



CITY OF
West Linn

22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

**WEST LINN
CITY COUNCIL MEETING
NOTES
November 13, 2017**

[Call to Order and Pledge of Allegiance led by Willamette Cub Scout Pack 504](#)

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, Assistant to the City Manager Dylan Digby, Citizen Engagement Coordinator Courtney Flynn, Associate Planner Peter Spir, Public Works Director Lance Calvert, and City Attorney Tim Ramis.

Approval of Agenda

Council President Brenda Perry moved to approve adding an ad hoc working group to review the Willamette Neighborhood Mixed Use Transitional Zone to Business from the City Council as 7.c. and approve the agenda for the November 13, 2017, West Linn City Council Meeting. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Consent Agenda \[5 min\]](#)

Agenda Report 2017-11-13-01: Approval of Meeting Notes for June 26, July 10 and 24; August 7, September 11, and October 9, 2017

[Draft Notes Information](#)

Agenda Report 2017-11-13-02: Oregon Public Works Emergency Response Cooperative Agreement

[Cooperative Agreement Information](#)

Council President Brenda Perry moved to approve the Consent Agenda which includes the June 26, July 10 and 24, August 7, September 11, and October 9, 2017 meeting notes and the Oregon Public Works Emergency Response Cooperative Agreement. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: Councilor Teri Cummings.

The motion carried 4 - 1

[Community Comments \[10 min\]](#)

Peggy Kirkendall is concerned about the survey monkey survey. There is no description of what occurs at the community centers; however, there are descriptions for the other items. She would like more clarity and community representatives to review the survey questions when it moves to the statistical reliable survey.

[Proclamations, Recognitions and Scheduled Presentations \[20 min\]](#)

[Small Business Saturday Proclamation](#)

[Proclamation](#)

Council President Perry read the proclamation.

[West Linn Refuse Presentation](#)

Steve Donovan, Andy Kahut and Ray Kahut presentation.

[Presentation](#)

[Business Meeting \[1 hour\]](#)

Agenda Report 2017-11-13-03: Public Hearing – ORDINANCE 1663, RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE

ORD 1663 DeNovo Information

Citizen submittals

Mayor Axelrod called the public hearing to order on the proposal to approve CDC-17-04, Ordinance 1663 proposing amendments to Community Development Code (CDC) Chapter 99 reinstating the denovo review appeal process as an interim measure. He explained how the hearing would proceed.

City Attorney Ramis explained that Council's decision must be based on consideration of: 1) the statewide planning goals and administrative rules adopted under ORS Chapter 197, 2) applicable federal or state statutes or rules, 3) applicable plans and rules adopted by Metro, and 4) on the City's comprehensive plan and development code. The Council may consider any relevant testimony received. Failure to raise an issue during the City's hearing on this matter precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. Any party with standing may appeal the decision of the City Council to LUBA according to the rules adopted by that Board. Persons with standing include those who submit written comments or present oral arguments.

He asked Council if any members wished to declare a potential or actual conflict of interest.

Mayor Axelrod mentioned that he and Councilor Martin are members of the Committee for Citizen Involvement (CCI) which brought forward this matter at the recommendation of citizens.

City Attorney Ramis asked if any member of the audience wished to challenge the ability of any member of the Council to participate in this decision. There were no objections.

He explained this ordinance makes two fundamental changes in the land use appeal procedure when a case is appealed from the Planning Commission to Council. One of those changes is to allow new evidence to be presented at the City Council level. Currently, deciding the case is confined to the record that was made at the Planning Commission and people who might want to raise new issues, are not permitted to do that. This ordinance will change that rule and allow people to testify to new facts. The second change relates to the issues that might be raised on appeal. Currently, no issues may be raised that were not identified in the notice of appeal that was filed. Under this proposal, people will be able to raise additional issues. Council will also be able to raise additional issues. This ordinance essentially returns to how the City operated previously. The Planning Commission has heard this matter and recommends approval. They have added some language that relates to the record they make. This ordinance is intended as an interim proceeding. The City is in the process of reconsidering all of the procedures that

apply to applications and the processing of applications and appeals.

Council President Perry asked how many times this allows new evidence to be brought in.

City Attorney Ramis answered Council is the judge of that, the standard is fairness. There is a statute that applies to the first evidentiary hearing. At the Planning Commission level, if new evidence comes in and someone requests a continuance, that has to be granted. Once the case comes to Council, it is your judgment as to what a fair process is. Typically, the parties put evidence on at the evidentiary hearing and have some rebuttal. If there is a request for additional evidence, the staff would recommend a process of written submissions. That typically involves written submittals with a chance for everyone to respond to the other side's information and a final written argument by the party that has the burden of proof with no new evidence submitted with the final submission, argument only.

Councilor Martin thinks the wording is equally clear from the Planning Commission so he would like to stay with the Planning Commission's wording rather than potential alternative text refinements suggested by Mayor Axelrod.

Councilor Cummings feels consideration and weight mean the same thing.

Council President Perry does not believe there is difference so would be inclined to leave it as the Planning Commission stated.

Councilor Sakelik agrees.

Mayor Axelrod said to scratch his proposed alternative wording and leave as the Planning Commission submitted.

Councilor Cummings brought up the idea of when someone files an appeal, they should identify the issue, but not be limited to that one, to encourage people to not just do an appeal because they do not like it, but to identify a flaw to avoid frivolous appeals.

Mayor Axelrod asked the City Attorney if there has to be a basis for the appeal.

City Attorney Ramis explained in the current Code, you need to identify your specific grounds. Under what Council is considering now, the provision is that you may identify grounds for appeal. In his experience, people typically do. The change here is it becomes permissive rather than required.

Council President Perry is inclined to do this in detail later to make sure it is done properly. The letters she received were all in support of denovo.

Public Comments

There were none.

Council received emails that were forwarded to staff and he asked that they be made a part of the record. He closed the public hearing.

Council Deliberations

Mayor Axelrod recommended the language he suggested under 99.250.C. also be changed under 99.270.E. it says that the hearing on appeal shall be denovo; however, all evidence presented to 1) any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal. He would like to simplify it to: ...and shall be given equal consideration as evidence presented on appeal. He asked the City Attorney if the proposed language was keeping with the original intent.

City Attorney Ramis believes that is consistent with the Planning Commission discussion. Their critical concern was just because evidence happened to be given earlier, it shouldn't receive less consideration than evidence given more recently.

Council President Brenda Perry moved to approve First Reading for "Ordinance 1663 relating to the amendment of West Linn Community Development Code Sections 99.250, 99.270 and 99.280 to reinstate past provisions for the DeNovo review appeal process as an interim measure," and set the matter for Second Reading. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Council President Brenda Perry moved to approve Second Reading for "Ordinance 1663 relating to the amendment of West Linn Community Development Code Sections 99.250, 99.270 and 99.280 to reinstate past provisions for the DeNovo review appeal process as an interim measure," and adopt the ordinance. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod said the Committee for Citizen Involvement (CCI) is working on revising our Code which will help the planning review process.

Agenda Report 2017-11-13-04: Public Hearing – ORDINANCE 1665, VACATING A PORTION OF THE THIRD AVENUE AND TENTH STREET RIGHT-OF-WAY WITHIN THE CITY OF WEST LINN

ORD 1665 ROW Vacation Information

Mayor Axelrod explained Council is holding a public hearing regarding application number MISC-17-06 for the vacation of right-of-way on Tenth Street and Third Avenue, west and south of 1220 Ninth Street. This is a quasi-judicial decision. Unlike in legislative hearings, where personal opinion may come into play, quasi-judicial rulings must be grounded in the relevant code, and if the application meets the code, the Council must approve it. He explained how the hearing would proceed and called to order the public hearing.

City Attorney Ramis explained the applicant has the burden of proving that the application is consistent with the provisions of Oregon Revised Statute (ORS) 271.080 to 271.120. The criteria that must be addressed in this hearing are ORS 271.120. As the City Council is sitting quasi-judicially, any testimony, argument or evidence that speakers give the Council must be directed at these criteria. Prior to the conclusion of the first public hearing on an application anyone who takes part in the hearing may request a continuance or ask that the record be left open to present additional information. If there is such a request, the Council will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument or testimony. Failure to raise an issue accompanied by statements or evidence sufficient to allow the Council and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.

He asked Council if they wished to declare a potential or actual conflict of interest or bias. There were none.

He asked if any member wished to report any site visits or ex parte contacts. Councilor Cummings drove up Ninth Street and took a look.

He asked if any member of the audience wished to challenge the jurisdiction of the Council to hear this matter. There were none.

He asked if any member of the audience wished to challenge the impartiality or ex parte disclosures of any member of the Council. There were none.

Associate Planner Spir staff presentation.

Presentation

Mayor Axelrod asked about the map, if the properties not surrounded in red did not approve of the proposed action.

Associate Planner Spir explained when people request a street vacation, staff makes it clear

what is required and that they have to meet the 66% benchmark. Since they met the benchmark, they might not have sought any more approval.

Applicant's Presentation

Zach Pelz has the requisite signatures from the property owners, it is not detrimental to the public, the Transportation System Plan does not identify these as improved streets at any time in the foreseeable future, and they bisect environmentally sensitive areas. This property is constrained by those environmentally sensitive areas to the extent that there is no future land division that could accommodate the street improvements that would be necessitated by building homes on these lots. Our purpose is to eliminate the number of required street improvements that the City would otherwise require. There is approximately 1,100 linear feet on public right-of-way and by doing this would reduce it to 800 feet along Ninth Street and make it feasible to build up to three homes on these properties.

Public Comments

There were none.

Mayor Axelrod asked if you need to vacate a right-of-way to develop rather than apply for a variance.

Associate Planner Spir replied one way might be a variance, but that would be a challenge under Chapter 96 where through the Public Works Director you may receive a fee-in-lieu. This street vacation is the cleanest way to eliminate future requirements for street improvements. We support this way due to the resource and environmental constraints that are at this location. We may receive more of these requests in the future where we have right-of-ways that were platted in 1910 and have no relationship to the actual conditions at the locations.

Councilor Cummings asked if this required a neighborhood association meeting.

Associate Planner Spir replied no. The notice is per ORS which says you need to have a newspaper notice two consecutive weeks prior to this meeting and a post-it notice on either end of the right-of-way. There is not a notice mailed to anyone and no requirements for meeting with the neighborhood association. There is de facto notice achieved since a notary is wandering throughout the neighborhood for a couple of months knocking on doors and asking if they will support this street vacation so the word does get out, they have to contact 75% of the people in the area.

Councilor Cummings is surprised by this. Most of this is 200 to 400 feet from the area and the neighbors might want a street there to help with circulation.

Associate Planner Spir replied staff looks at the Transportation System Plan and the Trails Master Plan. It might not be appropriate to put a road there but might be a safe route to school and they would recommend keeping an easement for a trail. In this case, they are

keeping utility easements.

Mayor Axelrod closed the public hearing. He felt the ordinance left out the environmental benefits of the reasoning behind the decision so he proposed additional language to the ordinance: "1) whereas, by not vacating the right-of-ways the viability and health of the parks wetland and associated habitat conservation area could be adversely impacted; 2) whereas, by vacating the right-of-ways the public interest of resource protection will be served."

City Attorney Ramis read the amendments: 1) whereas, by not vacating the right-of-ways the viability and health of the parks wetland and associated habitat conservation area could be adversely impacted; 2) whereas, by vacating the right-of-ways the public interest of resource protection will be served.

Council President Brenda Perry moved to approve First Reading for "Ordinance 1665 vacating a portion of the Third Avenue and Tenth Street right-of-way within the city of West Linn, Oregon with the changes as read," and set the matter for Second Reading Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Council President Brenda Perry moved to approve Second Reading for "Ordinance 1665 vacating a portion of the Third Avenue and Tenth Street right-of-way within the city of West Linn, Oregon with the changes as read," and adopt the ordinance. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod informed the audience if you would like to appeal this decision to the Land Use Board of Appeals, you must file an appeal in accordance with the Rules of the Land Use Board of Appeals and any applicable provisions in the Community Development Code.

[Agenda Report 2017-11-13-05: ORDINANCE 1667, AMENDING THE 2008 FRANCHISE GRANTED TO WEST LINN REFUSE AND RECYCLING, INC., FOR SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES](#)

[ORD 1667 WL Refuse Information](#)

Public Works Director Calvert staff report.

Mayor Axelrod suggested the language: from time to time, the site of the event may change at the sole discretion of the Company be changed to: from time to time, the site of the annual event may change and will be determined by agreement between the City and the Company. City Attorney Ramis read page 2, section 2. In addition to a once per year household debris pick-up at the customer's request, the Company will also host a fall cleanup and recycling drop-off event. The event will be held at a location selected by the Company and coordinated with the City to facilitate safe and efficient service delivery. From time to time, the site of the annual event may change and will be determined by agreement between the City and the Company. The event will be at the full expense of the Company. The City and the Company will coordinate the event with Metro to make the program eligible for grant funding, if available.

Council President Brenda Perry moved to approve First Reading for "Ordinance 1667 amending the 2008 franchise granted to West Linn Refuse and Recycling, Inc., for solid waste, recycling and yard debris collection services with the changes as read," and set the matter for Second Reading. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Council President Brenda Perry moved to approve Second Reading for "Ordinance 1667 amending the 2008 franchise granted to West Linn Refuse and Recycling, Inc., for solid waste, recycling and yard debris collection services with the changes as read," and adopt the ordinance. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Business from the City Council \[20 min\]](#)

[Agenda Report 2017-11-13-06: City Council Rules Amendments](#)

[Council Rules Information](#)

Council President Brenda Perry moved to approve the revised City Council Rules. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, and Councilor Richard Sakelik.

Nays: Councilor Bob Martin.

The motion carried 4 - 1

Citizen Advisory Board Appointments:

Committee for Citizen Involvement

Public Safety Advisory Board

Sustainability Advisory Board

Mayor Axelrod placed before Council the following Advisory Board Member Appointments:

Committee for Citizen Involvement – Ramiah Ramasubramanian

Public Safety Advisory Board – Mark Schofield

Sustainability Advisory Board – John Rose

Council President Brenda Perry moved to approve the Mayor's appointments. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Willamette Neighborhood Mixed Use Transitional Zone Working Group

Mayor Axelrod explained Council is forming a focus group to work on the mixed use transitional zone in Chapter 59. The Committee for Citizen Involvement (CCI) and staff reached out to the Neighborhood Associations, Chamber of Commerce, and other advisory boards. Council is going to appoint all members except the Chamber member because they do not have a name from the Chamber yet. Following are the appointments:

Economic Development Committee - Shannen Knight

Planning Commission - Jim Farrell (Gary Walvatne will do transitioning with Mr. Farrell)

Historic Willamette Main Street - Noelle Brooks

For the Neighborhood Associations:

Bolton - Roger Straus

Willamette - Gail Holmes

Savana Oaks - Rishi Bansal

Robinwood - Jim O'Toole

Council President Brenda Perry moved to approve the Mayor's appointments. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Report of the City Manager \[10 min\]](#)

City Manager Stein asked Council what their decision was on the request by the Neighborhood Associations President's (NAP) request to use the \$4,000 reserve funds for the cost of growth study.

Council President Perry said the reports say the tables can be updated by the staff and that would be a good way to start. She is concerned they haven't done due process on this, that the NAP didn't discuss this with their neighborhood associations. She wants to see useful data. It is good to know how much growth costs. We need to know the cost of development but also what will be brought into the City at a later date, like businesses. We cannot increase our System Development Charges (SDCs), we know we are really high on our SDCs.

Councilor Martin is concerned we don't have a formal process for allocating funds. He ask the City to take the recommendations done in 2012/13, review and update those and give Council a recommendation on a procedure. He would like to create a 501(c)(3) where advisory boards can accept donations and use for their activities. If the goal of this report is to inform citizens on the cost of annexation, it does not do that, it talks about the cost of growth. If this report is done, there needs to be a scope of work that focuses it on the cost of annexation.

Councilor Cummings agrees with the concerns about having a clear process. This was brought up during the budgeting process. It is to be able to make an informed decision, for instance, if you are making a zone change, trying to decide if you should make it commercial, industrial, or residential. This study can show you unfunded impacts. We don't collect SDCs for police, school, fire, library, or public buildings. The more residential we bring in, the school has to go back to the taxpayers to build more classroom space. It is just about being informed. The City had provided this information, what the potential cost would be, for annexations for many years.

Councilor Martin referred to this as one possible data source to be used in evaluating annexations because we've received letters that talked about that. If we are going to fund a study, it should be relevant to that. What we have is too broad. It doesn't consider if it were annexed or not, it needs to have both of those to be useful. It is important to have a definition of exactly what they want to accomplish. If we just updated the report, it will not accomplish what we want.

Council President Perry does not believe this is something the neighborhood associations (NAs) should be doing, it is something we should be doing as a city. When you are looking at island annexations, all the utilities, road, etc. are all pretty much there. That is very different

from annexing outside of the city. The report could come back and say development is best for the city because it brings in more money.

Councilor Sakelik agrees with Councilor Cummings. Once we go through the process, we award money to the NA's so they can use the money as they choose. If the NAs want this, for whatever reason they want, we should honor that. If we want to do it for our benefit, we should look at it from our different points of view. This has gone partially through the process and we should be consistent in going through the process.

Councilor Martin said first we need to have a process. Let's have that done and follow it. If we go through this process and decide the city has a role, then we would ask for a more defined statement of the outcomes before we decide to fund and I think that is a fair way to do that. It is still city money.

City Manager Stein clarified the policy was adopted in 1993 and 2008. She read a document from 2012 which talks about this reserve being an emergency reserve. There is a PowerPoint from May 2013 that also talks about this money being a reserve. In 2008 there is no reference to the emergency fund. She will do more research to find out what is the final policy.

Councilor Cummings does not think the information compels them to make one decision or another. It is good to have financial data available. The more information you have, the better.

Council President Perry believes in useful data. She would prefer if the city collected this information and included the full cost of development and the differences between economic, high density, low density, and collected this data efficiently and then the city can make this information available publicly. This is better than having someone we haven't even vetted to see if they are doing the type of report we want for West Linn.

Mayor Axelrod says they all want to understand the cost of growth. We need to understand what we are doing, why we are doing it and what is the process. Where are we going, what are the objectives, what is the scope of work? It is important to understand the work that we are doing and how we can do it most cost effectively. The problem is that we don't have a policy for spending the funds. We need to define what are the terms and what are we doing, what we are spending the money on. We cut back on funding the food bank this year and so a few thousand dollars makes a difference in our spending priorities. If the NAs are agreeing to spend the money, I think the process in the 2012 policy is legitimate. I have been told the process hasn't been followed with all of the NAs. That is just a fundamental check-in with the community that we are proposing to spend 40% of the reserve money on this, do you want to do it? This is a part of growth, but it isn't about SDCs. The cost of annexation and other growth is important, we are not planning to grow our city boundary. In the prior study, the money equated to about \$1.50 per household. It isn't just monetary however, there are other quality of life issues related to growth. I just want to follow a process like we do for all the decisions we make and vet all issues.

City Manager Stein wants citizens to understand this was one of the many potential additions to the budget that the budget committee considered at that time and we have a limited amount of money we can consider. This item did not receive as many votes as other items did. It is Council's prerogative to change this outcome, but it will be a budget impact. If individual NAs want to pool their money and pay for this study, that might be another option. She still wants to understand what the impact would be on staff workload to help update the report.

Council President Perry talked about respect for each other, people testifying, and staff. There has been a lack of respect from some of the members of the public. Council asked the City Manager to go to the NA meetings and she was not treated with respect at the meeting. If staff or Council goes to a NA meeting, they should be treated with respect.

Councilor Martin said there is an interesting distinction between data and information. Data is the raw numbers, information puts those numbers together in some way. To turn data into information, you have to have some context, some goal. We have a request to inform the citizens about the true cost of annexation and that goes beyond SDCs and property taxes. That is why this is a valid request and an important thing to do. We may have annexations come up in the future. We need to define the information we want.

Mayor Axelrod said we need more data and information to inform the process moving forward.

[Report of the City Attorney \[5 min\]](#)

City Attorney Ramis updated Council on the following four items:

1. LUBA case challenging the Upper Midhill decision. The Applicant has intervened to defend the approval that was granted. Procedurally, the record has been settled. The brief from the challengers has been filed. The brief on the response side is due November 27 and oral argument is scheduled for December 14. There is a request from the Appellant for an extension of this date.
2. The question to the Secretary of State about the appropriateness of having a link on the City website to Council social media pages of Council members. The City should not be providing this link unless Councilors can provide assurances that they will not be advocating on their social sites.
3. The application for Council approval of a development agreement is scheduled for December 4 for general discussion on development agreements and perhaps an executive session on aspects of this particular agreement.
4. The Notice of Claim on restriction of parking near high school. There was a Writ of Review filed at circuit court. We were never served and the court never issued it because the court

determined that was the wrong legal document to file. We have received another letter that is a notice of intent to file a Declaratory Judgment. When that comes in, we will know what the arguments are and will prepare a response. We may want to have an executive session to talk about that.

Councilor Sakelik asked about the LUBA case on Upper Midhill. Is the Applicant required to not do any work up there? Do we know if the Applicant has moved forward?

City Attorney Ramis explained there is no automatic stay or injunction. Since they have an approval, they can rely on it and move ahead. There is the ability for a challenger to ask for a stay, but that has not been requested in this case. Usually an Applicant does not proceed with an expensive project because of the risks and often a lender will say no. As far as we know, they are waiting, but we can have staff check.

Councilor Sakelik asked on the Secretary of State social media response, should they have zero links to social media on our pages? Does Council have to approve that or can staff just take care of it?

City Attorney Ramis responded yes, he recommends the links be terminated. Staff will remove the link.

Councilor Sakelik asked if we are scheduling an executive session to discuss the development agreement?

City Attorney Ramis responded we have December 4 set aside to discuss development agreements, but nothing in addition to that at this time. The application was finalized sometime in October which puts the 120 day clock in February.

City Manager Stein explained the application is just for the development agreement, not the entire land use process.

City Attorney Ramis explained the development agreement sets forth a series of applications that have to be filed and approved.

Council President Perry asked if the development agreement comes straight to the Council, not to the Planning Commission.

City Attorney Ramis replied that is true.

Mayor Axelrod would like to see the Secretary of State's decision to forward to other Mayors. He noted that Staff does not work on or otherwise expend resources on his Facebook page.

City Manager Stein said Councilors could stay away from advocacy or we could cut the link

prior to an election. Safest thing to do is remove the link.

Councilor Sakelik explained how you can do advocacy on Facebook.

[Adjourn](#)

DRAFT



CITY OF
**West
Linn**

Fall Cleanup Program Results



City Council Briefing

West Linn Refuse & Recycling, Inc.

November 13, 2017



Tonight's Agenda

- 🍃 Results of the October 7th Fall drop off event
 - 🍃 Recovery and disposal volumes
 - 🍃 Costs
- 🍃 Debrief – what worked, what we can do better
- 🍃 Discussion and next steps

Operating Results of the October 7th Event



Item Description	Measured Result
• Number of participating WL households	615
• Tires (recycled by Les Schwab at no cost to WL customers)	150
• Televisions	36
• Computer monitors/CPU's	40 boxes
• Printers, faxes, stereos, and copiers	207 boxes
• Shredded documents	7.03 tons
• Household batteries	0.74 tons
• Scrap metal	9.47 tons
• Donations to Goodwill	6 tractor trailer loads
• Solid waste disposed at Metro South (at no cost to WL customers)	21.11 tons

Financial Results of the October 7th Event



Labor	\$ 6,817.59	
Vehicles and equipment	4,930.65	
Printing, mailing, and marketing	722.15	
Disposal cost net of recycling revenues	<u>40.65</u>	<input checked="" type="checkbox"/>
Total	<u><u>\$ 12,511.04</u></u>	

Notes:

-  Disposal costs low due to donations from Good Will, Les Schwab, and Metro

Debrief – What Worked, and What We Need to Improve



What worked:

- Document shredding, new, and very popular
- Goodwill Industries presence (recycle and reuse)
- Les Schwab tire recycling

What we need to improve:

- Traffic control
- Customer wait times at peak hour (i.e., 11:00 am)





GOODWILL

DONATION CENTER

Our business is changing lives.





WASTE 2B WILLES
508-258-6300

MOBILE DOCUMENT SHREDDING

STATION
5



Council Questions & Discussion



Mollusky, Kathy

From: Roberta Schwarz <roberta.schwarz@comcast.net>
Sent: Thursday, November 09, 2017 9:03 PM
To: City Council
Subject: Please reinstate De Novo Hearings

THIS LETTER IS MEANT TO BE ADDED TO THE WRITTEN TESTIMONY FOR THE NOVEMBER 13, 2017 HEARING ON ORD. 1663 (RESTORING DE NOVO)

Dear Mayor Axelrod and City Council,

Please reinstate De Novo Hearings in West Linn. The citizens do not have the money required to fund professional entourages to accompany us to land use hearings. We need to have time to research and educate ourselves after the Planning Commission decides a land use case. We would like new information to be heard at our appeals to the City Council. This is the way it was in West Linn before "Cutting the Red Tape" was rushed through by a previous Council.

Please level the playing field and give us De Novo hearings again.

Thank you and please put this into the public record,
Roberta Schwarz

Mollusky, Kathy

From: Rebecca Adams <radams014@gmail.com>
Sent: Thursday, November 09, 2017 12:52 PM
To: City Council
Subject: Written testimony to Council for Hearing on De Novo (Ordinance 1663) November 13th, 2017

THIS LETTER IS MEANT TO BE ADDED TO THE WRITTEN TESTIMONY FOR THE NOVEMBER 13, 2017 HEARING ON ORD. 1663 (RESTORING DE NOVO)

Dear Members of City Council,

I think we all can agree that we would like a hearing process that renders the best overall result while honoring the rights of both the applicant and the citizens.

De novo does give citizens, who naturally are not experts in land-use, more of an opportunity to fairly engage in the process since studying the regulations, rallying support for their perspective, raising money to hire technical and legal experts takes much more time for them than such tasks would take a typical applicant who already has a professional team in place.

On-the-Record penalizes those who are not smart enough, quick enough, or rich enough to embed the “right” evidence or questions into the first hearing. This is where the professionals so thoroughly outpace the abilities of the average citizen who face a steep learning curve as they identify relevant truths bearing upon the case.

There is an important, but less obvious reason why returning to the De Novo Appeals Hearings supports this goal of attaining the best outcome all around. I learned this by listening to the Committee for Citizen Involvement tapes and am surprised this reason is not front and center in the discussion, it being so profound. On-the-Record perversely restricts the judging body during the conditioning phase of the proceedings.

Imagine a scientist faced with a real life problem to be solve, but restricting the solution to only those solutions previously presented or those supported by data that had made it into a highly restricted record? In many ways this is what On-the-Record does. By restricting the discussion and evidence on appeal, it to some extent restricts the range of solutions that can be conditioned into the outcome.

Citizens and applicants alike have a vested interest in empowering our judging body members to craft the best real life solutions possible based on the evidence and arguments presented, but also based on the ability of five intelligent persons to craft new solutions to truly resolve the issues of the case. De Novo restores that potential.

Please allow an immediate return to De Novo today, while at the same time affirming your ongoing support of the CCI's long range review of various ways to improve our land-use process.

Thank you,

Rebecca Adams

Address on Record



ANY INFORMATION PROVIDED MAY BE CONSIDERED PUBLIC RECORD AND SUBJECT TO DISCLOSURE

I wish to speak during **Community Comments** on a non-agenda related item (limited to five minutes):

Please specify topic (required): *Survey for possible bond issue*

I wish to speak during the **Business Meeting** on the agenda item listed below (limited to five minutes):

Please specify agenda report number(s) or topic(s) (required):

I wish to speak on **Ordinance 1663, proposing amendments to CDC Chapter 99 and reinstating past provisions for the DeNovo review appeal process (limited to five minutes):** The Council’s decision must be based on consideration of: 1) the statewide planning goals and administrative rules adopted under ORS Chapter 197, 2) applicable federal or state statutes or rules, 3) applicable plans and rules adopted by Metro, and 4) on the City’s comprehensive plan and development code. The Council may consider any relevant testimony received.

I do not wish to speak however; I would like to have standing on this item.

Issue:

Failure to raise an issue during the City’s hearing on this matter precludes an appeal to the Land Use Board of Appeals based on that issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board.

In Support Neither for nor against In Opposition

I wish to speak on **Ordinance 1665, vacating a portion of the Third Avenue and Tenth Street right-of-way within the City of West Linn (limited to five minutes):** The applicant has the burden of proving that the application is consistent with the provisions of Oregon Revised Statute (ORS) 271.080 to 271.120. The criteria that must be addressed in this hearing are ORS 271.120. Testimony on other issues will not be accepted.

I do not wish to speak however; I would like to have standing on this land use item.

Issue:

Failure to raise an issue during the City’s hearing on this matter precludes an appeal to the Land Use Board of Appeals based on that issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board.

In Support Neither for nor against In Opposition

Please print:

Name:

Peggy Kuhlendall

Address:

1825 Webb St.

City:

West Linn

State

Or.

Zip

97068

Email (optional):

peggy@wlnigwa.com

Phone (Optional):

503-709-2743

City of West Linn

Testimony Form

- **Community Comments** is an occasion for members of the public to speak for five minutes on any community matter other than a specific agenda items.
- **Business Meeting** is established for City Business. The public is invited to speak for five minutes about an item listed on the agenda.
- **Public Hearing.** The public is invited to speak for five minutes regarding Ordinance 1663 relating to the amendment of West Linn CDC Sections 99.250, 99.270, and 99.280 to reinstate past provisions for the DeNovo review appeal process as an interim measure and/or Ordinance 1665, vacating a portion of the Third Avenue and Tenth Street right-of-way within the City of West Linn. All comments must relate specifically to the applicable criteria and refer only to evidence and facts already in the record. No new facts or evidence may be submitted.
- Persons requesting to speak must first submit a completed testimony form to the City Recorder. When called upon, speakers shall first state their name and address for the record. Copies of written comments and materials are to be handed to the City Recorder (preferably before the meeting begins).
- Council may adjust comment time according to the length of the agenda. Verbally abusive or slanderous comments are not allowed.



22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

CITY COUNCIL AGENDA

Monday, November 13, 2017

5:00 p.m. – Pre-Meeting Work Session – Rosemont Room

6:30 p.m. – Business Meeting – Council Chambers

-
1. Call to Order and Pledge of Allegiance led by Willamette Cub Scout Pack 504
 2. Approval of Agenda
 3. Consent Agenda [5 min]
 - a. Agenda Report 2017-11-13-01: Approval of Meeting Notes for June 26, July 10 and 24; August 7, September 11, and October 9, 2017
 - b. Agenda Report 2017-11-13-02: Oregon Public Works Emergency Response Cooperative Agreement
 4. Community Comments [10 min]
 5. Proclamations, Recognitions and Scheduled Presentations [20 min]
 - a. Small Business Saturday Proclamation
 - b. West Linn Refuse Presentation
 6. Business Meeting [1 hour]
 - a. Agenda Report 2017-11-13-03: *Public Hearing* – ORDINANCE 1663, RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE
 - b. Agenda Report 2017-11-13-04: *Public Hearing* – ORDINANCE 1665, VACATING A PORTION OF THE THIRD AVENUE AND TENTH STREET RIGHT-OF-WAY WITHIN THE CITY OF WEST LINN
 - c. Agenda Report 2017-11-13-05: ORDINANCE 1667, AMENDING THE 2008 FRANCHISE GRANTED TO WEST LINN REFUSE AND RECYCLING, INC., FOR SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES
 7. Business from the City Council [20 min]
 - a. Agenda Report 2017-11-13-06: City Council Rules Amendments

- b. Citizen Advisory Board Appointments:
 - i. Committee for Citizen Involvement
 - ii. Public Safety Advisory Board
 - iii. Sustainability Advisory Board
- 8. Report of the City Manager [10 min]
- 9. Report of the City Attorney [5 min]
- 10. Adjourn

Meeting Notes:

The Council Chambers is equipped with an induction loop and a limited number of neck loops for the hearing impaired. Please let the City know if you require any special assistance under the Americans with Disabilities Act, please call City Hall 48 hours prior to the meeting date, 503-657-0331.

Community Comments provide an opportunity for statements from citizens regarding issues related to City government, properly the subject of Council/Commission consideration and not issues on the agenda. Persons wishing to speak shall be allowed to do so only after completing forms provided in the foyer in advance of Community Comments. All remarks should be addressed to the governing body. The City Council/Planning Commission will not engage in discussion with those making comments. The time limit for each participant is five (5) minutes or will be set by the Mayor or Chair.

Consent Agenda items are routine and will not be allotted individual hearing time. The items may be passed in one blanket motion. Any member may remove an item for discussion or questions by requesting such action prior to consideration.

Persons wishing to speak on agenda items shall be allowed to do so only after completing the forms provided in the foyer and returning them to the Clerk prior to the item being called for discussion. A separate slip must be turned in for each item. The time limit for each participant is five (5) minutes, unless the Mayor decides prior to the item to allocate more or less time.

When needed, the Council will meet in Executive Session pursuant to ORS 192.660.

Please help us to accommodate citizens who are chemically sensitive to fragrances and other scented products. Thank you for not wearing perfume, aftershave, scented hand lotion, fragranced hair products, and/or similar products.

Agenda Report 2017-11-13-01

Date: November 2, 2017

To: Russ Axelrod, Mayor
Members, West Linn City Council

From: Kathy Mollusky, City Recorder *KM*

Through: Eileen Stein, City Manager

Subject: Consent Agenda

Purpose

Approval of City Council Notes

Question(s) for Council:

Does Council wish to approve these City Council Meeting Notes?

Public Hearing Required:

None required.

Background & Discussion:

The mentioned City Council Meeting Notes are ready for Council approval.

Budget Impact:

N/A

Council Options:

1. Approve Council Notes
2. Revise and approve Council Notes

Staff Recommendation:

Approve Council Notes

Potential Motions:

Approval of the Consent Agenda will finalize this set of notes.

Attachments:

1. June 26, 2017 Council Meeting Notes
2. July 10, 2017 Council Meeting Notes
3. July 24, 2017 Council Meeting Notes
4. August 7, 2017 Council Meeting Notes
5. September 11, 2017 Council Meeting Notes
6. October 9, 2017 Council Meeting Notes



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22500 Salamo Road
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**WEST LINN
CITY COUNCIL MEETING
NOTES
June 26, 2017**

Call to Order

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, Records Coordinator Teresa Zak, Assistant to the City Manager Dylan Digby, City Attorney Tim Ramis, IT Director Shane Boyle, Finance Director Lauren Breithaupt, Associate Planner Peter Spir, and Finance Director Cathy Brucker

Community Comment

There were no community comments.

Consent Agenda

~~**Agenda Report 2017-06-26-01: Approval of Meeting Notes for May 8 and 16, 2017**~~

Draft Notes Information

Council pulled Agenda Report 2017-06-26-02: Clackamas County Fiber Optic Service Level Agreement Amendment No. 2 Approval off the Consent Agenda and moved it to the Business Meeting and pulled the Draft Notes off the Agenda.

Business Meeting

[Agenda Report 2017-06-26-02: Clackamas County Fiber Optic Service Level Agreement Amendment No. 2 Approval](#)

[Fiber Optic Service Information](#)

IT Director Boyle staff report.

Council President Brenda Perry moved to authorize the City Manager to execute Amendment 2 to the Fiber Optic Service Level Agreement with Clackamas County. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-06-19-05: Reconsideration of Final Decision, Findings and Conditions of Approval to deny the appeal of the 34 lot subdivision at 1800 Upper Midhill Drive – Continued Discussion](#)

[1800 Upper Mid Hill Reconsideration Information](#)

City Attorney Ramis asked Council if any members had any ex parte communication, conflict of interest, or bias since the last meeting.

There were not any.

Mayor Axelrod has some suggested changes as follows: Item 11 on the Traffic Management Plan (TMP). There are two areas where this information appears, (1) in the findings and (2) in the conditions. His understanding is the one in the findings discussion was going to have inserted, "at minimum" where it states "this shall consist of these things." The statement at the end was going to be deleted and included only in the conditions. For the TMP, there was a statement there he suggested, "the TMP shall be amended as necessary to meet any new conditions realized during the planning and implementation phases of the project." He asked if "at minimum" need to be included because of those statements.

Associate Planner Spir answered that staff wanted to make sure the findings were in agreement with the conditions of approval and that the findings or conditions were compromised with the inclusion of those phrases.

Mayor Axelrod continued: The conditions on page 19, Item 11, the statement about amending the TMP is there; however, it is not under Item 15. On page 21, the language is there for the

TMP. On the CMP, Item 15 the same language needs to be inserted. He asked Council to consider on Item 13, Supplemental Geotechnical Analysis on page 21 after the first sentence that ends with building sites, inserting “and any impacts of soil removal to tree retention on the property.” It would read, “the Applicant shall prepare a supplemental geotechnical analysis addressing the soils condition across the property and in the areas of the local streets within the subdivision including an estimate of the amount of soil to be removed and in order to construct the streets and develop the building sites. “ Add, “and any impacts of soil removal to tree retention on the property.” He is concerned if the geotechnical report showed no trees could remain on the site, that would change the plan.

Associate Planner Spir replied there is a bit off a cross-over to Condition 8 which states, “In the event that the geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal.” Mitigation of tree loss is based on the findings of the geotechnical report as stated in Condition of Approval 8. We were talking about mitigation for removal of 434 inches of trees and in the event the grading is more extensive than anticipated, then they would be required based on the geotechnical report to mitigate.

Mayor Axelrod asked if the geotechnical report showed that every tree, or nearly every tree, needed to be removed, might that require some adjustment in the property use because our code does not allow removing all the trees if there are that many significant trees? He understands they are going to mitigate on an inch-by-inch basis, but if the geotechnical analysis shows that they are removing more than we imagined and it goes beyond that 20% criteria in the code, maybe we have to change a couple of home sites.

Associate Planner Spir explained the Code talks about saving up to 20% as aspirational, so the purpose of the geotechnical report would be to demonstrate that the site is buildable. If it is determined that things are quite different on further study, they would be required to show how it could be developed and the applicant could then decide if he wanted to go ahead with the project or pursue the construction consistent with the recommendations of the geotechnical report.

Council discussed changing the Code, modifying the site plan, slope stability, how much soil might need to be removed, and the geotechnical design.

Councilor Martin is concerned that the public does not have a chance to comment on these changes to the project. He does not want to see this go to LUBA.

Mayor Axelrod explained that the Planning Commission already approved the geotechnical analysis so all Council has done is ask them to comment for the soil removal, not just for the road portion, but for the project. He believes this is going to help both the City and Applicant understand the volumes of dirt they are going to have to move and because they have a traffic mitigation plan and a construction plan for moving dirt, in case there needs to be adjustments to the plan.

Councilor Martin wants to make sure it only affects those two plans. He is concerned if it goes beyond that to changing the scope of the project. He asked City Attorney Ramis for clarification.

City Attorney Ramis stated Councilor Martin is raising a very good question. He thinks the solution is if it turns out that a huge volume of dirt needs to be removed, there would have to be an amendment to those conditions and then the Applicant would have to come back here seeking an amendment. The conditions suppose a reasonable amount of removal of dirt. If the removal is inconsistent with the condition, then this condition will not work. With respect to trees, there is the Code and a specific standard in Condition 8, the 1" standard tree loss would apply.

Councilor Perry is concerned they are stepping over the boundaries. The original was brought in with the dirt because of the traffic mitigation. She understands about the trees, but they have to rely on the City Code. If there are significant changes, they will have to come for an amendment. She does not think Council should put anymore in here than there is right now. She prefers to leave it as is. She does not want to go beyond the original appeal.

Mayor Axelrod just wanted to put forth the conditions so that it would bring forth the requirement in the amendment, but if Council doesn't support that then they can approve that one without change. The other item he had was Council had asked staff to look at the neighborhood plan, how they were going to get together and how that was going to work. He did not see anything in the conditions about that.

Associate Planner Spir stated Condition 15 requires outreach to the neighbors abutting the property in the form of a flyer that would explain the starting and potential ending dates of the project, days and hours of operation, a brief description of activities, and the name and telephone number of a resource/question line. Also, neighbors may contact the City so we can address any issues with the Applicant and get them corrected. In the Code, there are provisions related to dust, noise, and abatement. In the Public Works standards, there are erosion control standards. The issues that usually arise when a subdivision is being developed are dust, mud in the road, and noise so we already have the mechanisms in place and we have this subdivision management plan as a condition. They were not able to come up with anything more regarding meetings with the neighbors.

Councilor Cummings asked with number 2, the engineering standards, would the Tualatin Valley Fire and Rescue (TVF&R) criteria stated in their letter going to be somewhere? She is concerned the slopes exceed the criteria and wondered how that would be dealt with. She is concerned with the ability for TVF&R to get through these narrow streets.

Associate Planner Spir responded that TVF&R has their construction standards. When it is laid over the City, many of the streets do not comply with the 12% slope they desire. He spoke with TVF&R and they said they would get to any emergency as necessary. This site was reviewed and supported by TVF&R due to the looping road that allows access from the top of the site,

the hillside, and the lower portion. The roads are existing and are currently being used by TVF&R for emergencies.

Council discussed different ongoing communication forums they would like the Applicant to have with citizens. The decided to add Condition 18 to address their concerns.

The Applicant proposed to have monthly, half hour neighborhood update meetings. This would start after construction drawings/site work approval.

City Attorney Ramis summarized the issue of communication was discussed during the hearing so finding a solution to that is an appropriate thing to do during Council's deliberation and imposing the condition makes sense. He clarified the sections being amended are: (1) 15 to create a parallel requirement with 11 and (2) the addition of 18 to address neighborhood communication.

Council President Brenda Perry moved to adopt the revised finding with the amended amendments just stated by Mr. Ramis containing the final decision and findings with the attached conditions of approval and deny the appeal of AP-17-01 and uphold the Planning Commission's approval of the 34-lot subdivision Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-06-26-03: City Legal Services Structure - Discussion and Consideration of Possible Charter Amendment Language](#)

[City Legal Services Information](#)

[Citizen Emails Received](#)

City Manager Stein went through the legal services information that is posted.

Council discussed what information (i.e., emails) should be attached to Council Meetings when it occurs outside of the meeting.

Community Comments

Roberta Schwarz thanked Council for all the parks, their work on Highway 43, the Stafford Hamlet IGA, completing the budget, and the waterfront project. She would like Council to put the legal services to a vote.

[Roberta Schwarz submittal](#)

Sherry Pryor would like Council to put legal services to a vote.

Reana Hidarman would like Council to put legal services to a vote and would like the parks cleaned up.

Mary Hill would like Council to decide this issue, that is why they were elected, to make decisions.

Paul McGilvra wants Council to oversee all legal services and remove Section 21(A) from the Charter.

[Paul McGilvra submittal](#)

Ramsah Ramasubramanian wants Council to examine the issue and be good stewards of taxpayer money.

Lamont King wants the City Attorneys to report to the Council.

Kevin Bryck would like the City Attorneys to report to the Council.

Peggy Kirkendall wants all attorneys to report to the Council.

Karie Oakes wants Council to ask the citizens what they want and approve a Charter amendment.

Kathy Selvaggio wants legal services to report to the Council.

City Manager Stein explained how some of our legal services (i.e., labor attorney) should not report to Council.

Council President Perry explained that she has heard the citizens. She believes the creation of this position was questionable. She would like to focus on the current situation and future. She feels this position has been used for things it should not have been used for. There have been many changes and most of the previous issues no longer exist. She is an independent thinker and does what is best for the City. During her campaign, she felt the organizational structure was unbalanced. The citizens elect the Council and expect the Council to listen to them and to make decisions that reflect their wishes. The City Manager hires the staff and makes sure the City is run according to the direction of the Council. Council needs to make sure they maintain that balance. The City may be a hybrid system, but that does not mean it is wrong, she believes it is an effective system that saves time and money. The Charter requires Council oversees the City Attorney, she believes that is only the Jordan, Ramis office. The Charter also states the City Manager hires the staff, this does not preclude the hiring of a Staff Attorney or other legal services. She would like the job description to divide the Staff Attorney from the City Attorney.

Mayor Axelrod read the attached perspective.

[Mayor Axelrod's Perspective](#)

Councilor Sakelik stipulated Resolution 2013-10 and the measure was done with ill-intent. He does not believe the citizens understood what they were voting on. He would like to give the citizens the ability to fix this. He does not want Council to decide for them. He believes a Staff Attorney reporting to Council works as well as a Staff Attorney reporting to the City Manager. He likes the current hybrid model, just wants it clear that legal reports to Council.

City Attorney Ramis stated Council does have the ability to hire and fire whom they wish in respect to legal counsel whether or not Section 8(f) is in there.

Mayor Axelrod wants it to be clear, simple language that is technically correct if it goes for a vote. Stating that Council is responsible for all legal counsel is not under our purview.

Councilor Martin believes Council all want the same thing. The right thing is to have independent legal counsel for Council. There is a strong dividing line in our form of government that has been around for hundreds of years. Council is the board of directors, the City Manager is the CEO. All legal services should not report to Council, the City Manager needs independent legal advice. There is an equal need for legal services for Council and the City Manager. The only Charter change he believes we need is to clearly delineate that the City Manager is empowered to hire legal services to do the job. If Council wants to be like Portland and have a strong Council form of government, we should make it a priority and change the Charter. Council and City Manager need to not unduly influence each other.

Council President Perry clarified the costs of legal services does not include the Staff Attorney, they are paid a salary. The costs of legal services is outside attorneys and they are paid hourly. She does not believe the problem is happening now so there is not anything to fix.

Councilor Cummings wants to be open and transparent. Council is trying to fix this issue for the future. Until 2012, the Council hired the City Manager and City Attorneys (plural) whether contracted or in-house. This language gives Council the flexibility to have attorneys under their purview. Currently, Council does not have a choice on having an Assistant City Attorney or not. This language is bringing it back under Council control.

Mayor Axelrod feels this could be dangerous under a rogue Council.

Councilor Cummings believes the voters could prevent this. The voters power was diminished when this was put under the City Manager's office. She believes everything is Council's responsibility. They do not need to be involved in administrative decisions like the brand of toilet paper unless it becomes a legal matter, then they do.

Councilor Sakelik feels Council is responsible to make sure the City Manager works well with the attorneys, not that they are going to be supervising the attorneys on a day-to-day basis.

Councilor Martin wants to keep the Oath he took which is uphold the Charter and law. He will not bend it. The Charter draws the line and he trusts the City Manager who is a professional who has years of experience. Council's job is to get the best City Manager and make her as successful as possible.

Council President Perry called the question to end the debate. There was no second so the motion was lost.

Councilor Cummings does not believe that the City Manager would lose access to legal advice if Council goes this route.

Councilor Martin researched and found the way West Linn is operating is the predominant form of government throughout history. The model charter gives three alternatives (1) Legal hired by City Manager, (2) City Attorney is hired by the City Manager with the approval of the Council, and (3) City Attorney is hired by Council. It states option (3) is included for completeness, but is not recommended.

Mayor Axelrod believes restoring paragraph 8(f) shows the City Attorney is responsible for overseeing the legal services of the City. Any legal advice that goes to Council goes through the City Attorney. The City Manager has the right to hire internal legal staff.

Councilor Sakelik thinks that puts the City Attorney in the middle when they disagree with the Assistant City Attorney's advice and they do not have authority over the Assistant City Attorney. He wants the ability to hire and fire the legal staff.

Mayor Axelrod does not feel all legal services need to fall under Council. He does not want to supervise all the attorneys, that is what the City Manager is for. The current system is working.

Councilor Cummings does not believe restoring 8(f) is enough. It does not give Council ultimate authority over legal staff.

Mayor Axelrod asked the City Attorney to confirm there are legal staff that do not fall under Council, for instance, the labor attorney, investigations, staff issues, etc.

