand for them
- Parklets add valuable green space when designed with plant material

**Cons:**

- Parklets may attract troublemakers and can be difficult to monitor at night (observed in Olympia<sup>3</sup>)
- Visibility issues at night
- Poor sight-line design can result if design is not reviewed properly
- Complaints about the loss of parking
- Parklets are not used as active space when sponsor business is closed and movable furniture is locked up<sup>4</sup>

## **KEY QUESTIONS**

### **Summary**

The purpose of this worksession is to set the stage for a second worksession where Council will be asked whether the pilot parklet program should become permanent. We expect to have this discussion in September. This July worksession is intended to come to agreement about which criteria will be used to determine if this existing pilot program has been successful, and to identify other considerations that should be evaluated as part of the program.

### **Analysis**

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<sup>1</sup> <http://www.universitycity.org/publications>

<sup>2</sup> <http://www.universitycity.org/publications>

<sup>3</sup> <http://www.theolympian.com/2014/05/01/3111246/one-parklet-doesnt-work-but-others.html>

<sup>4</sup> Citizen complaint of Wine:30 parklet in 2014.

In reviewing the success of a parklet program, it is important to consider the purpose of the program: parklets are intended to create a lively downtown, promote community interaction, enhance the streetscape, and bring more people to our local businesses. The question before the Council is whether or not the current pilot program should become a permanent program. In order to determine this, a discussion regarding program evaluation is needed.

Based on a review of existing data from parklet programs around the country, staff suggests the following criteria be used to evaluate the program's success. Staff proposes to collect information responding to the criteria through a combination of methods, such as: direct observation and counts, survey of area businesses and customers, anecdotal information, written and oral testimony, and use of social media to elicit responses.

- How many people use the parklet? When is it used? Who uses the parklet?
- Is the parklet a positive addition to the downtown streetscape/pedestrian environment?
- Has the addition of the parklet resulted in impacts (positive and negative) to other downtown businesses?
- What has been the impact to parking?
- Has the parklet been properly maintained?
- Has the parklet generated any complaints?
- Has the parklet been well-received?



*Downtown The Dalles public parklet, funded and installed by The Dalles Main Street Association, 2014*

### **Key Questions**

1. Has the pilot parklet program been a success?
2. Should the parklet program be permanent?
3. Should the parklet program be primarily public versus private?

**CONCURRENCE**

The Community Development, Planning, Engineering, Building, and Public Works departments have contributed to this staff report and concur with its findings and recommendations.

**FISCAL IMPACTS**

No fiscal impacts are anticipated, unless City funds are proposed to be used to fund additional parklets.

**RECOMMENDATION**

Staff recommends a Council worksession on September 15 to consider the question of developing a permanent parklet program. In addition to collecting information relative to the applicable criteria as discussed above, staff has already begun evaluating the current permitting process and will come back to Council with revisions. Additional future policy-level decisions for Council consideration include: public vs. private parklets and the use of City funds for parklet construction and installation.