City Attorney Ramis informed Council there are operations in the City that are not under Council control. There is a provision for non-interference for things that the City Manager oversees, like Human Resources issues unless they rise to the Council level.

Council President Perry stated the system is working. The voters did speak, there is a new City Manager and a new Council.

Mayor Axelrod wants to know how putting this to the voters would change what Council would do.

Councilor Sakelik said it would give Council authority that they do not have now.

Councilor Richard Sakelik moved to have the City Manager work with the City Attorney to put together a resolution to add the June 16 provided Charter proposal to the November 2017 ballot. Councilor Teri Cummings seconded the motion.

Ayes: Councilor Teri Cummings and Councilor Richard Sakelik.

Nays: Mayor Russ Axelrod, Council President Brenda Perry, and Councilor Bob Martin.

The motion failed 2 - 3

Business from the City Council

Council President Perry had a meeting with the wastewater services group and the mayors from the five cities. The mayors are sending a letter asking the County Commissioners for a meeting with them and for them to reform the advisory committee. They are hoping to present the letter at the WES meeting tomorrow night at 6:30 pm.

Mayor Axelrod is attending the signing ceremony for the Stafford Intergovernmental Agreement on Wednesday at 1:30 pm at the Port of Commissioners office at the Red Soils Campus. The Corp of Engineers granted an extension for comments on the draft disposition study to repair and reopen the locks. The due date is July 12. He is hoping Senate Bill 256 to help support the locks effort passes.

City Manager Report

City Manager Stein discussed the steps for her employee evaluation and who the facilitator will be. She asked Council for authority to pay the insurance payments which are above the City Manager signing authority. In the past, the Finance Director has signed them as an administration matter.

Council President Brenda Perry moved to give the City Manager authority to pay the insurance premiums for the City. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Work Session Topics](#)

[Recommendations for Community Grant Allocations for FY 2017-18](#)

[Community Grant Information](#)

[High School Parking Discussion](#)

[Adjourn](#)

DRAFT



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22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

**WEST LINN
CITY COUNCIL MEETING
NOTES
July 10, 2017**

Call to Order and Pledge of Allegiance

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, City Recorder Kathy Mollusky, Assistant to City Manager Dylan Digby, Citizen Engagement Coordinator Courtney Flynn, Finance Director Lauren Breithaupt, Assistant City Engineer Erich Lais, Community Development Director John Williams, and City Attorney Tim Ramis.

Approval of Agenda

Council President Brenda Perry moved to approve the agenda for the July 10, 2017, West Linn City Council Meeting removing Main Street Development Agreement from the Business Meeting and appointment of citizen advisory board member from Business from the City Council. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Community Comments

Alice Richmond regarding the Fourth of July event.

Karie Oakes regarding public records.

[Karie Oakes submittal](#)

Consent Agenda

Agenda Report 2017-07-10-01: Approval of Meeting Notes for May 8, 16, and 18, 2017

Draft Notes Information

Council President Brenda Perry moved to approve the Consent Agenda for the July 10, 2017, West Linn City Council Meeting which includes the May 8, 16, and 18 meeting notes. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 4 - 0

Business Meeting

Agenda Report 2017-07-10-02: Approval of Community Grants for Fiscal Year 2018

Community Grant Information

Finance Director Breithaupt staff report.

Council President Brenda Perry moved to approve community grant allocations for FY 2017-18 as recommended by the citizen members of the Budget Committee withholding funding for items 4, 9, and 12 for now. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Agenda Report 2017-07-10-03: 2017 Road Improvement Program Contract Award

Road Improvement Information

Assistant City Engineer Lais staff report.

Community Comments

Lamont King regarding being told that residents could park on Mapleton or Cedar Oak, he stated there is not parking on those roads. Even if there was parking, the path between Kenthorpe and Mapleton is not opened yet. He is concerned about the elderly citizens and would like the city to go door-to-door to reach the citizens.

Dave Bullen has not seen any development (sidewalks, etc) except for a road. He proposes putting in a bike path.

Cindy Stott concerning closing Kenthorpe due to her father's medical needs, her need to go to work, go shopping, and her contractors' ability to access her house.

Kari Kaiser concerning maneuvering children in wheelchairs out of their house.

Council President Brenda Perry moved to award the bid to S-2 Contractors in the amount of \$852,181.00 for the 2017 Road Improvement Program and authorize the City Manager to execute the contract. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-07-10-04: Building Department Certified Plan Review and Related Services Contract Award](#)

[Building Contract Information](#)

Community Development Director Williams staff report.

Council President Brenda Perry moved to authorize the City Manager to enter into a contract with Clair Company, Inc. for Certified Plan Review and Related Services. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

~~d. Agenda Report 2017-07-10-05: Main Street Development Agreement~~

[Main Street Development Information](#)

Business from the City Council

Appointment of Citizen Advisory Board Member: Sustainability Advisory Board

Mayor Axelrod informed everyone there is an opening on the Sustainability Advisory Board.

Council President Perry stated Council has received multiple emails on reducing light pollution and would like staff to look into it.

Councilor Cummings stated the City used to have Codes in place to reduce light pollution. She would like to have something to send out to let citizens know what we are doing. Also, Hazelia Agricultural Trail opened and she invited citizens to enjoy it.

Mayor Axelrod stated there are two days to get comments in regarding the locks. This week is the West Linn Old Time Fair. Council will be marching in the parade. They are still looking for baseball players to participate in the baseball game on Friday night.

Council President Perry invited everyone to pjs and pancakes on Sunday morning.

Report from the City Manager

City Manager Stein will be out of the office the rest of the week attending the City Manager's conference. Ken Worcester will be the Acting City Manager.

Adjourn



CITY OF
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22500 Salamo Road
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**WEST LINN
CITY COUNCIL MEETING
NOTES
July 24, 2017**

Call to Order

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, Assistant to the City Manager Dylan Digby, and Records Coordinator Teresa Zak.

Mayor Russ Axelrod moved to postpone Item 4, appointments of the Citizen Advisory Board members to August 7, 2017. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Community Comment

Peggy Kirkendall regarding amending the ordinance to include Easy Street and the end of Broadway to the residential permit parking area.

Summer Buzza stated students drive through the bollards on Easy Street, it is dangerous. She would like Easy Street added to the ordinance.

Lynn Fox elected this Council to reverse the City Charter changes regarding having no control over the employees.

Business Meeting

Agenda Report 2017-07-24-01: City Legal Services - Continued Discussion

Legal Services Agenda Report July 2017

Proposed Charter Amendments from Mayor Axelrod

Community Comments

David Baker thinks it is important for Council to have unbiased legal counsel and that City Hall is able to run efficiently.

Peggy Kirkendall is not pleased with either the contracted or staff legal services.

Assistant to the City Manager Digby read Karie Oakes' and Ken Pryor's email submittals.

Citizen email submittals

Mayor Axelrod clarified for everyone that there is a staff attorney that gives advice to staff; however, the Council is getting their advice from the City Attorney. He asked City Attorney Ramis to answer if the Council's management of city affairs is based on objective, independent advice from the City Attorney and if the advice that Council receives is consistent with the powers invested in the Council as originally drafted in the Charter. He responded to the concerns expressed in the citizen's emails.

City Attorney Ramis stated that as far as he knows, the advice Council is getting is coming from his office. The advice at the staff level is done in coordination with the City Manager and City staff.

Mayor Axelrod explained his proposed Actions and Charter Revisions to Clarify Attorney Services.

Council President Perry does not have any hesitation about speaking to the City Manager if she has an issue with personnel. However, it is the City Manager's job to handle the staff issues. Investigations are done from outside, independent firms that are not under either the Council or City Manager control. Council is available to hear citizen concerns and answer questions they may have about processes. The cities neighborhood associations are very active which is another avenue where citizens can express their concerns and be heard.

Councilor Sakelik clarified on the staff report that he and Councilor Cummings are not wanting

to restore Section 8(f). Also, they did not say they were going to make any changes after the Council voted against the motion 3 to 2. They were ready to move on.

Mayor Axelrod believes Council wanted to restore Section 8(f) since the beginning.

Councilor Martin understands the frustration surrounding this issue. It is important to solve this issue. He requests citizens be respectful when expressing their opinions. The Council wants independent, high quality legal advice at the lowest cost to the citizens.

Councilor Cummings feels cities work well when Council has authority over the legal advisors and it is less expensive to have outside counsel. She would like to have the Assistant City Attorney report to the City Attorney.

Mayor Axelrod does not believe having a contracted outside City Attorney always work at other cities. It is helpful to have staff counsel to assist with legal issues, risk management, etc. This position also assists the City Attorney. Council's advice comes from the City Attorney.

Council President Perry stated many cities have in-house legal services. She expects the City Manager to oversee the Assistant City Attorney. It is less expensive to have the staff attorney compile a LUBA document than have outside council do it.

Councilor Cummings stated Council does not get involved in the day-to-day operations, nor would it be appropriate for them to do so. Council is in charge of the policy and budget decisions. The Charter was set up to have Council in charge of the City Manager and the legal advisors.

Councilor Sakelik clarified this is not about staff versus outside. He would just like all counsel to report to Council.

Councilor Martin stated our Charter is based on the LOC Model Charter which is based on the National Civic League Model Charter. The whole country uses this as a template model charter. This charter gives you options: (1) City Manager hires the City Attorney, (2) City Manager hires City Attorney and the Council gets to say yes or no, (3) City Council hires the City Attorney; however, this is not recommended. Our Charter did not say anything so by implication, gave the City Manager the power to hire the City Attorney. Section 8(f) specifically gave the City Council the right to hire the City Attorney.

Council discussed the three Proposed Charter Revisions.

Council President Brenda Perry moved to direct staff to prepare the documents required for placing the following Charter changes on the ballot. For Section 8 to replace 8(f) with the one change saying these legal advisors shall report to and serve at the direction of the Council. For Section 23(A) to add any legal advice to the City Council by any legal advisor shall be overseen

by the City Attorney. For 21(A) add the words this shall not prevent a City Council member from providing input to the City Manager relating to City business or the performance of an employee or department. No City Council member may directly, or indirectly, by suggestion or otherwise, attempt to interfere, influence, or coerce the City Manager in the award of a public contract or the hiring or termination of any personnel. Councilor Bob Martin seconded the motion.

Council continued to discuss the three Proposed Charter Revisions as put forth in the motion.

Council President Perry withdrew the motion.

Council President Brenda Perry moved to direct staff to prepare the documents required for placing the following Charter changes on the ballot. The first one is to change the sentence to "these legal advisors." On 23(A) "any legal advice provided to the City Council or its advisory groups shall be overseen by the City Attorney. Add "this shall not prevent a City Council member from providing input to the City Manager relating to City business or the performance of an employee or department." And, "No City Council member may directly, or indirectly, by suggestion or otherwise, attempt to interfere, influence, or coerce the City Manager in the award of a public contract or the hiring, discipline, or termination of any personnel." Councilor Bob Martin seconded the motion.

[Proposed Charter Revisions with 7-24-17 edits](#)

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, and Councilor Bob Martin.

Nays: Councilor Teri Cummings, and Councilor Richard Sakelik.

The motion carried 3 - 2

Council discussed Mayor Axelrod's submitted Proposed Actions to address the specific roles and responsibilities of the Staff Attorney.

Council directed the City Manager to draft the description of duties for both the City Attorney and Assistant City Attorney positions and bring back to a future Council Work Session.

[Business from the City Council](#)

~~a. Appointment of Citizen Advisory Board Member: Sustainability Advisory Board~~

Mayor Axelrod will be at the mayor's conference this week and he will be out of the office August 8 through the end of the week.

Councilor Martin thanked members of Council for the discussion today, he believes it is a real step forward.

Council President Perry received an email from the facilitator asking for a one-on-one meeting

prior to the Clackamas County Board of County Commissioners (BCC) Meeting next Tuesday. She invited all the Councilors to attend the August 1 meeting. She would like to see more city representation on the board.

Councilor Sakelik asked Council if they were comfortable having the rest of August off. He does not feel citizens have had enough opportunity to weigh in on the legal services. He wants to see this on a ballot measure. He wants all legal counsel under Council.

Councilor Cummings would also like to see all legal counsel under Council. She thought today's discussion went well.

Mayor Axelrod believes this is a huge win for the citizens and that it brings clarity to the issue.

[City Manager Report](#)

City Manager Stein will be out of the office August 8 to August 16.

[Adjourn](#)

DRAFT



CITY OF
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**WEST LINN
CITY COUNCIL MEETING
NOTES
August 7, 2017**

Call to Order

[Citizen submittal prior to meeting re: agenda](#)

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, City Recorder Kathy Mollusky, Police Captain Neil Hennelly, Community Development Director John Williams, Assistant to the City Manager Dylan Digby, Finance Director Lauren Breihaupt, and City Attorney Tim Ramis.

Mayor Axelrod would like to add parking signs that were taken down on Easy Street to the agenda.

Council President Brenda Perry moved to approve the agenda for the August 7, 2017, West Linn City Council Special Meeting with the addition of the Easy Street parking discussion. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Community Comment

There were none.

Proclamations, Recognitions and Scheduled Presentations to Council

West Linn - Oregon City Rivalry Day Proclamation

OC-WL Rivalry Day Proclamation 2017

Councilor Sakelik read the West Linn- Oregon City Rivalry Day Proclamation.

Business Food Waste Program - Metro Presentation

Ken Ray, Metro and Eben Polk, Clackamas County, presentation.

Metro Presentation - Revised 8-7-17

Report on 2017 Legislative Session and Preview for 2018 Short Session

Legislative Report

Doug Riggs, Northwest Grassroots and Communication, presentation.

Business Meeting

Agenda Report 2017-08-07-01: Charter Amendment Measure Resolution No. 2017-17: A Resolution to Submit To Voters to Amend the West Linn Charter Relating to City Council Authority Over Administration and Legal Services

RES 2017-17 Charter Information

RES 2017-17 Mayor Axelrod's Edits & Explanatory Statement

Citizen submittal prior to meeting re: Charter Amendment

City Attorney Ramis stated Council has spent a lot of time at meetings discussing this topic. Tonight the discussion is the format to present to voters. One measure or two and what is the language that will be in the voter pamphlet. We are restricted in the number of words that can be used in the caption, question, and summary and there is a strong neutrality requirement.

Councilor Cummings stated there has been a lot of last minute things that have come in she requested copies be made for the public in attendance.

Council will come back to this agenda item after copies are distributed.

[Agenda Report 2017-08-07-03: Intergovernmental Agreement with ODOT for Enhanced Commercial Truck Enforcement](#)

[ODOT IGA Information](#)

Captain Hennelly staff presentation.

Council President Brenda Perry moved to approve the renewal to the Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) and authorize the City Manager to sign it. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-08-07-02: Master Fees and Charges Document \(Public Records Fees\) Resolution No. 2017-18: A Resolution Amending the City's Master Fees and Charges Document Section 3.7 Pertaining to Public Records Requests](#)

[Master Fees and Charges Information](#)

Finance Director Breithaupt staff report.

Council discussed having research time be a fixed number per hour and adding to the website language that states if your request is for the public benefit, your fees will be waived. They discussed if complex documents, photocopying, and costs for CDs should be free.

City Manager Stein explained that the City receives many record requests where information has to be redacted and legal staff has to be involved. Sometimes this takes hours of time to review and redact the information (i.e., police records).

Council decided to go with \$20 fixed charge for now with the first 30 minutes free. They will take a look at this again in September.

Council President Brenda Perry moved to adopt Resolution 2017-18 revising the Master Fees and Charges document as shown in Attachment A to the resolution with the addition of the \$20 fee for searches beyond the first 30 minutes that are free. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-08-07-01: Charter Amendment Measure Resolution No. 2017-17: A Resolution to Submit To Voters to Amend the West Linn Charter Relating to City Council Authority Over Administration and Legal Services](#)

Community Comments

Ken Pryor did not like the bundling, the City Attorney has resolved that. He objects to the whereas clauses, feels it's antiquated. He is confused about the ballot measures, he cannot keep track of them. He is not satisfied with late changes and thinks Council can do better. He still does not understand what the City Attorney or Staff Attorney does.

Alan Smith believes there is a question on if the Staff Attorney has to report to the City Attorney, it is not clear in the proposed measure. He read the LOC model for establishing the City Attorney from page 18 and what kind of government you want from page 20. He doesn't think the new draft title points out the major effect which is required in ORS 250.035. He asked if Council will include a map what part of the public property will be used for the Highway 43 ballot measure.

Council President Brenda Perry moved to divide these measures into the two voter measures as we have printed up tonight. Councilor Bob Martin seconded the motion.

Councilors Cummings and Sakelik wants the ballot measures divided up into three measures since it's three charter sections.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, and Councilor Bob Martin.

Nays: Councilor Teri Cummings and Councilor Richard Sakelik.

The motion carried 3 - 2

Council wordsmithed Resolutions 2017-19 and 2017-17.

[Redlined RES 2017-19](#)

[Redlined RES 2017-17](#)

Council President Brenda Perry moved to adopt Resolution 2017-17, as amended, to submit a West Linn City Charter amendment to voters to amend the Charter provision relating to City Council authority over administration and legal services and to direct staff to take all necessary actions to place the ballot measure on the November 7, 2017, General Election. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, and Councilor Bob Martin.

Nays: Councilor Teri Cummings and Councilor Richard Sakelik.

The motion carried 3 - 2

Council President Brenda Perry moved to adopt Resolution 2017-19, as amended, to submit a West Linn City Charter amendment to voters to amend the Charter provision relating to legal services and to direct staff to take all necessary actions to place the ballot measure on the November 7, 2017, General Election. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, and Councilor Bob Martin.

Nays: Councilor Richard Sakelik.

The motion carried 4 - 1

Council President Brenda Perry moved to allow the City Manager to make the adjustments to bring the Explanatory Statements in line with the resolutions. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, and Councilor Bob Martin.

Nays: Councilor Teri Cummings and Councilor Richard Sakelik.

The motion carried 3 - 2

Business from the City Council

Easy Street Parking Signs

Mayor Axelrod stated Easy Street was not included in the previously passed ordinance. Council has been asked to take immediate action to put the signs back up and do a resolution in the future.

City Manager Stein informed Council that public works removed signage throughout the City that they didn't have authority to have up. She can have public works put the signs back up before school starts. The resolution including easy street will be done at the September 11 meeting.

Captain Hennelly informed Council that the police will just warn students the first couple of weeks of school. No citations will be issued or cars towed.

City Attorney Ramis is comfortable with that approach.

Councilor Cummings wants the City to look into the cyclone fence that says no trespassing, she thinks it is in the public right-of-way at the top of street. The bollards bend and kids are cutting through them. She would like it too be a no parking zone so it is not so heavily trafficked.

Captain Hennelly stated the bollards are designed to flop down and go back up for fire department access. Public Works can put do not enter signs. There are only two or three parking spots here.

Council President Perry is concerned about a recreational vehicle parked on West A with a power cord attached to the house.

Captain Hennelly knows they take it out on weekends and the motor home too big to fit in driveway. He will have an officer check into it.

Council President Brenda Perry moved to extend the meeting to 10:30 pm. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Citizen Advisory Committee Appointments

Appointments to Sustainability Advisory Board

Economic Development Committee

Mayor Axelrod placed before Council the following Advisory Board Member appointments: To the Economic Development Committee - Russel Williams, and to the Sustainability Advisory Board - Cynthia Ellison.

Council President Brenda Perry moved to approve the Mayor's Citizen Advisory Group appointments. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Committee Reports

Council President Perry is going to the Clackamas County Coordinating Committee (C4) retreat. She proposed future agenda items: (1) 10th street improvements. (2) Ordinance that bans smoking in parks. (3) Resolution in response to Audubon emails regarding light pollution. (4) Revisit Imagine West Linn. (5) Twinning with another city. (6) Approaching Tri Met regarding a local bus.

City Manager Stein stated the Community Development Director has a meeting with Tri Met and invited Council President Perry to join him.

Councilor Martin informed everyone the Committee for Citizen Involvement (CCI) has been working on the land use process and they will be making recommendations to Council to

improve the process (Chapter 98) including de novo hearings. He would like to discuss replacing Street Fees and Park Fees with an operating levy.

Councilor Sakelik said 16 students were chosen for the Youth Advisory Council. The Chamber has come to an agreement with Clackamas County tourism regarding the money they owe them.

Councilor Cummings is joining Council President Perry at the C4 retreat. The Transportation Advisory Board is talking about the crossing issue on Salamo Road from the church to the Safeway parking lot on July 26. They are deferring the high school parking issue until the school board has a chance to discuss it.

Adjourn Meeting

[Work Session Topics](#)

[Conditional Uses in Commercial and Mixed Use Zones – Code Amendment Process](#)

[Code Amendment Process Information - Conditional Use](#)

Community Development Director Williams staff report.

Council President Brenda Perry moved to extend the meeting for another 10 minutes. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

~~7. City Manager Report~~

~~a. Traffic Safety Issues: Salamo, West A and Fairhaven~~

~~b. Agenda and Minutes Posting on City Website/Access to City Hall Meeting Rooms~~

~~c. Park and Facilities Bond Measure Timeline~~

~~d. September Meeting Schedule~~

[Adjourn](#)



CITY OF
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**WEST LINN
CITY COUNCIL MEETING
NOTES
September 11, 2017**

Call to Order and Pledge of Allegiance

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, City Recorder Kathy Mollusky, Assistant To the City Manager Dylan Digby, Associate Planner Jennifer Arnold, Assistant City Attorney Megan Thornton, Finance Director Lauren Breithaupt, Parks & Recreation Director Ken Worcester, and City Attorney Tim Ramis.

Mayor Axelrod asked everyone to take a moment of silence to honor all those who lost their lives and all the first responders.

Approval of Agenda

Council President Brenda Perry moved to approve the agenda for the September 11, 2017, West Linn City Council Meeting with the one change the Consent Agenda will only include the June 12 and June 19 meeting notes. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Community Comments

Joel Leatherberry expressed concern regarding Kenthorpe Way. At the last Neighborhood Association Meeting, he was told Council was going to discuss closing Kenthorpe Way at this Council Meeting. He questioned why it is not on this agenda and would like it on Council's agenda until this item is closed. He feels Council does not listen. He is concerned about citizens' safety on that street. The citizens deserve more communication than what they have received. No one has communicated any solutions to them. If Council wants people to support them, they have to follow through on what they say they are going to do.

Mayor Axelrod replied that this is of high interest to Council. Council President Perry has been the liaison.

Council President Perry thought a formal request needed to be made to Council to provide a golf cart, that is not necessary and a golf cart is going to be provided. She will be at the Robinwood Neighborhood meeting tomorrow. The City has to get the road done and will continue to communicate with the neighbors. A number was given out to call if you have any questions. The road will only be closed for a couple of hours during the day. Citizens will be given advanced notice when the road will be closed.

Mr. Leatherberry said this has not been communicated. Council may feel it is resolved, but it has not been communicated.

Council President Perry said we will be sending communication out. She is looking forward to being done with this project.

Mayor Axelrod asked if the door-to-door outreach is going to continue. Staff replied it will.

Councilor Sakelik explained that Council had a work session last week where Council discussed this. That is where they found out a golf cart was available. A lot of people signed up at the Town Hall. He suggested staff get news out to everyone in an email blast. He restated we have a golf cart and have volunteers to drive it. We need to send an email blast.

City Manager Stein needs to make sure the logistics are nailed down before a communication is sent out.

Mr. Leatherberry replied when one of your City folks says it is going to be on the next Council agenda, and it is not, an email blast needs to be done. This is the first Council Meeting he has been to. When he sees something going astray, he needs to say something.

Mayor Axelrod stated it was on the agenda last week and it was discussed. There was nothing to discuss tonight. Staff is working on logistics.

Council President Perry explained citizens can listen to the meeting live and past meetings online.

Ole Olsen read from page 2 of his submittal that we must maintain emergency vehicle access to area homes during construction and that it is signed by the Public Works Director and the City Manager. The neighbors are angry due to the road closure. The statutes done by the Oregon Department of Transportation (ODOT) say we cannot close the road and must have flaggers or it is a safety issue. The Occupational Safety and Health Administration (OSHA) will send a compliance officer out. He told Council to not close the road or they will have to bring in the appropriate people. He begs Council to comply with the law. Staff cannot just sign documents and modify agreements after the fact. He told Council to find a way to comply with the law. They have to only do one road at a time. It took a lot of time to find the documents that are referenced in his book. You can get them off the internet. That entire book done by ODOT is thousands of pages long. Neighbors do not need to be angry over this issue.

Mayor Axelrod asked him if he contacted the City Engineer about his concerns. He talked about this to a lot of people at the picnic. There was a lot of misunderstanding about closures and he addressed concerns. He assured Mr. Olsen they are going to get taken care of. He shares Mr. Olsen's concerns. Staff will get it done and address his concerns.

Mr. Olsen informed Council when they correct the error, people's mindset is hard to change. Once you are told one thing, it is really difficult to change minds. People in his neighborhood didn't understand. He told Council to give more attention to technical details and safety issues. He asked Council if they could imagine what could happen if a kid got hurt. He doesn't think the City has enough bond to solve that problem.

Council President Perry understands we can close the street and that it is not possible to do in two halves because it is so narrow. Pedestrians and emergency vehicles will be able to get through.

Mr. Olsen said they are going to violate page 2, part 4 regarding maintaining access to area homes throughout construction.

City Attorney Ramis explained page 2 under general comment appendix C, is not completely quoted. The last page of the handout authorizes the City Engineer to allow street closures. It needs to be done with attention to issues the community has raised and Council has worked hard to do that.

Mayor Axelrod explained the street will only be closed during the day, not at night. Mr. Olsen had a conversation with ODOT and that clause is due to catastrophe. That is not

what it means, it is inconsistent to ODOT standards. Your contract does not make reference as required by law. He thinks it was overlooked and is inconsistent with safety standards.

Mayor Axelrod replied if we are required to have flaggers, we will have flaggers. He will have the City Engineer follow up with Mr. Olsen.

[Ole Olsen submittal](#)

Consent Agenda

Agenda Report 2017-09-11-01: Approval of Meeting Notes for June 12, 19, and 26; July 10 and 24; and August 7, 2017

[Draft Notes Information](#)

Council President Brenda Perry moved to approve the Consent Agenda which includes the June 12 and 19, 2017 meeting notes. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Business Meeting

Agenda Report 2017-09-11-02: Public Hearing - Appeal of Lot Line Adjustment at 1822 5th Avenue

[Lot Line Adjustment Information](#)

[Public Testimony](#)

[Public Testimony Rcd 9-11-17](#)

Mayor Axelrod explained that tonight we are holding a public hearing regarding application number AP-17-02, which is an on the record appeal hearing of the Planning Manager's approval of a Lot Line Adjustment and two Class I Variances at 1822 - 5th Avenue. The hearing will proceed as follows: After the preliminary legal matters, staff will introduce the appeal, which will be followed by Appellant's argument, and then members of the audience. Finally there will be time for rebuttal by the applicant. The applicant will have 20 minutes initially, plus ten minutes for rebuttal. Council members may ask questions of the applicant, staff, or anyone else who testifies.

If you would like to speak regarding this item, please complete a Sign In/Testimony Form located on the table in the hallway and submit it to the staff now. You must fill out a separate form for each agenda item. When you are called to testify, you will have up to five minutes to speak. If your testimony would be repetitious, but you would like the opportunity to appeal the

decision, you are still required to sign the form.

This is an on the record hearing, which means that no new facts or evidence can be submitted at this time. The time period for written argument has also closed; so, the Council cannot accept any written argument at this time.

I now call to order the public hearing.

Legal matters

City Attorney Ramis asked the following legal questions:

Do any members of the Council wish to declare a potential or actual conflict of interest or bias? There were none.

Do any members of the Council wish to report any site visits or ex parte contacts? Mayor Axelrod received an email from Mr. Stamp that he forwarded on to staff.

City Attorney Ramis replied that is included in record. He cautioned Council to consider the arguments in the document but the reference to the video document is considered outside of the scope of the record.

Does any member of the audience wish to challenge the jurisdiction of the Council to hear this matter? There was no challenge.

Does any member of the audience wish to challenge the impartiality, rebut or ask questions about the ex parte disclosures of any member of the Council? There was no challenge.

Written argument was received during the open argument period that ended today, September 11, 2017. None of the arguments received introduce facts or evidence that are not in the record. Therefore, staff recommends that the Council settle the record by making a motion finding that the record includes the file for AP-17-02 which includes the citizen arguments submitted by 5pm today, September 11, 2017.

Council President Brenda Perry moved to settle the record that the file for AP-17-02 includes comments submitted by 5:00 pm today, September 11, 2017. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

City Attorney stated there are only 5 issues before the Council on appeal:

1. CDC 25.070.B(1)(a)
2. CDC 25.070.C(6)
3. CDC 85.210 Diagram
4. CDC 85.210.A.3
5. CDC 99.030.C.2

Any argument that speakers present must be directed at these appeal issues.

Failure to raise an issue accompanied by statements or evidence sufficient to allow the Council and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue. Only those who have appeared before the City Council, in person or in writing, will have standing to appeal this item.

Associate Planner Arnold staff report.

Presentation

Mayor Axelrod asked if the line on the frontage street (5th Ave) where there is some right angle adjustments, if it was possible to simplify the line boundary?

Associate Planner Arnold went over that proposal during pre-application, but applicant decided to stick with this design.

Mayor Axelrod asked if there were alternatives that were looked at?

Associate Planner Arnold replied as long as the site on Parcel 2 fits in with that 10% lot dimension variance and the lot width is within the 5% variance then they could do it.

Mayor Axelrod is concerned about the fence line that may look highly irregular if it has to follow this lot line, couldn't that be rectified by simplifying the line?

Associate Planner Arnold replied it is possible, but this is what the applicant wanted.

Appellant's Argument

Jerry Offer, representing a group of his neighbors: 14 signed the appeal form, 18 signed the original comments, and several others have expressed an interest. The neighbors concerned with the lot line adjustment have a variety of reasons. Some neighbors don't want to see any development. Most are willing to see development if it is consistent with the Willamette Historic guidelines and the standards in the Code. Not many of the standards deal with lot line adjustments. One Code section requires that new lots are required to be rectangular in shape and have side lot lines that are perpendicular from the street. The Code doesn't say anything about an adjusted lot line. He thinks that is where a lot of the neighbors are coming from with

regard to that. They have been supportive of the changes in the Willamette District and there have been new homes constructed, including his own. There have been many modifications to homes there and it hasn't been a problem as long as people follow the standards. This project, to adjust the property line and potentially build a new house on a second lot, involves two variances, and a strained way of dealing with Code by City staff. That is why they are appealing the staff decision. We think it comes down to one clear issue, dealing with the diagram in Section 85.210. There is a diagram in that section that shows an acceptable and an unacceptable line adjustment. He does not have an example before him but it is in his report.

Mayor Axelrod informed him that Council has an example before them.

Mr. Offer continued the issue comes down to is this still in the Code. The Code that is online, under the approval standards, in Section 85.210, this diagram is there. He has looked at the Code several times in the past few months and it is always there, the Code shows this as an approval standard. Upon the application being made, some of the neighbors asked him to look at the approval standards and they said they are not meeting this and did not address it at all. City staff decision that is under appeal found Council's intent in 2014 was to remove this diagram. However, they have not provided any evidence showing that intent, no minutes of City Council meetings, any discussion that proved intent. There is nothing in the record showing the intent to remove that. We would contend that this is still within the Code and the evidence we provide is Ordinance 1036 that shows an ellipsis on the side of the ordinance showing that section that would include this diagram was omitted assumedly for brevity. It wasn't shown to be deleted. A deletion would be in brackets or cross outs and there is nothing in that ordinance that shows brackets or cross outs. It just shows ellipses which typically means omitted for brevity. We think it is still in the Code. We do not think staff can just case-by-case basis decide something is not in the Code. If it is in the Code, you have to apply it. They did not apply it in this case. Staff in their decision said, well, even if this is still in the Code, this is too vague to apply to this application. But they provided no findings for why it is too vague, there is nothing in the record. It appears they are just saying, we can't deal with it. I don't know where there is something in the Code where they can just ignore Code standard. The Code standard is there, it has to be applied. There may be other circumstances with different lot line adjustments where it may be difficult to apply this diagram as an approval standard. But in this case we are dealing with a very similar lot line adjustment to what is shown as an unacceptable lot line adjustment. The text says no gerrymandering or zigzags. The Applicant's proposal includes gerrymandering and zigzagging to avoid the house. The Applicant's proposal is so similar to the unacceptable lot line adjustment diagram that both of them show original lots that are roughly twice as deep as they are wide and when they are adjusted, they break the side lot line into seven segments. Seven segments in the proposed lot line adjustment, seven segments in what is unacceptable. They think this is clear enough in this case that this diagram could be applied. Staff is in error and the Applicant is in error in that they never addressed it. It is their burden of proof to show how their application is consistent with approval standards. This why they do not feel the Applicant has met their responsibility to show how they have met the burden of proof, and they think staff has erred in their decision. They urge Council to overturn staff's decision on the lot line adjustment and deny the application. With regards to

the two variances that were requested, we are not raising any issues on those, the approval standards for a minor variance are pretty simple and they met the burden of proof on that. On the lot line adjustment, we do not feel that the burden has been met.

Councilor Martin asked to have Ordinance 1635 on the screen.

Associate Planner Arnold reminded Council that Ordinance 1635 is not in the record; however, they do have the excerpts from the applicant's submittal.

City Attorney Ramis stated since it is part of our Code, we can look at it. It does not need to be offered as evidence.

Mr. Offer stated there is a page in their document that shows a page dealing with this particular section and the ellipses.

Councilor Martin believes Council needs to determine the intent of the deletion.

City Attorney Ramis stated that is correct. The challenge of this case is to determine what is the particular criteria and in this situation there is dispute about Council's intent in 2014 when this amendment was made so Council's task is to try to deduce the intent in 2014.

Councilor Martin believes in order to do that it would be useful to him to see the text in Ordinance 1635 that was deleted and how it relates to this diagram.

City Attorney Ramis noticed on Page 2 of Mr. Stamp's letter, he has reproduced the amendment. You will see the former language in a strikeout format.

Mayor Axelrod read the former language out loud.

Mr. Offer stated the ellipses in the left margin is the important part. That was intended to show that the diagram was omitted for brevity but it wasn't shown as being deleted or there would be a strikeout through it or brackets around it or the actual diagram would show a cross out.

Mayor Axelrod replied unless it was unintentionally omitted from the deletion.

Planning Manager Boyd informed Council during that period there were two ordinances that were being considered. Ordinance 1635 had multiple code provisions that were changed and Ordinance 1636 addressed lot, parcel, and tract definitions. Originally they were one ordinance and then they were segregated into two separate ordinances. There were many changes and some of the changes were correctly addressed with the ellipses. Part of this material, like the discussion, is not on the record.

Mayor Axelrod is curious as to putting aside what might be a reasonable omission to accidentally not have excluded the figure, to remove all the text associated with the figure, but not the figure. He is trying to understand what it is Mr. Offer is looking for. Some neighbors just don't want development, some others are fine. When he looks at the lot line adjustment that is proposed, it really doesn't look anything like the figure, where the figure goes around buildings. He is trying to understand the end game. What is being asked for by the community.

Mr. Offer replied it is to have lot line that is a perpendicular to the street. Every other lot in that historic plat, the historic district, not just because of the houses, but because of the historic structure of the neighborhood. Every other lot has a side lot line that is perpendicular to the street at least behind the house. If we have curved, angled side lot lines for one house or between two houses, it is going to stand out and break up the rhythm of what the Willamette Historic plat shows. Depending on how it is fenced or landscaped, it could detract from the historic character of the neighborhood which the City and neighbors have been trying to maintain for some time.

Council President Perry said you couldn't go straight through with this lot line, because then you would not fulfill the 50 foot front requirements so there has to be some kind of deviation. I guess this is the method to do this. Whatever goes up there is in the historic district so it has to meet the approval of the historic society for the area so the risk of this is reduced due to that as to what exactly goes in there.

Mr. Offer pointed out one of the things brought up in the appeal. They are not saying it has to be met at this point, but they are saying that Code Section 25.07(B) for any future application for historic review approval for construction needs to be found to meet standards that include lot or parcel size for portion and form, etc. shall correspond with the contributing buildings in the district. This is found on page 2 of the appeal document. We are not saying this is an approval standard not for this lot line adjustment, but if this lot is created this way now, they are going to have a heck of a time being able to make a positive finding with regards to that. Taking it a step further, if you say okay, then they can create a variance to that standard. This is a self-created hardship because they are proposing the lot line like this. It builds and builds and builds. What needs to happen is make the lot as much like the other lots as possible or if they don't do that, maybe they don't make the new lot. There are two lots that have been there since 1884 but essentially make a new buildable lot out of the two that are there now.

Council President Perry explained this is really just the first step to change the lot lines. The biggest step to me is if they can come up with a proposal that fits the requirements for the historical society area and can fit in with this spot. That is going to be the biggest challenge.

Mr. Offer replied it would be nice for all of us to know what the end game is.

Applicant

Andrew Stamp, land use attorney, and Phil Chok, homeowner.

Mr. Stamp wanted to spend a few minutes going over his letter that was sent on Friday. The record is clear that the subject property consists of two legal lots of record. As the diagram showed, the historic home that was built on this property in 1899 was built a little over the property line, there was an encroachment. What the Applicant is trying to do is make a second buildable space to allow for construction of a second home. Because of the way the Code is structured, that would require a property line adjustment with some amount of zigzagging in it. The conversation he has heard so far identifies the legal issues of this case and that in 2014 there was a Code Section 85.210(4) that was removed from the Code by the City Council at that time and he read the previous language. Even the language that says the figure below serves as a guide to lot line adjustments was removed. The task that is before the Council tonight is to figure out what was the Council's intent when they removed this language. Were they trying to make a substantive change in policy pertaining to zigzag lines or did they figure this language was superfluous and that a diagram was sufficient to carry out the intent of prohibiting zigzag lines. That is the question for Council tonight. Which one of those is the more likely scenario. Did they intend to change substantive policy or did they think this language was just cluttering up the Code and the diagram was good enough to accomplish the same thing. We submit the intent was to get rid of substantive policy. They decided the zigzag line prohibition was inappropriate. Council can speculate as to why. In the letter, he set forth some policy reasons why you would want this provision in the Code and why you would not want this provision in the Code. The Appellants say that it was intentional to leave the diagram in the Code and apply that diagram in the same manner as if the text was still there. We do not think that is plausible. It is pretty obvious that a substantive change in policy was intended. The Appellant said a quasi-judicial hearing is not the appropriate time for staff or Council to decide this matter, that this would be making a substantive legislative decision. He disagrees. It is routine for City Council, Planning Commission, and staff to make interpretations of the Code in almost every land use case. Probably 85 percent of LUBA cases that stem from quasi-judicial cases issue a statutory interpretation that arose in a situation like tonight. That argument that this is not the appropriate form has no merit. The law says when you have an ambiguity in the Code and Council has to decide what this Code means, the City Councils that were before us, passed a Code and now we are trying to figure out what they meant by it. Your goal is to figure out what did they intend when they made that change in 2014. He concluded in the letter that case law that, these are Oregon cases, where the courts have said when there are clerical errors that would defeat the purpose of the act, the court could correct them when the true meaning is obvious. An example is there was a word or in the Code and it should have been on. The Appellant said the word or was meaningful and it led to some policy changes. The City Council said they meant to say on. There are some other examples in the other cases he provided. Ordinance 1635 was intended to get rid of the prohibition on zigzag lines and they just forgot to take the picture out. It is within the power of the City Council to interpret the Code in that manner and take out the picture through interpretation. The other interpretation that Council took out the language to make the Code more ambiguous and difficult for staff to interpret the Code. That does not seem likely. With regards to the other

policies, the 25 series in the Code about historic structures, he is going to let the Applicant talk about what his design plans are for those sites and how he plans on dealing with that.

City Attorney Ramis reminded Council that Mr. Offer has an objection to testimony that would go beyond the existing record so he cautioned them that they may hear things that are beyond the record so they will be asked to not consider those things in their decision.

Mayor Axelrod asked the Applicant to keep his presentation to information that is in the record.

Mr. Chok started working on this house because he thought would be a great project and fun to do. People that came by while he was restoring it said they really like this house, but don't want an extra lot. He kept hearing that over and over. Most people that look at the property are in their 60s or 70s and they want a house where they can just walk everywhere and not be encumbered by an extra piece of property. He went to the City and asked if there was a way to split this lot in half. He has had two or three meetings with staff to make this dividing line. His goal is to build a Victorian next door that was smaller in scale and fit the criteria of what a new house should look like on that lot. He was thinking a much smaller Victorian with the same character and details that the houses in the area have. The house he is restoring right now took him 9 to 10 months and it looks fabulous. The materials they have been using are all top-of-the-line. He has created everything to make it look like it was original with the house. He took the old siding off and had siding made to replicate what was there hidden under years and years of shingles. They have done a lot to restore that property. There were about 150 people at an open house back when the fair was going. We had people who wanted the lot to put a Victorian on that was new and we had a lot of people who wanted the Victorian as it was, but no one wanted the extra lot and the Victorian together. So his thought was to build a nice, small Victorian next door.

Councilor Martin asked the Applicant to clarify that without the lot line adjustment, can they build next door?

Mr. Chok replied no. It is a 100 x 100 foot lot right now even though it is in two parcels, its intent was to always be in two pieces. The house that was built in 1899 has been added onto probably 60 to 70 years ago and they encroached onto the property line a little bit. If I put a straight line in there, it would be really close to where the line would be which is why staff helped us with the lot line adjustment.

Councilor Martin asked if the lot line adjustment would create another buildable lot that will not exist without the lot line adjustment.

Mr. Stamp answered yes. It does not create a new lot, but it makes the lot buildable that would not be otherwise.

Councilor Martin told City Attorney Ramis that his concern is that in the ordinance Council

cannot create lot line adjustment that would be considered a re-plating under ORS Chapter 92. It says you cannot increase the number of lots.

City Attorney Ramis does not believe that statute is violated by this application, because we are not being asked to recreate a new lot, it is already platted for two lots. One of the lots has become unbuildable because of an encroachment. Over the years, the house that was there was expanded and encroached on the property line. By modern standards, we would say there is an encroachment on the second lot which makes it impossible to meet setback requirements. The application is designed to adjust the existing lot so it no longer has an encroachment.

Councilor Martin asked if it does not make an additional lot and therefore does not violate the re-plating.

City Attorney Ramis answered correct.

Council President Perry is looking at the piece for approval criteria on findings and it is described here as an R5 zone and if you go down further, it talks about the size as an 4.5, so which is it?

Associate Planner Arnold answered the zone is R5.

Mr. Stamp stated it is R5, but it doesn't require a 5,000 square foot minimum lot size; there is a 4,500 square foot minimum lot size.

Council President Perry pointed out on page 16, staff finding number 4, proposed lot sizing will be this amount which meet or exceed the 4,500 square foot minimum for lot size of the R4.5.

Associate Planner Arnold explained that is a typo and apologized.

Council President Perry stated that is significant because on this it meets the criteria and on the other one it is short.

Mayor Axelrod asked if because we are on the record, if he cannot ask about any future design or fence. He doesn't think there is a need to necessarily.

City Attorney Ramis said we had the Appellant ask the question of what is proposed saying it would be helpful if we knew and have had a general response to that. He is reluctant to have us go further because it is far beyond the record.

Mayor Axelrod is fine with that.

Mr. Stamp said in closing, particularly in light of if it is on the record, the focus should be really narrow tonight, what was intended in 2014 when the City Council got rid of that text. That is

the question for the City Council tonight. What did they mean by that? Did they mean to get rid of the picture as well or did they think the picture was good enough as stand alone to be the sole guidance on that topic? Those are your two choices.

Associate Planner Arnold clarified this zone is R5, it allows attached and detached homes. For each attached home, the lot size is 4,500 square feet. For each single family home, the lot size is 5,000 square feet. Currently, the lot meets the 5,000 square foot requirement with the variance.

Community Comments

Ian Brown supports the Appellant in opposition to the application. While Chapter 25 of the Community Development Code (CDC) does not explicitly address lot line adjustments, CDC 82.210(A)(3), specifically dealing with lot line adjustments states that reducing the lot or parcel size shall not violate the site criteria or site development criteria for that district which include the regulation that parcels be perpendicular to the street with straight lines front to back and the criteria that lot or parcel size, etc. shall conform with standard buildings in the district and any specific historic standards applicable with the underlying zone which said corresponding lots are all rectangular, at least 50 feet wide, at least 5,000 square feet. The other thing I want to talk about is the gerrymandering diagram. It is true that in this quasi-judicial proceeding you are called upon to interpret the Code, it is not a situation in which you can legislate the Code to correct past mistakes if the Code has meaning. In the Code, there is the diagram that delineates an acceptable lot line adjustment with few deviations and unacceptable lot line adjustment with several deviations to wrap the lot around a structure which is exactly what the Applicant wants to do. The staff report suggests the intent of the 2014 ordinance was to delete that standard when it deleted some accompanying explanatory language but the standard that existed was not deleted, only the explanatory language was. Maybe the intent was that a picture is worth a thousand words. Maybe there was intent to delete it but the fact is that standard exists within the zoning code and it's your job to interpret the standard that exists in the zoning code rather than the intent of a different City Council that did not remove that standard. In *Brown v. Safe*, 361 OR 241, it's a very fascinating and long workers compensation case, but part of the point of that is the intent of subsequent legislatures does not alter a statute that was enacted previously. We have a fairly clear illustration of an idealized, unacceptable, zigzag line adjustment and I think the application very closely resembles the unacceptable lot line adjustment. If situations do arise where it is different to apply the criteria, that may be a reason for future City Councils to revisit whether that explanatory language should be inserted, how you can make that more clear. In this situation, the application language is very clear.

Alice Richmond said there is rules, there is codes, there is this and there is that, even in the driving manual. But also the driving manual tells you common sense and logical think. You're not going to drive 70 miles per hour when it's snowing for instance. It seems to me in this situation, I'm not going to say anything actually technically until I heard Mr. Offer say something and I'm looking at the thing and by George, he's right. Lets think about one thing,

assume R10, there is a building here and a building here, the common sense, the logical thing about what figures is, it is the most zigzagged line is that what happens when that person sells, because we all, historical, heritage, no matter what it is, sooner or later, one time or another, you're going to sell your property or your kids going to do it for you. What kind of property that is like a cartoon line over there zigzagged, is going to buy this property. The two buildings, the major building in the middle is separated evenly, continually straight up. Make it a sensible lots that thing. You got to arc in there, take it from both corners and make it straight. You're going to have a small heritage lot. Back then, they used to be smaller houses, smaller rooms, I think a little tiny elevator. I did visit all those houses over there, I was in the tour, I was one of the actors, so I am quite aware of the house. Who in the world, no real estate person is going to handle that kind of line. In my book I thought that was a big no, no am I'm hearing I might be right. Where is it said a crooked line like that is heritage. It doesn't. It doesn't state heritage. In my book it doesn't even state any code or rules because rules in a property line have to be either straight, or diagonal, or square. You might have a flag lot sometimes. But if there is the main lot are even. What is going to do, the lot on the left going to put a geranium in the corner so they know that is their corner of the lot, the one on the other side going to plant an eggplant or a tomato plant to make sure they are not going into the next one because it goes this way and that way. It doesn't make sense. It is not logical. It is not common sense. I do not know who is who and what is what here because I didn't get that thing because I'm not involved in that but I am talking about having an investment, it has a sellable, marketable, and happiness when two people are satisfied, there is a fence that is straight up. The dog doesn't have to go to the corner in here and the kid or this and that. There is a lot of civilized and function in that. What's wrong with making it straight. It is really divided between the construction in the middle. I made some sense, who cares who deleted that, who didn't delete that. We have this lot right in front of us in discussion and most of it is between the two buildings is pretty much straight and so common sense is make it straight through and through.

Michael Selvaggio is asking Council to deny the application on appeal. This decision is going to represent whether the City Council is going to adhere to the Code of the City of West Linn or whether we are going to enshrine errors and omissions into our Community Development Code. The attorney for the Applicant noted that we can look at legislative history and we can make a determination as to what is and is not applicable. In certain cases, that is correct. But if you refer to the currently ruling on case on that which is State v. Gains from 2009, you will see that the courts say very clearly that is used when there is an actual ambiguity in text such as when there is a typo of "of" and "or". In this case, we have a very clear construction still in Code. It is still in Code because absolutely nothing in Ordinance 1635 indicated the removal of this diagram or the instructional text with the diagram. In fact, in State v. Gains, the court said rules of statutory interpretation are allowed for history. That's my little note, here is the quote. When the text of a statute is truly capable of only one meaning, no weight can be given to legislative history that suggests or even confirms that legislators intended something different. So, what we have here is a diagram that says acceptable lot line on one side and describes a three-segmented line, and then says unacceptable lot line adjustment and in addition to describing visually a line with seven segments exactly as we see in the application, says further in text what is not allowed is zigzags and gerrymandering. In fact, the City staff at

the January 2017 meeting of the Historic Review Board characterized what this lot line would look like as a zigzag saying they would have to zigzag it meaning to get around that building. So we have the City staff stating this is a zigzag, we have a diagram in Code that no elected official removed from Code saying unacceptable lines include zigzag lines. So, this is a very clear example of something that maybe was intended by staff and maybe it was even intended by the Council to come out, and yet we have a very clear text with a single interpretation. Now if we choose to assume it should have come out because there is an ellipses in Ordinance 1635 that skipped over that part, then we are thrown to the winds because ellipses are used as a method of statutory adoption all over our City ordinances. There was an ellipsis neatly skipping over the part of CDC 99.038 requiring notification to residents and neighborhood associations that a particular development application had submitted. If we set precedence that an ellipses means material may be taken in or put out by staff's recommendation or interpretation, then we imperial that section of Code as well. However, let's assume for a moment that we are going to go with the actual intent and not the actual text of what we find in Code. There is an error in publishing CDC 85.210(A)(4) in that online, residents of West Linn will see that it simply makes a reference to a lot line adjustment as defined by ORS Chapter 92. But, Ordinances 1635 and 1636 adjusted that to impose a responsibility of the Applicant to show that their lot line adjustment is not a re-plat. That does not appear on the online version and yet it was a very clear intent of the City Council, the elected officials that passed those ordinances. So if we are going to use the test of what the Council in fact intended as opposed to what appears publically in the Code available to the residents of West Linn, then we have to find that this is an incomplete application because there is nothing in the accepted and closed record from the Applicant that shows this is not a re-plat. What this boils down to is if we accept that the Code can be changed willy nilly according to interpretation, what got published, what inadvertently didn't get published, then we have to admit that the West Linn Community Code and Municipal Code available online, which is what the residents of West Linn use to know the law, is useless, is functionally useless. The correct interpretation is to do as close as possible to what was actually passed and that there can only be one interpretation of the text of the ordinances that have been passed. Then that means that the diagram and the textual accompanying of the diagram remains in because there is no indication whatsoever that was to be omitted in Ordinance 1635 and that there is a responsibility of the Applicant to show that that is not a re-plat going on because that was explicitly put into Ordinance 1635 and 1636. So I ask you to please respect the wishes of the City of West Linn, its voters, and elected officials. I think that, despite the differences that some of us in this room may have over small items, there is a very, very common thread that these decisions, what the Community Development Code looks like, is the responsibility solely of our elected officials and not of the City staff and not of an applicant's interpretation.

Mayor Axelrod asked Mr. Selvaggio how does 92 support his interpretation? Your reference to 92 appeared in 85 where the figure is and I'm looking at 92, the section there, were you referring to a specific section in 92?

Mr. Selvaggio responded he was referring to CDC 85.210(A)(4), it makes a reference to Oregon Revised Statutes Chapter 92, the re-plant definition.

Mayor Axelrod said where the figure was shown, the gerrymandering figure that we are looking at if it were intended to be removed or not. If you go to the Code, that is where that figure appears when you refer to 92, but was there something specifically at 92 which I thought you were saying upholds your interpretation.

Mr. Selvaggio said no, he is sorry if he misspoke or implied. He is merely trying to explain what is currently in subsection 4 which does contain a reference to ORS Chapter 92. However, Ordinance 1636 further clarified and he thinks incorporated the re-plat definition from ORS 92 into subsection 4 although that does not appear in the online version.

Mayor Axelrod informed the audience they are going to, at the recommendation of counsel, provide an opportunity for a brief rebuttal at this time. First they are going to take a brief rebuttal of the Appellant. Would you like to make any final closing statement, we are going to allow you to do that and then we are going to go to the Applicant for any final closing comments and rebuttals so the Applicant will get your normal rebuttal, but we are going to offer them the opportunity if they care to make any final statement. If you so wish, would you come forward? We had a kind of script confusion and we are just trying to cover everyone and give everyone the opportunity to speak.

Rebuttal by Appellant

Jerry Offer, representing the neighbors that have brought this appeal. I think it is obvious to everybody, this has some pretty big issues with this and I would like to remind you what we are talking about with the interpretation that staff has made that that diagram shouldn't be in the Code by their interpretation or that the diagram is too vague. It is essentially something that affects every common property line in the City, not just this property line, not just the property lines in Willamette even though there has been a lot of focus on that tonight, the historic district as it should be because that is where this arose. However, the impact of a decision that would say we think the intent of the Council in 2014 was such and such even though we have nothing in the record, nothing has been submitted, it's just trying to figure out what the intent might have been potentially effects the ability to adjust every common property line in the City. So I think the proper thing to do here is to go with the evidence that is in the record. The evidence is in Ordinance 1036. The ellipses that that diagram does apply, that it is there, that is the only evidence of what the Council may have intended. We have nothing that has been submitted that says anything different about what their intent may have been. People have surmised, the Applicant's attorney would like you to take another approach and find a way that they intended something else, but they haven't provided any evidence. The only evidence is what is actually in the ordinance. And so I would say that you should find that the diagrams are there and then you should apply, you should have that ordinance apply to the Applicant's proposal. I think it is pretty clear. It's very similar, it gerrymanders, it zigzags. Ms. Richmond made some very good comments about the practical effect of that and others have made comments about the legal effect. This has some big impacts. The proper approach is to deal with this to overturn the planning director's decision, deny this application, and then fix the Code. That's the solution because this affects every common property line. The Applicant could

then reapply under whatever the clarified Code would be. That's why this should be dealt with through the legislative process, not through a quasi-judicial process and certainly not through a planning director's decision on just a lot line adjustment. This is something that could have a major effect Citywide so that is what I would urge you to do.

Rebuttal by Applicant

Mr. Stamp said let's address the last point first. Mr. Offer made a big deal about the fact this decision affects every property in the City, well, that's true of every quasi-judicial decision that makes a Code decision, that's true of every LUBA appeal, that's true of every Supreme Court decision, it's just how our laws evolved, so there's nothing unusual about that. To that point, it was said that there was no evidence of intent, that there is no evidence, as if we are supposed to provide evidence to you. But this isn't an evidentiary question, it is a legal question and it's a very simple one at that. What did the Council intend in 2014 when they deleted the text? There is two options, either they were changing substantive policy, which seems rather likely, or they just wanted to make their Code more ambiguous and pave the way for this hearing tonight, which seems rather unlikely. I heard mention of a case *Brown v. Safe*, it was badly mangled by the person testifying. What *Brown v. Safe* is talking about, legislative history, and what they are basically saying in that case is that if a legislature is speaking in the legislature, in the halls of the state capital and he is talking about what the current legislative proposal is, what it means and why that should be passed or why it should not be passed, that that is valid legislative history. But if that person talks about the intent of the law from 10 years before or 20 years before, that the court will not view that as legislative history as to the meaning of that law from 10 years ago. That is a relatively obvious point, it has no applicability here. Again, someone cited the *Gains* case and said that well, there is no ambiguity here and I think that suggestion is patently silly. The entire debate around this hearing tonight is whether or not the removal of text also meant that the picture itself should have been removed or whether or not the intent was to leave the picture and let it be a stand-alone criteria. That in itself is an ambiguity otherwise we wouldn't be over here taking about it. So, the suggestion that there is no ambiguity, I think, is frankly ridiculous. There was also talk about re-plats and that we hadn't proved that it wasn't a re-plat. Well, I think it's obvious on its face that it's not a re-plat. Re-plats are intended to either reconfigure an entire subdivision or add lots, delete lots, add easements, delete easements, it's a much more complicated process than what we have here is moving a singular property line which falls entirely within the statutory definition of a property line adjustment. So, I think that suggestion is not well taken. Then there was also talk about an ellipses, I'm not sure what that discussion is about, it's a red herring. I don't think that the Council needs to concern itself with ellipses or anything else, that discussion just made no sense to me at all. Here again, you're trying to decide whether or not removal of text suggests that the picture should have also been removed or not. That's really the only issue before you tonight and that's all we have to say with our rebuttal unless there's any questions for myself or the Applicant.

Mayor Axelrod asked if staff had any further comments or clarification regarding this appeal.

Planning Manager Boyd clarified in the appeal there is reference to Ordinance 1635 talking about ellipses, he just wanted to add that there was a pair of ordinances that were adopted. Ordinance 1636 also has in the same section ellipsis. As a person who worked on that, all the intent was to cross-reference that section that had multiple changes. Without going to far down the slippery slope, I'm just going to stop it there, just note that there are two ordinances.

Mayor Axelrod asked if any members of Council had any questions of staff or the Appellant now at this time, any more? Alright, with that I'm going to close the public hearing and open it up to any deliberations, discussions from the Council.

Council President Perry thinks the Applicant is right, it really comes down to the picture or text in the Code, should that matter or should it not. Although the text is gone, I hate to assume things, it just gets you into so much trouble. So, I have to or my feeling is as much as I have great sympathy for the Applicant, I have to not assume that it was supposed to be removed because I don't know that. All I know is that it is now currently in the Code and so when I look at this, you know the way this is configured here, to get it close to the 5,000 to get close to R5, to jiggle around with this, it's just, to me, it should be in Code. But I cannot judge on that right now, just the fact that it is in there and I have every sympathy for the Applicant, but I think I have to go with what is there and what I can see.

Councilor Martin is trying to focus on this question of intent and when I look at the language removed that lot lines should be generally straight with only a few deviations, but more importantly, lot lines shall not gerrymander or excessively zigzag. That is the language that was in the Code before the ordinance. At that time we were saying we do not want the type of lot lines that we are now looking at in this application. That is the language that was removed. The fact that it was removed tells me in effect we are saying it's okay for lot lines to gerrymander, it's okay to have excessive zigzags, that's what it says when we took this out. So if I interpret that, the removal of that language, then I can say it's okay to gerrymander, it's okay to zigzag, then I cannot reconcile that with the diagram because the diagram is saying don't, don't zigzag. But the fact that this was taken out says it's okay to zigzag so that contradiction, to me, says that they intended for the diagram to be removed. So that's one data point in my mind. The second one, and I'm not sure if I can use this one, am I allowed to use my experience if it is not in the record? I was a part of the Planning Commission when we dealt with what was called the Red Tape Code and it was later called something like easing regulatory restrictions or something like that because the Red Tape became too inflammatory. The Streamlining project, whatever it was or a rose by any other name, but the clear intent at that time for all that Code, was to make it easier to develop, to encourage development. If you go back and look at the ordinances that were passed, they reduced restrictions on lots on the frontage, on portions of lots to make it possible to build on more lots. That was the intent of all of that Code and 1635 was part of the implementation of that whole package. So again, to assume that the intent of this Code was to make it easier to develop a lot by allowing more gerrymandering or zigzags would be consistent with the intent that we experienced at that time. So there is two data points pointing to the diagram that was in the Code being in there by mistake. Now I agree that

legislatively we would like to absolutely reconsider that Code and go back to straighter lot lines, but that is not what this hearing is about, that's a future legislative hearing, we're here, we're bound to interpret this Code the best way you can and to rule on the Code that is in front of us and the application that is in front of us. So what I interpret is that the lot line adjustment should be allowed. Someone help me because I am confused. I get confused if I'm for or against the appeal. I'll let you sort that out. But I believe on the question of intent, I come down on the side of the diagram being in there by mistake.

Council President Perry still has a problem with this assumption. You know, if it's in there, even if it's in there by mistake and sometimes things are in there by mistake and sometimes we have to rule by them. So, I just, I really, I'm sure that they, I feel that they meant to remove that diagram, but it is still in there and it's still part of our Code and that shows what they don't want and so, you know, it troubles me. There are lots of things in the Code we would like to change and we have to rule by it because it's in the Code and we haven't gotten around to making those changes yet. I feel like this is not that much different, it troubles me to make an assumption on something because if it was just the way something was worded, I could maybe, you know, think about this and say well yes, they must have intended this just that they worded it badly, but this is a picture and the diagram is still in the Code so I just feel it's part of the Code so it troubles me.

Councilor Cummings agrees. There is some incredibly compelling arguments on both sides from everybody and she really appreciates it. This is a tough one. In looking at the picture, is it correct? I'm just kind of curious about the thing about the perpendicular, the need to have, the other criteria that was in 82.210(3) is that it, about the references about the other references about things needing to be perpendicular and 50 feet and that kind of thing and this is I understand the type of criteria that is helping this district sort of maintain their integrity, like the look and feel of the way the lots are together. They put a great deal of effort. I sat through your meetings, I mean the historic resource meetings and I it's mind numbing sometimes how careful they are with every little thing, because you know they are trying to play historical stuff and keep it, the integrity, for the future, it's a big deal. So you know thinking about that wondering about this, I'm noticing that you know on gravel the alley it's called I guess, it's not a regular street, is that the case?

Mayor Axelrod responded it's an alley.

Councilor Cummings continued, it's an alley, so an alley is not really required to be 50 feet frontage, is that the case or what? Well, what I'm noticing is that there is a 39 feet 5 inches lot there and this is willingly divided this way 39 feet 5 inches than 60 feet with 7 inches. So I'm just kind of curious would that help if that 39 was brought over to 50 so that that line was a little straighter, would that make any difference? You know what I'm saying with this?

Mayor Axelrod said yes, that is what he is saying. One of the objectives there is that they've got to maintain within the variance of the 5,000 square footage so if they move over, they have to adjust the other slightly.

Councilor Cummings replied she understands that. So just kind of, just wondering about that this isn't the black and white case at all. You know, it's not easy at all. Because I agree with the argument the text is there, that is what we have to work with. There's that and then you can see what was deleted is part of the actual language that was deleted is the actual language that is still there. You know, I'm varying on the side of honoring that, but I also think, I also believe that the applicant, if the applicant makes some adjustments that would be acceptable to the neighborhood, I think I'd rather see both parties to be able to go home like happy, if that's possible.

Mayor Axelrod inserted well, the question before us is not quite that really so the question before us is to determine what was intent of Code at the time represented.

Councilor Cummings doesn't think that, she is not a mind reader. I see that was deleted, but I also see that it stayed.

Mayor Axelrod said let's get a few other thoughts.

Councilor Sakelik agrees with Council President Perry and Councilor Cummings. It isn't really that black and white, that's a very difficult issue but if we don't follow what is actually in our Codes, which we follow other things now that we are stuck with older codes and if new applications come in, we have to honor them if we know they are wrong or not the right way to go, cause they're there we have to honor them and so I can't presume to understand or know what Council or the planning group was doing in 2014, what their real intent was. I can only go by what shows in our Code and so I would have to agree with Council President Perry on that. I think there is a solution that I don't know if it was Mr. Offer or that if the appeal is upheld and we can go and change it, we can correct it to what we feel it was really meant to be through discussion etcetera, then the applicant can reapply and this can be resolved in the manner it should have been originally. I mean it's too bad if the intent was really to take that drawing out, it's really unfortunate that somebody didn't take the time to make sure it was taken care of and so I think you know, somebody's going to suffer from it but there is a solution, we can fix it and then the applicant can apply again, and yes it's going to take some time and if there's some additional cost etcetera, maybe we can mitigate that because of the potential issues from within the City so that it's least disruptive. But to me that would be a positive resolution even though it's the long way around so to speak.

Council President Perry just has one more comment. So you know one of the things I think concerns me about this piece, this diagram in there, if you wanted to remove it, you would have to come to us and we would then have to discuss whether or not it should be removed. You can't, you would have to go through CCI, you would have to go through Planning Commission and get permission to remove it. So, that makes it part of the Code because it was not removed at the time if it was intended to be removed. So you know, it's not like the staff can look at this, the planning department can look at this and say oh, this should have come out three years ago, we'll just whip that out now. Now it still is part of that Code so you would have to go to the Planning Commission Department and have the Planning Committee and

have it removed which makes it part of the Code.

Mayor Axelrod wonders if this was the intent of someone long ago to confuse the future, that there was something vindictive here, but the one thing for me, I mean there are several things around this issue is, when I look at the plat pattern, I agree there either is a general plat pattern for the historic district and when I look at the example of the sort of gerrymandering in the figure, it's in my mind significantly different than the kind of line that is shown on the boundary distinction here to distinguish the two lots. Yes, there's seven segments, but you could put fewer segments in and if there is not a fence along the line, per se, unless you know perhaps there could even be a frontage area eventually, but that is really not part of our decision in how things get designed. But there are ways and I have faith I guess in the design, I guess, of the historic group to have input and feedback on the design that would, you know, would ultimately make it fit because I think it's not re-platting so it is meeting other elements of the Code. The one thing for me that I find compelling here and not to say that I've seen mistakes in enough City documentation that I've seen in the past, but the fact that the reference to the figure was removed, implies to me that the intent was to remove the figure. So if the description for figure was left intact, the reference to the figure, the actual text that refers to the figure itself was intended to be retained, I would think the text to retain the figure would have been retained. So I interpret that to mean the intent of the figure was to be removed and I find it hugely awkward and unfortunate that it is there, so I'm leaning in the direction of, I don't think this has implications to rest of City in any way, shape or form. We have the most interesting, crazy lot lines around the City in many parts, not in the heart of the historic district, I'll render that and I'm very much interested in maintaining the heart and feel of the historic district absolutely. Do I think this would compromise that? I don't think so if it were to move forward because my thinking is that in meeting the frontage requirements of appearing the same, there are design ways to make it fit. So later on when it comes to actually building the design, there are ways for the historic group and the commission to condition it to the extent that they do to make it fit, to make it look like it fits, even though there may be a slight adjustment to the plat boundary. When I look at the gerrymandering that is shown, it goes completely around buildings and rectangular and sort of encompasses buildings, and I don't see that happening here at all. What I see here is just a slight deviation of a straight line. You might argue the back end could be adjusted slightly to maybe not be so irregular. I don't know what the limitations are there with meeting the square footage requirements again without, that's what I was curious about. What other line adjustments did you guys look at? Could the Council determine another lot line adjustment, I don't know. But in terms of the questions before us, what was the intent? What I find compelling is that the reference to the figure was removed and that implies to me the intent was to remove the figure and it just did not happen to get done in word processing or whatever the process is that the City does and that's unfortunate. But again, if I felt I was allowing a 20 story building in the middle here, it would be kind of a different decision I guess. But knowing that we have other controls and ways to make this happen so it fits the district, it sort of, it allows me to sleep at night I guess if you will so that's kind of where I'm leaning.

Councilor Martin has been sitting next to this guy for 10 years almost and both on the Planning

Commission and here and his clarity of thought continues to amaze me and I look at the points that you just made and he's shaking his head, how did he miss that? On page 18 of 23 under 4, why if the intent was to leave that figure in, why would anybody delete that last sentence? The fact that the last sentence was deleted to me is just conclusive evidence that the picture should have been deleted, that the intent of the Code was to allow this type of lot line. And could it be corrected in the future as Councilor Sakelik was talking about? Well, yes, certainly and I hope we'll be able to do that. But we have to decide on the law and the intent of the law as it is right here and if we decide incorrectly, that's subject to appeal and so it's not a matter of just saying let's decide this way for now and then pass a vote and they can reapply. It's a really narrow problem that says we have to decide this case based on our interpretation of the law which is ambiguous. We have to resolve the ambiguity by examining intent and I've seen and I just heard the most overwhelming argument on intent that you know I'm embarrassed that I missed it, but I think the other thing I brought up still stands but I think the intent is clear and therefore the ambiguity is resolved and therefore we have to act on the law based on that resolution with the ambiguity and allow it.

Mayor Axelrod asked if there were any further comments or observations. He stated I would accept a motion, I guess.

Council President Perry with regret and with concern I would move to overturn the Planning Manager's decision for approval of LLA-17-04 and variance 17-02/03 and deny the, oh sorry no, I'm going the wrong way, to uphold the Planning Manager's, no I want to deny the Planning Manager's, I was right in the first one. This doesn't sound right.

Mayor Axelrod input you have two options here, one is to uphold the Planning Manager's decision to accept.

Council President Perry stated they are both denying the appeal on this.

Mayor Axelrod replied oh, on the way it is written up on our motions? Well here, let me see. I'm not in the staff report right now, I don't have a hard copy.

Council President Perry said the one I've got, oh this is not up here.

Mayor Axelrod doesn't think it is on there.

Council President Perry said no it's on.

Mayor Axelrod said it wouldn't be on there.

Council President Perry stated look, the potential motion, they are both denying, denying the appeal.

Mayor Axelrod read move to uphold the planning manager decision for approval and deny the

appeal, that's correct, based on findings in the record so the first one you're saying the Planning Manager decision that the figure was inadvertently left in the Code.

Council President Perry said no, no. What I'm trying to explain is move to uphold, move to overturn but both of them say deny the appeal. Yeah.

Mayor Axelrod oh, move to overturn the Planning Manager decision. Yeah. Mr. Ramis do you want to clarify those motions for us?

City Attorney Ramis responded essentially, you need to decide if you agree with the Appellant or you agree with the Applicant. So if you agree with the Appellant, you would move to uphold the appeal. If you agree with the Applicant, you would move to deny the appeal.

Council President Brenda Perry moved to overturn the Planning Manager's decision for approval of LLA-17-04 and VAR-17-02/03 and uphold the appeal AP-17-02 based on findings in the record tentatively to allow staff to prepare documents to support this. Councilor Richard Sakelik seconded the motion.

City Attorney Ramis asked that in making that motion you make a tentative decision tonight so that the staff could come back with findings that would support it because the findings in the record currently are on the opposite side.

Mayor Axelrod said in clarifying the motion, underlying that motion was the very question that we were giving that essentially the intent, our decision was supposed to be around the intent, was it not? Was it a simple mistake, was the Code ambiguous, what was the intention, or the intent was perhaps to leave the figure in. Those were sort of the three options so in essence if you're supporting the overturning of the Planning Manager's decision then you're saying in your mind that the evidence showing the striking out of the figure in text is irrelevant.

Council President Perry replied the diagram is still there so I would amend to move tentatively.

Mayor Axelrod said well, the decision would be, well you don't tentatively, you're moving to appeal it but what you're saying is our, the Council is saying that our decision is tentative pending the preparation of clarification on the decision by staff.

City Attorney Ramis asked Mayor Axelrod to repeat the question.

I was asked that Councilor Perry had indicated that her motion was tentative and I said that your motion isn't tentative but the decision is tentative pending the preparation of the write up of the acceptable terms of the decision by staff.

City Attorney Ramis responded correct. It's the decision that is tentative subject to seeing findings that comport with your decision.

Council President Perry said that's if you can pass this, we haven't voted yet.

Mayor Axelrod responded yeah, that's correct, but with the motion that's there and the description so far it sounds like but is there any other discussion around the motion at this point. Anyone?

Councilor Sakelik had just a quick thought. You know going back to what Councilor Martin said that last line and going to my comments that I made I can't imagine to speak for anybody as to what was their decision making process so that last line could have been crossed out by error and the paragraph could have meant to be put in. Does it seem likely? Hard to say, but who are we to make that decision? It's very possible if a mistake could be made one way, a mistake could be made the other way so, just a point.

Councilor Martin no I'm not, I don't even want to comment on that.

Mayor Axelrod said alright. Well, for me, again, I'm going to stick with the material put before us is to whether or not the intent, I'm not saying whether it is the right decision or not or the right form of it to be in, but I see the intent because the figure, the reference to the figure was also crossed out as a typographical error if you will, that the figure was not removed and it's unfortunate, but that's what I see, that's how I interpret it and my hope is that if it does move forward, they will find a way to address any concerns in how they develop the site that meet and satisfy and fit with the with the neighborhood. So, I guess we can do a vote.

Councilor Martin asked if we could restate the motion, read it one more time so we'll know exactly what we are voting on.

Ayes: Council President Brenda Perry, Councilor Teri Cummings, and Councilor Richard Sakelik.

Nays: Mayor Russ Axelrod and Councilor Bob Martin.

The motion carried 3 - 2

Mayor Axelrod said alright, so the appeal is moved forward.

City Attorney Ramis asked for a reasonable timetable for the staff to return with findings. Mr. Mayor, we will return with proposed findings on October 9.

Mayor Axelrod said okay so we will return with proposed findings on October 9 and I will say I am looking for my final closing. We would like to thank all who have testified tonight. Your comments have been very helpful. Thank you. If you would like to appeal this decision, you must appeal to LUBA in accordance with LUBA's rules and any applicable provisions in the CDC. This hearing is concluded. Thank you.

City Attorney Ramis replied thank you.

Mayor Axelrod said alright, you want to take a five minute break or we've got a lot of things, do you want to just keep going? Yeah, we've got some things to do, let's get on with business, so let's just give a minute if you guys want to, for those of you that are leaving, maybe if you could take discussions out of the room and at least not be noisy in here. Thank you all, we have a request for a two minute break so we'll take a two minute break.

[Agenda Report 2017-09-11-03: Resolution 2017-20, Extending the Residential Parking Zone for the City Streets Around and Near West Linn High School](#)

[RES 2017-20 Parking Zone Information](#)

[Citizen Correspondence rcd by 9-8-17](#)

[Rory Bialostosky submittal](#)

Mayor Axelrod thought we were just reestablishing the parking zone.

City Manager Stein explained what we are doing is establishing the district as it has been defined through various resolutions over the years. The adoption of this resolution tonight would consolidate into one map all the past resolutions. There is a secondary question, if Council desires to make additions to the residential parking district.

Mayor Axelrod explained the students brought this to Council and they want to help the student body. He feels Council is being chastised for going through process and referenced the letter received from Mr. Bialostosky. What Council is trying to do is bring together all the past resolutions in one coherent document that represents what has been done in the past. When reviewing the past documents, staff found certain streets were in a map but not in text or vice versa. What Council is considering tonight is approval of this drawing that establishes where the existing parking is today without any changes. Mr. Bialostosky indicated there are signs up on Easy Street, the Mayor thought they were always there; however we covered them since they were not documented in a resolution. He asked the City Manager if they were uncovered.

City Manager Stein is not aware of that. If Council adopts the resolution tonight, it will be okay if those signs were uncovered.

Council President Perry is concerned that Easy Street was not included in this. Staff is on a slippery slope when they assume Council is going to pass the resolution and put the signs up well in advance of the decision. Easy street was not included, it is to clarify because it should have been and that is why signs were there originally. The signs were there and taken down because they shouldn't have been there and then they were put back. She is concerned about the process.

Mayor Axelrod believes Easy Street was in the program for parking restrictions.

Assistant City Attorney Thornton informed Council that not all of Easy Street was in the previous resolution, but it was always signed. There is a piece on the map that shows the Easy

Street addition, that is the piece that was historically signed when the rest of Easy Street came into the district.

Mayor Axelrod responded so the assumption was that Easy Street was under control.

Council President Perry said it was an assumption, it was not in any resolution. The signs were put up with the assumption that Council is going to pass this tonight.

Councilor Martin asked if this is two step process: (1) adopt zone (2) add Easy Street?

City Manager Stein stated Step 1 is to clean up the map through the adoption of this resolution, reestablishing the parking district area.

Councilor Martin asked if adopting the resolution with this map would then have a resolution supporting every place that we are restricting parking?

City Manager Stein replied yes, all the areas identified in green on Exhibit A.

Mayor Axelrod asked if the blue areas on the second map should be added even though they have been signed for 20 years.

City Manager Stein explained it is colored green in the first map (Exhibit A) so it brings it in.

Mayor Axelrod asked what are the legal ramifications where we had signs up for the past 20 years? The citizens who live along the blue areas have always assumed there were parking restrictions there.

City Attorney Ramis explained signing does not make it illegal to park there, there has to be an ordinance implemented through a resolution that actually defines the area you are restricting. If we have had street signage without an ordinance, that is a problem, and the objective here is to clean it up so areas intended to be restricted are restricted. The restrictions are real in a policy sense, it doesn't mean legally those are enforceable restrictions, but if that has been the expectation of the public for years, you have actual code restrictions to catch up with the policy.

Mayor Axelrod accompanied staff last week at a meeting at ODOT, they are looking at regional development plans around I205. During that meeting, he asked if students could park on those bridges. ODOT regulations do not allow parking on bridges. Passenger vehicles would not affect the integrity of the bridge, as long as traffic is allowed to flow, according to the West Linn Police Department. Staff is following up with them on opportunities there. We might be able to get 10 to 20 more spaces if allowed to park there. Also last Friday, to bring the City and the school district in future collaborative terms, City Manager Stein and he sat down with School District Superintendent Ludwig. They brought up the parking situation and the school district was receptive to finding solutions. They have adequate busses, but no one wants to

ride the busses, people want to drive. There are all kinds of complications, we say ride your bike; however, we have rain and hills. We could reduce parking demand in doing a better job of coordinating how kids might share rides. We could get our youth and student councils together to develop solutions. The parking requirement of the high school to provide off street parking is within the number required in their Conditional Use Permit. The number of parking spots at the high school is based on the occupancy of the stadium. The school district thinks they are providing adequate parking. Should we demand the school district build a second story somewhere or get some more parking some way on campus?

Council President Brenda Perry moved to extend the meeting to 10:30 pm. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod assured the students they do care and want to improve parking. They need to all be on the same page with where all the restrictions are. It makes sense to advance an understanding of where we are with the parking on the map. He asked Council if they should approve the map that's all green or take the green off those areas that were blue on Easy Street that weren't actually in the resolution, but were on the map. He is inclined to keep it this way because this is what the citizens assumed and those are the ones who pay taxes and own homes. Those who might be renting their driveways to students and using their parking permits to park out front, that is unacceptable practice. It is misuse of public property.

Captain Hennelly know families rent their driveways and use their permits to park their family cars in the street. Code Enforcement Officer Jones runs plates to verify the address jives with the permit. He does not know if there is a violation of law to allow someone to use their driveway. He doesn't know what the rate is for driveway parking or who is doing it. He knows there was a vacant house that kids were parking all over. It is now signed for no parking, no trespassing, and tow away zone.

City Attorney Ramis stated we would have to create some law in this situation. We have the ability to regulate who can park in the streets, we could set criteria for permits and one of the criteria could be you cannot rent your driveway out to someone not eligible for a permit.

Councilor Cummings said this is an awkward process, that these signs would go back up even though there is no regulation to back it up. Did Mr. Bialostosky ask to have this letter read into the record, it will be in the record. She appreciates that the fencing came down because Easy Street was blocked and now students are glad because they have access up to the high school. This is an opportunity for students to use the bus or carpool, it is the sustainable environmentally friendly thing to do. As far as maps are concerned is there a reason why Easy

Street and the blue ones are automatically added into this green one? The grey areas were not.

Assistant City Attorney Thornton replied those are the historically signed areas.

Council President Perry said it concerns me a student comes with us to assist with parking and we restrict it even further. I understand we need to sort out this area, but we need to not lose sight of his request. I do not believe the school is stepping up to the plate. Have they provided carpool spaces? They want our Youth Advisory Group to meet with the student body, but then what? Are they willing to meet with them after? I want a commitment from the school board that they are going to do something. They have doubled the number of students at that school and a lot of them drive. The bus may not be that convenient. I think this needs to be looked into more. I am going to support it with the understanding that we aren't going to forget the students in this and that we are going to follow up on this and make sure the school board steps up to the plate.

Mayor Axelrod added the superintendent is interested on working on solutions and mentioned carpooling spaces could be made at the school. Students also have to help get organized around it.

Council President Perry replied the students did get involved and talked about this and we restricted the parking further. I would like to see the school board say you set this up and we will meet you then. Not just nebulous promises.

Mayor Axelrod will attend the meetings and help them with it. We are not expanding the restrictions, we are preparing a map that shows all the restrictions.

Council President Perry argued they didn't exist, they had signage but no resolutions, we are expanding.

Mayor Axelrod replied they were in text but not on a map, or on a map but not in text.

Assistant City Attorney Thornton explained there is one piece that says Easy Street addition. That piece was not on a resolution but it was signed along with the rest of Easy Street historically. Staff can modify the map in any way that Council directs. If you prefer to adopt a map without that piece, we can do that as well.

Mayor Axelrod continued we have had two requests to add onto the map.

City Manager Stein explained the signage that was there came down as a result of Public Works going through the accreditation process and looking at what is in Code or resolution and what exists on the street and so the sign came down. Council had one meeting where residents in the Easy Street neighborhood spoke to Council so the sign went back up and then there was a request to cover the sign until this matter was resolved. Council was responding to residents that were here at the Council meeting. This issue started with the

request to relax the parking district to allow students to park on the streets around the high school. It is Council's prerogative to restrict or liberalize parking around the high school. We can set aside this portion of Easy Street and put in the grey category with West A and Broadway. We are trying to get a clean map to work with.

Mayor Axelrod's understanding is that section on Easy Street is a hazard because of the bollards and students cutting through to get onto Highway 43. It comes in at an awkward angle and it is a safety issue.

Captain Hennelly replied there is a new do not enter sign going westbound onto Easy Street from Highway 43. The cars that park at the bottom of that, block off the fire department access if they were to have to go up that way. Although we heard from the fire department that they don't drive over malleable curves any more. They would come around from the top.

Mayor Axelrod said if TVF&R needs it for emergency access, we will have restrictions there. If not, we can put in that in the consideration category.

Councilor Sakelik clarified all the blue were signed, but there is no formal resolution?

City Attorney Thornton answered it was signed, but that doesn't mean there wasn't a resolution. There are different tag lines on the resolution and some of them say were added by different resolutions and some of them are map corrections where the resolution described it, but the map never added it. Some of them are brand new additions such as the piece all the way to the west on Easy Street.

Council Sakelik replied so it's just housekeeping, signs were up for 20 years, we should do that. Getting students and people to say they are renting out their driveways is never going to happen, so the only way we are going to be able to control that is to change the rule, ordinance, or law. On the West Linn community page, there were people asking if anyone had a driveway to rent. I agree with Council President Perry that they should take the students seriously. What Mr. Bialostosky put in writing tonight is not accurate. He states the residents have a want not a need. He doesn't recall anything given to Council other than a statement that he was going to talk to students, he hasn't provided the information. We know the residents have a need because of the drugs and trash and this is how it first got passed. My perspective is students need to show the need. They say they want more parking spots. Students have doubled, but we don't know the need. Could this need be satisfied by busses plus 20 spots on the bridge? We need that information before we can make any decisions. If there is a need, we can find a way to do it. I am all for getting the green taken care for housekeeping and then having a discussion on the needs.

Mike Edwards sent an email and letter. He would like to add when he originally built the house, the last sign was in front of his house in the middle of the driveway, he called the City to have it moved. They moved it towards the high school. The new signs state end of permit parking that

makes it clear that beyond that it is okay to park. The sign was moved towards the high school instead of beyond his house.

Mayor Axelrod clarified on the third map on the east side of West A, those two properties, is where the request is to extend.

Council President Perry asked if this would be an extension or if it is existing?

Assistant City Attorney Thornton replied it would be an extension.

Council President Perry asked if we are going to address this later?

Mayor Axelrod would like to firm up what we know and what is in place. We are going to address the request for additional restrictions as part of this whole collaborative process with the school district and kids.

Mr. Edwards asked so the fact that the sign was originally in front of my house, but I'm not included in it?

Councilor Cummings is curious if he has a newer house? Was it built after the parking zone was made? Was it an empty lot?

Mr. Edwards replied it was an empty lot. His house was built in 2008.

Mayor Axelrod said so the sign was where you built the driveway and wondered if there were any documentation.

Mr. Edwards said he called the City and asked them to move the sign and they moved it the wrong way.

Council President Brenda Perry moved to Adopt Resolution 2017-20 extending the Residential Parking Zone for the City Streets around and near West Linn High School as shown in Exhibit A. Councilor Richard Sakelik seconded the motion.

Councilor Cummings would be more interested in completing this with those two properties on West A. I think it's reasonable to assume if those properties were built, they would have included those two houses. He did at one time have that privilege and now he doesn't, similar to the Easy Street people. I don't know that much about the Broadway situation.

Mayor Axelrod asked staff to clarify the situation at the end of Broadway.

Assistant City Attorney Thornton stated a citizen that lives in that area made a comment at the previous meeting and staff tried to include every request.

Council President Perry's concern about the Broadway ones are there are several other properties there and I hate to do it piecemeal. I think we need to look at Broadway better and maybe include those two houses on Easy Street.

Mayor Axelrod is fine with adding West A Street. Mr. Edwards was diligent about his approach and had it at one point.

Council President Perry withdrew her motion. Councilor Sakelik withdrew the second.

Council President Brenda Perry moved to Adopt Resolution 2017-20, Extending the Residential Parking Zone for the city streets around and near West Linn High School to include also the extra two properties on West A Street. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod said City Manager Stein is going to talk to our communication outreach person to connect on the youth connection, getting our Youth Council together with the student council. I'm willing to participate and support it. Maybe a couple of other councilors want to participate. I want to connect with our youth and look forward to working on this issue.

City Manager Stein will do that follow up. That conversation was serendipitous where we talked about this being a task or project that the Youth Advisory Council could work on and Superintendent Ludwig identified this as something their student body council could work on. There is overlap between the two groups and they can work with Mr. Bialostosky to brainstorm and come up with a solution to recommend to the City and the school board.

Councilor Sakelik was at the Youth Council meeting last week and Mayor Axelrod and City Manager Stein are going to be at next one so they can share their perspective. Parking was near the bottom of their list.

Captain Hennelly said he and School Resource Officer Halverson could be part of the discussion also.

[Agenda Report 2017-09-11-04: Community Grant Awards for Fiscal Year 2018](#)

[Community Grant Information](#)

Finance Director Breithaupt informed Council that on July 10 they approved 12 out of the 15 community grants, the other three were withheld for additional information. At this point two are ready to move forward, Oktoberfest for \$750 and the West Linn Chamber for \$2,500.

Council President Brenda Perry moved to approve the award of community grants for FY 2018 to the West Linn Chamber of Commerce in the amount of \$2,500 and Oktoberfest in the amount of \$750. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-09-11-05: Construction Manager/General Contractor Contract Award](#)
[" White Oak Savanna Park Naturescape and Playground](#)

[White Oak Savanna information](#)

Parks & Recreation Director Worcester explained Construction Manager/General Contractor (CMGC) is a different process for awarding a public improvement contract. It is an exemption to the design, bid, build rules. We have used it successfully several different times, mostly on park projects, specifically, Tanner Creek Park, Marylhurst Park, Midhill Park, and Robinwood Park. We are proposing to use that same process for this project mainly because it's a tricky project. There are a lot of design build components to the playground and field fit installation. For us to have spent the amount of money we would have to spend on engineering and specifications then construction documents to provide every particular detail of this would have taken about a third of the budget. We have an architect on our design team and a contractor to do everything in a collaborative value-engineering process and that is the benefit. The lengthy memo he wrote is to help Council understand why there is an exemption. We have gone through the Request for Proposal (RFP) process, reviewed proposals, interviewed two proposers and are recommending the Paul Brothers of Boring be the recipient of this contract. There is not a specific contract amount, there is a budget amount. We work with the contractor to the guarantee maximum price. Council will authorize us to award contract to Paul Brothers. The budget project constraints is around \$600,000 and we'll work within the parameters to establish the guaranteed maximum price.

Mayor Axelrod said the package is a blank contract, it didn't explain how the scoring was going to go.

Parks & Recreation Director Worcester explained they went through the contractor interviews on Friday and conducted reference checks. There wasn't time to give Council this information back when the agenda bill was due. We only received two proposals so that made the interview part easy. They were both comparable. The main difference is that Paul Brothers has been building parks in the northwest for three generations. We have worked with them before, they built a park for us. We are familiar with them and they had less fee.

Mayor Axelrod asked if it could be less than \$600,000.

Parks & Recreation Director Worcester explained the way this works is we could build more stuff. We were stretching, asking for everything so we will do what we can, but it will be close. We will probably cut some of the stuff out of the contract for an eagle scout project.

City Manager Stein informed Council we will report if we achieved it all or what we had to shave off the project.

Mayor Axelrod has been in discussions with Mr. Parker about re-routing Tannler through his property. Does that affect the entrance to the park? Should we proceed as though it is going to be blocked off?

Parks & Recreation Director Worcester answered it is designed within the confines of the Transportation System Plan (TSP). We are waiting for the restrooms, it will be a different contract. We hope someone besides the City puts in sewer on Tannler. It would be really expensive for us to do all that for one service.

Council President Brenda Perry moved to Award a contract for Construction Manager/General Contractor services with Paul Brothers, Inc. the successful Proposer, and authorize the City Manager to negotiate and execute the contract. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Agenda Report 2017-09-11-06: Main Street Release and Settlement Agreement](#)

[Main Street Information](#)

City Attorney Ramis explained this case began as a zoning violation that had Charter limitations and a dispute about the extent of easement rights where a person building a driveway to a replacement home made claims as to the extent they could expand the driveway. The settlement agreement has the following features: the builder will pay a fine of \$15,000 relating to the zoning violations and tree cutting, there is a plan for restoration for re-planting the area affected; there is a fee in lieu of frontage improvements of \$6,875; and the driveway has been redesigned to meet all the Code requirements and occupies no more land than the original driveway. The property owner will relinquish more than half of the easement area that they now hold over City property. We recommend approval of the settlement agreement. In particular, the benefit to the public is the reacquisition of full control of City property.

Council President Brenda Perry moved to approve the proposed terms of the Release and Settlement Agreement as outlined in the agenda report and authorize the City Manager to sign the Agreement. Councilor Bob Martin seconded the motion.

Mayor Axelrod asked hasn't the restoration plan already been drafted and approved? What leverage does the City have on this plan if it isn't proposed and agreed to before the settlement agreement is signed? In the agreement, there is reference to a restoration plan that hasn't been prepared.

City Attorney Ramis understands the restoration plan is a condition of the driveway construction, it could be a condition that goes along with paying the fine.

Mayor Axelrod's main concern is to make sure that the City has leverage.

City Attorney Ramis explained we have the leverage to stop construction of the driveway until they obtain a permit. As a condition of the permit, they have to do the four things listed under E which includes the tree and planting plan for the area disturbed by the grading.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

[Business from the City Council](#)

Citizen Advisory Board Appointment: Sustainability Advisory Board

Mayor Axelrod placed before Council appointing Terrence Shumaker to the Sustainability Advisory Board.

Council President Brenda Perry moved to approve the Mayor's liaison appointment. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod thanked all the applicants. If you were not selected, don't give up, there's opportunities in the future and we have openings periodically for all the boards. Please stay connected and he encouraged those who want to participate to come to the meetings.

Council President Perry informed Council the Clackamas County Coordinating Committee (C4) approved updates to their bylaws and she needs approval from Council to move forward with

the changes. The major changes are: (1) Add villages, we don't have any now, but they wanted to add if we do have in the future. (2) How agenda items get forward, they want to make sure members have the opportunity to put agenda items out there. There is a business note at the end where any member can bring something up and have it put on the agenda. (3) There are no alternates for the co-chair positions. We have had an issue where anyone who showed up thought they were the co-chair. If the assigned chair from the commission didn't turn up, there was no chair. We held a meeting like that this week and it worked just fine. There was a lot of wordsmithing. The cities are satisfied with the wording. We still have to work on the Metro subcommittee bylaws. (4) We are going to go with Sturgis Rules rather than Robert's Rules. She would like approval from Council that she can say yes to these changes in the bylaws.

Councilor Teri Cummings moved to approve the bylaws. Councilor Richard Sakelik seconded the motion.

Mayor Axelrod asked if this is a separate matter, to follow Sturgis?

Council President Perry clarified that is for your information, we might want to consider it in the future.

Mayor Axelrod asked if all the members listed here worked on the bylaws?

Council President Perry responded we had a bylaw committee. The changes went to the retreat and then the C4 committee, so they all reviewed it.

Mayor Axelrod asked if the housing need is a separate matter?

Council President Perry said no, we don't need to. If you want to take a vote on that and then I can update you on the housing needs.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, and Councilor Richard Sakelik.

Nays: None.

The motion carried 4 - 0

Councilor Martin abstained.

Council President Perry said the housing needs assessment came up. She asked a lot of questions and pointed out West Linn's concerns. She asked what the County was going to do with the data, but they don't have an answer. Milwaukie answered; however everything they came up with, we cannot do in West Linn. We're infill, don't have transportation, and don't have jobs close to where people live. She asked about staff time needed and they promised to get back to me on that, they feel it is considerable. Other cities, like Canby, said they are facing the same issues. How does he squeeze out more staff time? We have to do cost versus benefit

analysis in West Linn. What if we spend all this staff time, what do we benefit from it, what do we actually use it for? If we pull our Planning staff away from all the Code changes that will help make it easier for development to work on this project actually works against it. Lot of issues, lot of good discussion. They are going out for an RFP for a consultant. We are not committed to this.

Councilor Martin believes these goals and objectives seem to be exactly the information we need to be able to address or respond to legislature. If we don't have this data, it is difficult to craft a fair and reasonable response that allows us to identify how we differ from other cities. We justify things by saying we don't have the land, or this or that. But we also don't have any quantified information to back that up. This kind of assessment allows us to understand the problem much better. If we had the option of ignoring the problem, I might say lets not do it. But we are going to have to address this problem. If we don't have valid information, we wont have decent answers or decisions. I think this is money well spent.

Council President Perry replied it is a lot of money and a lot of staff time. Where would it benefit us? It gives us data, but what could we use that data for in West Linn?

Councilor Martin asked what are the current housing conditions and needs in West Linn?

Council President Perry responded that's a decision for Council, that's not a decision I will make on my own.

Councilor Martin said in terms of supporting the need to do a housing needs assessment for each municipality I see as a benefit, what is the cost?

Council President Perry responded that is the questions and that's why I'm waiting for more data. Once they have the RFP, I will ask what is our share of the consultant fees? Milwaukie and Wilsonville have done one so they can give us an idea of the staffing requirements which is a far bigger cost. Then I can bring that back to Council to say this is what the estimated costs of this is and the time involved and then have Council decide if we want to participate.

Councilor Martin thought you were advocating that we should not move forward with this.

Council President Perry is asking a lot of questions, she wants to know everything about this before she brings it back to the Council. This is only because it is part of the bylaws. The only action needed tonight is on the bylaws.

Councilor Martin questioned page 8 of the bylaws, it says the meetings are going to be conducted by Roberts Rules of Order, I thought you said it was Sturgis.

Council President Perry said an email was sent out today with a clean copy, this was all she had this afternoon, but she can forward the email. We made two decisions at the meeting, to go with these and we had a separate vote on Sturgis.

Councilor Richard Sakelik moved to Extend the meeting 15 minutes to 11:00 pm. Council President Brenda Perry seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod asked if on the housing assessment piece, there is an abbreviated one because some of the elements don't apply to West Linn.

City Manager Stein suggests Community Development Director Williams works on a summary of HB 1051 and how it applies to West Linn. You have a joint meeting coming up with the Planning Commission on October 16, I suggest you save that briefing for that meeting. This housing needs assessment may be in addition to that. Community Development Director Williams is exploring this to find out what this assessment is all about and what they are after.

Council President Perry explained they do not have to make a decision on this right now so there will be more information coming back that she can bring to the Council.

Councilor Sakelik wants to discuss last weeks work session, the potential lease to Clackamas County Tourism of City Hall. He wants understand it better and discuss it at another work session before making any final decision. There has been an additional email that none of the rest of Council was copied on regarding the County being anxious to move forward and if we are not ready to do something relatively quickly, they will move on to something else. They have never expressed a time frame to us besides back in May they said they want to do something relatively soon. I'll put together an email with all the numbers so you will be privy to what the financial aspects are and send it out to Council so we can make an informed decision.

Council President Perry said perhaps you could share the email you received.

Councilor Sakelik replied he will.

[Council President Perry's C4 handout](#)

[Council President Perry's Sturgis handout](#)

Report from the City Manager

City Manager Stein was going to report on the same item Councilor Sakelik did. It's important to look at the email Councilor Sakelik has and the Council can go from there. She reminded Council about the ICMA webinar this week. Councilors Sakelik, Cummings, and Martin are attending. Your training session will be Friday, October 13 at 10:00 am and you should expect to go all day. The Willamette Christian Church will be taking 90 days to get back to Council regarding the cost sharing aspect Council asked them to consider. Community Development

Director Williams will be writing a memo to Council regarding the annexation request on that property and the issues.

Council President Perry asked if they do not use city water or sewer, what do they use?

City Manager Stein responded probably a well.

Council President Perry said and a septic tank.

City Manager Stein said they are outside of the urban growth boundary. Bringing them into the City will involve an urban growth boundary amendment process as well.

[Adjourn](#)

DRAFT



CITY OF
West Linn

22500 Salamo Road
West Linn, Oregon 97068
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**WEST LINN
CITY COUNCIL MEETING
NOTES
October 9, 2017**

Call to Order and Pledge of Allegiance

Council Present:

Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Staff Present:

City Manager Eileen Stein, City Recorder Kathy Mollusky, Assistant to the City Manager Dylan Digby, Associate Planner Darren Wyss, Community Development Director John Williams, Police Captain Neil Hennelly, and City Attorney Tim Ramis.

Approval of Agenda

Council President Brenda Perry moved to approve the agenda for the October 9, 2017, West Linn City Council Meeting removing Senator Richard Devlin from scheduled presentations and adding the Main Street Update. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Community Comments

There were not any community comments.

Proclamations, Recognitions and Scheduled Presentations

Senator Richard Devlin and Representative Julie Parrish Legislative Updates

Main Street Update

Noelle Brooks and Lacey Sprague, Historic Willamette Main Street, asked to be on Council agenda quarterly. They just completed a successful Farmer's Market and informed Council about all the changes they made to make it successful. Over 300 kids showed up to get their \$2 a week to spend on produce. Nine farms participated including honey, eggs, and chickens. Al's gave tomato plants to children who then had a tomato contest at the end of the market. Main Street partnered with the Methodist Church, the Chamber, and businesses. Ms. Brooks is writing a grant to get bike racks. She explained how they have done pop-up shops. They contact the building owner about vacancies and stores temporarily open up a shop in the vacancy.

Business Meeting

[Agenda Report 2017-10-09-01: Public Hearing – ORDINANCE 1661, RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTION 11.030 TO ALLOW COMMUNITY BUILDING AS A FORM OF PERMITTED USE IN THE SINGLE-FAMILY RESIDENTIAL DETACHED , R-10 ZONE ONLY ON THE PROPERTY LOCATED AT 3706 CEDAROAK DRIVE, WEST LINN FOR PURPOSES OF PERMITTING USE OF THE ROBINWOOD FIRE STATION AS A COMMUNITY BUILDING \(CDC 17-03\)](#)

ORD 1661 Information

Mayor Axelrod explained this is a public hearing on land use case CDC-17-03 and Ordinance 1661, a proposal to amend Community Development Code Chapter 11 to allow a community building as a permitted use in the Single-Family Residential Detached R-10 Zone on the City-owned property at 3706 Cedar Oak Drive and he called the public hearing to order. The testimony and arguments we hear will be used to come to a decision on this amendment either tonight or at a later date.

He explained how tonight's hearing will proceed. After the preliminary legal matters, staff will make a presentation, the Council will have an opportunity to ask questions, then the Council will hear public testimony. After the Council asks any final questions of staff, the hearing will be closed, and the Council will discuss the proposal and make a decision.

If you wish to speak during the public comment portion of this hearing, please fill out a testimony form and give it to staff. All persons that wish to speak must be recognized by the Council before speaking. When you come to the podium, please state your name and city of residence for the record so the information can be entered into the minutes. Speakers will be limited to five minutes.

City Attorney Ramis explained the Council's decision must be based on consideration of: 1) the statewide planning goals and administrative rules adopted under ORS Chapter 197, 2) applicable federal or state statutes or rules, 3) applicable plans and rules adopted by Metro, and 4) on the City's comprehensive plan and development code. The Council may consider any relevant testimony that we receive.

Failure to raise an issue during the City's hearing on this matter precludes an appeal to the Land Use Board of Appeals based on that issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing include those who submit written comments or present oral arguments.

He asked if any members of the Council wish to declare a potential or actual conflict of interest? There were not any.

He asked if there were any challenges to impartiality of any member of the Council. There were not any.

Associate Planner Wyss staff report.

[Staff Presentation](#)

Community Comments

Kevin Bryck is in favor of this. This has taken a long time. He hopes moving forward, dealing with problems moves faster.

Councilor Cummings thanked Mr. Bryck for all his effort.

Questions of Staff

There were not any.

Mayor Axelrod closed the public hearing.

Council President Brenda Perry moved to approve First Reading for Ordinance 1661 relating to the amendment of West Linn Community Development Code Section 11.030 to allow community building as a form of permitted use in the single-family residential detached, R-10 zone only on the property located at 3706 Cedaroak Drive, West Linn for purposes of permitting use of the Robinwood Fire Station as a community building (CDC 17-03), and set the matter for Second Reading. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Council President Brenda Perry moved to approve Second Reading for Ordinance 1661 relating to the amendment of West Linn Community Development Code Section 11.030 to allow community building as a form of permitted use in the single-family residential detached, R-10 zone only on the property located at 3706 Cedaroak Drive, West Linn for purposes of permitting use of the Robinwood Fire Station as a community building (CDC 17-03), and adopt the ordinance. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod stated this has been a long road and this is a great night tonight to see this finally move forward, so thanks to the friends. He asked City Attorney Ramis if anything else was required.

City Attorney Ramis replied no.

Mayor Axelrod adjourned the public hearing.

[Agenda Report 2017-10-09-02: Public Hearing - ORDINANCE 1662, RELATING TO SUBMITTAL REQUIREMENTS AND APPROVAL STANDARDS FOR GRADING, GEOTECHNICAL HAZARDS AND STORM DETENTION AND TREATMENT ELEMENTS OF DEVELOPMENT](#)

[ORD 1662 Information](#)

Mayor Axelrod explained this is a public hearing on land use case CDC-17-02 and Ordinance 1662, a proposal to amend numerous sections of West Linn's Community Development Code relating to submittal requirements and approval standards for grading, geotechnical hazards and storm water detention and treatment and he called the public hearing to order. The testimony and arguments we hear will be used to come to a decision on this amendment either tonight or at a later date.

He explained that tonight's hearing will proceed as follows: After the preliminary legal matters, staff will make a presentation, the Council will have an opportunity to ask questions, and then the Council will hear public testimony. After the Council asks any final questions of staff, the hearing will be closed, and the Council will discuss the proposal and make a decision.

If you wish to speak during the public comment portion of this hearing, please fill out a testimony form and give it to staff. All persons that wish to speak must be recognized by the Council before speaking. When you come to the podium, please state your name and city of residence for the record so the information can be entered into the minutes. Speakers will be limited to five minutes.

City Attorney Ramis explained the Council's decision must be based on consideration of: 1) the

Statewide Planning Goals and administrative rules adopted under ORS Chapter 197, 2) applicable federal or state statutes or rules, 3) applicable plans and rules adopted by Metro, and 4) the City's comprehensive plan and development code. The Council may consider any relevant testimony that we receive.

Failure to raise an issue during the City's hearing on this matter precludes an appeal to the Land Use Board of Appeals based on that issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing include those who submit written comments or present oral arguments.

He asked if any members of the Council wish to declare a potential or actual conflict of interest? There were not any.

He asked if any member of the audience wished to challenge the ability of any member of the Council to participate in this decision? There were not any.

Community Development Director Williams staff presentation.

[Staff Presentation](#)

Community Comments

There were not any.

Councilor Martin appreciates seeing what the other municipalities are doing. If we used a map rather than what using right now, would that be more efficient? The Planning Manager could make a decision based on the map. Would there be type three lands where you wouldn't want a report because it isn't in a slide area? Which approach accomplishes this better?

Community Development Director Williams answered some other cities rely on historic landslide mapping. Where that data is available and put together, it is helpful. With the changes in our ordinance, our requirements are roughly equivalent to other cities. Other cities focus in on if the development is in a sloped area. The way our definitions have historically worked is a development could have a slope on the land; however you are not developing there, but you still might be required to do the study. If we are able to put together the resources on mapping, that would help everyone and would be a virtuous goal for us to have.

Mayor Axelrod asked if he should close the public hearing.

City Attorney Ramis stated there is no one here participating, so it doesn't make a difference. If Council wants to ask questions of staff, you should leave the record open.

Mayor Axelrod mentioned the importance of not relying on slope. He's glad to see we are moving away from some things there. To not pigeonhole staff in the future that we are leaving all the factors in that could result in a need for a geotechnical evaluation. He would like to refer

to the text on page 3 of the ordinance under 24.080 Submittal Requirements, Item F. The sentence says, tables and maps identifying acreage, location, and type of development constraints due to slope, drainage and geologic hazard. Other factors could lead to the need so he doesn't want to try to identify all those things. With a slight adjustment to the terminology, right before slope after due to we would insert "site characteristics such as". This would allow staff and the City to require it for whatever unique factor it might be, for instance soil type, specific vegetation, even drainage, stormwater management, or other management. This appears six or eight times. He suggest this to eliminate this concern. In Section 10, item D, he really likes this new insert. Per Chapter 99.035, who has approval authority and the appeal authority over the planning director and is there a role for the planning commission in that?

Community Development Director Williams responded the scenario is an application comes in, staff doesn't think the information is needed so they waive it. It says it goes to the approval authority which is usually the Planning Commission; however it could go to Council. Based on the preferences of the review authority or new information that comes in at a hearing it turns out the information is needed. So, knowing that we have 120 day rule, in order to create the time in the process to do this, the applicant would provide a waiver, an extension, or a stay of the 120 day rule to allow that to happen or the review authority would find it does not meet criteria. We are adding criteria in this ordinance to give council this authority.

City Attorney Ramis added just because the staff waives the requirement, it doesn't mean the issue is gone, it can be re-interjected into the hearing process and the decision maker can take it into account. The applicant can decide to push ahead on the record that has been made or to waive the clock and get the homework done. The Planning Commission and Council have that authority. In some cases, the Planning Director decision is a recommendation, not an approval authority, in that case, it has to go to next step to get authority.

Community Development Director Williams explained most of the applications this would come up at, staff writes the report and the Planning Commission conducts the hearing, in that case, the Planning Commission would be the approval authority. There are staff decisions on administrative permits where the appeal goes various places in either case, Council is covered.

Councilor Cummings asked if on the record appeal, would it be something that could be heard if it wasn't already addressed?

City Attorney Ramis replied on the record appeal, there is some limitation. It is still possible to raise an issue, you don't necessarily need additional facts, one could say I think the interpretation is wrong so more information is needed or you could remand it back to where the record was made in first place to get additional information added.

Councilor Cummings asked if Council wanted, you couldn't bring new information. The applicant couldn't say give me more time and I'll do this.

City Attorney Ramis said that proposition is generally correct. The exception would be if it fell

into the exceptions to on the record appeal. Someone could argue the reason for the error fell into one of the exceptions and you could take evidence. The usual case would be to remand it back to the hearing body that created the record. A waiver would be requested for the 120 days.

City Manager Stein asked if an administration decision is made and the Planning Commission didn't pick up, could Council on appeal?

City Attorney Ramis stated the issue could come up, but you couldn't raise new facts. If Council felt they need more evidence, they could remand or it has to fall within the two exceptions.

City Manager Stein asked if Council changes the Code, then Council could pick up and have a new hearing?

City Attorney Ramis said this is correct. With the opportunity to introduce new evidence on appeal, you could go get the work done and introduce the new evidence at the hearing.

Mayor Axelrod wants to insert "site characteristics such as" into Section 2F, Section 5B, Section 6 item 4, Section 9.B.3, Section 12.E, and Section 15 item 3. Sometimes the Code refers to stormwater, sometimes it refers to storm detention. He would like stormwater.

Community Development Director Williams informed Council that language is consistent throughout the Code, it came from Engineering standards.

Councilor Cummings thinks we have a little housekeeping on this and are running the risk of missing something. She asked if we should finish it up at a work session.

Mayor Axelrod would rather get it approved tonight. We can track it as a clean up item later in the year and have a discussion with Public Works.

Community Development Director Williams will note this. He is bringing to Council typo corrections and will search the entire code for this at that same time.

Mayor Axelrod wants to do it that way. He closed the public hearing.

Community Development Director Williams read all the changes, in Sections 2F, Section 5B, Section 6 item 4, Section 9.B.3, Section 12.E, and Section 15, item 3.

Council President Brenda Perry moved to approve First Reading for Ordinance 1662 relating to submittal requirements and approval standards for grading, geotechnical hazards and storm detention and treatment elements of development with the amendments as read, and set the matter for Second Reading. Councilor Bob Martin seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Council President Brenda Perry moved to approve Second Reading for Ordinance 1662 relating to submittal requirements and approval standards for grading, geotechnical hazards and storm detention and treatment elements of development as read, and adopt the ordinance. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Mayor Axelrod thanked staff for their work and this will hopefully eliminate some appeals and streamline the process.

Councilor Cummings thanked the CCI, Planning Commission, and citizens who worked on this, we have a better Code here than we had before.

[Agenda Report 2017-10-09-03: RESOLUTION 2017-21, ADOPTING AN EMERGENCY OPERATIONS PLAN](#)

[RES 2017-21 Information](#)

Police Captain Hennelly informed Council this is the final approval of the Plan. The cost has already been spent to update the Plan. Moving forward, he is looking to do it in-house. We use the same outfit the County uses. He thinks we could save money doing it in-house.

Mayor Axelrod knows the firm and thinks we could save money.

Councilor Sakelik wants to know when are going to have a trial.

Captain Hennelly replied it is on his agenda to get it done. It is a skill we need to exercise.

Council President Brenda Perry moved to Adopt Resolution 2017-21, adopting an Emergency Operations Plan. Councilor Richard Sakelik seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Agenda Report 2017-10-09-04: RESOLUTION 2017-22, NAMING CORNWALL CREEK

RES 2017-22 Information

Community Development Director Williams informed Council this resolution applies a name of Cornwall Creek to the unnamed creek. If the resolution is adopted, we will change the maps to reflect that name.

Mayor Axelrod asked that staff add in Section 1, the tributary creek depicted on the map in Exhibit A will be recognized by the City of West Linn as Cornwall Creek, "a tributary to Tanner Creek."

Council President Perry suggested "the tributary creek to Tanner Creek as depicted on the map in Exhibit A will be recognized by..." rather than having two tributaries in the sentence.

Council President Brenda Perry moved to Adopt Resolution 2017-22, naming Cornwall Creek with the agreed amendment. Councilor Teri Cummings seconded the motion.

Ayes: Mayor Russ Axelrod, Council President Brenda Perry, Councilor Teri Cummings, Councilor Bob Martin, and Councilor Richard Sakelik.

Nays: None.

The motion carried 5 - 0

Business from the City Council

Citizen Advisory Board Appointment: Sustainability Advisory Board

Mayor Axelrod is not appointing members tonight. There are openings on the Public Safety Advisory Board, the Sustainability Advisory Board, and the Committee for Citizen Involvement.

Councilor Sakelik reported the West Linn Chamber requested the Council liaison not attend their board meetings based on a recommendation from the Oregon Chamber of Commerce. They only have board members attend their board meetings. He will keep in contact to see if they need any assistance. The Youth Advisory Council Chair is meeting with the Associated Student Body to talk about the parking issue. They have invited Rory to the next Youth Advisory Council meeting which is on the 18th.

Councilor Cummings, along with Mayor Axelrod and Councilor Sakelik, attended the League of Oregon Cities conference. She especially enjoyed the historical presentation and economic development sessions. The White Oak Savanna ribbon cutting was a wonderful event. She thanked Roberta and everyone else who worked on this. At the Clackamas County Coordinating Committee (C4) meeting, staff put together proposals to consider to set priorities for projects they would like to have considered for the Tri Met bond. The one that is critical for West Linn is the I205 Abernathy Bridge project. The Hwy 43 project made the secondary list. Staff also got Willamette Falls Drive on the map. She attended an arts conference with Citizen

Engagement Coordinator Flynn and a citizen. They are trying to form an arts commission and get the community involved.

Council President Perry clarified it is just one section of Willamette Falls Drive, it is the end part through village, not by Highway 43.

Councilor Cummings replied it is from 10th street to Tualatin River. The criteria was it had to be something that could be done in the next 7 years.

Councilor Martin acknowledged the Committee for Citizen Involvement (CCI) has been meeting once a week and trying to work on Chapter 99. He encouraged anyone who has an interest in citizen involvement to consider applying for the vacancy. Water Environmental Services (WES), our sewer district, has created a citizen advisory board. If you have an interest in how that process is done, get on their website and apply.

Council President Perry is going to be on the elected advisory committee. They are eliminating Milwaukie, they are not technically a service district. There are a few glitches they need to work out on the 18th. She thinks the elected will come from the elected forum.

Councilor Martin talked with Library Director Erickson. He has offered to create a planning shelf at the library. He is going to see what they have and add to it. It is important to have this resource. He doesn't expect people to read 10 books on planning, but even if you read one, you get the main concepts and vocabulary. The same thing applies to land use law. He congratulated Roberta and everyone else involved in the White Oak Savanna. This and Robinwood were completely grass roots efforts.

Council President Perry added the Main Street group. It is starting to look beautiful.

Mayor Axelrod has a draft letter to support the Oregon Department of Transportation (ODOT) grant opportunity to repair Abernathy bridge. He is happy to sign it if Council supports. Council supports this. At the Savanna event, the Parks & Recreation Director had a shovel event for the lower part that is going to be a creative play area. It is a new, different park we are going to have. This came out of a workshop held at Willamette Elementary School.

Councilor Saklik thinks having a zip line and mud area is a wonderful, creative thing.

Council President Perry has a bench in the White Oak Savanna area.

[Report from the City Manager](#)

City Manager Stein has nothing to report.

[Adjourn](#)



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Agenda Report 2017-11-13-02

Date: 11/13/2017

To: Russ Axelrod, Mayor
Members, West Linn City Council

From: Lance Calvert, P.E. – Public Works Director/City Engineer *LEC*

Through: Eileen Stein, City Manager *ES*

Subject: Oregon Public Works Emergency Response Cooperative Agreement Renewal

Purpose

The Oregon Public Works Emergency Response Cooperative Assistance Agreement is up for renewal. The City of West Linn's commitment to the agreement expires on January 28, 2018. If renewed, the agreement will remain in effect for five years after the date of execution.

Question(s) for Council:

Does Council want to approve a five year extension to the emergency response mutual aid agreement, continuing to provide a mechanism for public works emergency response between governmental agencies?

Public Hearing Required:

None

Background & Discussion:

- The City of West Linn, along with several other governmental agencies and the State of Oregon Department of Transportation, originally committed to this agreement in March 2003. The 5-year term agreement was renewed in January 2008, January 2013, and is again up for extension.
- Terms of the agreement remain unchanged; the mutual aid agreement enables public works agencies to support each other during an emergency.
- The agreement sets up the documentation needed to seek maximum reimbursement possible from federal agencies.

Budget Impact:

None

Council Options:

1. Approve renewal of the Oregon Public Works Emergency Response Cooperative Agreement.
2. Deny renewal of the Oregon Public Works Emergency Response Cooperative Agreement.

Staff Recommendation:

Approve renewal of the Oregon Public Works Emergency Response Cooperative Agreement.

Potential Motion:

1. "I move to approve renewal of the Oregon Public Works Emergency Response Cooperative Agreement."
2. "I move to deny renewal of the Oregon Public Works Emergency Response Cooperative Agreement."

Attachments:

1. Oregon Public Works Emergency Response Cooperative Assistance Agreement

OREGON PUBLIC WORKS EMERGENCY RESPONSE
COOPERATIVE ASSISTANCE AGREEMENT

THIS AGREEMENT is between the government agencies (local, county, or state) that have executed the Agreement, as indicated by the signatures at the end of this document.

WITNESSETH:

WHEREAS, parties to this agreement are responsible for the construction and maintenance of public facilities such as street, road, highway, sewer, water, and related systems during routine and emergency conditions; and

WHEREAS, each of the parties owns and maintains equipment, and employs personnel who are trained to provide service in the construction and maintenance of street, road, highway, sewer, water, and related systems and other support;

WHEREAS, in the event of a major emergency or disaster as defined in ORS 40 1.025 (5), the parties who have executed this Agreement may need assistance to provide supplemental personnel, equipment, or other support; and

WHEREAS, the parties have the necessary personnel and equipment to provide such services in the event of an emergency; and

WHEREAS, it is necessary and desirable that this Agreement be executed for the exchange of mutual assistance, with the intent to supplement not supplant agency personnel;

WHEREAS, an Agreement would help provide documentation needed to seek the maximum reimbursement possible from appropriate federal agencies during emergencies;

WHEREAS, ORS Chapter 402.010 provides for Cooperative Assistance Agreement among public and private agencies for reciprocal emergency aid and resources; and

WHEREAS, ORS Chapter 190 provides for intergovernmental agreements and the apportionment among the parties of the responsibility for providing funds to pay for expenses incurred in the performance of the agreed upon functions or activities;

NOW THEREFORE, the parties agree as follows:

1. Request

If confronted with an emergency situation requiring personnel, equipment or material not available to it, the requesting party (Requestor) may request assistance from any of the other parties who have executed this Agreement.

2. Response

Upon receipt of such request, the party receiving the request (Responder) shall immediately take the following action:

- A. Determine whether it has the personnel, equipment, or material available to respond to the request.
- B. Determine what available personnel and equipment should be dispatched and/or what material should be supplied.
- C. Dispatch available and appropriate personnel and equipment to the location designated by the Requestor.
- D. Provide appropriate access to the available material.
- E. Advise the Requestor immediately in the event all or some of the requested personnel, equipment, or material is not available.

NOTE: It is understood that the integrity of dedicated funds needs to be protected. Therefore, agencies funded with road funds are limited to providing services for road activities, sewer funds are limited to providing services for sewer activities and so on.

3. Incident Commander

The Incident Commander of the emergency shall be designated by the Requestor, and shall be in overall command of the operations under whom the personnel and equipment of the Responder shall serve. The personnel and equipment of the Responder shall be under the immediate control of a supervisor of the Responder. If the Incident Commander specifically requests a supervisor of the Responder to assume command, the Incident Commander shall not, by relinquishing command, relieve the Requestor of responsibility for the incident.

4. Documentation

Documentation of hours worked, and equipment or materials used or provided will be maintained on a shift by shift basis by the Responder, and provided to the Requestor as needed.

5. Release of Personnel and Equipment

All personnel, equipment, and unused material provided under this Agreement shall be returned to the Responder upon release by the Requestor, or on demand by the Responder.

6. Compensation

It is hereby understood that the Responder will be reimbursed (e.g. labor, equipment, materials and other related expenses as applicable, including loss or damage to equipment) at its adopted usual and customary rates.

Compensation may include:

- A. Compensation for workers at the Responder's current pay structure, including call back, overtime, and benefits.
- B. Compensation for equipment at Responder's established rental rate.
- C. Compensation for materials, at Responder's cost. Materials may be replaced at Requestor's discretion in lieu of cash payment upon approval by the Responder for such replacement.
- D. Without prejudice to a Responder's right to indemnification under Section 7.A. herein, compensation for damages to equipment occurring during the emergency incident shall be paid by the Requestor, subject to the following limitations:
 - 1) Maximum liability shall not **exceed** the cost of repair or cost of replacement, whichever is less.
 - 2) No compensation will be paid for equipment damage or loss attributable to natural disasters or acts of God not related to the emergency incident.
 - 3) To the extent of any payment under this section, Requestor will have the right of subrogation for all claims against parties other than parties to this agreement who may be responsible in whole or in part for damage to the equipment.

- 4) Requestor shall not be liable for damage caused by the neglect of the Responder's operators.

Within 30 days after presentation of bills by Responder entitled to compensation under this section, Requestor will either pay or make mutually acceptable arrangements for payment.

7. Indemnification

This provision applies to all parties only when a Requestor requests and a Responder provides personnel, equipment, or material under the terms of this Agreement. A Responder's act of withdrawing personnel, equipment, or material provided is not considered a party's activity under this Agreement for purposes of this provision.

To the extent permitted by Article XI of the Oregon Constitution and by the Oregon Tort Claims Act, each party shall indemnify, within the limits of the Tort Claims Act, the other parties against liability for damage to life or property arising from the indemnifying party's own activities under this Agreement, provided that a party will not be required to indemnify another party for any such liability arising out of the wrongful acts of employees or agents of that other party.

8. Workers Compensation Withholdings and Employer Liability

Each party shall remain fully responsible as employer for all taxes, assessments, fees, premiums, wages, withholdings, workers compensation and other direct and indirect compensation, benefits, and related obligations with respect to its own employees. Likewise, each party shall insure, self-insure, or both, its own employees as required by Oregon Revised Statutes.

9. Pre-Incident Plans

The parties may develop pre-incident plans for the type and locations of problem areas where emergency assistance may be needed, the types of personnel and equipment to be dispatched, and the training to be conducted to ensure efficient operations. Such plans shall take into consideration the proper protection by the Responder of its own geographical area.

10. The Agreement

- A. It is understood that all parties may not execute this Agreement at the same time. It is the intention of the parties that any governmental entity in the State of Oregon may enter into this Agreement and that all parties who execute this Agreement will be

considered to be equal parties to the Agreement. The individual parties to this Agreement may be "Requestor" or "Responder's" as referred to in Section 1. and 2. above, to all others who have entered this Agreement.

- B. The Oregon Department of Transportation (ODOT) Maintenance and Operations Branch shall maintain the master copy of this Agreement, including a list of all those governmental entities that have executed this Cooperative Assistance Agreement. ODOT will make the list of participants available to any entity that has signed the Agreement. Whenever an entity executes the agreement, ODOT shall notify all others who have executed the Agreement of the new participant. Except as specifically provided in this paragraph, ODOT has no obligations to give notice nor does it have any other or additional obligations than any other party.
- C. This Agreement shall be effective upon approval by two or more parties and shall remain in effect as to a specific party for five years after the date that party executes this Agreement unless sooner terminated as provided in this paragraph. Any party may terminate its participation in this Agreement prior to expiration as follows:
 - 1) Written notice of intent to terminate this Agreement must be given to all other parties on the master list of parties at least 30 days prior to termination date. This notice shall automatically terminate the Agreement as to the terminating party on the date set out in the notice unless rescinded by that party in writing prior to that date.
 - 2) Termination will not affect a party's obligations for payment arising prior to the termination of this Agreement.

11. Non-exclusive

This Agreement is not intended to be exclusive among the parties. Any party may enter into separate cooperative assistance or mutual aid agreements with any other entity. No such separate Agreement shall terminate any responsibility under this Agreement.

12. Parties to This Agreement

Participants in this Agreement are indicated on the following pages, one party per page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Public Works Cooperative Assistance to be executed by duly authorized representatives as of the date of their signatures.

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION



June 1, 2017

Luci Moore
Statewide Maintenance Engineer

Date

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Public Works Cooperative Assistance to be executed by duly authorized representatives as of the date of their signatures.

Agency

County, Oregon

Authorized Representative

Date

Designated Primary Contact:

Office:

Contact:

Phone Number:

Public Works

Lance Calvert

503-722-3424
503-756-1217 (cell)

Emergency 24 Hour Phone Number:

Fax Number:

503-635-0238 (Locom)

503-742-8652

E-mail address (if available):

lcalvert@westlinnoregon.gov



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PROCLAMATION

West Linn, Oregon

WHEREAS, the City of West Linn celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are currently 28.8 million small businesses in the United States, they represent 99.7 percent of all businesses with employees in the United States, are responsible for 63 percent of net new jobs created over the past 20 years; and

WHEREAS small businesses employ 48 percent of the employees in the private sector in the United States; and

WHEREAS, 33 percent of consumers' holiday shopping will be done at small, independently-owned retailers and restaurants; and

WHEREAS, 91 percent of all consumers believe that supporting small, independently-owned restaurants and bars is important; and

WHEREAS, 76 percent of all consumers plan to go to one or more small business as part of their holiday shopping; and

WHEREAS, the City of West Linn supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

WHEREAS, advocacy groups as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

NOW, THEREFORE, BE IT PROCLAIMED BY THE CITY OF WEST LINN, that Saturday, November 25, 2017, is:

SMALL BUSINESS SATURDAY

and we urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

DATED THIS 13TH DAY OF NOVEMBER, 2017.

RUSSELL B. AXELROD, MAYOR

ATTEST:

KATHY MOLLUSKY, CITY RECORDER



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Agenda Report 2017-11-13-03

Date: November 1, 2017

To: Mayor Axelrod and West Linn City Council

From: John J. Boyd AICP, Planning Manager *JB*

Through: John R. Williams, Community Development Director *JRW*

Eileen Stein, City Manager *ES*

Subject: CDC 17-04/Ordinance No. 1663

Purpose

Council public hearing and discussion of the Planning Commission's recommendation of approval for CDC 17-04/Ordinance No. 1663. This proposal implements changes to West Linn's Community Development Code regarding interim measures to reinstate past provision for the denovo review for appeals. Please note this agenda report was prepared prior to the Council's November 6 work session on this topic so it does not reflect any changes or discussion from that meeting.

Question(s) for Council:

Following a work session discussion on November 6 and a public hearing on November 13, does the Council wish to approve CDC 17-04 and adopt Ordinance No. 1663 as originally drafted or with amendments proposed by the Planning Commission?

Public Hearing Required: Yes.

Background & Discussion:

CDC 17-04 comprises a set of code amendments in response to direction from the Mayor and City Council as an *interim measure* to reinstate past provisions for the denovo review of appeal. The proposed amendments follow direction provided to City Attorney Ramis and Planning staff from the City Council. A recommended amendment discussed by the Planning Commission at their September 20 work session and proposed for consideration by Council at the Planning Commission October 4th public hearing.

Code amendments are approved by City Council ordinance following a public hearing. Prior to this the Planning Commission also conducts a public hearing and provides a recommendation for City Council consideration. The Planning Commission discussed the proposed changes in detail and changes were proposed to address concern about unnecessary duplication of testimony.

Four changes were recommended by the Planning Commission; these changes are described in **Attachment 1** Final Findings and Recommendation and depicted in **Attachment 2** a revised ordinance. The Council conducted a work session on November 6th and additional changes to Ordinance No. 1663 may result from that discussion. The Planning Commission Staff Report and Ordinance as drafted by the City Attorney is found in **Attachment 3**.

The Planning Commission, after the October 4, 2017 hearing, recommended Council approve Ordinance 1663 with the following changes (listed by Ordinance 1663 section numbers in bold):

- **SECTION 1.** Removing “and” from 99.250.A.2 and adding “and” to 99.250.A.1 as a needed sentence structure correction;
- **SECTION 1.** Adding “and shall be considered and given equal weight as evidence presented on appeal.” to the CDC 99.250.C;
- **SECTION 2.** Adding “however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal.” to CDC 99.270.E; and
- **SECTION 3.** Adding the phrase “evidence in ” and removing the term “part of” to 99.280.A

No written comments or oral testimony comments were received by the end of the Planning Commission hearing.

Options:

1. Approve CDC 17-04 and adopt Ordinance No. 1663 as proposed.
2. Approve CDC 17-07 and adopt Ordinance No. 1663 as amended by the Planning Commission.
3. Remand the ordinance back to the Planning Commission for additional work.
4. Do not approve Ordinance 1663.

Note that the City Council *intends* to continue a conversation about potential amendments related to the appeal process as part of future docket and CCI coordination.

Staff Recommendation:

Option 1 or 2. Approve CDC 17-04 and adopt Ordinance No. 1663 *as proposed or as amended by the Planning Commission*, following a public hearing and potential Council amendments. As a reminder, this legislative amendment is not governed by a 120-day timeline limitation. The Council may request additional information/ language from staff and continue discussion of this topic to future dates.

Potential Motion:

“I move that the Council accept the record for file CDC 17-04, including the findings of fact and conclusions presented in the staff report, and adopt Ordinance No. 1663 as amended by the Planning Commission (*with the following changes...*).”

Alternate Motion

“I move that the Council accept the record for file CDC 17-04, including the findings of fact and conclusions presented in the staff report, and adopt Ordinance No. 1663 as drafted by the City Attorney (*with the following changes...*).”

Attachments:

- 1: Final Findings and Recommendation of the Planning Commission.
- 2: Draft Ordinance 1663 as recommended by the Planning Commission.
- 3: Planning Commission Staff Report, details the background and intention of the proposed amendments and addresses applicable criteria. No written comments or oral testimony comments were received prior to or by the end of the Planning Commission hearing. Exhibits include the Ordinance as drafted by City Attorney Ramis (Exhibit PC-2), a Legal Memorandum on the restoration of the previous appeal process (Exhibit PC-3) and an excerpt of the 2013 Community Development Code (Exhibit PC-4).

Attachment No. 1

Final Findings and Recommendation

**WEST LINN PLANNING COMMISSION
FINAL FINDINGS AND RECOMMENDATION
CDC-17-04**

**IN THE MATTER OF A RECOMMENDATION TO THE CITY COUNCIL ON A
PROPOSED TEXT AMENDMENT TO COMMUNITY DEVELOPMENT CODE
SECTIONS 99.250, 99.270 and 99.280**

I. Overview

At their meeting of October 4, 2017, the West Linn Planning Commission (“Commission”) held a public hearing to consider the request by City Council, to make recommendations to City Council on proposed Ordinance No. 1663 to reinstate past provisions for the de novo review appeal process as an interim measure. The hearing was conducted pursuant to the provisions of CDC Chapter 98. A work session on the proposed amendments was conducted by the Planning Commission on September 20, 2017.

The hearing commenced with a staff report presented by John Boyd, Planning Manager. There was no additional public testimony. The hearing was closed and a motion was made by Commissioner Mathews and seconded by Commissioner Metlen to recommend Council approve the proposed amendment with recommended changes. The motion passed unanimously.

II. The Record

The record was finalized at the October 4, 2017, hearing. The record includes the entire file from CDC 17-04.

III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The Commission finds that it has received all information necessary to make a recommendation to Council based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record, including any exhibits received at the hearing.

IV. Findings

The Commission adopts the Staff Report for October 4, 2017, with attachments, including specifically the Addendum dated October 4, 2017, as its findings, which are incorporated by this reference. The Commission concludes that all of the required approval criteria are met.

V. Recommendation

The Commission recommends that Ordinance 1663 contained in file CDC 17-04 be revised to reflect the Commission’s changes and approved by City Council based on the Record, Findings of Fact and Findings above.

The proposed changes by the Planning Commission (highlighted in red) are:

Section 1. 99.250.A The notice of appeal shall contain:

1. A reference to the application sought to be appealed; **and**
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140. **and**

CDC 99.250.C The hearing on the appeal or review shall be **de novo; however, all evidence presented to any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal.**

Section 2. 99.270.E State **that the hearing on appeal shall be de novo; however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal.**

Section 3. CDC 99.280.A ~~All~~ **appeals and reviews shall be de novo of a decision made by the Planning Director shall be heard on the record.**

1. The record of the previous application, hearing, and decision shall be incorporated and considered as **evidence in part of** the appeal procedure.
2. If any party requests a continuance of the appeal hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal.

GARY WALVATNE, CHAIR
WEST LINN PLANNING COMMISSION

DATE

Action on this recommendation to City Council will be processed according to the provisions of Chapter 98 of the Community Development Code and any other applicable rules and statutes.

Attachment No. 2

Ordinance 1663 with revisions
Recommended by the
Planning Commission

ORDINANCE NO. 1663

AN ORDINANCE RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are bold underlined.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City Council on June 2, 2014 passed Ordinance 1622 that in part amended Community Development Code (CDC) sections 99.250, 99.270, and 99.280;

WHEREAS, the City Council on August 7, 2017 moved to initiated steps for the restoration of DeNovo review appeal process as an interim measure; and

WHEREAS, amending the Community Development Code Sections 99.250, 99.270, and 99.280 implements the City's Council's direction that the DeNovo process as previously existing to Ordinance No. 1622 be reinstated;

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendment. West Linn Community Development Code Section 99.250, APPLICATION FOR APPEAL, is amended to read as follows:

99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of appeal shall contain:

1. A reference to the application sought to be appealed; and
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140.; and
- ~~3. A statement clearly and distinctly identifying the grounds for which the decision should be reversed or modified. The appeal shall identify:~~

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- a. ~~Applicable approval criteria that were misapplied, or~~
- b. ~~Procedural irregularity, and~~
- c. ~~If petitioner is requesting that the Council re-open the record to allow submission of additional written testimony and evidence as part of the appeal, petitioner must show that:~~
 - i. ~~The Planning Commission committed a procedural error, through no fault of the petitioner, that prejudiced the petitioner's substantial rights, and that reopening the record before the Council is the only means of correcting the error, or~~
 - ii. ~~A factual error occurred before the Planning Commission, through no fault of the petitioner, which is relevant to an approval criterion and material to the decision.~~

- B. The appeal application shall be accompanied by the required fee.
- C. The hearing on the appeal **or review** shall be **de novo; however, all evidence presented to**
 - 1) **any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal.** limited to the provisions of CDC ~~99.280~~ (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)
- D. The appeal or review application may state grounds for appeal or review. (Ord. 1474,2001; Ord. 1568, 2008)**

SECTION 2. Amendment. West Linn Community Development Code Section 99.270, CONTENTS OF NOTICE OF APPEAL, is amended to read as follows:

99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List ~~the~~ **any** grounds for appeal or review stated in the application **for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;**

- 1) E. State that the hearing on appeal shall be de novo; however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal. ~~the grounds on which new argument or testimony may be presented, if any;~~
- F. Include the name of government contact and phone number; and
- G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

SECTION 3. Amendment. West Linn Community Development Code Section 99.280, TYPE OF APPEAL HEARING AND SCOPE OF REVIEW, is amended to read as follows:

A. ~~All~~ Appeals and reviews shall be de novo ~~of a decision made by the Planning Director shall be heard on the record.~~

1. The record of the previous application, hearing, and decision shall be incorporated and considered as evidence in part ~~of~~ the appeal procedure.
2. If any party requests a continuance of the appeal hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal.

~~B. Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:~~

- ~~1. Those issues set forth in the request to appeal; and~~
- ~~2. The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;~~

~~C. The Council may reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that:~~

- ~~1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or~~
- ~~2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.~~

~~D. Except when limited reopening of the record is granted, pursuant to this section, the Council shall not re-examine issues of fact and shall limit its review to determine whether there is substantive evidence in the record to support the findings by the lower decision-making~~

~~body, or to determine if errors in law were committed by the City. Review shall be limited to the issues clearly identified in the notice of appeal. No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)~~

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 6. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 4-6) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 7. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the ____ day of _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

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Attachment No. 3

Planning Commission Staff Report with attached Exhibits



CITY OF West Linn

STAFF REPORT FOR THE PLANNING COMMISSION

FILE NUMBER: CDC-17-04

HEARING DATE: October 4, 2017

REQUEST: To consider a recommendation to City Council for adoption of proposed text amendment to West Linn Community Development Code Chapter 99.

APPROVAL CRITERIA: Community Development Code (CDC) Chapters 98 and 105

STAFF REPORT PREPARED BY: John Boyd, Planning Manager

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GENERAL INFORMATION

APPLICANT: City of West Linn

DESCRIPTION: A proposal for a text amendment to West Linn Community Development Code Section 99.250, 99.270 AND 99.280 to reinstate past provisions for the de novo review appeal process as an interim measure.

**APPROVAL
CRITERIA:**

Community Development Code (CDC) Chapter 98 provides administrative procedures for legislative amendments to the Community Development Code. Section 98.100 of the CDC lists the factors upon which a decision shall be based. These are briefly described below and addressed in greater detail in a separate Section of this report:

1. The Statewide Planning Goals and rules adopted under ORS Chapter 197 and other applicable state statutes;
2. Any federal or state statutes or rules found applicable;
3. Applicable plans and rules adopted by the Metropolitan Service District (Metro);
4. The applicable Comprehensive Plan policies and map; and,
5. The applicable provisions of implementing ordinances.

PUBLIC NOTICE: Legal notice was published in the West Linn Tidings on September 21, 2017 and will be posted on November 2, 2017 for the City Council hearing. Notice was also provided to required public agencies and persons who requested notice in writing on September 13, 2017.

120-DAY RULE: Not applicable to this legislative action.

EXECUTIVE SUMMARY

CDC-17-04 is a proposed amendment that reinstates in the Community Development Code (CDC) past provisions for (de novo) review of appeal process as an interim measure. This proposal removes existing provisions for on-the-record appeal review and returns an appeal review that is de novo. Additional clarifications note the title is de novo and the process allows for evidence submitted at the lower approval authority shall be made part of the record. The result is an appeal review process that recognizes the actions of the lower approval authority and provides additional flexibility for Council as the appeal review body to take testimony on other relevant issues.

Staff is seeking a recommendation from the Planning Commission regarding CDC-17-04. This staff report details the background and intention of the proposed amendment, addresses applicable criteria, and supports the proposed amendment.

Generally, this proposed amendment addresses City Council's direction to amend Community Development Code Sections:

99.250 Application for Appeal,

99.270 Contents of Notice of Appeal, and

99.280 Types of Appeal Hearing and Scope of Review

The proposed amendments allow for the reinstatement of past provisions for de novo review appeal process as an interim measure. The amendment was initiated by the City Council pursuant to CDC 98.030(B). The Council may take action to amend the docket and initiate a comprehensive review of Chapter 99 appeal process. This interim action will remain in effect until replaced by a future legislative action.

RECOMMENDATION

Staff recommends that the Planning Commission **RECOMMEND** approval of draft Ordinance 1663 to the City Council with any modification deemed appropriate by the Commission.

PROJECT BACKGROUND

Over the past two years, Council goals initiated actions on prioritizing citizen involvement and crafting focused plan and code updates. One aspect of that process was the appeal review process; citizens often referred to as “de novo rights.”

The Community Development Code (CDC) has treated the appeal review process differently over time. Staff completed a review of CDC sections 99.280 (type of appeal or review) and 99.290 (action on appeal or review) and found the following:

Acknowledgement in 1983 - review on appeal used “de novo” process based on the record of the proceedings of the lower review body and subject to the grounds relied upon in the notice of review. An option allowed, if both parties (appellant and opponent) agreed, for the appeal review to be conducted solely by written argument.

In 1989 & 1990, Council adopted Ordinance 1255 & 1271 - review on appeal used “de novo” process based on the record of the proceedings of the lower review body and subject to the grounds relied upon in the notice of review. The proposed changes allowed submittal of new evidence (subject to meeting criteria) and addressed petitions for review and appeal application for review. Those criteria for new evidence required that evidence be related to issues discussed at the proceedings and be related to at least one approval criteria for the matter that is subject to the appeal or review hearing.

In 2001, Ordinance 1474 removed most of CDC 99.280, the changes made optional to cite the grounds for appeal or review in the application for appeal or review. The process called “de novo” remained based on the record of the proceedings of the lower review body. All criteria for evidence to be related to issues or approval criteria were removed.

In 2008, Ordinance 1568 removed a provision to appeal a recommendation of the Planning Commission on a proposed map or text amendment. The process called “de novo” remained based on the record of the proceedings of the lower review body.

In 2014, Ordinance 1622, replaced CDC 99.280, returned provisions that existed prior to 2001 and added a new section to reopen the record based upon specific criteria. The term “de novo” process was removed and replaced with an “on the record” review. The review on appeal process was termed “on the record”. The process remained based on the proceedings of the lower review body. The appeal was subject to the grounds relied upon in the notice of review, The Council was allowed to re-open the record on a limited basis after confirming compliance with two issues: procedural error or factual error. The review on appeal did not allow for reconsideration of items not subject to issues on appeal.

The proposed amendment was introduced as part of a docket of amendments at the March and May 2017 workshops. It was also discussed at a special meeting of City Council on August 7, 2017 where Council directed the Planning Commission to begin work on an interim reinstatement of “de novo” review appeals.

PUBLIC COMMENTS

At the time this Staff Report was prepared, the City had received no written comment on the proposed CDC amendment.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
October 4, 2017

APPLICABLE CRITERIA AND COMMISSION FINDINGS

West Linn Community Development Code

Chapter 98 - Procedures for Decision Making: Legislative

CDC 98.035 Citizen Engagement in Legislative Changes

B. New and modified land use legislative changes to this code will be developed by a representative working group of citizens and assisted by planning staff, unless the City Council determines that a working group is not necessary...

Findings: The City Council found that a working group was not necessary and directed staff to prepare a proposed amendment and bring it through the legislative process, with the Planning Commission making a recommendation to Council.

CDC 98.040 Duties of Director

A. The Director shall:

- 1. If appropriate, or if directed by the City Council or Planning Commission in their motion, consolidate several legislative proposals into a single file for consideration;*
- 2. Upon the initiation of a legislative change, pursuant to this chapter:*
 - a. Give notice of the Planning Commission hearing as provided by CDC [98.070](#) and [98.080](#);*

Findings: The Planning Commission public hearing will be held on October 4, 2017, with the City Council public hearing scheduled for November 13, 2017. Legislative notice was provided as required and documentation can be found in Exhibit PC-1.

b. Prepare a staff report that shall include:

- 1) The facts found relevant to the proposal and found by the Director to be true;*
- 2) The Statewide planning goals and rules adopted under Chapter 197 ORS found to be applicable and the reasons why any other goal or rule is not applicable to the proposal except that goals 16 through 19 which are not applicable to the City of West Linn need not be addressed;*
- 3) Any federal or State statutes or rules the Director found applicable;*
- 4) Metro plans and rules the Director found to be applicable;*
- 5) Those portions of the Comprehensive Plan found to be applicable, and if any portion of the plan appears to be reasonably related to the proposals and is not applied, the Director shall explain the reasons why such portions are not applicable;*
- 6) Those portions of the implementing ordinances relevant to the proposal, and if the provisions are not considered, the Director shall explain the reasons why such portions of the ordinances were not considered; and*

7) *An analysis relating the facts found to be true by the Director to the applicable criteria and a statement of the alternatives; a recommendation for approval, denial, or approval with modifications; and at the Director's option, an alternative recommendation;*

Findings: Relevant facts and associated analysis for applicable Statewide Planning Goals, federal and state statutes and rules, Metro plans and rules, West Linn Comprehensive Plan goals and policies, and West Linn Community Development Code criteria are found in the sections of the Staff Report below. The title page of the Community Development Code and applicable portion for de novo review as it existed in 2013 can be found in Exhibit PC-4.

c. *Make the staff report and all case file materials available 10 days prior to the scheduled date of the public hearing under CDC [98.070](#);*

Findings: The staff report, proposed amendment, and all other associated project materials were made available on September 22, 2017, thirteen days prior to the hearing.

d. *Cause a public hearing to be held pursuant to CDC [98.070](#);*

Findings: The West Linn Planning Commission is scheduled to hold the first evidentiary public hearing on October 4, 2017, with the West Linn City Council scheduled to hold its public hearing and make a final decision on November 13, 2017.

CDC 98.100 Standards for Decision

A. *The recommendation of the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:*

1. *The Statewide planning goals and rules adopted under Chapter 197 ORS and other applicable State statutes;*

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for the adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

Findings: The City has a citizen involvement program which has been acknowledged by the State. This legislative process to review the proposed amendment will require two public hearings (one before the Planning Commission on October 4th and one before City Council on November 13th) pursuant to CDC Chapter 98.

The Planning Commission held a publicly noticed work session to discuss this proposal on September 20, 2017. In addition, information was distributed and available throughout the process via the City's website. The Committee for Citizen Involvement held a series of training sessions on the quasi-judicial process from April to August 2017 including a discussion on the two types of appeal review: on-the-record and de novo. Citizen outreach, education and opportunity for feedback and citizen input met or exceeded requirements.

As part of the legislative process, public notice requirements for both the Planning Commission and City Council public hearings were met (see Exhibit PC-1). The notice was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published in the September 21, 2017 issue of the West Linn Tidings for the Planning Commission meeting. A second public notice will

be published in the November 2, 2017 issue of the West Linn Tidings for the City Council meeting. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the draft of the proposed amendment can be viewed.

Statewide Planning Goal 2 – Land Use Planning:

This goal outlines the land use planning process and policy framework. The Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals.

Findings: The City of West Linn has an acknowledged Comprehensive Plan and enabling ordinances. The amendment to the West Linn Community Development Code is being undertaken to reinstate past provisions for the de novo review appeal process as an interim measure and update the City's acknowledged land use planning program in a manner consistent with current conditions and citizen values. The amendment is being processed in accordance with the City's adopted procedures, which requires any applicable statewide planning goals, federal or state statutes or regulations, Metro regulations or plans, comprehensive plan policies, and the City's implementing ordinances be addressed as part of the decision-making process. The amendment is being processed as a post-acknowledgement plan amendment (PAPA) and noticing requirements have been met. All applicable review criteria have been addressed within this staff report; therefore, the requirements of Goal 2 have been met.

Statewide Planning Goal 5 – Natural Resources:

This goal requires the inventory and protection of natural resources, open spaces, historic sites and areas.

Findings: The City is currently in compliance with the State's Goal 5 program and Metro's Title 13: Nature in Neighborhoods program, which implements Goal 5. The amendment does not impact or alter the City's acknowledged Goal 5 inventories or associated land use programs. No changes will occur to current natural resource protections. As a result, the amendment remains in compliance with Goal 5 process requirements.

Statewide Planning Goal 6 – Air, Water, and Land Resource Quality:

To maintain and improve the quality of air, water, and land resources of the state.

Findings: The City is currently in compliance with Metro's Title 3: Water Quality and Flood Management program, which implements Goal 6. The amendment does not impact or alter the City's acknowledged land use programs regarding water quality and flood management protections. As a result, the amendment remains in compliance with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Hazards:

To protect people and property from natural hazards.

Findings: The City is currently in compliance with Goal 7 and Metro's Title 3: Water Quality and Flood Management program. The amendment does not impact or alter the City's acknowledged Goal 7 land use programs. No changes will occur to current natural hazard protections. As a result, the amendment remains in compliance with Goal 7.

Statewide Planning Goal 8 – Recreational Needs:

This goal requires the satisfaction of the recreational needs of the citizens of the state and visitors.

Findings: The proposed amendment does not impact or alter any City recreational programs or land use requirements related to parks and recreation. The amendment remains in compliance with Goal 8.

Statewide Planning Goal 9 – Economic Development:

To provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

Findings: The City is currently in compliance with Goal 9 and Metro’s Title 1: Requirements for Housing and Employment Accommodation and Title 4: Industrial and Other Employment Areas. The amendment does not impact or alter the City’s compliance with Goal 9. The amendment remains in compliance with Goal 9.

Statewide Planning Goal 10 – Housing:

To provide adequate housing for the needs of the community, region and state.

Findings: The City is currently in compliance with Goal 10 and the Metropolitan Housing Rule (OAR 660-007/Division 7), and Metro’s Title 1: Requirements for Housing and Employment Accommodation. The proposed amendment does not impact the City’s amount of buildable land. The amendment does not impact or alter the City’s compliance with Goal 10. The amendment remains in compliance with Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services:

To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as framework for urban and rural development.

Findings: The City is currently in compliance with Goal 11 through its acknowledged Comprehensive Plan. This includes an adopted Public Facility Plan as required by Oregon Revised Statute 197.712 and Oregon Administrative Rule 660-011. The amendment does not impact or alter the City’s compliance with Goal 11. The amendment remains in compliance with Goal 11.

Statewide Planning Goal 12 – Transportation:

To provide and encourage a safe, convenient, and economic transportation system.

Findings: The City is currently in compliance with Goal 12 and Metro’s Regional Transportation Plan through its acknowledged Comprehensive Plan and TSP as required by Oregon Administrative Rule 660-012 (Transportation Planning Rule). The amendment does not impact or alter the City’s compliance with Goal 12. The amendment remains in compliance with Goal 12.

Statewide Planning Goal 13 – Energy Conservation:

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

Findings: The City is currently in compliance with Goal 13 through its acknowledged Comprehensive Plan. The amendment does not impact or alter the City’s compliance with Goal 13 and is consistent with this goal.

Statewide Planning Goal 14 – Urbanization:

To provide for orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Findings: The City is currently in compliance with Goal 14 and Metro’s Title 11: Planning for New Urban Areas through its acknowledged Comprehensive Plan and land use regulations. The City also has a signed Urban Growth Management Agreement with Clackamas County as required by ORS 195.065. The amendment does not impact or alter the City’s compliance with Goal 14. The amendment remains in compliance with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway:

To provide for keeping the land green along the banks of the river and providing for recreation access.

Findings: The City is currently in compliance with Goal 15 through its acknowledged Comprehensive Plan and land use regulations. The amendment does not impact or alter the City’s compliance with Goal 15. The amendment remains in compliance with Goal 15.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable Statewide Planning Goals.

2. *Any federal or State statutes or rules found applicable;*

Findings: Staff is not aware of any applicable state or federal regulations that are impacted by the proposed draft ordinance. The City has an acknowledged Comprehensive Plan and associated land use regulations that comply with applicable state statutes and administrative rules. The Oregon Department of Land Conservation and Development and the Oregon Department of Transportation were sent notice of the proposed amendment and provided the opportunity to comment. The amendment reinstates a previously adopted appeal process. This amendment does not impact or alter the City’s compliance with any state or federal statutes or rules.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable federal or state statutes or rules.

3. *Applicable plans and rules adopted by the Metropolitan Service District;*

The Metro Urban Growth Management Functional Plan

Findings: The City of West Linn is currently in compliance with the Metro Urban Growth Management Functional Plan (UGMFP). Metro staff was sent notice of the proposed amendment and provided the opportunity to comment. The proposed change will not impact or alter compliance with requirements found in the UGMFP.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable plans and rules adopted by Metro.

4. *The applicable Comprehensive Plan policies and map;*

Goal 1: Citizen Involvement

Policy 4. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.

Findings: As part of the legislative process, public notice of the Planning Commission and City Council public hearings was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published twice in the September 21, 2017 and November 2, 2017 issues of the West Linn Tidings. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the entire draft of the proposed amendment could be viewed.

Policy 5. Communicate with citizens through a variety of print and broadcast media early in and throughout the decision-making process.

Findings: Information was distributed throughout the process via the City website. The Committee for Citizen Involvement held a series of training sessions on the quasi-judicial process from April to August 2017 including a discussion on the two types of appeal review: on-the-record and de novo.

The Planning Commission held a work session on September 20, 2017 to discuss the proposal. As part of the legislative process, public notice of the Planning Commission and City Council public hearings was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published in the September 21, 2017 and November 2, 2017 issues of the West Linn Tidings. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the entire draft of the proposed amendment could be viewed. Opportunity for gathering feedback and comments were provided at each public outreach.

Citizen outreach, education and opportunity for feedback and citizen input met or exceeded requirements.

Goal 2: Land Use Planning

Finding: None of the goals or policies regarding Residential, Neighborhood Commercial, Mixed Use/Commercial Development under Goals 2 apply to this application.

Section 5: Intergovernmental Coordination

Policy 1. Maintain effective coordination with other local governments, special districts, state and federal agencies, Metro, the West Linn-Wilsonville School District, and other governmental and quasi-public organizations.

Policy 4. Coordinate with Metro planning activities on all areas in which Metro has jurisdiction and as specified in Goal 14 of this Plan.

Finding: Notice was sent to West Linn-Wilsonville School District, Metro, Clackamas County, TriMet, ODOT, and all West Linn Neighborhood Associations. They were provided the opportunity to review and comment on the amendment proposed for adoption.

Goal 5: Open Spaces, Scenic and Historic Areas & Natural Resources

Goal 6: Air, Water & Land Resources Quality

Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 8: Parks and Recreation

Goal 9: Economic Development

Goal 10: Housing

Goal 11: Public Facilities and Services

Goal 12: Transportation

Goal 13: Energy Conservation

Goal 14: Urbanizations

Goal 15: Willamette River Greenway

Finding: None of the goals or policies under Goals 5 through 15 apply to this application.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable West Linn Comprehensive Plan policies and map.

5. *The applicable provisions of the implementing ordinance.*

Finding: The proposed amendment reinstates in the Community Development Code (CDC) past provisions for (de novo) review of appeal process as an interim measure. This proposal removes existing provisions for on-the-record appeal review and returns an appeal review that is de novo. The result is an appeal review process that recognizes the actions of the lower approval authority by incorporating the evidence submitted at the lower approval authority as part of the record. The interim amendment provides additional flexibility for Council as the appeal review body to take testimony on other relevant issues. The reinstatement of these prior appeal review procedures in the proposed ordinance have been reviewed and acknowledged in the past by the Department of Land Use Conservation and Development.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable provisions of the implementing ordinance.

EXHIBIT PC-1 – AFFIDAVIT OF NOTICE AND MAILING PACKET

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. CDC-17-04 Applicant's Name City of West Linn

Development Name _____

Scheduled Meeting/Decision Date PC-10/4/17 CC-11/13/17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

A. The applicant (date) 9-13-17 (signed) S. Shroyer

B. Affected property owners (date) _____ (signed) _____

C. School District/Board (date) _____ (signed) _____

D. Other affected gov't. agencies (date) 9-13-17 (signed) S. Shroyer

E. Affected neighborhood assns. (date) 9-13-17 (all) (signed) S. Shroyer

F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 9-21-17 and 11-2-17 (signed) S. Shroyer

City's website (posted date) 9-13-17 (signed) S. Shroyer

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

A. The applicant (date) _____ (signed) _____

B. Affected property owners (date) _____ (signed) _____

C. School District/Board (date) _____ (signed) _____

D. Other affected gov't. agencies (date) _____ (signed) _____

E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.

Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) 9-22-17 (signed) S. Shroyer

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN
PUBLIC HEARING CDC-17-04**

**TO ADOPT TEXT AMENDMENTS TO COMMUNITY DEVELOPMENT CODE
CHAPTER 99**

The West Linn Planning Commission will hold a public hearing on **Wednesday, October 4, 2017, at 6:30 p.m.** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider adoption of Ordinance Number 1663 "An Ordinance relating to the amendment of West Linn Community Development Code Sections 99.250, 99.270 And 99.280 to reinstate past provisions for the denovo review appeal process as an interim measure". Following the hearing, the Planning Commission will make a recommendation to the City Council. The Council will make a final decision regarding the Planning Commission recommendation following its own public hearing on **Monday, November 13, 2017 at 6:30 p.m.**, in the Council Chambers of City Hall, 22500 Salamo Road, West Linn.

The hearing will be conducted in accordance with the rules of CDC Chapter 98 and Chapter 105. Anyone wishing to present written testimony on this proposed action may do so prior to, or at the public hearings. Oral testimony may be presented at the public hearings. At the public hearing(s), the Planning Commission and City Council will receive a staff presentation, and invite both oral and written testimony. The Commission or Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed amendments as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

At least 10 days prior to the hearing, a copy of Ordinance 1663 and associated staff report will be available for inspection or purchase at a cost of \$0.25 a page after the first five pages at the Planning Department, 22500 Salamo Road. The information is also available on the West Linn website at <http://westlinnoregon.gov/planning/community-development-code-text-amendment-reinstate-denovo>

For further information, please contact John Boyd, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 742-6058, or via e-mail at jboyd@westlinnoregon.gov.

Publish: West Linn Tidings, September 21, 2017 and November 2, 2017



CITY OF West Linn

**CITY OF WEST LINN
NOTICE OF UPCOMING
PLANNING COMMISSION MEETING
AND
CITY COUNCIL MEETING**

**PROJECT # CDC-17-04
MAIL: 9/13/17 TIDINGS: 9/21/17 & 11/2/17**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

EXHIBIT PC-2 – PROPOSED AMENDMENT (ORD 1663)

ORDINANCE NO. 1663

AN ORDINANCE RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City Council on June 2, 2014 passed Ordinance 1622 that in part amended Community Development Code (CDC) sections 99.250, 99.270, and 99.280;

WHEREAS, the City Council on August 7, 2017 moved to initiated steps for the restoration of DeNovo review appeal process as an interim measure; and

WHEREAS, amending the Community Development Code Sections 99.250, 99.270, and 99.280 implements the City's Council's direction that the DeNovo process as previously existing to Ordinance No. 1622 be reinstated;

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendment. West Linn Community Development Code Section 99.250, APPLICATION FOR APPEAL, is amended to read as follows:

99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of appeal shall contain:

1. A reference to the application sought to be appealed;
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140; and
- ~~3. A statement clearly and distinctly identifying the grounds for which the decision should be reversed or modified. The appeal shall identify:~~

- ~~a. Applicable approval criteria that were misapplied, or~~
- ~~b. Procedural irregularity, and~~
- ~~c. If petitioner is requesting that the Council re-open the record to allow submission of additional written testimony and evidence as part of the appeal, petitioner must show that:

 - ~~i. The Planning Commission committed a procedural error, through no fault of the petitioner, that prejudiced the petitioner's substantial rights, and that reopening the record before the Council is the only means of correcting the error, or~~
 - ~~ii. A factual error occurred before the Planning Commission, through no fault of the petitioner, which is relevant to an approval criterion and material to the decision.~~~~

B. The appeal application shall be accompanied by the required fee.

C. The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record. ~~limited to the provisions of CDC 99.280.~~ (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

D. The appeal or review application may state grounds for appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

SECTION 2. Amendment. West Linn Community Development Code Section 99.270, CONTENTS OF NOTICE OF APPEAL, is amended to read as follows:

99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List ~~the~~ any grounds for appeal or review stated in the application for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;
- E. State that the hearing on appeal shall be de novo ~~the grounds on which new argument or testimony may be presented, if any;~~

F. Include the name of government contact and phone number; and

G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

SECTION 3. Amendment. West Linn Community Development Code Section 99.280, TYPE OF APPEAL HEARING AND SCOPE OF REVIEW, is amended to read as follows:

A. ~~All~~ appeals and reviews shall be de novo ~~of a decision made by the Planning Director shall be heard on the record.~~

1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.

2. If any party requests a continuance of the appeal hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal.

~~B. Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:~~

~~1. Those issues set forth in the request to appeal; and~~

~~2. The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;~~

~~C. The Council may reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that:~~

~~1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or~~

~~2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.~~

~~D. Except when limited reopening of the record is granted, pursuant to this section, the Council shall not re-examine issues of fact and shall limit its review to determine whether there is substantive evidence in the record to support the findings by the lower decision-making body, or to determine if errors in law were committed by the City. Review shall be limited to the issues clearly identified in the notice of appeal. No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)~~

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 6. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 4-6) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 7. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the _____ day of _____, 2017, and duly PASSED and ADOPTED this _____ day of _____, 2017.

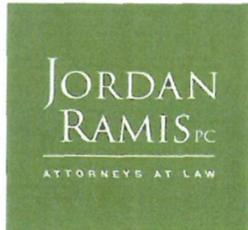
RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

**EXHIBIT PC-3 – LEGAL MEMORANDUM – RESTORATION OF PREVIOUS APPEAL
PROCESS**



Lake Oswego
Two Centerpointe Dr., 6th Floor
Lake Oswego, OR 97035
503-598-7070
www.jordanramis.com

Vancouver
1499 SE Tech Center Pl., #380
Vancouver, WA 98683
360-567-3900

Bend
360 SW Bond St., Suite 510
Bend, OR 97702
541-550-7900

LEGAL MEMORANDUM

TO: West Linn City Council
West Linn Planning Commission

FROM: Timothy Ramis, City Attorney

DATE: August 28, 2017

RE: **Restoration of Previous Appeal Process**
File No. 50015-36839

In concert with Planning Department staff we have prepared for your consideration development code amendments which restore the former procedure for land use appeals to the City Council. It is my understanding that these changes are being considered as a possible interim change, to be replaced in the future by an alternative which the Planning Commission will consider later this year.

In restoring the former procedure, it is important to note that the amendments which created the current process for land use appeals changed two key aspects of the former appeal process. The first difference relates to the evidence that can be introduced and considered by the City Council. The current code, with few exceptions, limits an appeal case to the evidence introduced in the prior proceeding. For example, if a Planning Commission denial of a subdivision is appealed, the Council may only consider the evidence introduced during the Planning Commission hearing. The proposed amendments change this procedure, allowing the introduction of new evidence during the City Council appeal. The legal term for this type of appeal is "de novo."

The second difference involves the use of the appeal document to limit the issues that may be raised during a City Council appeal. Under existing Code provisions, only objections specifically described in the appeal document can be considered by the City Council. Under the prior procedure, the Council and the parties were free to consider any issue relating to the applicable approval criteria. The proposed amendments restore this aspect of the prior procedure.

If these amendments are adopted, the appeal process will be de novo with respect to both issues and evidence. Under this appeal system there is opportunity to raise and resolve all relevant issues at the City Council level. It will mean changes to the conduct of our appeal hearings. There may be greater need for continuances because introduction of new issues and evidence may require extra time to develop responses. The Council may also have to determine whether an application, amended in several respects after a Planning Commission proceeding, has been so substantially changed that a new application should be filed. For example, substantial changes might render obsolete supporting engineering, environmental or traffic analysis, thus necessitating a new application. It is also possible that substantial changes might alter the nature of a project to the extent that the public would be misled, unless a new application was filed.

Our office and City staff are available to answer questions about this proposal.

EXHIBIT PC-4 – EXCERPT OF COMMUNITY DEVELOPMENT CODE – 2013 VERSION

COMMUNITY DEVELOPMENT CODE

CITY OF WEST LINN

**A Codification of the Community Development Ordinances
of the City of West Linn, Oregon**

**Reprinted 2010
Updated through Ordinance 1614, July 15, 2013**

**CODE PUBLISHING COMPANY
Seattle, Washington**



(Revised 8/13)

COMMUNITY DEVELOPMENT CODE
CITY OF WEST LINN, OREGON

ADOPTED DECEMBER 14, 1983
ORDINANCE NO. 1129

AMENDMENTS:

MAY 9, 1984	(Ord. 1137)
NOVEMBER 14, 1984	(Ord. 1150)
JANUARY 23, 1985	(Ord. 1152)
JUNE 11, 1986	(Ord. 1180)
FEBRUARY 11, 1987	(Ord. 1192)
MAY 27, 1987	(Ord. 1200)
JULY 27, 1987	(Ord. 1201)
SEPTEMBER 9, 1987	(Ord. 1211)
FEBRUARY 8, 1988	(Ord. 1226)
OCTOBER 13, 1988	(Ord. 1242)
FEBRUARY 8, 1989	(Ords. 1248/1249)
APRIL 13, 1989	(Ord. 1252)
MAY 25, 1989	(Ord. 1255)
JANUARY 1, 1990	(Ord. 1276)
JUNE 1990	(Ord. 1287)
NOVEMBER 1990	(Ord. 1291)
APRIL 1991	(Ord. 1298)
NOVEMBER 1991	(Ord. 1308)
JANUARY 1992	(Ord. 1314)
JUNE 1992	(Ord. 1321)
FEBRUARY 1993	(Ord. 1339)
JUNE 1993	(Ord. 1346)
NOVEMBER 1993	(Ord. 1350)
FEBRUARY 1994	(Ord. 1354)
MARCH 1994	(Ord. 1356)
DECEMBER 1994	(Ord. 1369)
FEBRUARY 1995	(Ord. 1370)
SEPTEMBER 1995	(Ords. 1377/1378)
NOVEMBER 1995	(Ord. 1382)
FEBRUARY 1996	(Ord. 1385)

AMENDMENTS: (Continued)

JULY 1996	(Ord. 1391)
AUGUST 1996	(Ords. 1394/1396)
MAY 1997	(Ords. 1401/1402/1403)
FEBRUARY 1998	(Ords. 1408/1410)
JUNE 1998	(Ord. 1411)
NOVEMBER 1998	(Ord. 1425)
MAY 1999	(Ord. 1434)
OCTOBER 1999	(Ord. 1442)
OCTOBER 2000	(Ord. 1463)
OCTOBER 2001	(Ord. 1474)
MAY 2002	(Ord. 1484)
DECEMBER 2003	(Ord. 1499/1500)
APRIL 2004	(Ords. 1501/1502)
AUGUST 2004	(Ord. 1506)
NOVEMBER 2004	(Ord. 1510)
FEBRUARY 2005	(Ords. 1513/1514/1515)
SEPTEMBER 2005	(Ords. 1522/1523)
OCTOBER 2005	(Ords. 1525/1526/1527)
NOVEMBER 2005	(Ord. 1528)
JUNE 2006	(Ord. 1538)
AUGUST 2006	(Ord. 1539)
JANUARY 2007	(Ord. 1544)
FEBRUARY 2007	(Ords. 1545/1547)
MAY 2007	(Ord. 1549)
JULY 2007	(Ord. 1550)
APRIL 2008	(Ord. 1565)
MAY 2008	(Ord. 1568)
SEPTEMBER 2008	(Ords. 1572/1576)
DECEMBER 2008	(Ord. 1584)
JANUARY 2010	(Ord. 1590)
APRIL 2010	(Ord. 1594)
OCTOBER 2010	(Ord. 1597)
MARCH 2011	(Ord. 1599)
OCTOBER 2011	(Ord. 1604)
AUGUST 2013	(Ords. 1613/1614)

The preparation of this code was financed in part through a Comprehensive Planning Grant from the State of Oregon, Department of Land Conservation and Development.

99.250 APPLICATION FOR APPEAL OR REVIEW

- A. The application letter of appeal or review shall contain:
1. A reference to the application sought to be appealed or reviewed;
 2. A statement as to how the petitioner qualifies as a party as provided by CDC 99.140.
- B. The appeal or review application shall be accompanied by the required fee.
- C. The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record.
- D. The appeal or review application may state grounds for appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

99.260 PERSONS ENTITLED TO NOTICE ON APPEAL OR REVIEW – TYPE OF NOTICE

Upon appeal or review, notice shall be given by the Director to all persons having standing as provided by CDC 99.140 to notice as required by CDC 99.080. (Ord. 1568, 2008)

99.270 CONTENTS OF NOTICE ON APPEAL OR REVIEW

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed or reviewed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List any grounds for appeal or review stated in the application for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;
- E. State that the hearing on appeal shall be de novo;
- F. Include the name of government contact and phone number;
- G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008)

99.280 TYPE OF APPEAL OR REVIEW HEARING AND SCOPE OF REVIEW

- A. All appeals and reviews shall be de novo.
1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.

2. If any party requests a continuance of the appeal or review hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

99.290 ACTION ON APPEAL OR REVIEW – TIME LIMIT AND AUTHORITY TO CHANGE DECISION

- A. The approval authority shall act upon the appeal or review within 120 days of the application being deemed complete, unless the applicant consents to an extension of time; and
- B. The approval authority may affirm, reverse, or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of CDC 99.110; or
- C. The approval authority may remand the matter if it is not satisfied that testimony or other evidence could not have been presented or was not available at the hearing. In deciding to remand the matter, the approval authority shall consider and make findings and conclusions regarding:
 1. The prejudice to parties;
 2. The convenience or availability of evidence at the time of the initial hearing;
 3. The surprise to opposing parties;
 4. The date notice was given to other parties as to an attempt to admit; or
 5. The competency, relevancy, and materiality of the proposed testimony or other evidence. (Ord. 1474, 2001; Ord. 1568, 2008)

99.300 PARTICIPATION BY MEMBERS OF APPROVAL AUTHORITY IN DECISION AND VOTING

- A. The provisions of CDC 99.180 apply and, in addition:
 1. A majority of the qualified voting members of the approval authority must vote affirmatively to affirm, affirm with conditions, or reverse or remand the decision. If no majority is in favor of any motion, then the previous decision shall be considered affirmed.
- B. Unless a decision be deferred, in the event of a tie, the decision which is the subject of appeal or review shall stand. (Ord. 1474, 2001; Ord. 1568, 2008)

99.320 DENIAL OF APPLICATION – RESUBMITTAL

An application which has been denied and, if appealed, has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission, or the courts, may not be resubmitted for the same or a substantially similar pro-

Agenda Report 2017-11-13-04

Date: November 13, 2017

To: Russ Axelrod, Mayor
Members, West Linn City Council

From: Peter Spir, Planning Department *PS*

Through: John Williams, Community Development Director *JRW*
Eileen Stein, City Manager *ES*

Subject: MISC 17-06 - Vacation of right-of-way along Third Avenue and 10th Street at 1220 Ninth Street

Purpose

To consider the request from Emery Smith, DBA Encore Homes LLC, to vacate 38,191 square feet of undeveloped right-of-way (ROW) along Third Avenue and 10th Street in the Willamette Neighborhood.

Question(s) for Council:

1. Does the Council wish to accept the petition for ROW vacation and hold a hearing?
2. Should the ROW along Third Avenue and 10th Street be vacated?

Public Hearing Required:

Yes.

Background & Discussion:

The applicant, Emery Smith, DBA Encore Homes LLC (Roy Marvin), proposes to vacate undeveloped portions of Third Avenue and Tenth Street ROW as shown in Exhibit D. The purpose of the vacation is to allow the applicant to build a single family home on the property south of Third Avenue and east of Tenth Street without having to construct street improvements in those two ROWs, as required by CDC Chapter 96. The applicant will be required to improve abutting Ninth Street ROW.

The Community Development Code (CDC) defers to state statute for the approval criteria for vacation of ROW. The vacation process is a two-step quasi-judicial process. Council is asked to consider both steps on the same hearing date. In the first step, Council accepts the petition in order to hold a hearing on whether the ROW should be vacated as long as the petition is complete. This vacation petition included the required attachment showing that 100% of abutting property owners and 75% of "affected properties" (66.6% required) consent to the vacation.

In the second step, the council makes a decision on the vacation request by addressing the statutory criteria in ORS 271.120: "whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation." The decision is approved by ordinance. As stated above, the petition included the requisite number of signatures. Notice of the public hearing was posted for two consecutive weeks in the paper and posted at both ends of the proposed vacation as required by ORS 271.110

The Public Works Director supports the ROW vacation. The Transportation System Plan does not identify these right-of-ways as needed. No adopted utility master plans require these ROWs. The Parks Director supports the ROW vacation as well.

The ROWs and adjacent properties are occupied by a creek, wetlands, 100 year floodplain, Habitat Conservation Areas (HCAs), and Riparian Corridors, as shown in Exhibit E.

Budget Impact:

Negligible, the addition of land into the tax rolls will not create an additional buildable lot.

Council Options:

1. Accept the petition, hold a public hearing on the vacation, and approve the ROW vacation.
2. Accept the petition, hold a public hearing on the vacation, and deny the ROW vacation.

Staff Recommendation:

Staff recommends that the Council approve the vacation request.

Potential Motion:

Motion for Step One:

“I move to accept the petition and hold a public hearing on the right-of way vacation petition.”

Motion for Step Two:

1. “I move to approve MISC 17-06 and vacate the unimproved rights-of-way on Third Avenue and 10th Street as described in Exhibits A1, A2, B1 and B2.”
2. “I move to deny MISC 17-06.”

Attachments:

1. MISC-17-06 staff report
2. Ordinance No. 1665
3. Exhibits including applicant’s submittal
4. Public comments received to date



**STAFF REPORT
FOR THE CITY COUNCIL**

FILE NUMBER: MIS-17-06

HEARING DATE: November 13, 2017

REQUEST: Vacation of undeveloped portions of right-of-way (ROW) on Tenth Street and Third Avenue, west and south of 1220 Ninth Street

**STAFF REPORT
PREPARED BY:** Peter Spir, Associate Planner

Planning Manager's Initials _____

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GENERAL INFORMATION

OWNERS/

APPLICANT: Emery Smith DBA Encore Homes LLC (Roy Marvin)

SITE LOCATION: The ROW to be vacated are portions of Third Avenue and Tenth Street.
(See Exhibit A, D and E)

DESCRIPTION: Proposed street vacation of undeveloped ROW.

SITE SIZE: 38,191 square feet.

ZONING: R-10 (Single family residential detached, 10,000 square foot minimum lot size)

PLAN

DESIGNATION: Low Density Residential

APPROVAL

CRITERIA: Oregon Revised Statute (ORS) 271.120. Hearing conducted per the procedures of Community Development Code (CDC) Chapter 99.

PUBLIC NOTICE: Notice was completed per CDC 99.080 and ORS 271.110

EXECUTIVE SUMMARY

Street ROW vacations are reviewed and decided by City Council by the authority of ORS 271 and acting as the City's "Governing Body" (ORS 271.005 (1)). Street ROW vacations are a two-step quasi-judicial process with both steps being considered on the same hearing date.

Step 1 petition acceptance phase, requires "... the consent of the owners of all abutting property and of not less than two-thirds in the area of the real property affected." (ORS 271.080(2)). The Step 2 hearing process requires three criteria: 1) a finding that the number requirements are met (100% and 66.6%), 2) notice was proper, and 3) vacation is in the public interest. (ORS 271.120).

The petition included the requisite number of signatures. Notice of the public hearing was posted for two consecutive weeks in the paper and posted at both ends of the proposed vacation as required by ORS 271.110.

The Public Works Director supports the ROW vacation. The Transportation System Plan does not identify these right-of-ways as needed. No adopted utility master plans require these ROWs. The Parks Director supports the ROW vacation as well.

The ROWs and adjacent properties are occupied by a creek, wetlands, 100 year floodplain, Habitat Conservation Areas (HCAs), Riparian Corridors as shown in Exhibit E.

The applicant, Emery Smith DBA Encore Homes LLC (Roy Marvin), proposes to vacate undeveloped portions of Third Avenue and Tenth Street ROW as shown in Exhibits A1, A2, B1 and B2. The purpose of the vacation is to allow the applicant to build a single family home on the property south of Third Avenue and east of Tenth Street without having to construct street improvements in those two ROWs, as required by CDC Chapter 96. The applicant will be required to improve abutting Ninth Street ROW.

RECOMMENDATION

Staff recommends that the Council approve the ROW vacation request.

PUBLIC COMMENTS:

Greg Smith (2140 Volpp Street) contacted staff seeking additional information about the proposed vacation and the applicant's future plans. (See Exhibit I)

ADDENDUM APPROVAL CRITERIA AND FINDINGS

Approval Criteria 1: The proposed vacation must have the support of all abutting property owners and two-thirds of property within the “affected area” per ORS 271.080(2).

Staff Finding 1: The proposed street ROW vacation has the consent of 100 percent of the abutting property owners as required by ORS 271.080(2).

The “affected area” was measured out by staff and is shown in Exhibit C. The “affected area” comprises 772,728 square feet. The square footage of properties supporting the vacation totals 579,720 square feet which represents 75 percent. This amount exceeds the minimum two-thirds or 66.6 percent. All property owner signatures were notarized and validated. The criteria is met.

It is noted that Willamette Park is abutting the proposed 10th Street ROW vacation. Willamette Park is owned by the City of West Linn. The Parks Director has expressed his support for the vacation, but the City’s support or non-support is ultimately expressed by the City Council decision to either approve or deny the application.

Approval Criteria 2: The notice must be completed per ORS 271.110 and 99.080 (E).

Staff Finding 2: Notice has been satisfied. Notice was published in the West Linn Tidings newspaper once each week for the two consecutive weeks prior to the hearing (publish dates: November 2, 2017 and November 9, 2017). Staff posted a “*Notice of Street Vacation*” at each end of the ROWs 14 days prior to the hearing date. The criteria is met.

Approval Criteria 3: The “public interest” shall not be prejudiced by the vacation.

Staff Finding 3: The Public Works Director has determined that there is no need to retain these ROWs for future street improvements. The Transportation System Plan does not identify the ROWs as necessary. There are no existing utilities in these ROWs. No future utilities are proposed in these ROWs per the adopted Storm, Sewer and Water Master Plans. The Public Works Director does, however, want to establish utility easements in those ROWs. The proposed ordinance, attached as Exhibit A, provides for creation of a utility easement.

The Parks Director has determined that the adjacent Willamette Park will not be adversely impacted by the proposed vacation. Conversely, by not vacating the ROWs and seeing a future street constructed on the east edge of Willamette Park, the viability and health of the park’s wetland and associated HCA could be adversely impacted. The 2013 Trails Plan does not identify these ROWs as needed.

The ROWs and adjacent properties are constrained by a creek, riparian corridor, wetlands, the 100 year floodplain and an HCA. By vacating the ROWs, the street improvements will not be required and the public interest of resource protection will be served.

The vacation of the ROW will not compromise future development on adjacent properties since all properties will retain frontage on Ninth Street.

Also, a large pole barn owned by Thomas Farwell, the neighbor to the north of Third Avenue, encroaches 12 feet into that ROW (visible in Exhibit D.) By vacating the ROW, the structure will meet the R-10 zone setbacks and become a conforming structure.

The criteria is met.

EXHIBIT A: ORDINANCE NO. 1665
(Commences next page)

ORDINANCE NO. 1665

**AN ORDINANCE VACATING A PORTION OF THE
THIRD AVENUE AND TENTH STREET RIGHT-OF-WAY WITHIN
THE CITY OF WEST LINN, OREGON.**

WHEREAS, Emery Smith DBA Encore Homes LLC submitted a petition to vacate a portion of the Third Avenue and 10th Street right-of-way on June 13, 2017; and the City fixed a time pursuant to Oregon Revised Statute (ORS) 271.130 on November 13, 2017, for a public hearing on the proposed vacation; and,

WHEREAS, the City published notice of the proposed right-of-way vacation in the West Linn Tidings on November 2, 2017 and November 9, 2017, and City staff posted a copy of the notice with all required information at three conspicuous places near each end of the proposed vacation area; and,

WHEREAS, the City Council held a public hearing on the proposed vacation on November 13, 2017; and,

WHEREAS, the City Council found that the petition was complete with the consent of 100 percent of abutting property owners and the consent of property owners of over two-thirds of the affected area in support of the vacation; and,

WHEREAS, the City Council found that the applicants obtained the requisite signatures of consent, the notice was complete, and the public interest will not be prejudiced by the vacation because the right-of-ways do not serve any purposes with the exception of a public utility easement to be established on these right-of-ways.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Vacation. The portions of Third Avenue and 10th Street right-of-ways, located in the City of West Linn, Clackamas County, Oregon, adjacent to tax lots 300 and 800 of Assessor's Map 31E2AC, as more particularly described in attached Exhibits A1 and A2 (legal descriptions) and Exhibits B1 and B2 (maps), is vacated.

SECTION 2. Establish Public Utility Easement. All of the vacated right-of-ways, as described in Exhibits A1, A2, B1 and B2, are subject to dedication of a public utility easement for their entirety.

SECTION 3. Vacation Effective Date. This ordinance shall take effect on the 30th day after its passage.

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

PASSED and ADOPTED this _____ day of _____, 2017.

RUSSELL AXELROD, MAYOR

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the _____ day of _____, 2017, and duly PASSED and ADOPTED this _____ day of _____, 2017.

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job # 5926

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM-KEIZER, OR

EXHIBIT A1

Right-of-Way Vacation Description

A portion of right-of-way of the plat "Willamette & Tualatin Tracts", Plat No. 198, Clackamas County Plat Records, located in the Northeast One-Quarter of Section 2, Township 3 South, Range 1 East, Willamette Meridian, City of West Linn, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeasterly corner of Lot A, Tract 20 of said plat; thence along the southerly right-of-way line of 3rd Avenue (20.00 feet from centerline), South $67^{\circ}39'00''$ West 418.00 feet to the northwesterly corner of Lot B of said Tract; thence leaving said southerly right-of-way line, North $22^{\circ}21'00''$ West 40.00 feet to the southwesterly corner of Lot C, Tract 21 of said plat, also being on the northerly right-of-way line of 3rd Avenue (20.00 feet from centerline); thence along said northerly right-of-way line, North $67^{\circ}39'00''$ East 418.00 feet to the southeasterly corner of Lot D of said Tract; thence leaving said northerly right-of-way line, South $22^{\circ}21'00''$ East 40.00 feet to the Point of Beginning.

The above described tract of land contains 16,720 square feet, more or less. The Basis of Bearings is per said plat.

6/14/2017

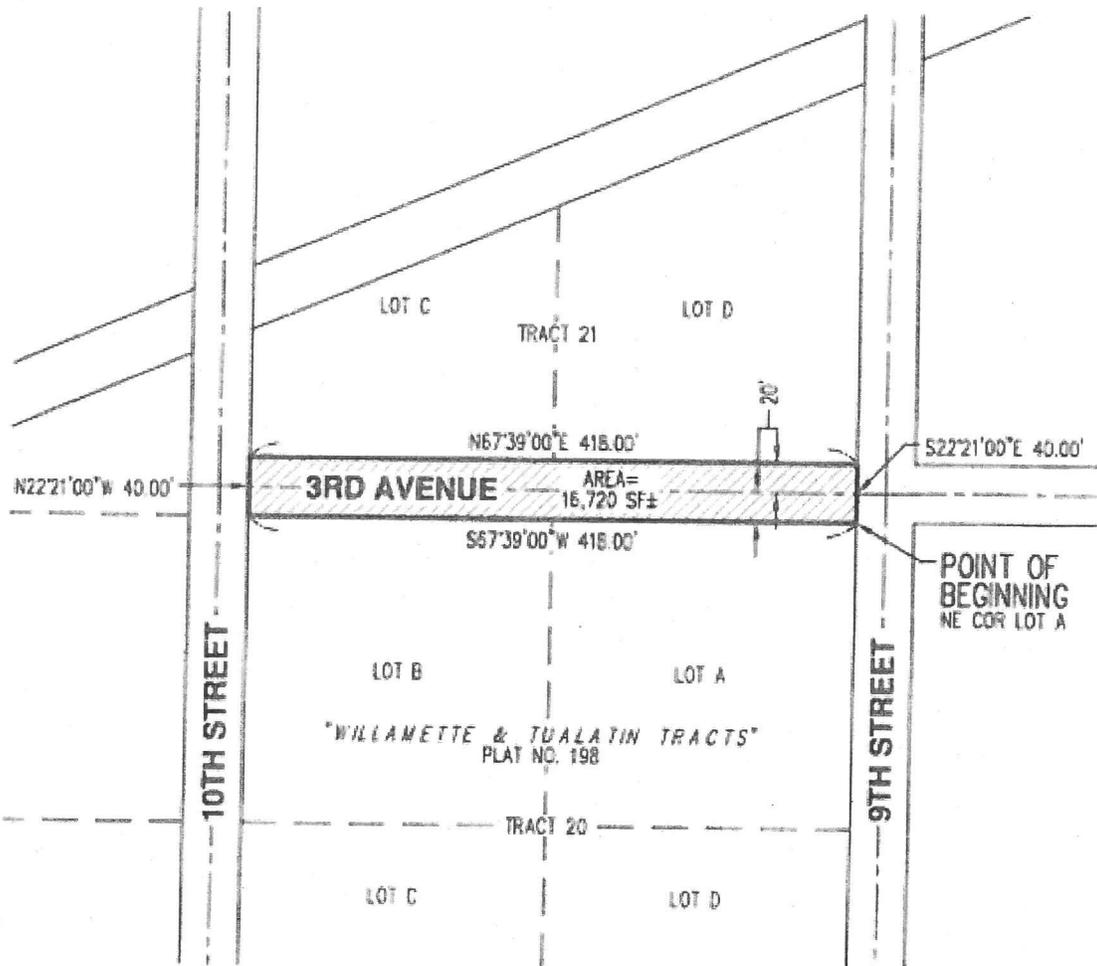
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
DECEMBER 2, 1983
D. GARY HUTCHESON
2072

RENEWS: 6/30/19

EXHIBIT B1

A PORTION OF RIGHT-OF-WAY OF THE PLAT "WILLAMETTE & TUALATIN TRACTS",
 LOCATED IN THE NORTHEAST 1/4 OF SECTION 2,
 TOWNSHIP 3 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN,
 CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON



6/14/2017

REGISTERED
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D. Gary Hutcheson

OREGON
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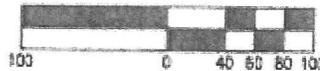
RENEWS: 6/30/16

PREPARED FOR

ENCORE HOMES LLC
 7989 SE TOWHEE COURT
 MILWAUKIE, OR 97267

THE BASIS OF
 BEARINGS IS PER
 THE PLAT
 "WILLAMETTE &
 TUALATIN TRACTS",
 PLAT NO. 198.

SCALE: 1" = 100 FEET



MAP OF RIGHT-OF-WAY VACATION

AKS ENGINEERING & FORESTRY, LLC
 12965 SW HERMAN RD, STE 100
 TUALATIN, OR 97062
 P: 503.563.6151 F: 503.563.6152 aks-eng.com



EXHIBIT
B

DRWN: WCE
 CKRD: DGH
 AKS JOB
 5926



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #5926

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM-KEIZER, OR

EXHIBIT A2

Right-of-Way Vacation Description

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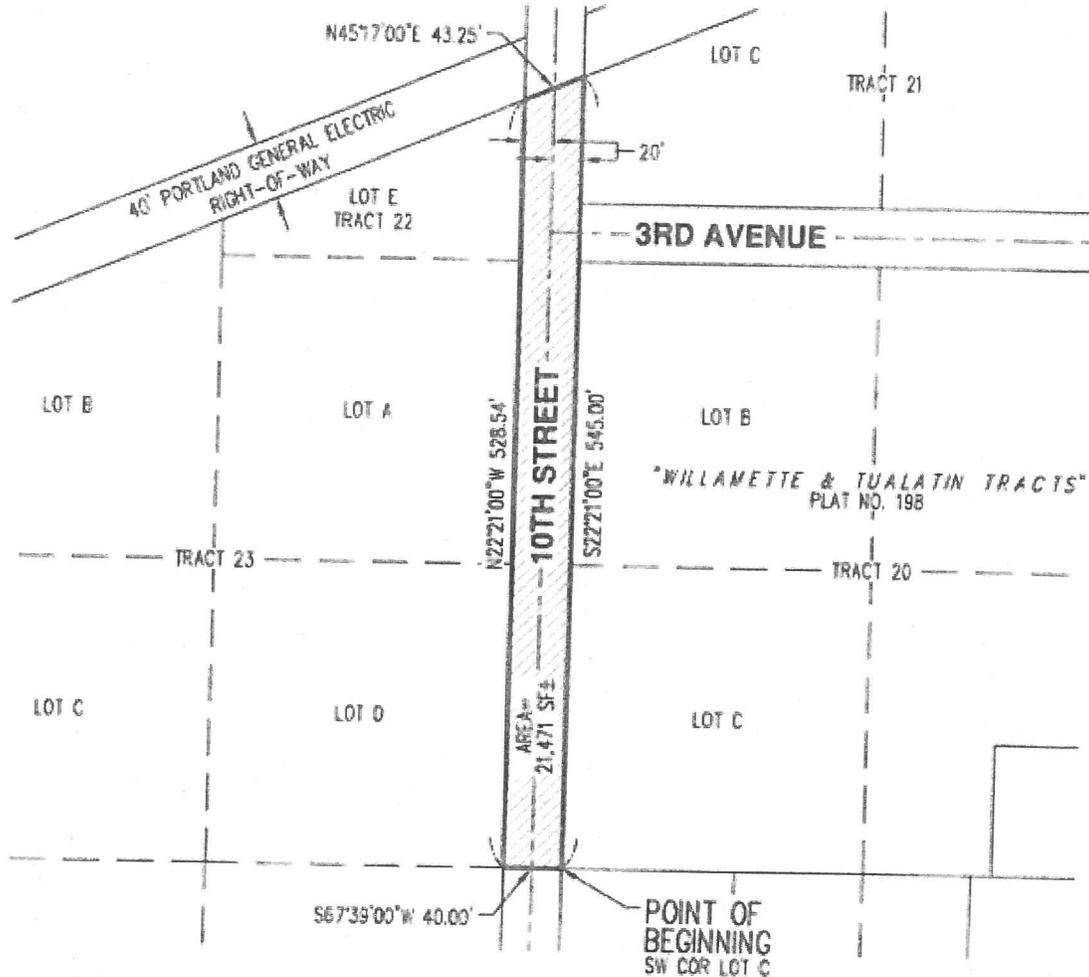
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
DECEMBER 2, 1983
D. GARY HUTCHESON
2072

RENEWS: 6/30/19

EXHIBIT B2

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 LOCATED IN THE NORTHEAST 1/4 OF SECTION 2,
 TOWNSHIP 3 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN,
 CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON



6/14/2017
**REGISTERED
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D. Gary Hutcheson
**OREGON
 DECEMBER 2, 1983
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 2072
 RENEWS: 6/30/19**

PREPARED FOR
 ENCORE HOMES LLC
 7989 SE TOWHEE COURT
 MILWAUKIE, OR 97267

SCALE: 1"=100 FEET

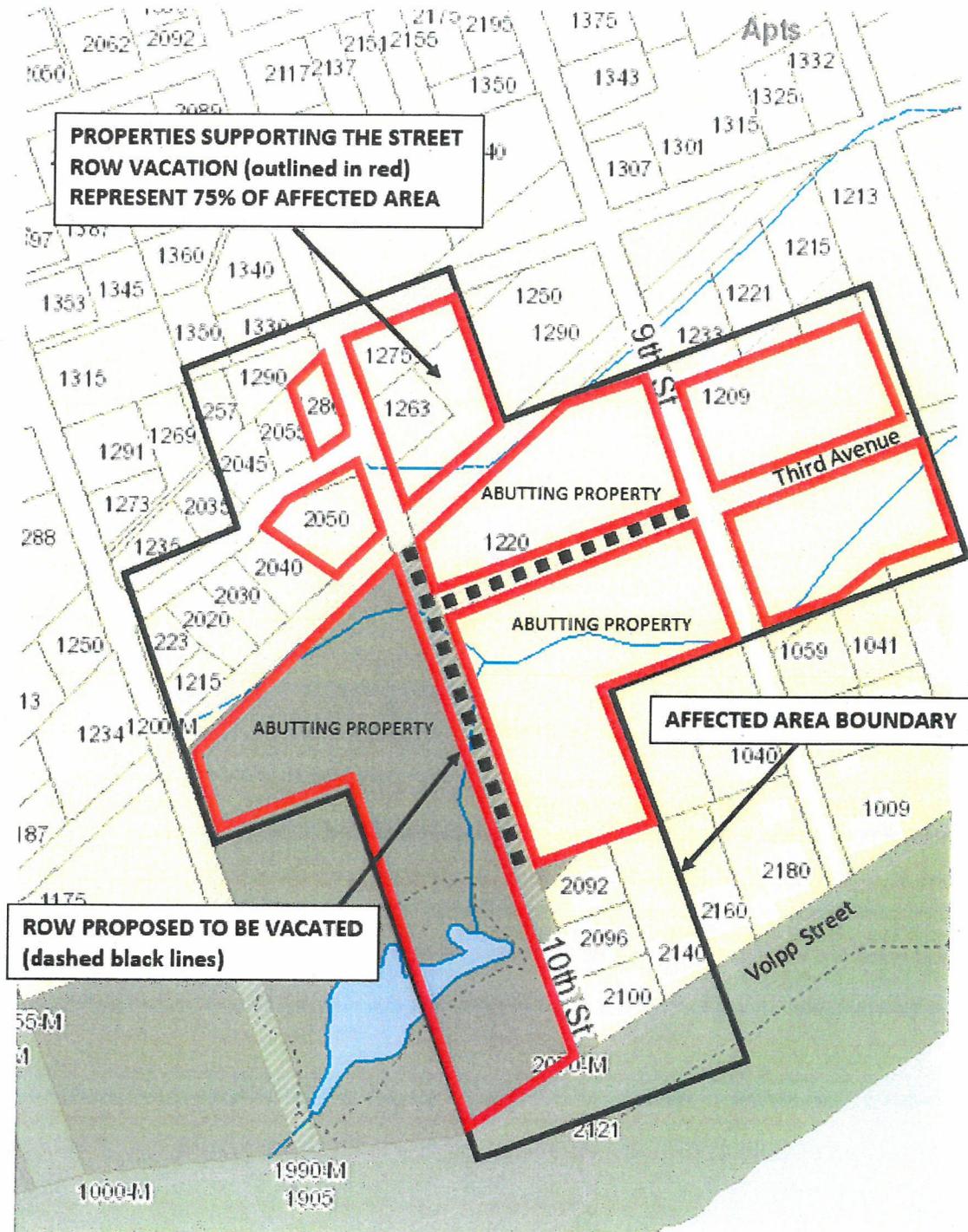


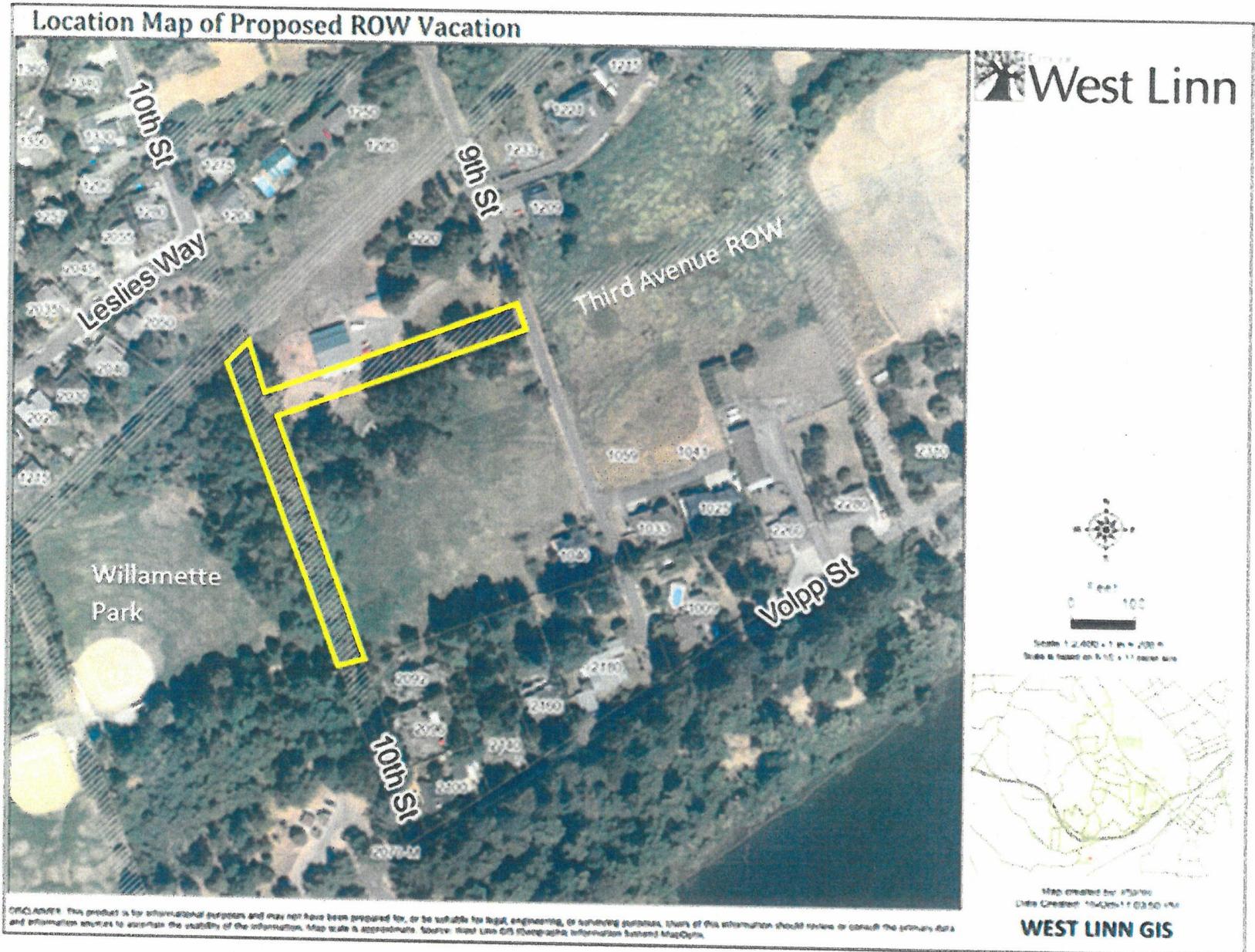
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MAP OF RIGHT-OF-WAY VACATION	
AKS ENGINEERING & FORESTRY, LLC 12955 SW HERMAN RD, STE 100 TUALATIN, OR 97062 P. 503.563.6151 F. 503.563.6152 aks-eng.com	AKS

EXHIBIT B
ORWN: W03 ORNO: DC#
AKS JOB 5926

Exhibit C: Map of "Affected Area" including properties in support of the vacation
(Source: West Linn Planning Staff)





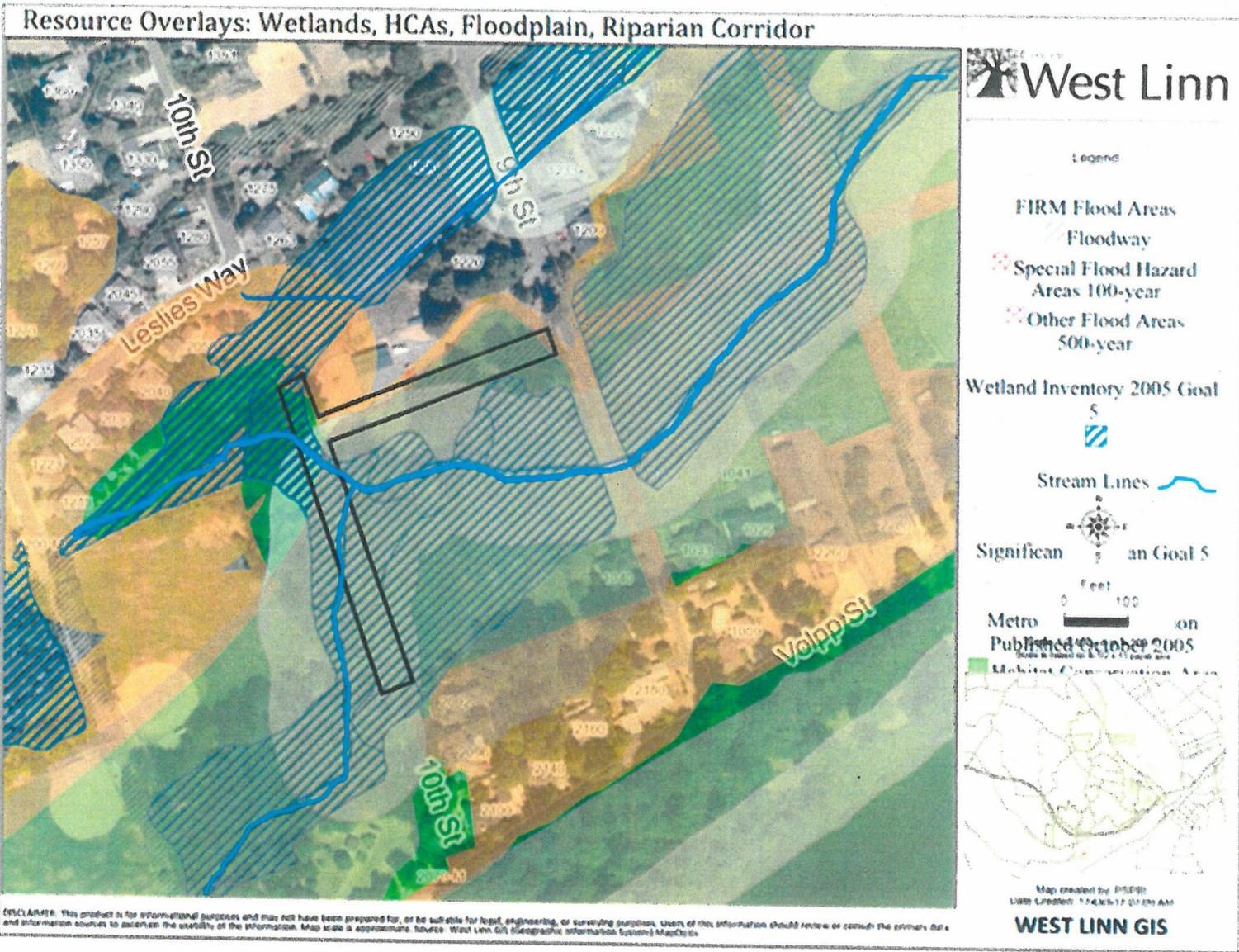


Exhibit E: Wetland, HCAs, Floodplain and Riparian Corridor Overlay Map

Exhibit F: AFFIDAVIT OF NOTICE

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. MISC-17-06 Applicant's Name Roy Marvin
Development Name _____
Scheduled Meeting / Decision Date 11-13-17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A _____

- A. The applicant (date) 10-26-17 (signed) J. Skoyev
- B. Affected property owners (date) _____ (signed) _____
- C. School District/Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____
- F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 11-2-17 ; 11-9-17 (signed) J. Skoyev
City's website (posted date) _____ (signed) _____

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) Oct 25, 2017 (signed) [Signature] (3 signs)
and per 025 271.

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.

Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

Exhibit G: COMPLETENESS LETTER



City of
West Linn

Sent

September 20, 2017

Emery Smith DBA Encore Homes LLC
(Roy Marvin)
7989 SE Towhee Ct.
Milwaukie, OR 97267

SUBJECT: MIS-17-06 application for Street ROW Vacation for portions of 10th Street and Third Avenue

Dear Roy:

You resubmitted this application on September 13, 2017 with additional notarized signatures. You now have the support of 74 percent of the affected area which exceeds the minimum 66.6 percent per ORS 271. The Planning and Engineering Departments find that this application is **complete**. This is a legislative action and therefore the 120 day rule does not apply. You will be notified of the date when the City Council will meet to consider your application.

Please contact me at 503-742-6062, or by email at pspir@westlinnoregon.gov if you have any questions or comments.

Sincerely,

Peter Spir

Peter Spir
Associate Planner

Exhibit H: APPLICANT'S SUBMITTAL

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>Peter Spiv</i>	PROJECT NO(S). <i>MISC-17-06</i>	
NON-REFUNDABLE FEE(S) <i>6000-</i>	REFUNDABLE DEPOSIT(S) <i>0</i>	TOTAL <i>6000-</i>

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Lot Line Adjustment (LLA) */** | <input type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input checked="" type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: <i>1220 9th ST</i>	Assessor's Map No.: 31E02AC
Between 9th and 10th Streets, south of 3rd Avenue	Tax Lot(s): 800
	Total Land Area: 3.76

Brief Description of Proposal:

Vacate portions of the unimproved rights-of-way on 10th Street and 3rd Avenue

Applicant Name: <i>Roy Marvin EMELY SMITH DBA ENCORE HOMES ULL</i>	Phone:
Address: 7989 SE Towhee Ct.	Email: Please contact Applicant's representative
City State Zip: Milwaukie, OR 97267	

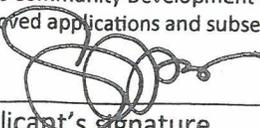
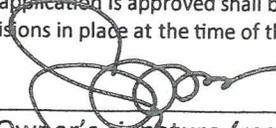
Owner Name (required):	Phone:
Address: Same as applicant	Email:
City State Zip:	

Consultant Name: Zach Pelz, AICP	Phone: (503) 563-6151
Address: AKS Engineering & Forestry 12965 SW Herman Rd., Suite 100	Email: pelzz@aks-eng.com
City State Zip: Tualatin, OR 97062	

- All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.**
One (1) complete set of digital application materials must also be submitted on CD in PDF format.
If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

	<i>5/22/17</i>		<i>5/22/17</i>
Applicant's signature	Date	Owner's signature (required)	Date

June 16, 2017

Lance Calvert, P.E.
Public Works Director
City of West Linn
West Linn, OR 97068

RE: Petition to Vacate a Portion of the Unimproved 3rd Avenue and 10th Street Right-of-Way

Dear Mr. Calvert,

We are submitting this request to vacate a portion of the unimproved rights-of-way that comprise 10th Street and 3rd Avenue (see attached Exhibit A) to develop the property described as Clackamas County Assessor's Map 3-1E-02AC, Tax Lot 800. Improving the subject rights-of-way along the frontage of the site is not feasible given the high degree of constraint posed by water resource, habitat conservation, and flood management areas located within Tax Lot 800.

Our review of the site, in the context of recent advice from City Planning and Engineering staff and applicable development criteria, revealed the potential for three new residential dwelling units on Tax Lot 800. New single-family homes on these three lots will be responsible for public street improvements along more than 1,100 linear feet of public right-of-way. In addition to the sheer length of the potential street improvements, much of this frontage is located within environmentally sensitive and flood management areas which will unquestionably raise the cost of permitting and construction beyond that typically associated with public street improvements. Exhibit B illustrates impracticality to construct these improvements, and depicts the several unimproved public rights-of-way and under-improved tracts in the immediate vicinity of the subject site. Considerably denser residential development and improved public rights-of-way are located immediately outside of the environmentally constrained areas encompassing the subject site.

Vacating these public rights-of-way is also in the best interest of the City's habitat preservation and flood management objectives for the area. The potential environmental impact necessary to construct public street improvements cannot be justified by the provision of limited needed housing (subject property and surrounding area is zoned R10) that may be provided in this part of West Linn.

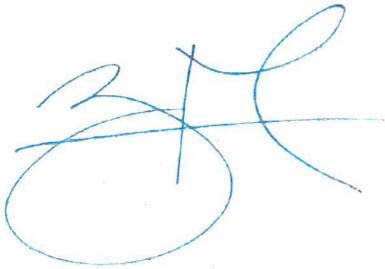
We have obtained consent from all abutting and affected property owners, per ORS 271.080, and have found no public or franchise utilities located within the rights-of-way subject to this vacation request.

For these reasons, we respectfully request that the City approve the vacation of the existing public rights-of-way, as described in Exhibit A. Per ORS 271.080, the following additional documents are included with this submittal:

- Fully executed City of West Linn Development Review Application Form
- Fee for a public right-of-way vacation
- Consent of owners of abutting property, per ORS 271.080(2)
- Exhibit A – Exhibit map illustrating right-of-way subject to this vacation request
- Legal Description of right-of-way subject to this vacation request

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions regarding this vacation request.

Sincerely,
AKS ENGINEERING & FORESTRY, LLC

A handwritten signature in blue ink, appearing to be 'Zach Pelz', written over a large, light blue circular scribble.

Zach Pelz, AICP
(503) 563-6151
pelzz@aks-eng.com

EXHIBIT A

Right-of-Way Vacation Description

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6/14/2017

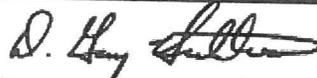
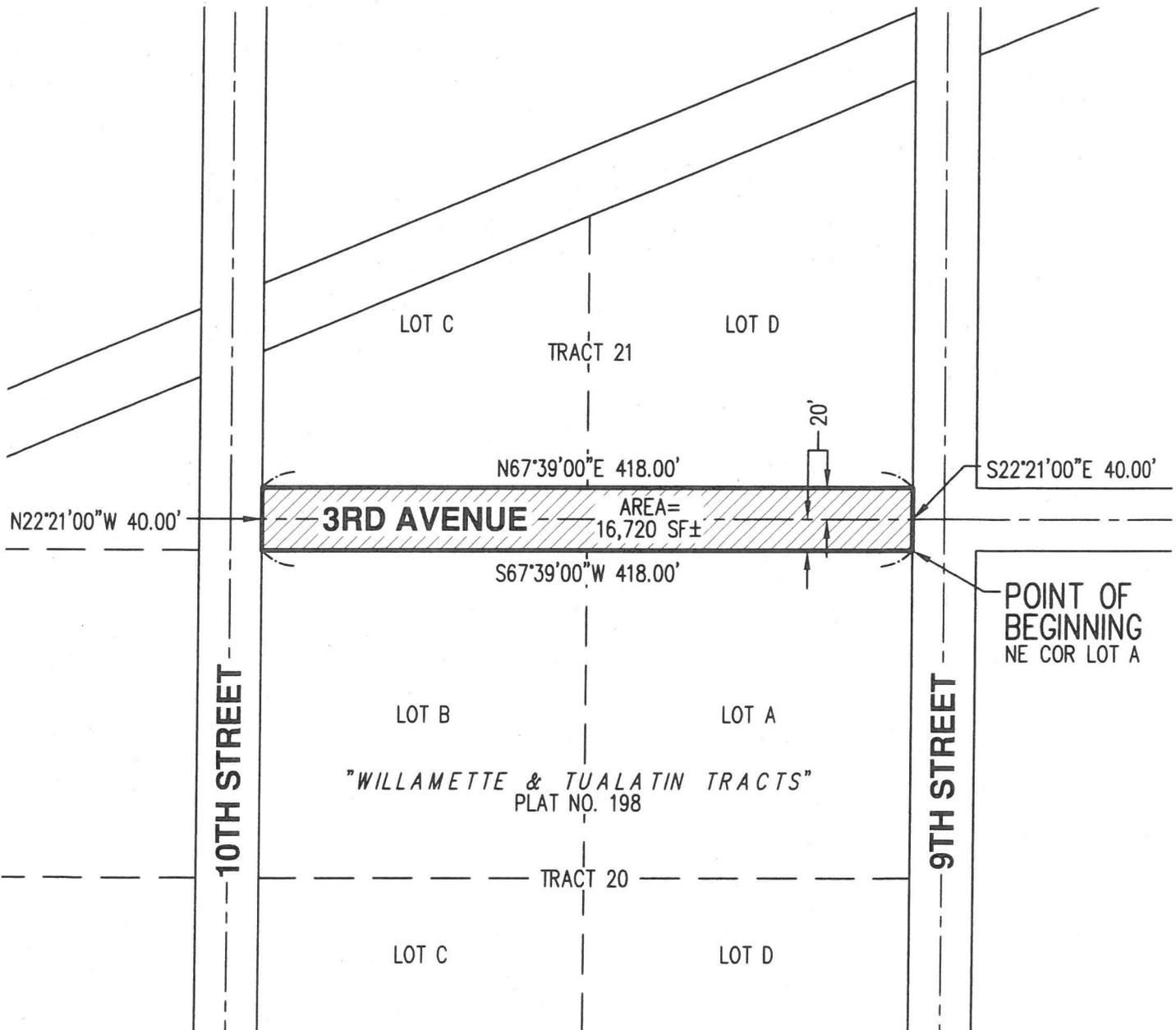
**REGISTERED
PROFESSIONAL
LAND SURVEYOR****OREGON
DECEMBER 2, 1983
D. GARY HUTCHESON
2072****RENEWS: 6/30/19**

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 CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON



6/14/2017

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D. Gary Hutcheson

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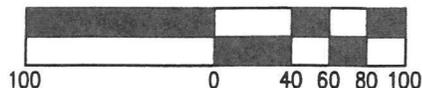
RENEWS: 6/30/19

PREPARED FOR

ENCORE HOMES LLC
 7989 SE TOWHEE COURT
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THE BASIS OF
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SCALE: 1" = 100 FEET



MAP OF RIGHT-OF-WAY VACATION

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EXHIBIT
B

DRWN: WCB
 CHKD: DGH

AKS JOB:
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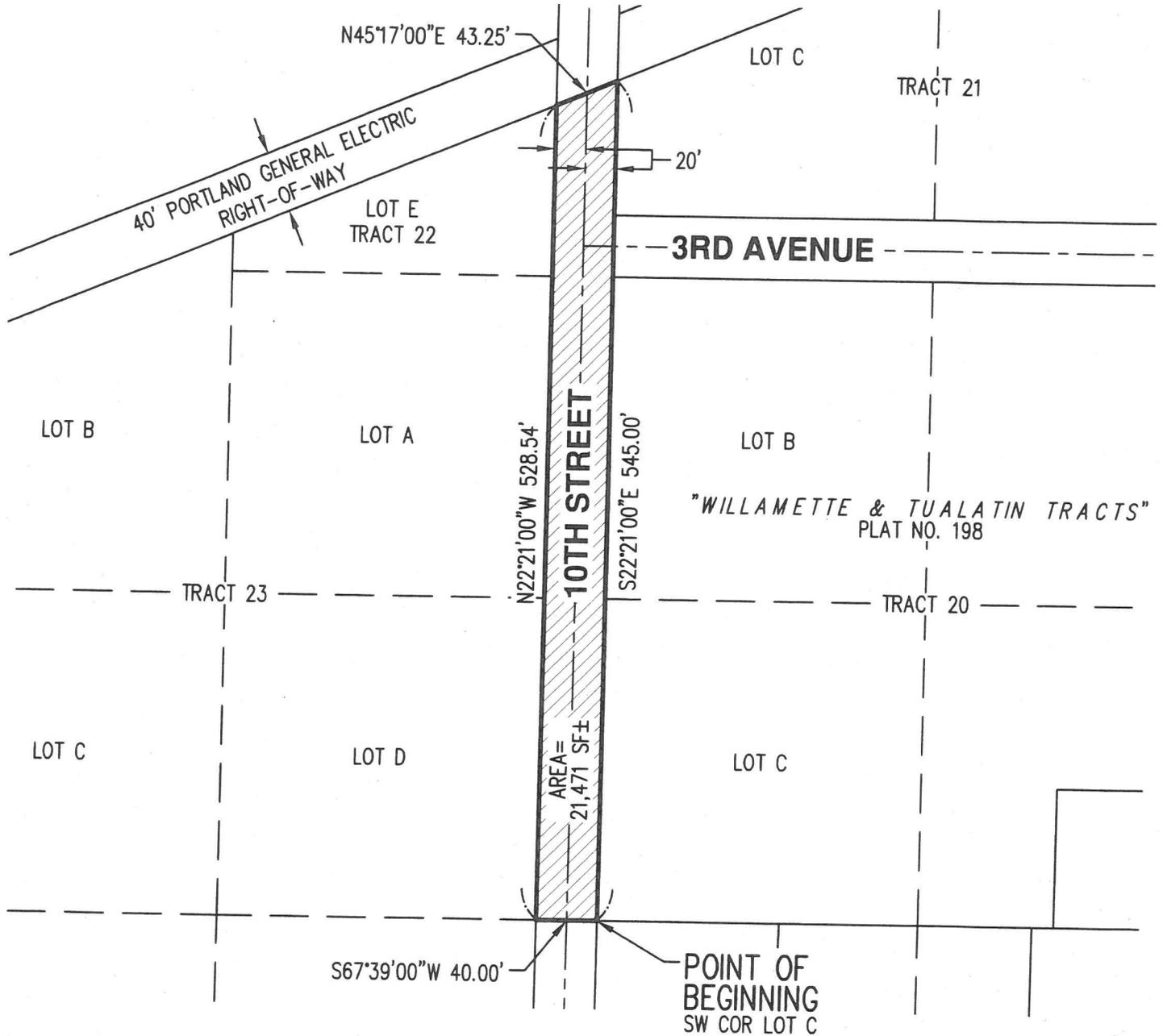
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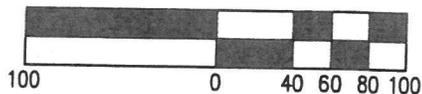
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REGISTERED
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PREPARED FOR

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D. Gary Hutcheson

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RENEWS: 6/30/19

THE BASIS OF
 BEARINGS IS PER
 THE PLAT
 "WILLAMETTE &
 TUALATIN TRACTS",
 PLAT NO. 198.

MAP OF RIGHT-OF-WAY VACATION

AKS ENGINEERING & FORESTRY, LLC
 12965 SW HERMAN RD, STE 100
 TUALATIN, OR 97062

P: 503.563.6151 F: 503.563.6152 aks-eng.com



EXHIBIT
B

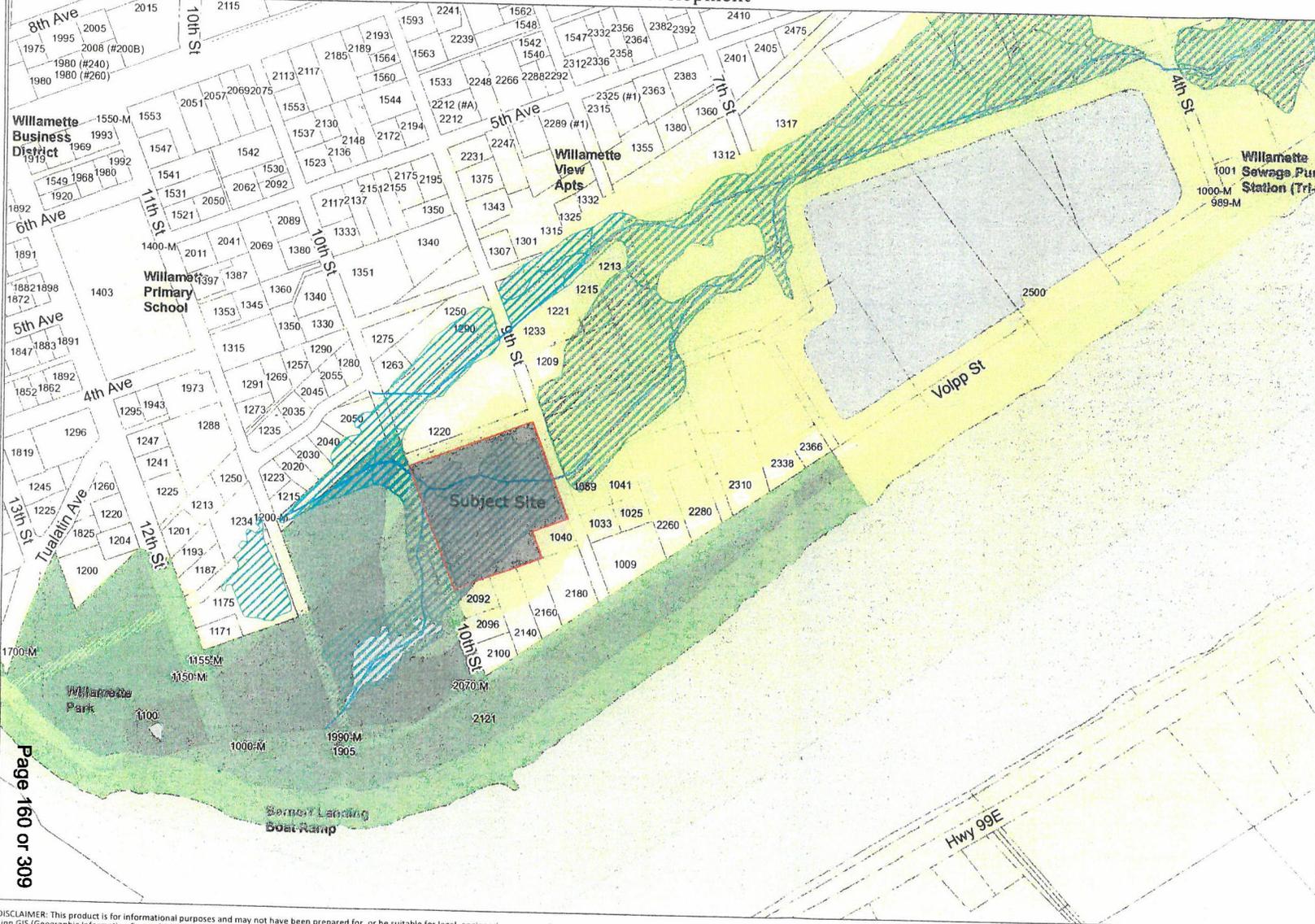
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CHKD: DGH

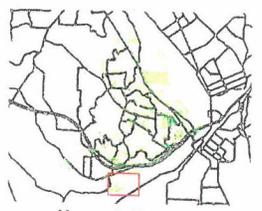
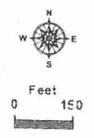
AKS JOB:

Page 159 of 309 5926

Exhibit B - Environmental Constraints Limit Potential for Residential Development



- Legend
- Flood Management Areas
 - Wetland Inventory 2005 Goal 5
 - Stream Lines
 - Significant Riparian Goal 5
 - Unimproved Right of Way
 - Historic Parcel Lines



Map created by: public
 Date Created: 13-Jun-17 04:12 PM
WEST LINN GIS

Page 160 of 309

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Map scale is approximate. Source: West Linn GIS (Geographic Information System) MapOptix.

Acknowledgment by Individual

State of

County of

Oregon

Clackamas

On this 25 day of April

, 20 17

before me,

Naghmeh Asiaei Pourassef

Name of Notary Public

the undersigned Notary Public, personally appeared

Euan Currie.

Name of Signer(s)

Proved to me on the oath of _____

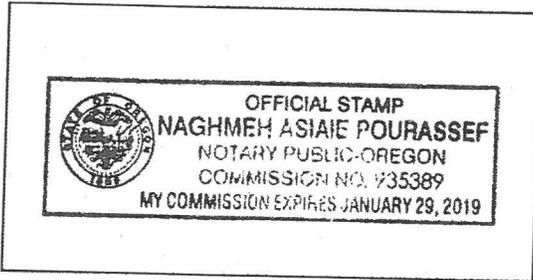
Personally known to me

Proved to me on the basis of satisfactory evidence _____

(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Naghmeh Asiaei Pourassef
(Signature of Notary Public)

My commission expires 1-29-19

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

Description of Attached Document

Type or Title of Document

Proposed street Vacation Exhibit A

Document Date

4-24-17

Number of Pages

4

Signer(s) Other Than Named Above



Notice of Non Solicitation: This notice advises Buyers who have entered into an Oregon Real Estate Agency contract with a Realtor in the State of Oregon, that all terms and obligations of such contract(s) remain in full force, until such time that the contract expires or is terminated or canceled. If you have questions about the term of the contract you are advised to discuss it with your Realtor or seek competent legal counsel. The Buyer acknowledges that they have contacted the Realtor on their own behalf and at no time has the Realtor solicited such contact while client was already under contract. Any decision by the Buyer to enter into a new Oregon Real Estate Agency contract with the Realtor shall be of their own desire and such contract shall not begin until prior contract(s) have expired or have been mutually cancelled by the parties, as evidenced in writing.

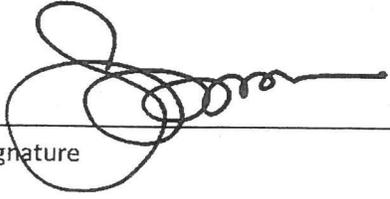
I have read the above disclosures and have also received copies of the following checked documents:

- Oregon Real Estate Agency Disclosure Pamphlet
- Protect Your Family/Lead Paint EPA Handout (If built prior to 1978)
- Home Warranty Brochure

Encore Homes, LLC.

Buyer - Print Name

Buyer - Print Name

BY 

Buyer Signature _____ Date _____

Buyer Signature _____ Date _____

Carol Howard

Broker Signature _____ Date _____

To whom it may Concern,

Re; Proposed street vacation of 3rd Ave & 10th st on Tax lot #'s

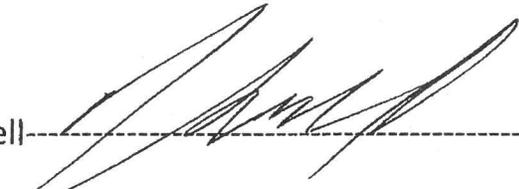
00748668-00748613

West Linn, Or 97068

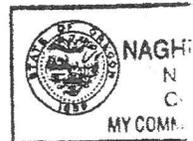
We the undersigned support the proposed street vacation as shown in exhibit A.

Thomas Farwell

1220 9th St West Linn

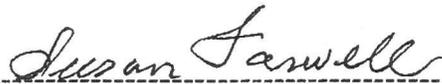


4-24-17

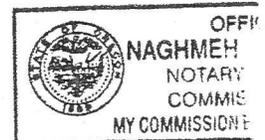


Susan Farwell

1220 9th st West Linn

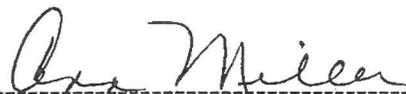


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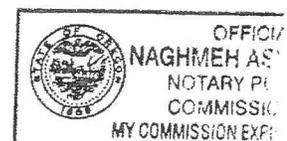


Ann Miller

1009 9th St West Linn



4/24/17

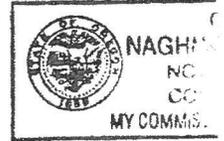


Euan Currie

[Handwritten signature]

4/25/17

1209 9th St West Linn



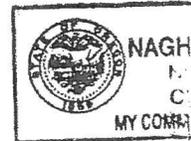
Carol Gronvold

[Handwritten signature]

4/24/17

1307 9th st

West Linn, Or



Re; Proposed street vacation of 3rd Ave & 10th st on tax lot #'s

00748668- 00748613

Donald R Nelke 9/12/17

Donald R Nelke

We the undersigned support the proposed street vacation as shown in exhibit A.

1275 Tenth St.

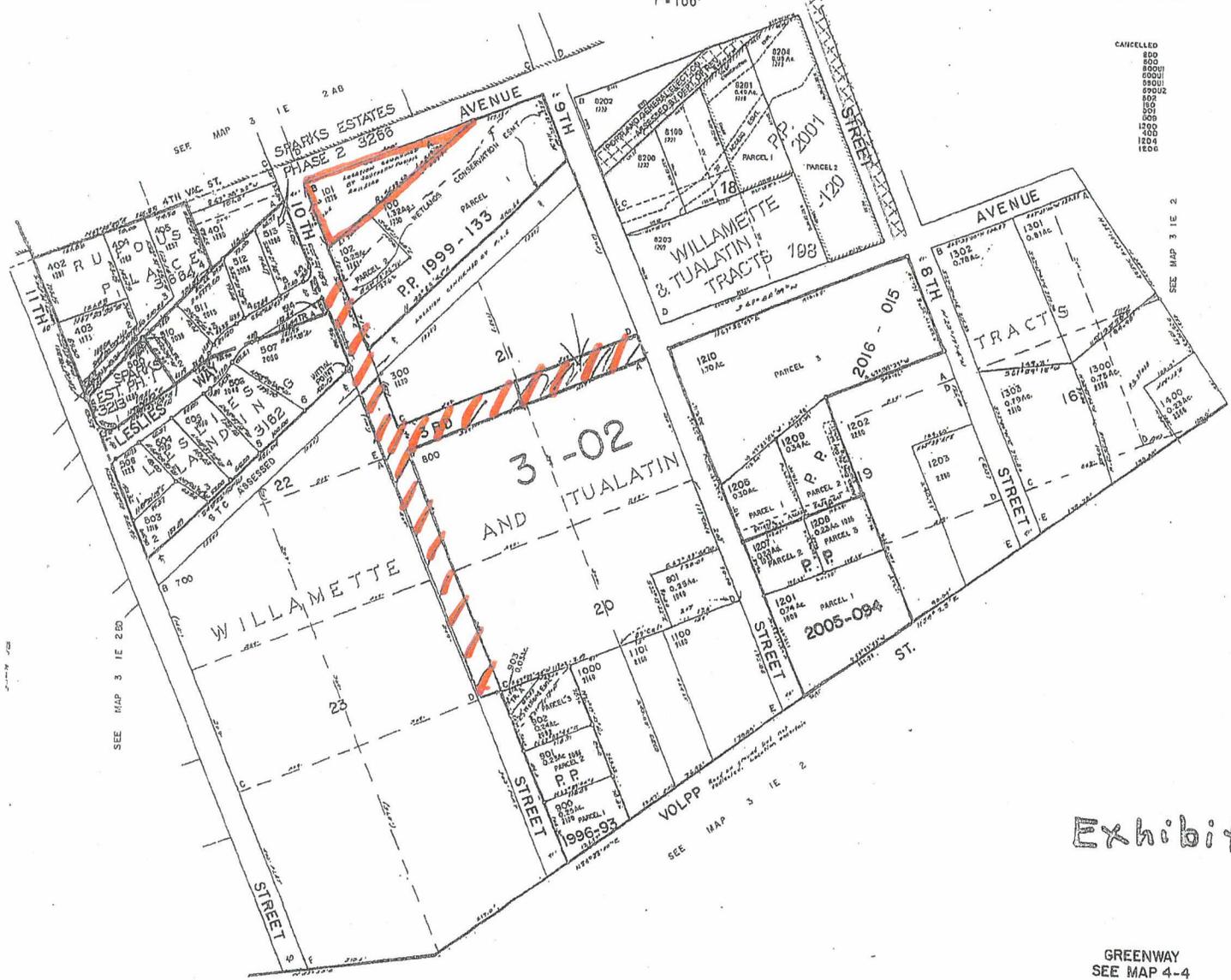


This map was prepared for assessment purposes only.

SW 1/4 NE 1/4 SEC 2 T3S.R1E.WM.
CLACKAMAS COUNTY
1" = 100'

D. L. C.
AMBROSE FIELDS NO. 52

3 IE 2AC
WEST LINN



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1275 Tenth St.

Exhibit A

GREENWAY
SEE MAP 4-4

3 IE 2AC

BOOK 27

ALL-PURPOSE ACKNOWLEDGMENT

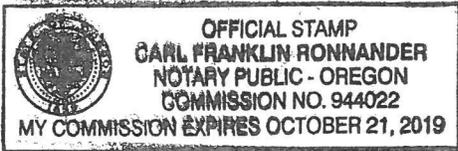
State of OREGON

County of CLACKAMAS

On 09/12/2017 before me, CARL FRANKLIN RONNANDER
DATE NAME OF NOTARY PUBLIC

personally appeared DONALD RAY NELKE
NAME(S) OF SIGNER(S)

personally known to me OR I approved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal or Stamp Here

Carl Franklin Ronnander
SIGNATURE OF NOTARY

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it may prove valuable to persons relying on this Acknowledgment and could prevent fraudulent reattachment of this certificate to another document.

DESCRIPTION OF ATTACHED DOCUMENT

THIS CERTIFICATE
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TO THE DOCUMENT
DESCRIBED AT RIGHT

PROPOSED STREET VACATION

TITLE OR TYPE OF DOCUMENT

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NUMBER OF PAGES

NONE

DATE OF DOCUMENT

NONE

SIGNER(S) OTHER THAN NAMED ABOVE

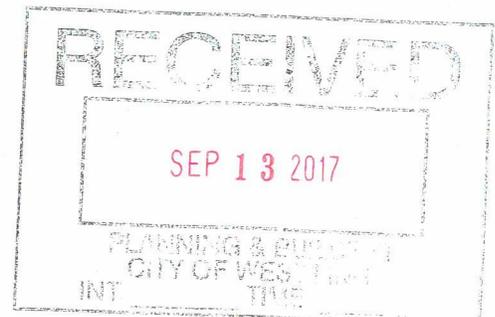
1250 Ninth St.

Re; Proposed street vacation of 3rd Ave & 10th st on tax lot #'s

00748668- 00748613

We the undersigned support the proposed street vacation as shown in exhibit A.

Gerald L. Paulsen Gerald L Paulson 9/12/17

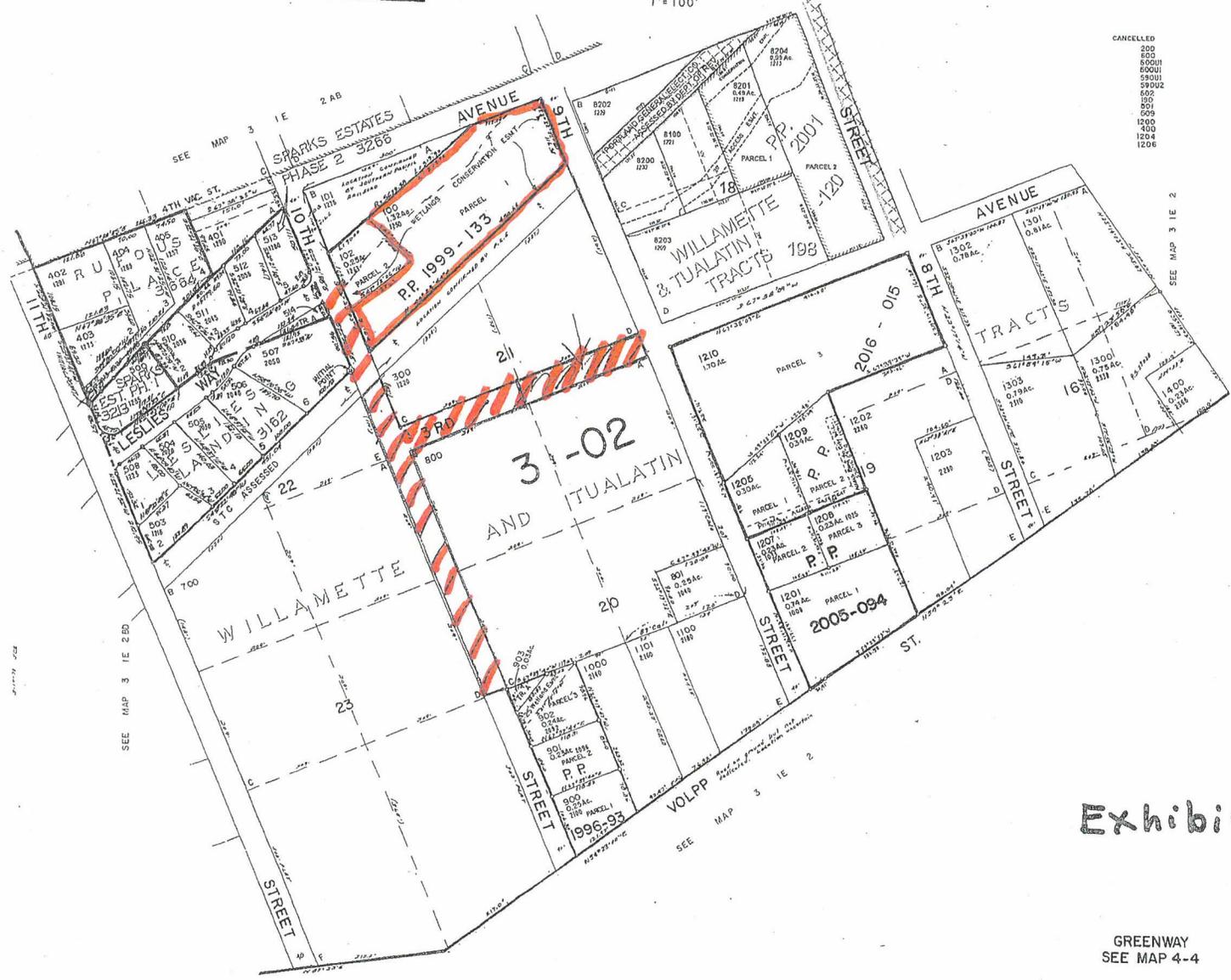


This map was prepared for assessment purpose only.

SW 1/4 NE 1/4 SEC 2 T.3S.R.1E.WM.
CLACKAMAS COUNTY
1" = 100'

D. L. C.
AMBROSE FIELDS NO. 52

3 IE 2AC
WEST LINN



- CANCELLED
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1250 Ninth St.

Exhibit A

GREENWAY
SEE MAP 4-4

3 IE 2AC

BOOK 27

ALL-PURPOSE ACKNOWLEDGMENT

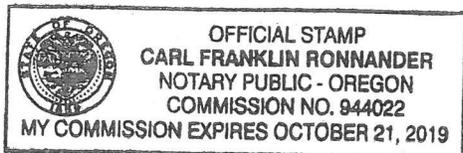
State of OREGON

County of CLACKAMAS

On 09/12/2017 before me, CARL FRANKLIN RONNANDER
DATE NAME OF NOTARY PUBLIC

personally appeared GERALD LOREN PAULSEN
NAME(S) OF SIGNER(S)

personally known to me OR approved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), an that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal or Stamp Here

Carl Franklin Ronnander
SIGNATURE OF NOTARY

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it may prove valuable to persons relying on this Acknowledgment and could prevent fraudulent reattachment of this certificate to another document.

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DESCRIBED AT RIGHT

PROPOSED STREET VACATION
TITLE OR TYPE OF DOCUMENT

2
NUMBER OF PAGES

NONE
DATE OF DOCUMENT

NONE
SIGNER(S) OTHER THAN NAMED ABOVE

Re; Proposed street vacation of 3rd Ave & 10th st on tax lot #'s

00748668- 00748613

We the undersigned support the proposed street vacation as shown in exhibit A.

9/12/2017

Stacy Linn
1263 10th St.
West Linn, OR 97068

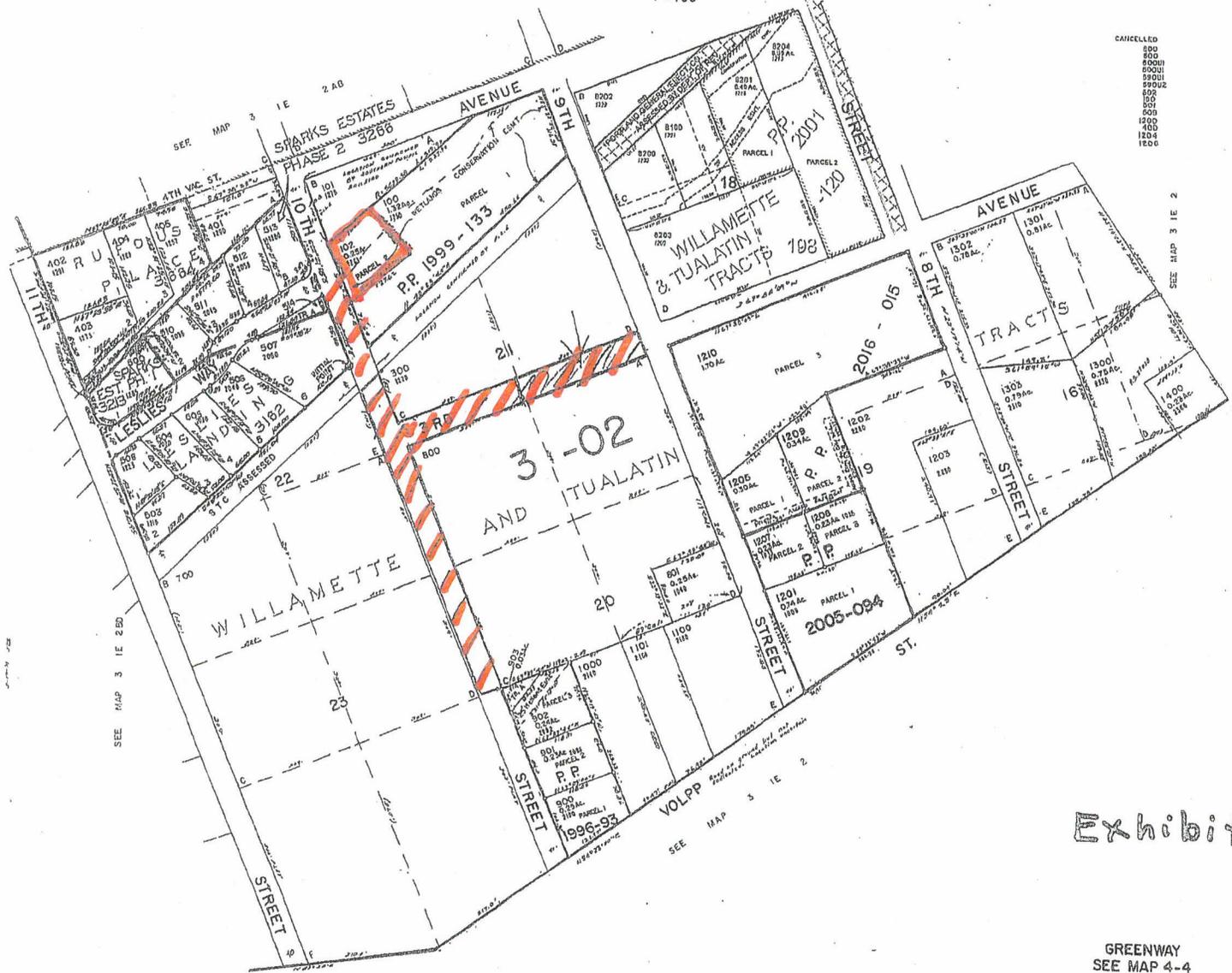


This map was prepared for assessment purposes only.

SW 1/4 NE 1/4 SEC 2 T3S. R1E. W.M.
CLACKAMAS COUNTY
1" = 100'

D. L. C.
AMBROSE FIELDS NO. 52

3 IE 2 AC
WEST LINN



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1263 Tenth St.

Exhibit A

GREENWAY
SEE MAP 4-4

3 IE 2 AC
BOOK 27

ALL-PURPOSE ACKNOWLEDGMENT

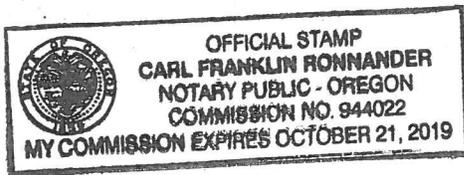
State of OREGON

County of CLACKAMAS

On 09/12/2017 before me, CARL FRANKLIN RONNANDER
DATE NAME OF NOTARY PUBLIC

personally appeared STACEY JENNIFER KRISH
NAME(S) OF SIGNER(S)

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

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Carl Franklin Ronnander
SIGNATURE OF NOTARY

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TITLE OR TYPE OF DOCUMENT

2

NUMBER OF PAGES

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DATE OF DOCUMENT

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SIGNER(S) OTHER THAN NAMED ABOVE

2050 Leslies Way

Re; Proposed street vacation of 3rd Ave & 10th st on tax lot #'s

00748668- 00748613

We the undersigned support the proposed street vacation as shown in exhibit A.

Dominic Zeni

Dominic Zeni 9/12/17



ALL-PURPOSE ACKNOWLEDGMENT

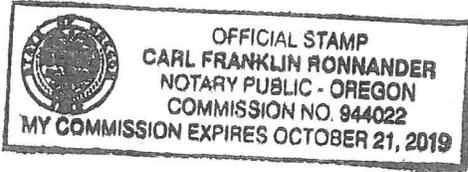
State of OREGON

County of CLACKAMAS

On 09/12/2017 before me, CARL FRANKLIN RONNANDER
DATE NAME OF NOTARY PUBLIC

personally appeared DOMINIC CHARLES ZENI
NAME(S) OF SIGNER(S)

personally known to me OR approved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



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Carl Franklin Ronnander
SIGNATURE OF NOTARY

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DESCRIBED AT RIGHT

PROPOSED STREET LOCATION

TITLE OR TYPE OF DOCUMENT

1

NUMBER OF PAGES

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DATE OF DOCUMENT

NONE

SIGNER(S) OTHER THAN NAMED ABOVE

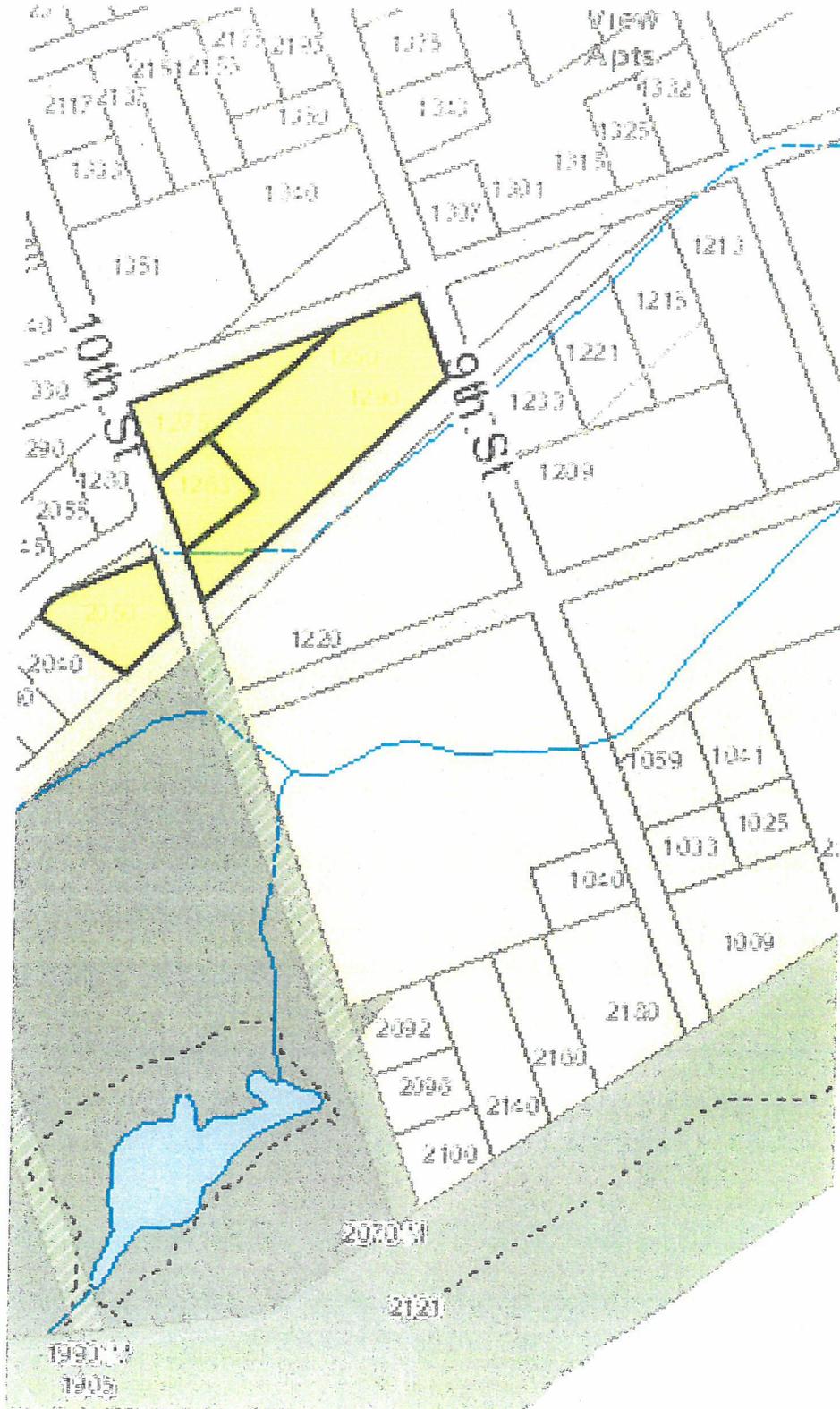


Exhibit I: PUBLIC COMMENTS

Spir, Peter

From: Greg Smith <gasmith@lclark.edu>
Sent: Thursday, October 26, 2017 9:55 AM
To: Spir, Peter
Subject: Vacating 10th and 3rd Streets

October 26, 2017

Dear Peter,

I just saw the announcement of the request by Emery Smith Encore Homes to vacate 10th and 3rd Streets. I'm checking to make sure that "vacate" means returning the control of the land to abutting property owners. I'm guessing that doing so would allow Emery Smith to include the now vacated land when the entire property is subdivided into additional buildable lots. Is this what is planned? And if so, where would these houses be located? Finally, would any of the vacated land on the formerly platted 10th Street be used for additional roads?

Many thanks. A group of neighbors who had not been consulted about this change by Smith's company will be meeting this evening. It would be helpful to have information that will allow us to understand what his company's plans are.

Sincerely yours,

Greg Smith



CITY OF
**West
Linn**

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Agenda Report 2017-11-13-05

Date: 11/13/2017

To: Russ Axelrod, Mayor
Members, West Linn City Council

From: Morgan Coffie, Management Analyst

Through: Lance Calvert, P.E. - Public Works Director *LEC*
Eileen Stein, City Manager *ES*

Subject: West Linn Refuse and Recycling Franchise Agreement Update

Purpose

To provide information regarding proposed changes to language within section 5.1.4 of the current franchise agreement between the City of West Linn and West Linn Refuse and Recycling (WLRR) to more accurately reflect current practices as they relate to curbside pick-up and the annual recycling drop-off event.

Question(s) for Council:

Shall the Council update this franchise agreement to reflect current practices?

Public Hearing Required: None

Background & Discussion:

West Linn Refuse and Recycling (WLRR) has, in prior years, provided an annual one day household debris curbside pick-up event in the spring. As a result of discussions between WLRR and the City, the curbside pick-up event was cancelled and replaced with a once per year individual resident on-call curbside pick-up for bulk items. In addition to changes to residential curbside pick-up, WLRR also provides an annual recycling drop-off event. The first drop-off event was held in fall of 2017.

Budget Impact: None

Council Options:

1. Adopt changes to the franchise agreement language to reflect current practice.
2. Do not adopt changes to the franchise agreement.

Staff Recommendation:

1. Adopt changes to the franchise agreement language to reflect current practice.

Potential Motion:

1. Motion to adopt Ordinance 1667 to modify the franchise agreement to reflect current practice.

Attachments:

1. Ordinance No. 1667
2. Franchise Agreement

ORDINANCE NO. 1667

AN ORDINANCE AMENDING THE 2008 FRANCHISE GRANTED TO WEST LINN REFUSE AND RECYCLING, INC., FOR SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES

WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of the 1993 Oregon Revised Statutes (ORS), has declared that it is a matter of statewide concern for local agencies to make adequate provisions for Solid Waste handling and the opportunity to Recycle within their jurisdictions;

WHEREAS, in 2008 the City Council of City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transportation, and disposal of Solid Waste and the collection transportation, and processing of Recyclables and Yard Debris;

WHEREAS, the City and West Linn Refuse declare their intention to continue the current franchise, attached and incorporated as Exhibit A, except for any amendments proposed by this Ordinance; and

WHEREAS, the City and West Linn Refuse propose amending the franchise to allow for a fall cleanup and recycling drop-off event and an annual curbside pick-up for each household;

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Franchise. The 2008 franchise, attached as Exhibit A and incorporated by this reference, remains in full force and effect except as modified by this Ordinance.

SECTION 2. Amendment. Section 5.1.4, City Facilities' Collection, is amended as follows:

Company shall ~~collect~~ and dispose of all Solid Waste generated at public facilities and events at no charge to the City.

~~The Company will also provide an annual curbside Spring Clean-up program for all Customers in the City at no charge to the City or to the Company's customers. The Company will coordinate this program with the City to facilitate safe and efficient service delivery. The collection schedule and Spring Clean-up program may be modified from time to time as mutually agreed upon by Company and City. The City and the Company will coordinate the Spring Clean-up program with Metro to make the program eligible for grant funding, if available.~~

The Company will also provide for an additional household debris curbside pick-up at the individual customer's request once per year at no additional charge to the City or Company's customers in West Linn. The requested additional household debris pick-up will take place on the customer's regularly scheduled garbage and recycling pick-up day or as coordinated between customer and Company.

In addition to a once per year household debris pick-up at the customer's request, the Company will also host a fall cleanup and recycling drop-off event (Event). The Event will be held at a location selected by the Company and coordinated with the City to facilitate safe and efficient service delivery. From time to time, the site of the event may change at the sole discretion of the Company. The Event will be at the full expense of the Company. The City and the Company will coordinate the Event with Metro to make the program eligible for grant funding, if available.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the ____ day of _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY



CITY OF
**West
Linn**

FINAL
AGREEMENT
BETWEEN
CITY OF WEST LINN
AND
WEST LINN REFUSE & RECYCLING, INC.
FOR
SOLID WASTE, RECYCLING AND YARD DEBRIS
COLLECTION SERVICES

* * *

FINAL
 AGREEMENT
 BETWEEN
 CITY OF WEST LINN
 AND
 WEST LINN REFUSE & RECYCLING, INC.
 FOR
 SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES

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EXHIBITS

1. INITIAL RATES
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3. FAITHFUL PERFORMANCE BOND
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5. CORPORATE GUARANTY

RECITALS

This Franchise Agreement (Agreement) is entered into this 12th day of November 2008 by and between the City of West Linn (City) and West Linn Refuse & Recycling, Inc. (Company), for the collection, transportation, and disposal of Solid Waste and the collection, transportation and processing of Recyclables and Yard Debris.

Recitals

WHEREAS, City prepared a Draft Agreement for Solid Waste, Recycling, and Yard Debris Collection Services and,

WHEREAS, Company prepared and submitted a proposal to provide the services outlined in City's Draft Agreement; and,

WHEREAS, City has reviewed Company's proposal and has determined that Company's proposal, as revised during negotiations between City and Company, best meets the goals and objectives of City for solid waste, recycling and yard debris collection services; and,

WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of the 1993 Oregon Revised Statutes (ORS), has declared that it is a matter of statewide concern for local agencies to make adequate provisions for Solid Waste handling and the opportunity to Recycle within their jurisdictions; and,

WHEREAS, the City Council of City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transportation, and disposal of Solid Waste and the collection, transportation, and processing of Recyclables and Yard Debris; and,

WHEREAS, City and Company are mindful of the provisions of the laws governing the safe collection, transfer, and disposal of Solid Waste, ORS 459 and ORS 459A, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and,

WHEREAS, City and Company desire to leave no doubts as to their respective roles, and by entering into this Agreement, City is not thereby becoming a "generator" or

an "arranger" as those terms are used in CERCLA § 107(a)(3), and it is Company, not City, which is "arranging for" the collection, removal, transportation, and disposal of Solid Waste which may contain hazardous substances; and,

WHEREAS, the City Council of City declares its intention of maintaining reasonable rates and quality service related to the collection, transportation, and disposal of Solid Waste, the collection, transportation, and processing of Recyclables and Yard Debris, and other services; and,

WHEREAS, City and Company (Parties) hereto desire to enter said Agreement.

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Agreement

"Agreement" means this Franchise Agreement between City and Company for Collection, transportation, and disposal of Solid Waste and the Collection, transportation and processing of Recyclables and Yard Debris, including all exhibits and attachments, and any amendments thereto.

1.2 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by City or Company, or made by others for City or Company, to owners or occupants of property, including Residential Property and Commercial Property, served by Company for the Collection of Solid Waste and Recyclables.

1.3 City

"City" means City of West Linn, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.4 Collection

"Collection" means a service that provides for collection of solid waste or recyclable material or both but does not include that part of a business operated under a certificate issued under ORS 822.110.

1.5 Commercial Property

"Commercial Property" means commercial and industrial property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.6 Company

"Company" means West Linn Refuse & Recycling, Inc., a corporation organized and operating under the laws of the State of Oregon and its officers, directors, employees and agents.

1.7 Company's Compensation

"Company's Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.8 Construction and Demolition Debris

"Construction and Demolition Debris" means construction materials resulting from construction, remodeling, repair or demolition operations, as part of a total service offered by a duly-licensed demolition contractor or City, including rocks, soil, tree remains, and other Yard Debris which normally results from land clearing or land development operations for a construction project.

1.9 Containers

"Containers" means any and all types of Solid Waste receptacles.

1.10 Curbside

"Curbside" means the placement of containers for pickup no more than three (3) feet from any traveled street or alleyway or as designated by City.

1.11 Disposal

"Disposal" means the ultimate disposition of Solid Waste collected by Company at a transfer station or landfill in full regulatory compliance.

1.12 Disposal Site

"Disposal site" means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and Recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal

sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050 or 468B.053; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

1.13 Drop Box Container

"Drop Box Container" means a single container designed for the storage and collection of large volumes of Solid Waste or Recyclable Materials, which usually is ten (10) cubic yards or larger in size, and which is taken from the storage or collection site on a drop box truck for disposal or processing of the contents of the said single container.

1.14 Environmental and Safety Laws

"Environmental and Safety Laws" means all federal and state statutes and regulations, and county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the Oregon Solid Waste Management Act, ORS Chapter 459; the Oregon Reuse and Recycling Act, ORS 459A; the Oregon Employment Safety and Health Act, ORS Chapter 654; and the Oregon Workers' Compensation Act, ORS 656, as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.15 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Company for purposes of performing under this Agreement.

1.16 Fiscal Year

"Fiscal Year" means the period commencing January 1 of one year and concluding December 31 of the same year for Company.

1.17 Franchise

"Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

1.18 Franchise Fee

"Franchise Fee" means the fee paid by Company to City for the right to hold the Franchise for Solid Waste and Recycling services granted by this Agreement.

1.19 Gross Revenues

"Gross Revenues" means any and all revenue or compensation in any form of Company or subsidiaries, or parent companies of Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, monthly customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business.

1.20 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) the Oregon

Hazardous Waste and Hazardous Materials II Act, ORS 466.005; and (vi) the Clean Air Act, 42 USC §7401 et seq.; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.21 Hazardous Waste

"Hazardous waste" has the meaning given that term in ORS 466.005.

1.22 Household Hazardous Waste (HHW)

"Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous waste" may include but is not limited to some cleaners, solvents, pesticides and automotive and paint products.

1.23 Legislation

"Legislation" means any code, ordinance, resolution or any other forms/enactment of the governing body of City, which now exists or which may hereafter be adopted, which constitutes law or regulation governing the operation of Company.

1.24 Missed Pick-up

"Missed Pick-up" means failure of Company to pick up Solid Waste or Recyclables that has been set out by the customer at the time, at the weight, in the volume, in the proper container, with the lawful contents in accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the customer and Company.

1.25 Multi-Family Dwelling Unit

"Multi-Family Dwelling Unit" means any Premises serviced in a manner similar to Commercial Property (bin or debris box), but used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent.

1.26 Non-Putrescible Solid Waste

"Non-Putrescible Solid Waste" means inoperable vehicles; vehicle parts; tires; residential, commercial, and industrial building demolition or construction waste; plastic; glass; cardboard; and wastepaper.

1.27 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement.

1.28 Person

"Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

1.29 Premises

"Premises" means any land, or building, in City where Solid Waste is generated or accumulated.

1.30 Principal Recyclable Material

"Principal Recyclable Material" means those Recyclable Materials designated from time to time by the Department of Environmental Quality.

1.31 Putrescible Solid Waste

"Putrescible Solid Waste" means Solid Waste or waste material, including bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers contaminated

with food wastes; particles or residues; vegetable and fruit food wastes; manure; dead fowl; dead animals or similar organic wastes which cause offensive odors or create a health hazard or which are capable of attracting or providing food for potential disease carriers, such as birds, rodents, flies, and other vectors.

1.32 Rate Year

"Rate Year" means the twelve-month period commencing July 1 of one year and concluding June 30 of the subsequent year, for which Company's Compensation is calculated.

1.33 Rates

"Rates" means the unit to be charged customers by Company for providing Solid Waste Collection and Disposal and Recycling Collection and processing services. Rates may be adjusted from time to time in accordance with this Agreement.

1.34 Recyclable Materials

"Recyclable material" means any material or group of materials that can be collected and sold for Recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

1.35 Recycling

"Recycling" means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

1.36 Residential Property

"Residential Property" means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied.

1.37 Rubbish

"Rubbish" means all waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Garbage, Hazardous Substance, Yard Waste or Recyclable Materials, and such materials

defined as "rubbish" by applicable local ordinances in existence as of the Effective Date of this Agreement.

1.38 Single Family Dwelling Unit

"Single Family Dwelling Unit" means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex, triplex, fourplex, or town house in all cases in which there is separate or individual Solid Waste Collection service using cans or carts.

1.39 Solid Waste

"Solid waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

- (a) Hazardous waste as defined in ORS 466.005.
- (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

1.40 Yard Debris

"Yard debris" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

1.41 Waste Generator

"Waste Generator" means any Person whose act or process produced Solid Waste, or whose act first causes Solid Waste to become subject to regulation.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

Company is a duly organized, validly existing Corporation in good standing under the laws of the State of Oregon. It is qualified to transact business in the State of Oregon and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Company Authorization

Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Company has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement.

2.3 Agreement Duly Executed

The persons signing this Agreement on behalf of Company have been duly authorized by Company to do so, and this Agreement has been duly executed and delivered by Company in accordance with the authorization of its Board of Directors or shareholders, if necessary, and is enforceable against Company in accordance with its terms.

2.4 No Conflict with Applicable Law or Other Documents

Neither the execution and delivery by Company of this Agreement nor the performance by Company of its obligations hereunder:

- a) Conflicts with, violates or will result in a violation of any existing applicable law; or
- b) Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing

agreement or instrument to which Company is a party, or by which Company or any of Company's properties or assets is bound; or

- c) Will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company that will interfere materially with Company's performance hereunder.

2.5 No Litigation

There is no action, suit, proceeding or action at law or equity, or to the best of Company's knowledge, any investigation before or by any court or governmental entity, pending or threatened against Company or otherwise affecting Company, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Company's performance hereunder, or which in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Company.

2.6 Corporate Guaranty, Financial Ability, No Material Change

Company warrants that there has been no material adverse change in West Linn Refuse & Recycling, Inc.'s financial circumstances since the date of the most recent financial statements.

2.7 Expertise

Company has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

2.8 Company's Investigation

Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by Company under the Agreement, and enters into this Agreement on the basis of that independent investigation.

ARTICLE 3
TERM AND SCOPE OF FRANCHISE

3.1 Term of Agreement

3.1.1 Effective Date

The effective date of this Agreement shall be November 12, 2008 ("effective date").

3.1.2 Term of Agreement

Unless grounds exist for suspension, modification or revocation of the Agreement, the Agreement shall be considered as a continuing eight (8) year term. Beginning on July first (1st) of each year, the Agreement will be considered renewed for an additional eight (8) year term, unless at least thirty (30) days prior to July first (1st) on any year the City notifies the Company of intent to terminate the Agreement. Upon the filing of such notice, the Company will have an Agreement which will terminate on July 1st which is eight years from the date of the last renewal prior to the notice of termination. The City may initiate proceedings for suspension, modification, or revocation of the Agreement at any time based on the terms and conditions of the Agreement.

3.1.3 Conditions to Effectiveness of Agreement

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City, upon City's expressed written consent. Waivers are limited to those expressed in writing, and are in the sole and exclusive discretion of City.

- a) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending or threatened in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.

- c) Furnishing of Insurance and Bonds. Company has furnished evidence of the insurance and bonds required by Article 10.
- d) Effectiveness of City Council Action. The City Council ordinance approving this Agreement shall have become effective prior to the effective date.

3.2 Franchise

3.2.1 Grant and Acceptance of Franchise

City hereby grants to Company the exclusive Franchise, right and privilege to Collect and transport Solid Waste, Recyclable Materials, and Yard Debris accumulating in City that is required to be accumulated and offered for Collection to Company in accordance with this Agreement and such rules and regulations set forth by ordinances of City that are not inconsistent with this Agreement.

3.2.2 Scope of Franchise

The Franchise for the Collection and transportation of Solid Waste, Recyclable Materials, and Yard Debris granted to Company shall be exclusive except as to the following categories of Solid Waste listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City which is otherwise required by law:

- a) Solid Waste that is placed in Drop Boxes that are removed from any Premises by City's franchised Drop Box service provider;
- b) Solid Waste which is removed from any Premises by the Waste Generator, and which is transported personally by the Owner or occupant of such Premises (or by his or her full-time employees) to any processing or Disposal Facility;
- c) Construction and Demolition Debris which is removed from any Premise by employees of the construction or demolition contractor or City, using equipment owned by the contractor or City;

- d) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- e) Recyclable materials which are removed from any Premises by charitable or non-profit organizations; and,
- f) Abandoned cars that are removed from any Premises by a licensed towing company authorized to do so by City.

Company acknowledges and agrees that City may permit other Persons besides Company to collect any or all types of the Solid Waste listed in this Section 3.2.2, without seeking or obtaining approval of Company under this Agreement.

3.2.3 Limitations

This grant to Company of an exclusive Franchise, right and privilege to Collect, transport, and Dispose of Solid Waste, Recyclable Materials, and Yard Debris shall be interpreted to be consistent with state and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive Franchise, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of City to lawfully provide for the scope of Franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that City shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

3.2.4 Acceptance of Franchise

Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement and any applicable City ordinances.

3.2.5 City's Right to Direct Changes

City may direct Company to modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes that City may direct. Company may seek an adjustment in its Company's Compensation in accordance with Section 7.5 for providing such additional or modified services.

3.2.6 Ownership of Solid Waste

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Waste Generator to Company by operation of this Agreement. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Recyclable Materials, and Yard Debris which it Collects. Solid Waste, Recyclable Materials, Yard Debris or any part thereof, which is disposed of at a Disposal Site or sites (whether landfill, transformation Facility, transfer station, processing Facility or material recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by Company. City may obtain ownership or possession of Solid Waste, Recyclable Materials, or Yard Debris placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Company.

ARTICLE 4
FRANCHISE FEE AND OTHER SURCHARGES

4.1 Franchise Fee

4.1.1 Franchise Fee Amount

In consideration of the exclusive Franchise provided in Section 3.2.1 of this Agreement, Company shall pay to City five percent (5%) (or another amount as provided in Section 4.1.3) of the Gross Revenues collected by Company from services provided in City net of Disposal charges and Franchise Fees paid by Company.

4.1.2 Time and Method of Payment

On or before the last day of the month following the end of each calendar quarter, Company shall calculate the franchise fees due to City for services rendered during the preceding calendar quarter. City shall review the Company's schedule and calculations and may request, and Company shall provide, supporting documents related to the schedule provided. Should City identify adjustments to the schedules or calculations, City shall notify Company within thirty 30 days after receipt of franchise fee payment and seek an explanation for any apparent differences. If the franchise fee is not paid on or before the last day of the month following the end of each calendar quarter, Company shall pay to City a late payment fee in an amount equal to one percent (1%) of the amount owing for that quarter for each thirty (30) day period the franchise fee remains unpaid.

4.1.3 Adjustment to Franchise Fee

City may adjust the amount of the Franchise Fee annually. Such adjustment shall be reflected in the Rates that Company is allowed to charge and collect from customers in accordance with Article 7, such that Company may receive the calculated Company's Compensation including the amount of Franchise Fees payable to City.

4.2 Other Fees

4.2.1 Other Fee Amounts

City has incurred, and will continue to incur, expenses for other Solid Waste programs and franchise administration. These expenses may be determined and a fee may be calculated to reimburse City. Company will collect these amounts from customers on the regular billings and remit the amount collected on a monthly basis, as provided below. Company may be required to separately identify some or all of the fees on bills as determined and directed by City.

4.2.2 Time and Method of Payment

On or before the last day of the month following the end of each calendar quarter, Company shall pay City the amount collected during the previous quarter. If the other fees are not paid on or before the last day of the month following the end of each calendar quarter, Company shall pay to City a late payment fee in an amount equal to one percent (1%) of the amount owing for that quarter for each thirty (30) day period the other fees remain unpaid.

4.2.3 Adjustment to Other Fees

City may adjust the amount of the other fees annually. Such adjustment shall be reflected in the Rates that Company is allowed to charge and collect from customers in accordance with Article 7, such that Company may receive the calculated Company's Compensation including the amount of surcharges payable to City.

ARTICLE 5
DIRECT SERVICES

5.1 Solid Waste Collection

5.1.1 General

The work to be done by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous and high-quality Solid Waste, Recyclable Materials, and Yard Debris Collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Company of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement or not.

5.1.2 Residential Solid Waste - Single Family Dwelling Unit

Company shall Collect Solid Waste at the subscribed service level from the Containers provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Standard Collection service shall be semi-automated or automated Collection, unless another method is approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall Collect Solid Waste from the side or back yard of those Single Family Dwelling Units that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.1.3 Commercial, Industrial, and Multi-Family Dwelling Units

Company shall Collect Solid Waste at the subscribed service level from Company-provided Solid Waste Containers in compliance with any and all local ordinances in existence as of the Effective Date of this Agreement. Special consideration shall be given when determining the pick up area for Commercial, and/or Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. Additionally, if in City's opinion the location of an existing pick up area is inappropriate, City may require the customer to relocate the pick up area.

5.1.4 City Facilities' Collection

Company shall Collect and dispose of all Solid Waste generated at public facilities and events at no charge to City.

The Company will also provide an annual curbside Spring Clean-up program for all Customers in the City at no charge to the City or to the Company's customers. The Company will coordinate this program with the City to facilitate safe and efficient service delivery. The collection schedule and Spring Clean-up program may be modified from time to time as mutually agreed upon by Company and City. The City and the Company will coordinate the Spring Clean-up program with Metro to make the program eligible for grant funding, if available.

5.2 Recyclable Materials Collection

5.2.1 Residential Recyclables

Company shall Collect Recyclable Materials weekly from the Containers provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Residential Recyclable Materials Collection will be on the same day of the week as Solid Waste Collection service. For purposes of this section, Recyclable Materials shall be sorted by the Company into no more than four groups and shall include, at a minimum, metal and plastic containers, glass containers, newspaper and mixed paper, and cardboard. Notwithstanding the foregoing, Company shall Collect Recyclable Materials from the side or back yard of those Single Family Dwelling Units

that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.2.2 Commercial Recyclables

Company shall Collect Recyclable Materials at the subscribed service level from Company-provided Containers. For purposes of this section, Recyclable Materials shall include, at a minimum, metals, plastic, glass, newspaper, mixed paper and cardboard.

5.2.3 City Facilities' Recyclables

Company shall Collect and dispose of all Recyclable Materials generated at public facilities and events and in accordance with the schedule identified in Exhibit 1 at no charge to City. For purposes of this section, Recyclable Materials shall include, at a minimum, metals, plastic, glass, newspaper, mixed paper and cardboard. The collection schedule may be modified from time to time as mutually agreed upon by Company and City.

5.2.4 Diversion Goal

Company will meet the recycling goals of the Regional Solid Waste Management Plan as adopted by Metro, and promote ongoing efforts as other recycling "best practices" become available and also help identify methods of reuse when applicable. It is expected that achievements in existing programs will increase as a result of the plans and programs required by this Agreement and described in the Company's proposal. Company agrees to work diligently to promote and expand Recycling programs to meet these goals. Best efforts shall be made by Company to achieve the Recycling Diversion goal.

5.3 Yard Debris Collection

Company shall Collect Yard Debris from the carts provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Company shall provide weekly curbside Collection of Green Waste on the same day as Solid Waste Collection from the Service Area's Single Family Dwelling Units. Standard Collection service shall be semi-automated or automated Collection, unless another method is

approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall Collect Yard Debris from the side or back yard of those Single Family Dwelling Units that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.4 Operations

5.4.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected from Residential Premises and Commercial Premises located within one hundred (100) feet of a Residential Premises between 8:00 P.M. and 6:00 A.M. on any day. Solid Waste shall be Collected Monday through Friday. Annually, on or before the service day preceding the affected Holiday, Company shall notify City and customers in writing of the alternate Collection day when the regularly scheduled Collection day falls on Christmas Day or New Year's Day.

Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all Solid Waste Collected under this Agreement with City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports or complaints. If the plan is determined to be inadequate by City, Company shall revise the plan, incorporating any changes into a revised plan, and review said revised plan with City within thirty (30) calendar days.

When notified of a missed pick-up, Company shall Collect the Solid Waste within one (1) business day. For residential service, a business day shall mean Monday through Friday, excluding Christmas and New Year's Day.

5.4.2 Vehicles

A. General. Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle (e.g., cart service and bin service) used to respond to complaints and emergencies.

B. Specifications. All vehicles used by Company in providing Solid Waste Collection services shall be registered with the Oregon Department of Motor Vehicles. All such vehicles shall have bodies designed to prevent leakage, spillage or overflow.

C. Vehicle Identification. Company's name, local telephone number, and a unique vehicle identification number designed by Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Company shall not place City's name and/or any City logos on Company vehicles.

D. Cleaning and Maintenance

- 1) Company shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. Upon reasonable notice, City may inspect vehicles at any time to determine compliance with this Agreement. Company shall repaint or refurbish to the satisfaction of City all vehicles used in the Collection of Solid Waste within thirty (30) days' notice from City, if City determines that their appearance warrants painting. Company shall also make vehicles available to the Clackamas County Health Department and Oregon Department of Transportation for inspection, at any frequency it requests.
- 3) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be removed from service until repaired and operating properly. Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Company shall obtain warranty performance. Company shall maintain

accurate records of repair, which shall include the date and operating hours, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

- 4) Company shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company shall keep accurate records of all vehicle maintenance, recorded according to date and operating hours and shall make such records available to City upon request.

E. Operation. Vehicles shall be operated in compliance with the Oregon Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with US EPA noise emission regulations. Noise levels of equipment used for Collection shall comply with City ordinance.

Subject to Section 10.1, Company shall be responsible for any damage resulting from or directly attributable to any of its operations.

5.4.3 Containers

A. Residential Solid Waste Containers. Company shall provide 21-gallon, 35-gallon, 65-gallon, or 95-gallon carts for single-family residential Solid Waste Collection. Residential customers shall be given an opportunity to select the initial cart size and to change their cart size not more than once each year.

B. Residential Recycling Containers

Company shall furnish a 95-gallon cart and a 14-gallon bin to each Single-Family Residential Dwelling Unit for the collection of Recyclable Materials.

C. Residential Yard Debris Containers

Company shall furnish 65-gallon carts for collection of Yard Debris from Single-Family Residential Dwelling Units.

D. Non-Residential Solid Waste and Recycling Containers. Company shall furnish customers appropriate Containers to Collect Solid Waste and Recycling at Multi-Family Dwelling Unit, commercial, and other Premises upon customer request. Containers with a capacity of one cubic yard or more shall be available in standard sizes. The kind, size and number of Containers furnished to particular customers shall be as determined mutually by the customer and Company. Containers which are front-loading bins shall have lids. All Containers with a capacity of one cubic yard or more shall meet applicable regulations for Solid Waste bin safety, shall have reflectorized marking (unless normally located in an enclosure), shall be maintained in good repair with neatly and uniformly painted surfaces, and shall prominently display the name and telephone number of Company.

5.4.4 Litter Abatement

A. Minimization of Spills. Company shall use due care to prevent Solid Waste, Recyclable Materials, Yard Debris or fluids from leaking, being spilled, and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle, without prior written approval by City.

B. Clean Up. During the Collection or transportation process, Company shall clean up litter in the immediate vicinity of any Solid Waste storage area (including the areas where Collection bins are stored for Collection). Company shall discuss instances of repeated spillage not caused by it directly with the Waste Generator responsible and will report such instances to City. City will attempt to rectify such situations with the Waste Generator if Company has already attempted to do so without success.

5.4.5 Personnel

Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the Oregon Department of Motor Vehicles.

Company also agrees to establish and vigorously enforce an educational program that will train Company's employees in the identification of Hazardous Waste. Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the Disposal Site.

Company shall train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Company of a complaint related to discourteous or improper behavior, Company will consider reassigning the employee to duties not entailing contact with the public while Company is pursuing its investigation and corrective action process.

Company shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

5.4.6 Identification Required

Company shall provide its employees and subcontractors with identification for all individuals who may make face-to-face contact with residents or businesses in City. City may require Company to notify customers yearly of the form of said

identification. Company shall provide a list of current employees and subcontractors to City upon request.

5.4.7 Fees and Gratuities

Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection and transportation of Solid Waste, Recyclable Materials, or Yard Debris. Compensation or gratuity shall exclude holiday gifts.

5.4.8 Non-Discrimination

Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or state law.

5.4.9 Change in Collection Schedule

Company shall notify City thirty (30) days prior to, and residential customers not later than two (2) weeks prior to, any change in the residential Collection schedule which results in a change in the day on which Solid Waste Collection occurs. Company will not permit any customer to go longer than the customer's scheduled service frequency in connection with a Collection schedule change. City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

5.4.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

Company shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Company shall deliver the address or description to City within five (5) working days of such observation.

5.5 Contingency Plan

Company shall submit to City on or before the effective date of the Agreement, a written contingency plan demonstrating Company's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency (not including a labor dispute), including the events described in Section 12.4.

5.6 Transportation of Solid Waste, Recyclable Materials, and Yard Debris

5.6.1 Transportation of Solid Waste

The Company shall transport all Solid Waste collected under Section 5.1 to the Disposal Site. Company agrees to identify commercial and industrial containers containing significant quantities of Recyclable Materials and offer the Waste Generator commercial recycling service.

The Company shall maintain accurate records of the quantities of Solid Waste transported to the Disposal Site and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of the Disposal Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

5.6.2 Transportation of Recyclable Materials

The Company shall transport all Recyclable Materials collected under Section 5.2 to a processing Site meeting all applicable local, state, and federal licensing and permitting regulations.

The Company shall maintain accurate records of the quantities of Recyclable Materials transported to the processing Site and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of the Processing Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, and so forth.

5.6.3 Transportation of Yard Debris

The Company shall transport all Yard Debris collected under Section 5.3 to a properly permitted processing Site.

The Company shall maintain accurate records of the quantities of Yard Debris transported to the processing Site and will cooperate with the processing Site in any audits or investigations of such quantities.

The Company shall cooperate with the processing Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, and so forth.

5.7 Disposal of Solid Waste

Company shall dispose of all Solid Waste collected under Section 5.1 at the Disposal Site. If the Disposal Site becomes unable to accept and dispose of City's Solid Waste for reasons outside the Company's control, the Company shall, with the prior approval of City, to the extent it is legally able to do so, transport and dispose of City's Solid Waste at another Disposal Site that results in the lowest possible transportation and disposal cost. Additional transportation and disposal cost incurred in delivering the Solid Waste to another Disposal Site will be the responsibility of Company to recover from the Owner of the Disposal Site.

5.8 Service Exceptions; Hazardous Waste Notifications

5.8.1 Hazardous Waste Inspection and Reporting

Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to collect Hazardous Waste put out with Solid Waste. Company shall notify all agencies with jurisdiction, if appropriate, including

the Oregon Department of Environmental Quality and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Manager or the City Manager's designee.

5.8.2 Waste Generator Notification

When Solid Waste is not Collected from any Residential Waste Generator, Company shall notify the Waste Generator in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made. When Solid Waste is not Collected from any Commercial Waste Generator, Company shall notify customer by phone of the reasons why the Collection was not made.

5.8.3 Hazardous Waste Diversion Records

Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from service recipients within City, but diverted from landfilling.

ARTICLE 6
OTHER SERVICES

6.1 Services and Customer Billing

6.1.1 Service Description

Company shall annually, and with every service start, prepare and distribute, subject to the direction of City, a notice to each Owner or occupant of property entitled to service under this Agreement a listing of Company's Collection Rates, rates for other services, annual holiday schedule, and a general summary of services required to be provided hereunder and optional service which may be furnished by Company. Such notice shall be in a form subject to City's approval prior to its distribution and may be included with Billings made by Company.

6.1.2 Billing

Company shall bill and collect from persons receiving Collection and Disposal services at Rates fixed by City from time-to-time. City shall approve the form and content of the billings. Billing shall be performed either monthly or quarterly for each account, but in no event less frequently than once per quarter. Company may terminate Collection service to Solid Waste accounts that become more than sixty (60) days past due, following thirty (30) days written notice. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent.

6.1.3 Customer Billing List

Upon request from the City, Company shall prepare a current and complete summary billing list (containing the number of accounts by service category). Company shall provide City a copy of such billing list.

6.1.4 Review of Billings

At least annually, Company shall review its Billings to customers under Section 6.1.2. The purpose of the review is to determine that the amount which Company is billing

each customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, location of Container) being provided to such customer by Company. Company shall distribute new route books to its drivers as needed to reflect changes in customer service levels. Each driver is to provide the service level shown in the route book, adding and subtracting customers and changing service levels, as necessary. Route supervisors shall periodically check the routes to ensure that drivers are providing service in accordance with their route books.

Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by City upon request. Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

6.2 Customer Service

6.2.1 Local Office

Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Company shall be available during office hours for communication with the public at the local office. Normal office hour telephone numbers shall either be a local or toll free call. Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Company shall also maintain a local or toll free telephone number for use during other than normal business hours. Company shall have a representative, answering or voice-mail service available at said after-hours telephone number.

6.2.2 Complaint Documentation

All service complaints shall be directed to Company. Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint.

All written customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Company shall log action taken by Company to respond to and remedy the complaint.

Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available to City during business hours and at no cost. City shall, at any time during regular Company business hours, have access to Company's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

6.2.3 Resolution of Customer Complaints

A customer dissatisfied with Company's decision regarding a complaint may ask City to review the complaint. Company shall provide the customer with the number of the City Liaison, as designated in accordance with Section 6.2.4. City Liaison shall contact Company's Government Liaison to request additional information and ask Company to respond to the complaint. Company shall attempt to cure the complaint and notify City Liaison by telephone or in writing of resolution.

If the customer is still dissatisfied, the matter may be referred to the City Manager. The decision of City Manager or his/her designee shall be final on any matter. Nothing in this Section is intended to effect the remedies of third parties against Company.

6.2.4 Liaisons

Company shall designate in writing a "Government Liaison" who shall be responsible for working with City Manager and/or City's designated representative(s) to resolve customer complaints. City shall designate in writing a "City Liaison" who shall be responsible for working with Company and/or Company's designated representative to resolve customer complaints.

6.3 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with ORS 459A.035. Company agrees

to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, disposed, diverted or otherwise handled/processed.

ARTICLE 7
COMPANY'S COMPENSATION AND RATES

7.1 General

The Company's Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from customers for services rendered at Rates fixed by City from time-to-time in accordance with this agreement. The Company does not look to City for the payment of any sums under this Agreement.

7.2 Initial Rates

The Rates for the Rate Year ending June 30, 2008 are those established by a Resolution of the West Linn City Council to be adopted at the same session as this Agreement is accepted by the City Council. Unless and until the Rates established by that resolution are adjusted by City, the Company will provide the service required by this Agreement, charging no more and no less than the Rates set by the resolution unless authorized to do so by City.

City and Company agree that if the City sets Rates as set forth in the attached Exhibit 1, those rates have been calculated to generate an amount of revenue necessary to compensate Company for its costs (including Disposal) and profit and to cover City's Franchise Fees and other City fees, if any.

The Rates shall be fixed and shall not be increased to reflect decreases in revenues below those anticipated by City and Company, nor decreased to reflect increases in revenues above those anticipated by City and Company.

7.3 Subsequent Rates

7.3.1 Company's Compensation for Interim Years

For Rate Years between Detailed Rate Years, (Years Two, Four, Six, and Eight), Rates shall be adjusted as described below and illustrated in Exhibit 2. For purposes of this calculation, Rates shall be composed of three (3) components: a monthly Collection Rate, a monthly Disposal Rate, and a Franchise Fee, as shown in Exhibit 2.

A. Monthly Collection Rate Adjustment

The monthly Collection Rate shall be adjusted upward or downward to reflect eighty percent (80%) of the change in the Portland-Salem Consumer Price Index (CPI) for the most recent twelve (12) month period ending December 31, for all urban consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

B. Monthly Disposal Rate Adjustment

The monthly Disposal Rate shall be adjusted upward or downward to reflect the Metro disposal rate in effect on March 1 of the then current year.

C. Franchise Fee Adjustment

The Franchise Fee component shall be calculated by multiplying the monthly Collection Rate (as calculated in Section 7.3.1.A) by 0.05.

D. Total Monthly Service Rate

The total monthly service rate shall be the sum of the monthly Collection Rate plus the monthly Disposal Rate plus the Franchise Fee.

7.3.2 Company's Compensation for Detailed Rate Years

A. Company's Application

If requested by Company or City, on or before March 1 of every other year, Company shall submit a Calculation of Rate Adjustment as described below. The calculation shall be based on the Company's audited financial statements for the preceding Fiscal Year. Company shall assemble, provide, and submit such information that is

necessary to support the assumptions made by Company with regard to the assumptions underlying the forecast.

City shall use its best efforts to make the adjustment effective by July 1. However, City shall not make any retroactive adjustments to compensate for any delay in calculating the Company's Compensation which results in whole or in part from the failure of the Company to submit its request by March 1 and/or respond promptly and completely to requests of City for information related to any of the calculations required by this Section or from appeals of the calculation to City which extends the process.

B. Determination of Company's Compensation.

City, or its representative, will review Company's application for compliance with this Agreement, accuracy, and reasonableness. Company's Compensation shall consist of the forecasted annual cost of operations, profit and forecasted pass-through expense, calculated as set forth below.

1) Forecasted Annual Cost of Operations for Detailed Rate Years.

The forecasted annual cost of operations consists of the sum of:

- (a) Forecasted labor-related costs;
- (b) Forecasted vehicle-related costs;
- (c) Forecasted other costs; and,
- (d) Forecasted depreciation expense.

2) Determination of Sums.

Each of these sums shall be determined as follows:

- (a) Determination of Actual Costs.** Company's financial statement and supporting schedules will be reviewed to determine Company's costs for each of the foregoing categories during the most recently completed Rate Year immediately preceding any Detailed Rate Year. City will determine that

Costs have actually been incurred and have been assigned to the appropriate category.

- (b) Adjustment of Actual Costs.** City may adjust the actual costs in four ways: (1) to exclude any non-allowable costs, set out below; (2) to exclude and/or reduce any costs which were not reasonably incurred in and necessary for the performance of the services provided in accordance with this Agreement; (3) to account for an adjustment that carries forward into the following Rate Year; and, (4) to adjust for changes in service demand that materially affects Company's cost of operations.

Costs that are non-allowable consist of the following:

- (1) Payments to individuals who are directors and/or owners of Company unless paid as reasonable Compensation for services actually rendered;
- (2) Promotional, entertainment and travel expenses not directly related to the performance of services required by this Agreement;
- (3) Payments to repair damage to property of third parties or City for which Company is legally liable above one thousand dollars (\$1,000) per occurrence and ten thousand dollars (\$10,000) per Rate Year;
- (4) Fines for penalties of any nature;
- (5) Liquidated damages assessed under Section 12.3 of this Agreement;
- (6) Federal or state income taxes;
- (7) Charitable or political donations;
- (8) The amount (if any) of rental or lease charges for Collection vehicles which is greater than the cost of

acquisition of the vehicles depreciated over seven (7) years, plus interest costs;

- (9) Attorneys' fees and other expenses incurred by Company in any court proceeding in which City and Company are adverse parties, unless Company is the prevailing party in such proceeding;
- (10) Attorneys' fees and other expenses incurred by Company in any court proceeding in which Company's own negligence, violation of law or regulation, or wrongdoing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed, and attorneys' fees and expenses incurred by Company in a court proceeding in which the legal theory or statute providing a basis of liability against Company also provides for separate potential liability for City arising from the action of its citizens or rate payers (such as in a CERCLA lawsuit), unless Company is the prevailing party in such proceeding;
- (11) Payments to affiliates for products or services related to vehicle maintenance and repair in excess of current market Rates for those products or services;
- (12) Payments to affiliates for all other products or services in excess of cost to the affiliate for those products or services;
- (13) Goodwill; and,
- (14) Any additional Costs related to Company's unilateral decision to utilize an alternative Transfer Station or Disposal Site.

(c) Forecast of Costs. Allowed Costs of operations for the most recently completed Rate Year prior to a Detailed Rate Year, will

be multiplied by the change in the appropriate indices compiled and published by the United States Department of Labor, Bureau of Labor Statistics, as described below:

- (1) Labor-related costs will be forecasted for the Detailed Rate Year by: (1) multiplying the allowed labor-related costs by one (1) plus the percentage change in the Portland-Salem Consumer Price Index (Urban Wage Earners; 1982-84 = 100) between the Index most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding index published twelve (12) months earlier, and (2) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted labor-related costs for the next Detailed Rate Year;
- (2) Vehicle-related costs will be forecasted for the Detailed Rate Year by: (i) multiplying the allowed vehicle-related costs by one (1) plus the percentage change in the Portland-Salem Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics between the Index most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding index published twelve (12) months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted vehicle-related costs for the next Detailed Rate Year;
- (3) Other costs will be forecasted for the Detailed Rate Year by: i) multiplying the allowed other related costs by one (1) plus the percentage change in the national Producer Price Index Industrial Commodities between the Index

most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding Index published twelve (12) months earlier, and ii) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted other costs for the next Detailed Rate Year. Other costs shall include Yard Debris per ton Processing Costs; and,

(4) Depreciation shall be calculated based on the total agreed-upon depreciable value included in Company's proposal using seven years for vehicles, ten years for Containers, and twenty-five (25) years for buildings and improvements.

(d) Profit. Profit for Detailed Rate Years shall be calculated by dividing the forecasted annual costs, as described in Section 7.3.2.B.2(c), for the next Detailed Rate Year by 0.88 and subtracting the forecasted annual costs of operations for the next Detailed Rate Year from the dividend. No profit shall be calculated on pass-through expenses as calculated in Section 7.3.2.B.2(e).

(e) Pass-Through Expenses for Detailed Rate Years. The forecasted pass-through expense shall be determined by calculating the sum of:

(1) Forecasted Transfer and Disposal Expense. The forecasted transfer and disposal expense for Detailed Rate Years shall result from multiplying the tonnage of Solid Waste forecasted to be Disposed of by: 1) the effective transfer and Disposal rate for the Detailed Rate Years under review; or, 2) an alternative rate if approved by the appropriate regulatory agency but not yet placed in effect; or, 3) if no such rate has been placed

in effect, then that rate in effect at the time Company's Request for Adjustment to Compensation is submitted shall be used.

- (2) **Forecasted Interest Expense.** The forecasted interest expense for Detailed Rate Years shall be calculated by subtracting actual interest earnings (if any) from actual interest expense (if any) for the most recently completed Rate Year. The interest rate used to determine interest expense shall not exceed the one (1) year prime rate plus two percentage (2%) points in effect at the end of the most recently completed Rate Year.
- (3) **Agreement Preparation and Negotiation.** Company shall reimburse City for City's cost of the preparation and negotiation of the Agreement. Payment shall be due in full on or before the effective date of this Agreement. Said amount shall be allowed as a pass-through expense and shall be amortized on a straight-line basis over the eight-year term of the Agreement.

(f) Forecasted Franchise Fees. The forecasted franchise fees for Detailed Rate Years shall be calculated in accordance with the appropriate methodology for the relevant fees using current forecasted Detailed Rate Year values.

C. **Limitation on Rate Adjustments**

Notwithstanding the foregoing, except for changes in Company's fuel costs, in no event shall any rate exceed the average of the current rate granted by Clackamas County and jurisdictions in Clackamas County and their franchised haulers.

7.4 Variances from Projections

The Company assumes all risk of variations from the revenue projection such that the Company shall retain any revenue from actual revenue being greater than projected but shall not be compensated for actual revenue being less than projected.

In addition, calculations of the Rates shall not be adjusted for past variances of actual revenues from those projected. However, adjustments in Metro's tip fees shall be passed through to the rates at the cost to Company, with no adjustment for profit.

7.5 Interim Rate Adjustment

In the event City directs the Company to change its operations in accordance with Section 3.2.5 of this Agreement or in the event of an extraordinary or unanticipated event including a change in law, a change in Disposal Site, or an adjustment to the Disposal Rate by Metro, and such adjustment is greater than two (2) percent of the Company's annual cost of operations (including Disposal) then the Company or City may submit a request for an interim Rate adjustment. In such case, the Company shall provide City with its calculations of the impact of the change in a format approved by City. Any proposed change in the approved Rates shall be subject to City review and approval. Nothing in this section shall be construed to require City to accept Company's calculations as correct.

7.6 Subsequent Rates

From time to time and based on changes to the Rates, as described above, and other considerations, the City Council shall revise the Rates by resolution or ordinance, as determined in the good faith exercise of its legislative discretion.

ARTICLE 8
REVIEW OF SERVICES AND PERFORMANCE

8.1 Performance Hearing

City may hold a public hearing on or about ninety (90) days after receipt of the Annual Report from Company at which time Company shall be present and shall participate, to review the Solid Waste Collection, services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection to achieve a continuing, advanced Solid Waste Collection system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Company shall, at a minimum, submit a report to City indicating the following:

- a) Changes recommended and/or new services to improve City's Collection Services and to contain costs and minimize impacts on Rates.
- b) Any specific plans for provision of changed or new services by Company.

The reports required by this Agreement regarding customer complaints may be used as one basis for review. Company may submit other relevant performance information and reports for consideration. City may request, and Company shall submit, specific information related to the performance for the hearing. In addition, any customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, regulatory constraints and Company performance. City and Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, City may issue a report. As a result of the review, City may require Company to provide expanded or new services within a reasonable time and for reasonable Rates and compensation, as determined in the City Council's good faith legislative discretion, and City may direct or take corrective actions for any performance inadequacies.

ARTICLE 9
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

9.1 General

Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. The foregoing is not intended to require significant additional administrative labor or the modification of Company's computer software.

9.2 Records

9.2.1 General

Company shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement, with the exception of accounts payable records, which will be maintained for three (3) years after payment.

Company agrees that the records addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours.

9.2.2 Financial Records

Financial records shall be maintained in a manner such that cost and revenue information can be allocated among the service types (residential, commercial and drop box) and to the City.

9.2.3 Solid Waste Records

Company shall maintain records for City relating to:

- a) Customer services and billing;
- b) Weight and volume of Solid Waste, Recyclable Materials and Yard Debris. Information is to be separated between Single-Family Dwelling Units and Commercial premises.
- c) Routes;
- d) Facilities, equipment and personnel used;
- e) Facilities and equipment operations, maintenance and repair;
- f) Disposal of Solid Waste;
- g) Complaints; and,
- h) Missed pick-ups.

9.2.4 CERCLA Defense Records

City views the ability to defend against CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.) and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in City was taken for Disposal, as well as where it was not taken, to be matters of concern. Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in City was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 5.6 for five (5) years after the term during which Collection services are to be provided pursuant to this

Agreement, or to provide copies of such records to City. Company agrees to notify City's Risk Manager and City Attorney before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

9.2.5 Disposal Records

Company shall maintain records of Disposal of all Solid Waste Collected in City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Solid Waste services to City, Company shall provide all records of Disposal or processing of all Solid Waste Collected in City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

9.3 Reports

9.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set Rates and evaluate the financial efficacy of operations;
- b) Evaluate past and expected progress towards achieving diversion goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate customer service and complaints.

Company may propose report formats that are responsive to the objectives and audiences for each report. City and Company will mutually agree upon the format of each report. Company agrees to submit all reports on computer discs in a mutually agreed upon format at no additional charge, if requested by City. Company will provide a certification statement, under penalty of perjury, by the responsible Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within thirty (30) calendar days after the end of the report month. Quarterly reports shall be submitted within forty-five (45) calendar days after the end of the quarter. Quarters end on September 30, December 31, March 31, and June 30. Annual reports shall be submitted before September 30th following the reporting year.

All reports shall be submitted to:

City Manager (or designated representative)
City of West Linn
22500 Salamo Road
West Linn, OR 97068

9.3.2 Quarterly Reports

The information listed shall be the minimum reported for each service:

A. Regular Services

- 1) Solid Waste Collected by Company, sorted between Single-Family Dwelling Units and Commercial Premises and the Disposal Site used, in tons.
- 2) Complaint summary, for month and cumulative for report year, summarized by nature of complaints.
- 3) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.
- 4) A summary or copy of the Hazardous Waste records required under Section 5.8.
- 5) Other information or reports that City may reasonably request or require.

B. Summary Assessment. Provide a summary assessment of the overall Solid Waste program from Company's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives

of this Agreement and ORS 459A. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

9.3.3 Annual Report

The Annual Report is to be essentially in the form and content of the quarterly reports. In addition, Company's annual audited financial statements shall be included. The annual report shall also include a list of Company's officers and members of its board of directors.

A. Financial Statements. Financial statements shall show Company's results of operations for City, including the specific revenues and expenses in connection with the operations provided for in this Agreement. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). The financial statements shall be audited in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of Oregon as determined by the State of Oregon Board of Accountancy.

9.4 Adverse Information

9.4.1. Reporting Adverse Information.

Company shall provide City two copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, or other formal actions relating specifically to Company's performance of services pursuant to this Agreement, submitted by Company to, or received by Company from, the United States Environmental Protection Agency, the Oregon Department of Environmental Quality, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court actions brought by any of the aforementioned agencies, with regard to Company's operations in the State of Oregon. Copies shall be submitted to City simultaneously with Company's filing or submission of such matters with said agencies. Company's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

9.4.2. Failure to Report.

The refusal or failure of Company to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Company in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Company to all remedies which are available to City under the Agreement or otherwise.

ARTICLE 10
INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

Company hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnities) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitees' negligence, but shall not extend to matters resulting from the indemnitees' sole negligence, willful misconduct or breach of this Agreement. Company further agrees to and shall, upon demand of City, at Company's sole cost and expense, defend (with attorneys reasonably acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or

otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. City and Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event City and Company jointly agree to appeal, or to oppose any appeal, City and Company agree to share equally the costs of appeals. Should either City or Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

10.2 Hazardous Substances Indemnification

Company shall indemnify, defend with counsel reasonably acceptable to City, protect and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, Indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, Indemnities arising from or attributable to the acts or omissions of Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal,

remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or Household Hazardous Waste (Collectively, "Waste") at any places where Company Collects and transports, processes, stores, or disposes of City Solid Waste, and/or construction and street debris, or other waste. The foregoing indemnity shall not apply to the processing, storage, or disposal of City Solid Waste, and/or construction and street debris, or other waste, unless the Company is engaging in those activities. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), to defend, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The foregoing applies only to facilities owned or operated by Company pursuant to this Agreement.

10.3 Insurance

City does not, and shall not, waive any rights against Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by City or the deposit with City by Company of the insurance policies described in this provision. Company shall maintain insurance policies meeting the following specifications at all times during the term of this Agreement.

10.3.1 Minimum Scope of Insurance.

Coverage shall be at least as broad as:

- 1) Comprehensive General Liability or Commercial General Liability insurance.
- 2) Automobile Liability insurance.
- 3) Workers' Compensation insurance as required by the State of Oregon and Employers Liability insurance.

10.3.2 Minimum Limits of Insurance.

Company shall maintain in force for the term of this Agreement limits no less than:

- 1) Comprehensive General Liability: Five Million Dollars (\$5,000,000) aggregate, One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
- 2) Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.
- 3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the State of Oregon and Employers Liability limits of \$1,000,000 per accident.
- 4) Environmental Impairment Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for the release of pollution into the environment.

10.3.3 Deductibles and Self-Insured Retentions.

If Company wants to increase its deductibles over the amount as of the Effective Date of this Agreement, the Company shall obtain the written consent of City. City's consent will not be unreasonably withheld.

10.3.4 Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

- 1) General Liability, Automobile Liability and Environmental Impairment Liability Coverage
 - a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; Premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

- b) Company's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
 - d) Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 2) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for City.
 - 3) All Coverage - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

10.3.5 Acceptability of Insurers.

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of Oregon and with a rating in the most recent edition of Best's Insurance Reports of A+ or better.

10.3.6 Verification of Coverage.

Simultaneously with the execution of this Agreement, Company shall furnish City with certificates of insurance and with original endorsements affecting coverage required hereunder, in form and substance satisfactory to City. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. Such certificates and endorsements shall show the type and amount of coverage, effective date and dates of expiration of policies, and shall have all required endorsements. City reserves the right to review copies of all required insurance policies, at City Hall, upon the reasonable request of City.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

If Company fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Company's expense, such insurance as it may deem proper.

10.3.7 Contractors and Subcontractors.

Company shall include all contractors and subcontractors providing Collection services under this Agreement as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverage for contractors and subcontractors shall be subject to all of the requirements stated herein. All other subcontractors having face-to-face contact with the customers shall be required by Company to carry general liability insurance.

10.3.8 Required Endorsements

- 1) The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

2) The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

10.4 Faithful Performance Bond

Company shall deposit either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of One Hundred Thousand dollars (\$100,000). The letter of credit or Performance Bond shall be in a form acceptable to City (see Exhibit 3). The Performance Bond shall serve as security for the faithful performance by Company of all the provisions and obligations of this Agreement. City may proceed against the performance bond upon Company's breach as defined in Article 12.1 and in accordance with the procedures outlined in Article 12.5.

ARTICLE 11
CITY'S RIGHT TO PERFORM SERVICE

11.1 General

In the event that Company, for any reason whatsoever, fails, refuses or is unable to Collect or transport any or all Solid Waste which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that City should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Company during the period of such emergency as determined by City, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Company; and/or (2) to take temporary possession of any or all of Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within City which Company would otherwise be obligated to Collect and transport pursuant to this Agreement.

If Solid Waste accumulates in City to such an extent, in such a manner or for such a time that City finds that such accumulation represents an immediate danger or menace to the public health safety or welfare, City shall not be required to provide the twenty-four (24) hour prior written notice set forth above in order to take the above actions.

Notice of Company's failure, refusal or neglect to Collect and transport Solid Waste may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within twenty-four (24) hours of the oral notification.

Company further agrees that in such event:

- A.** It will take direction from City to effect the transfer of possession of equipment and property to City for City's use.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Company, Company further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and disposal operations and for the billing and Collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.4, City shall pay to Company the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Company; and (3) does not exempt Company from any of the indemnity or insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify City against claims and damages arising from the negligence or willful misconduct of City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

11.2 Temporary Possession of Company's Property

If City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 12.4), City may take possession of and use all of Company's property described above until other suitable arrangements can be made for the provision of Solid Waste Services.

11.3 Billing and Compensation to City during City's Possession

During such time that City is providing Solid Waste services, as above provided, Company shall bill and Collect payment from all users of the above-mentioned services as described in Section 6.1. Company further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that billed and received by Company in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Company under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

11.4 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Company and thereupon demand that Company resume the Solid Waste services as provided in this Agreement, whereupon Company shall be bound to resume the same.

11.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Company's facilities and equipment, and to render Collection services, shall terminate when the event which caused the taking possession under Section 11.1 is cured and the Performance Bond is fully restored. In any case, City has no obligation to maintain possession of Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Company.

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default

All provisions of the Franchise and this Agreement to be performed by Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit.** If Company practices any fraud or deceit upon City.
- B. Insolvency or Bankruptcy.** If Company becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Company in a bankruptcy proceeding.
- C. Failure to Maintain Coverage.** If Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement unless such insurance becomes unavailable.
- D. Violations of Regulation.** If Company violates any orders or filings of any regulatory body having jurisdiction over Company, which orders or filings have a material impact on Company's ability to perform this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred.
- E. Failure to Perform.** If Company ceases to provide Collection services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Company, including labor disputes. If City performs service under Article 11, the Company's failure to perform shall not be considered a default.
- F. Failure to Pay.** If Company fails to make any payments required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- G. Acts or Omissions.** Any other act or omission by Company which violates the terms, conditions, or requirements of this Agreement, ORS 459 and ORS 459A, as it

may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

H. False or Misleading Statements. Any material representation or disclosure made to City by Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If Company fails to provide reasonable assurances of performance as required under Section 12.6.

Company shall be given forty-eight (48) hours from notification by City to cure any default arising under subsections C, E, F, I, and J provided, however, that City shall not be obligated to provide Company with a notice and cure opportunity if the Company has committed the same or similar breach within a twenty-four (24) month period.

12.2 Right to Terminate upon Default

In the event that Company should default and subject to the right of the Company to cure, in the performance of any provisions of this contract, and the default is not cured within forty-eight (48) hours from notification of default from City for any default arising under Section 11.1.C., E, F, I, or J, or ten (10) days' notice if the public health or safety is threatened, or otherwise thirty (30) days after receipt of written notice of default from City, then City may, at its option, hold a hearing at its next practically available City Council meeting to determine whether this contract should

be terminated. In the event City decides to terminate this contract, City shall serve thirty (30) days' written notice of its intention to terminate upon Company. In the event City exercises its right to terminate this contract, City may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Company to perform its obligations under this Agreement.

City's right to terminate this Agreement and to take possession of Company's Facility are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by City to Company, the remedy of damages for a breach hereof by Company may be inadequate and City may seek injunctive relief.

12.3 Liquidated Damages

12.3.1 General.

City finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that Franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies

are, at best, a means of future correction and not remedies which make the public whole for past breaches.

12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards.

The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 12, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company
Initial Here FK

City
Initial Here Uaj

Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

- A. Collection Reliability**
- a) For each failure to commence service to a new customer account within seven (7) days after order: \$150.00
 - b) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established customer account on the scheduled Collection day and not Collected within twenty-four hours which exceeds four (4) such failures annually: \$150.00
 - c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same customer on four (4) consecutive scheduled pickup days: \$150.00
- B. Collection Quality**
- a) For each occurrence of damage to private property which exceeds eight (8) such occurrences annually: \$250.00
 - b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments which exceeds four (4) such occurrences annually: \$150.00
 - c) For each occurrence of excessive noise or discourteous behavior which exceeds four (4) such occurrences annually: \$250.00
 - d) For each failure to clean up Solid Waste spilled from Containers which exceeds four (4) such failures annually: \$150.00
 - e) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds four (4) such occurrences annually: \$250.00
- C. Customer Responsiveness**
- a) For each failure to initially respond to a customer complaint within one (1) business day: \$100.00
 - b) For each failure to process customer complaints to City as required by Article-6.2: \$500.00

D. Timeliness of Submissions to City

Any report shall be considered late until such time as City receives a correct and complete report. For each calendar day a report is late, the daily liquidated damage amount shall be:

- a) Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day
- c) Service Plans for Special Events \$500 each

12.3.3 Process

Liquidated damages will only be assessed after Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of customer complaints.

Prior to assessing liquidated damages, City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Company may, within ten (10) days after receiving the notice, request a meeting with City. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Company with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

12.3.4 Amount.

City may assess liquidated damages for each calendar day or event, as appropriate, that Company is determined to be liable in accordance with this Agreement.

12.3.5 Timing of Payment.

Company shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten- (10) day period, City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or both.

12.4 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company is not an excuse from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement. Notwithstanding the foregoing, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Company's land, equipment and other property and engaging Company's Personnel in Article 10 and this Article 11 will apply.

12.5 Notice, Hearing and Appeal of City Breach

Should Company contend that City is in breach of this Agreement, it shall file with the City Manager a written request with City for an administrative hearing. Said request

shall be made within ninety (90) days of the event or incident that allegedly gave rise to the breach. City shall notify Company of the time and date said hearing shall be held within thirty (30) days of receipt of Company's request. Company shall present its position and all relevant facts after City staff has made its presentation. Company shall be notified of City's ruling in writing within fourteen (14) days of the administrative hearing.

If Company is not in agreement with the ruling issued by City at the administrative hearing, it shall have the right to appeal this ruling to the City Council or to a three (3) person appeal/review board, one member appointed by the City Council, another member appointed by Company, and the third member selected by the other two appointees. This appeal shall be made in writing to City no later than fourteen (14) days after receipt of the administrative hearing ruling. City shall notify Company of the time and date the Board will review Company's allegation. Company shall present its position and all relevant facts after staff has made its presentation. Company shall be notified in writing within thirty (30) days of the Board's ruling. The Board's ruling shall be final, and Company shall have no further rights of appeal.

Notwithstanding any other provision to the contrary in this Agreement, Company's sole remedy for any dispute or claim it may have relating to compensation or Rates is to file a petition for writ of mandate pursuant to. Company shall have no cause of action for damages against City in relation to any such dispute or claim.

12.6 Assurance of Performance

Each party may, at its option and in addition to all other remedies it may have, demand from the other Party reasonable assurances of timely and proper performance of this Agreement, citing specific reasons for the Party's concern over the other Party's ability to perform, in such form and substance as the Party may require. If the other Party fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the Party, such failure or refusal shall be an event of default.

ARTICLE 13
OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

The parties intend that Company shall perform the services required by this Agreement as an independent Company engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents. Neither Company nor its officers, employees, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

13.2 Compliance with Law

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of Oregon, and local agencies. City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

13.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon.

13.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of Oregon, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Clackamas County.

13.5 Assignment

13.5.1 Company's Assignment

Except as may be provided for in Article 11 (City's Right to Perform Service), Company shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written approval of the City.

For purposes of this Section when used in reference to Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Company to a third party provided said sale, exchange or transfer may result in a change of control of Company, excluding stock transfers among the existing shareholders; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of Company; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of Company.

Company acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Company to perform the services specified herein based on (1) Company's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Company's financial resources to maintain the required equipment and to support its indemnity

obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

13.5.2 City's Assignment.

City may assign and delegate all rights and duties of City, and its Council, Boards and Officials, its rights under this Agreement to any joint powers authority or other public agency; provided, however, that this Agreement will continue to govern only the Collection and Transportation of Solid Waste generated within City.

13.6 Contracting or Subcontracting

Company shall not engage any contractors or subcontractors for Collection or transport of Solid Waste without the prior written consent of City. Company is expressly permitted to subcontract for the collection and handling of infectious medical waste that is generated in the City.

13.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns of the parties.

13.8 Transition to Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with City and subsequent company(ies) to assist in an orderly transition which will include Company providing route lists and billing information. Company will not be obliged to sell Collection vehicles, bins and Containers to the next company. Depending on Company's circumstances at the point of transition, Company at its option may enter into negotiations with the next company to sell (in part or all) Collection vehicles, bins and Containers.

13.9 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

13.10 Condemnation

City fully reserves the rights to acquire Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 11.

13.11 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below, be faxed to the number below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068
(503) 657-0331
(503) 650-9041 (facsimile)

If to Company:

Mr. Fred A. Kahut
West Linn Refuse & Recycling, Inc.
1600 S.E. Fourth Avenue
P.O. Box 1285
Canby, OR 97013
(503) 557-3900
(503) 263-6477 (facsimile)

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered, faxed or, if mailed, three days from the date it is deposited in the mail.

13.12 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Company. City may rely upon action taken by such designated representative as actions of Company unless they are outside the scope of the authority delegated to him/her by Company as communicated to City.

13.13 City Free to Negotiate with Third Parties

During the Term of this Agreement, City may investigate all options for the Collection, transporting, and Disposal of Solid Waste after the expiration of the Term. Without limiting the generality of the foregoing, City may solicit proposals from Company and from third parties for the provision of Collection services, and may negotiate and execute agreements for such services that will take effect upon the expiration or earlier termination under Section 12.1 of this Agreement.

13.14 Compliance with Municipal Code

Company shall comply with those provisions of the municipal code of City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

13.15 Privacy

Company shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Company from preparing, participating in, or assisting in the preparation of waste composition studies or waste stream analyses which may be required by ORS 459A.035.

13.16 Attorney Fees and Cost Recovery

Company shall pay all attorney fees and other costs and expenses incurred by City in any enforcement action brought by City against Company under the terms of this Agreement. Payment shall be made within 10 days of written notification to Company of the amount incurred.

ARTICLE 14
MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

14.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

14.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and City.

14.4 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

14.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

14.7 Exhibits

Each of the Exhibits identified as Exhibit "1" through "5" is attached hereto and incorporated herein and made a part hereof by this reference. In the case of conflict between the Exhibits and this Agreement, the Agreement shall govern.

14.8 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to perform, whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first above written.

CITY OF WEST LINN

("City")

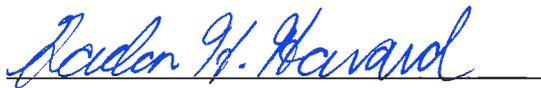
ATTEST: 
CITY RECORDER

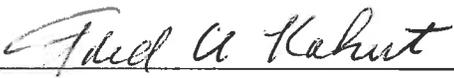
By: 
CITY

APPROVED AS TO FORM:

WEST LINN REFUSE & RECYCLING, INC.

("COMPANY")


CITY ATTORNEY

By: 

Name:

Title: president

By: _____

Name:

Title:

EXHIBITS

EXHIBIT 1
INITIAL RATES

Initial Rates 2009

**Residential Cart Service
(including Recycling and Yard Debris)**

		<u>Curbside</u>				<u>Backyard</u>	
		<u>Collection Frequency</u>				<u>Collection Frequency</u>	
		Monthly	Weekly			Monthly	Weekly
Cart Size (gallons)	21	\$ 9.07	\$ 18.13	Cart Size (gallons)	21	\$ 10.62	\$ 21.23
	35	\$ 10.81	\$ 21.61		35	\$ 12.64	\$ 25.29
	65	n/a	\$ 34.58		65	n/a	\$ 40.46
	95	n/a	\$ 38.04		95	n/a	\$ 44.50

**Mobile Home/Condo. Cart Curbside Service
(including Recycling and Yard Debris)**

		<u>Collection Frequency</u>
		Weekly
Cart Size (gallons)	35	\$ 15.99

Commercial Cart Service

		<u>Collection Frequency</u>
		Weekly
Cart Size (gallons)	35	\$ 21.61
	65	\$ 34.58
	95	\$ 38.04

Extra Trash Service

Bags up to 32 gallons	\$ 7.20
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Hourly Hauling Rates

Truck with 1 Person	\$ 52.45 per hour plus disposal
Truck with 2 Persons	\$ 70.85 per hour plus disposal

Major Appliances

\$ 5.00 min., appliances with freon compressors \$35.00 ea.

Tires (less than 10)

Up to 750 x 16	\$5.00 off rim / \$ 7.50 on rim
Over 750 x 16	\$7.50 min per tire + current disposal rate

Commercial Refuse Container Service 2009						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 84.78	\$ 178.03	\$ 271.29	\$ 364.54	\$ 457.80	\$ 551.06
1.5 YARD	\$ 129.50	\$ 271.94	\$ 414.39	\$ 556.83	\$ 699.28	\$ 841.73
2 YARD	\$ 155.40	\$ 326.33	\$ 497.27	\$ 668.20	\$ 839.14	\$1010.08
3 YARD	\$ 233.09	\$ 489.49	\$ 745.89	\$1002.29	\$1258.68	\$1515.09
4 YARD	\$ 310.78	\$ 652.64	\$ 994.51	\$1336.37	\$1678.23	\$2020.10
6 YARD	\$ 512.79	\$1076.85	\$1640.92	\$2204.93	\$2769.05	\$3333.11

Additional Commercial Refuse Container						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 93.25	\$ 195.83	\$ 298.42	\$ 401.00	\$ 503.58	\$ 606.16
1.5 YARD	\$ 142.45	\$ 299.13	\$ 455.83	\$ 612.51	\$ 769.20	\$ 925.90
2 YARD	\$ 170.94	\$ 358.96	\$ 547.00	\$ 735.03	\$ 923.05	\$1111.00
3 YARD	\$ 256.40	\$ 538.43	\$ 820.47	\$1102.51	\$1384.56	\$1666.60
4 YARD	\$ 341.86	\$ 717.91	\$1093.96	\$1470.00	\$1846.06	\$2222.10
6 YARD	\$ 564.06	\$1184.53	\$1805.00	\$2425.48	\$3046.01	\$3666.43

Commercial Container Trash & Recycling Rates - Compacted						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 205.15	\$ 430.83	\$ 656.52	\$ 882.20	\$1107.88	\$1333.55
1.5 YARD	\$ 313.39	\$ 658.09	\$1002.83	\$1347.52	\$1692.24	\$2036.98
2 YARD	\$ 376.07	\$ 789.71	\$1203.40	\$ 1617.07	\$2030.71	\$2444.20
3 YARD	\$ 564.08	\$1184.55	\$1805.03	\$2425.52	\$3046.03	\$3666.52
4 YARD	\$ 752.09	\$1579.40	\$2406.71	\$3234.00	\$4061.33	\$4888.62
6 YARD	\$1240.93	\$2605.97	\$3971.00	\$5336.06	\$6701.22	\$8066.15

EXHIBIT 2
RATE ADJUSTMENT METHODOLOGY

West Linn Refuse & Recycling, Inc.
Rate adjustment effective January 1, 2009

Rate Adjustment Methodology
Interim Years
(Section 7.3.1)

	Line Item Description	Source	Residential	Commercial
A	Initial Rate (July 2007)	Exhibit 1	\$ 21.28	\$ 83.53
B	Disposal Portion	Company Proposal Form 10 (Disposal/Rate Revenue)	22.41%	25.32%
C	Disposal Rate	Initial Rate x Disposal Portion	4.77	21.15
D	Franchise Fee %	Section 4.1.1.	3.00%	3.00%
E	Franchise Fee	Initial Rate - Disposal Rate x Franchise Fee %	0.50	1.87
F	Collection Rate	Initial Rate - Disposal Rate - Franchise Fee Amt	16.02	60.51
G	Additional 2% Franchise Fee	Section 7.3.1.A.	2.00%	2.00%
H	January 2009 Collection Rate	Collection Rate x 1+Additional 2% Franchise Fee	16.34	61.72
I	<i>Change in Metro Tipping Fee</i>	<i>** Metro - Regional Environmental Management **</i>	<i>0.00%</i>	<i>0.00%</i>
J	January 2009 Disposal Rate	Disposal Rate x 1+Change in Metro Tipping Fee	4.77	21.15
K	Franchise Fee	Jan. 2009 Collection Rate ÷ 0.97 - Jan. 2009 Collection Rate	0.51	1.91
L	January 2009 Total Rate	Jan. 09 Collection Rate + Jan. 09 Disposal Rate + Franchise Fee	\$ 21.61	\$ 84.78

Note: July 2002 rate was the pass-through increase in Metro tipping Fees from \$62.50 per ton to \$66.25 per ton

Note: September 2004 Metro tipping fee went to 70.96 per ton

Note: September 2006 Metro tipping fee went to 69.86 per ton (but was 71.41 Sept 05 - Sept 06).

Note: January 1, 2009 Franchise fee increase from 3% to 5%

EXHIBIT 3
FAITHFUL PERFORMANCE BOND

Company's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That West Linn Refuse & Recycling, Inc., an Oregon Corporation, as PRINCIPAL, and Amwest Surety Insurance Co., a Corporation organized and doing business by virtue of the laws of the State of Oregon, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Oregon, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of One hundred thousand dollars (\$100,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste, Recycling and Yard Debris generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2008.

an Oregon Corporation

By: _____

(PRINCIPAL)

(SEAL)

SURETY

By: _____

(ATTORNEY IN FACT)

(SEAL)



AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

CREDIT NUMBER: 53-147
ISSUE DATE: November 6, 2006

BENEFICIARY	APPLICANT
City of West Linn City Manager Office 22500 Salamo Road West Linn, OR 97068	West Linn Refuse & Recycling, Inc. 1600 SE 4 th Avenue Canby, OR 97013

We hereby issue this Amendment to the above captioned Irrevocable Standby Letter of Credit as follows:

Effective as of January 1, 2009, decrease Irrevocable Standby Letter of Credit # 53-147 from \$400,000.00 to \$100,000.00.

Amend Letter of Credit #53-147 to expire on December 31, 2009; This letter of credit shall be automatically extended for additional consecutive period[s] of one year from the present or each future expiration date unless Issuing Bank has notified Beneficiary in writing, not less than sixty (60) days before such expiration date, that Issuing Bank elects not to renew this letter of credit. Issuing Bank's notice of such election shall be sent air courier to the above address of the Beneficiary

All other terms and conditions remain unchanged.

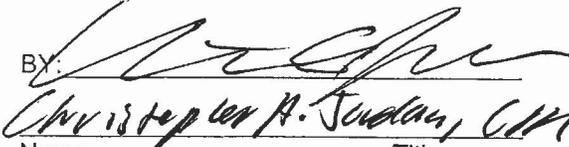
The Beneficiary is requested to sign a copy of this amendment in acknowledgement and acceptance or rejection of the terms changed herein. The signed copy is to be returned to West Coast Bank, 25977 S.W. Canyon Creek Road, Suite J, Wilsonville, Oregon 97070, Attn: Standby Letter of Credit Operations.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" ("UCP") International Chamber of Commerce Publication No. 600 and shall in all respects be deemed part hereof as fully as if incorporated herein and shall apply to this Letter of Credit. This Letter of Credit shall be governed by and construed in accordance with the laws of the State of Oregon, United States of America, except to the extent such laws are inconsistent with the "UCP".

Accepted Rejected

City of West Linn

West Coast Bank

BY: 
Christopher A. Jordan, CMA
Name Title

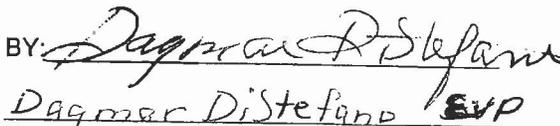
BY: 
Dagmar DiStefano, EVP
Name Title

EXHIBIT 4
NOTARY CERTIFICATION

NOTARY CERTIFICATION

STATE OF OREGON

COUNTY OF CLACKAMAS

On November 17, 2008, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared Fred A. Kahut
_____, known to me to be the President of Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Clackamas this 17th day of Nov., 2008.



Mary Stoller
Notary Public

My Commission Expires: 3/18/2009

EXHIBIT 5
CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the 12th day of November, 2008, by West Linn Refuse and Recycling, Inc. , a corporation organized under the laws of the State of Oregon (hereafter "Guarantor"), to the City of West Linn, a municipal corporation (hereafter the "City").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. West Linn Refuse & Recycling, Inc. (hereafter "Contractor") is a corporation organized under the laws of the State of Oregon. The majority of the issued and outstanding stock of Contractor is owned by the shareholders of Guarantor.

B. Contractor and City have negotiated a Franchise Agreement for Solid Waste, Recycling and Yard Debris Collection Services dated as of November 12, 2008, (hereafter "Agreement"), under which the Contractor is granted the right to and assumes the duty of collecting Solid Waste, Recyclables and Yard Debris generated within the City and arranging for its transport, processing, and disposal. A copy of this Agreement is attached hereto and incorporated herein by this reference.

C. It is a requirement of the Agreement, and a condition to the City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy and observe them in the place of the Contractor. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement.

2. **Guarantor's Obligations are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement.

3. **Waivers.** The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement; (3) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives the right to require the City to (a) proceed against the Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may now hold or hereafter hold. Guarantor agrees that the City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other

indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; or (d) any assignment of the Agreement is effected which does not require City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorneys' fees and all other costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to the Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of Oregon and shall be governed and construed in accordance with the laws of Oregon without regard to its conflicts of laws or rules for all purposes, including but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of Oregon and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in Oregon:

Mr. Fred A. Kahut

Name

1600 S.E. Fourth Avenue

Address

Canby, Oregon 97013

City, State, Zip

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. **Subordination.** Any claims Guarantor may have against Contractor are hereby subordinated to any and all claims of the City against Contractor until such time as the obligations of Contractor to City are fully satisfied and discharged.

Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follow:

To the City:
City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

With a copy to the City Attorney, at the same address.

To Guarantor:
Mr. Fred A. Kahut
West Linn Refuse & Recycling, Inc.
1600 S.E. Fourth Avenue
P.O. Box 550
Canby, OR 97013

IN WITNESS HEREOF, Guarantor has executed this Guaranty on the day and year first above written.

West Linn Refuse and Recycling, Inc.

By: Fred A Kahut

Title: President

By: _____

Title: _____



CITY OF
**West
Linn**

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Agenda Report 2017-11-13-06

Date: November 1, 2017
To: Russ Axelrod, Mayor
Members, West Linn City Council
From: Eileen Stein, City Manager *ES*
Subject: City Council Rules Amendments

Purpose

To make changes to the City Council Rules discussed on October 2, 2017.

Question(s) for Council:

Does the Council desire to change the City Council Rules which it discussed at its October 2nd work session?

Public Hearing Required:

None.

Background & Discussion:

In recent weeks, various issues have given rise to Council commentary about changing Council Rules, the purpose of this discussion is to consider these matters. The commentary and requests relate to:

- Meeting Minutes
- Work Session Starting Time
- Agenda Reports/Staff Recommendation

The Council discussed these and other council rules issues at a work session on October 2, 2017 and agreed to the changes in the City Council Rules presented in the attachment.

Meeting Minutes

The meeting minutes section has been changed to add the actual language of ORS 192.650 (1). This section was also amended to include language indicating when draft minutes will be posted on-line within two weeks of the meeting.

In its discussion, the Council also requested that the Agendas/Meetings section of website be updated to show agendas, minutes, audio/video recordings and draft notes of city council, citizen advisory group and neighborhood association meetings will be posted within 2 calendar weeks for city council and citizen advisory group meetings, and for neighborhood association meetings within 3 business days once staff has received the draft or final minutes from the association.

Work Session Starting Time

This item was discussed and the Council decided to leave the starting time for work sessions as is. There was discussion about the possibility of setting special meetings (or executive sessions) during the daytime depending on the subject matter and Council availability. Therefore no changes to the Council Rules are proposed.

Agenda Report Format: Staff Recommendations

The Council re-affirmed its desire to see a staff recommendation in the Agenda Report template. However, the Council also concurred in changing the name of staff reports from "Agenda Report" to "Agenda Bill".

Other Changes

The Council also agreed to change the title of certain elements of the meeting agenda template, specifically retitling "Business from the City Council" to "Mayor and City Council Reports" (and likewise for reports from the city manager and city attorney.)

Budget Impact: None, unless in order to meet the two week turnaround expectation, we begin to contract out for minutes transcription.

Council Options:

- 1) By motion, approve changes to the City Council Rules

- 2) Do not change City Council Rules

Attachment: Proposed City Council Rules, dated November 13, 2017

City of West Linn

COUNCIL RULES

Adopted ~~April 10, 2017~~ November 13, 2017

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Agenda. The City Manager shall coordinate with the Mayor (or presiding officer) on the preparation of an agenda of the business to be presented at a regular Council meeting. Council Work Session agendas will be published the Thursday prior to the Work Session. The agenda packet containing all agenda bills will be available for the City Council and public ten calendar days before a regular Council meeting. No items will be added to or removed from the agenda after the agenda packet is published without the approval of the City Council, which shall vote to approve the agenda at the beginning of each Council meeting.

- A. A Council member may place or remove an item on a Council agenda by motion at the beginning of each Council meeting, additions and deletions to the agenda must be approved by a majority of the Council. No action shall be taken on items that are not on the agenda without first modifying the agenda by motion. Council members will endeavor to have subjects they wish considered submitted in time to be placed on the agenda, and shall attempt to notify the City Manager in advance of proposing changes to the agenda.
- B. A Councilor who desires major policy or ordinance research should first raise the issue at a meeting under Council Business. The Council should consider items in light of City priorities and workload and agree to proceed with an issue or ordinance before staff time is spent preparing a report. The Councilor may present information or a position paper or ask for a department report or committee recommendation. Councilors who agree that staff time can be spent on a particular item are not bound to support the issue when it comes before the Council for a vote.

Agenda ReportBill. Each item of Council business requiring Council action shall be accompanied by an Agenda ~~Report~~Bill in a format approved by the Council.

Annual Report of Boards, Commissions, Committees, and Neighborhood Associations. Each board, commission, committee, and neighborhood association will annually report to the Council on its activities for the previous year, including their recommendations. The report will be prepared in a format prescribed by the Council.

Attendance. Councilors will inform the Mayor and the City Manager if they are unable to attend any meeting. Additionally, the Mayor will inform the Council President and the City Manager regarding any absence by the Mayor.

Bias and Disqualification. Prior to the commencement of a quasi-judicial hearing, each Councilor must disclose his or her previous pre-~~judgement~~judgment, personal interest or participation in any manner or action on the matter to be heard and shall state whether he or she can participate in the hearing with an open mind. If the Councilor deems him or herself unable to hear the matter impartially, the Councilor has a duty to step down from the hearing and participate as a citizen, if so desired.

- A. Any person may challenge the qualifications or impartiality of any Councilor about to participate in the discussion and decision. The challenger must state facts relied upon from which the party has concluded that the Councilor will not likely participate and/or make a decision in an

impartial manner. Such challenges shall be made prior to the commencement of the public hearing. The Mayor shall then give the challenged member an opportunity to respond. Any such challenge to a Councilor shall require a vote of the Council to accept or deny the challenge. The Councilor being challenged shall not vote unless required by the law of necessity to do so. Such challenges shall be recorded into the record of the hearing. If the City Council majority determines that the member is biased, it may disqualify the member by majority vote from participating in a decision. In which case, the Councilor may participate in the proceedings as a private citizen if the Councilor is a party with standing.

Business from the Council Mayor and City Council Reports. The Mayor and Councilors will report on the regional meetings they attend on behalf of the city.

Censure.

- A. The Council has the inherent right to make and enforce its own rules and to ensure compliance with those laws generally applicable to public bodies. The Council, acting as a whole, may reprimand or discipline to the extent provided by law, any member(s) of the council, or any member(s) of a board, commission or committee directly associated with the City Council.
- B. To exercise such right, the alleged offender(s) must first be notified of a finding that reasonable ground exists that a substantial violation has occurred prior to referral for investigation of the Council. Council may hold an executive session to consider the complaints or charges unless the person requests an open hearing according [to ORS 192.660\(2\)\(b\)](#) Discipline of Public officers and employees.
- C. The accused member(s) shall have the right to present a defense to the allegations, including the right to have legal representation at such meeting.
- D. Upon finding that a substantial violation has occurred, the Council may, upon unanimous vote of the balance not accused, proceed with censure or impose a proper sanction.

City Manager Evaluation. The evaluation of the City Manager will be performed under the terms of the Manager's contract. According to City Charter Chapter 1V, Section 21 (b), -the Council shall provide a mechanism for public input at least annually into the evaluation of the City Manager's performance and shall consider such public input in its evaluation of the performance and tenure of the City Manager.

City Communications. As a general policy, the City communication tools (including, but not limited to: newsletter, website, mailers, postcards, bulletin boards, email newsletters and videos) should be used solely for City government related content. Events not sponsored entirely or partially by the City should not be allowed space in City communications. Requests for placement of articles in City communications shall be approved by the City Manager or designee.

Communication with Staff. Mayor and Councilors shall respect the separation between policy making and administration by:

- A. Supporting the Council-Manager form of government by adhering to the policy of non-interference in the administration of day-to-day City business, which is directed by the City Manager.
- B. Attempting to work together with the staff as a team in a spirit of mutual confidence and support.
- C. At all times respecting the administrative functions of the City Manager and various department heads, and refraining from actions that would undermine the administrative authority of the City Manager or department heads. In all events, the Council will abide by the City Charter and Municipal Code when dealing with the City Manager.
- D. Limiting all inquiries and requests for information from staff or department heads to those questions that may be answered readily or with only the most minimal of research. Questions of a more complex nature shall be addressed to the City Manager or City Attorney. Such questions should, whenever possible, be put in writing. Questions requiring significant staff time or resources (one hour or more) shall require the approval of the majority of the Council. All pertinent information given by the City Manager or City Attorney to the Mayor or a Councilor should be distributed to all the Councilors.
- E. Limiting individual contacts with City officers and employees so as not to influence staff decisions or recommendations, to interfere with their work performance, to undermine the authority of supervisors or to prevent the full Council from having benefit of any information received.
- F. Respecting roles and responsibilities of staff when and if expressing criticism in a public meeting or through public electronic mail messages.

Community Comment. General community comment is established to allow members of the public to speak for five minutes at the beginning of each Council meeting and work session on any community matter other than specific agenda items. The Mayor may adjust comment time according to the length of the agenda or the number of requested speakers. Verbally abusive or slanderous comments are not allowed.

Councilors are not expected to engage in discussions while receiving comments; however may ask clarifying questions with the Presiding Officer's permission. Later, during the business portion of the meeting, Councilors may discuss concerns and direct questions to the City Manager with the understanding that answers from staff may not be immediately available.

Persons requesting to speak must first submit a completed testimony form to the City Recorder. A neighborhood representative may speak as an individual as well as the neighborhood representative when presenting items voted upon by the neighborhood association. When presenting items on behalf of the neighborhood association, the designated representative will be allowed up to 10 minutes for this testimony. When called upon, speakers shall first state their name and city of residence for the record. Copies of written comments and materials are to be handed to the City Recorder to deliver to the

Council and submit to the record. If a speaker wishes to show a presentation, the presentation must be delivered to City staff 48-hours prior to the meeting.

Conferences and Seminars. Members of the Council are urged to educate themselves about local government. To that end, and as funding allows, Councilors are urged to attend the League of Oregon Cities functions. Requests to attend other government related conferences, training seminars and meetings will be presented to the Council for approval. Members of the Council who serve on committees or the boards of the League of Oregon Cities, the National League of Cities or other such government group will be reimbursed for reasonable expenses not covered by the respective body. Councilors should share information upon returning.

Confidentiality. Councilors will keep all written materials marked as confidential in complete confidence to ensure that the City's position is not compromised. No mention of the information read or heard should be made to anyone other than other Councilors, the City Manager or City Attorney.

- A. If the Council, in executive session, provides direction or consensus to staff on proposed terms and conditions for any type of negotiation whether it be related to property acquisition or disposal, pending or likely claim or litigation, or employee negotiations, all contact with other parties shall be made by designated staff or representatives handling the negotiations or litigation. A Councilor will not have any contact or discussion with any other party or its representative nor communicate any executive session discussion.
- B. All public statements, information, or press releases relating to a confidential matter will be handled by designated staff, the Mayor, or a designated Councilor.
- C. The Council, by resolution, may censure a member who discloses a confidential matter.

Conflict of Interest. Councilors shall adhere to State laws concerning conflicts of interest. Conflicts of interest arise in situations where a Councilor has an actual or potential financial interest in the matter before the Council. Under state law, an actual conflict of interest is defined as one that would be to the private financial benefit of the Councilor, a relative or a business with which the Councilor is associated. [ORS 244.020](#). A Councilor must publicly announce potential and actual conflicts of interest, and, in the case of actual conflict of interest, must refrain from participating in debate on the issue or from voting on the issue unless allowed by state law. [ORS 244.120](#).

Consent Agenda. In order to make more efficient use of meeting time, the City Manager shall place all items of a routine nature on which no debate is expected on a consent agenda. Any item placed on the consent agenda shall be disposed of by a single motion "to adopt the consent agenda" which shall not be debatable. With the approval of the Council, any Councilor or the Mayor can remove an item from the Consent Agenda. An item removed from the consent agenda shall not receive public testimony unless agreed to by a majority of the rest of the Council. Any item removed from the Consent Agenda will be discussed and considered as the first business item of the meeting.

Council Rules. Pursuant to Chapter IV, Section 13, of the City Charter, the Council shall adopt Council rules. The Council shall review its rules at least once every two years. Amendments shall be adopted by a majority vote. The Council rules are not intended to replace or supersede any applicable federal or state laws or regulations, City ordinances or policies, or provisions of the City Charter. These rules may be suspended upon an affirmative vote of the Council.

Emergency Meetings. In the case of an emergency, an emergency meeting may be called by consent of all available Councilors upon such notice as is appropriate to the circumstances. The minutes of the emergency meeting shall describe the emergency justifying less than 24 hours' notice. The City shall attempt to contact the media and other interested persons to inform them of the meeting. Councilors are responsible to inform staff of how they can be reached when out of town.

Ethics. All members of the City Council shall constantly strive to meet the highest ethical standards in their role of City Councilor. The Council may act to discipline a member of the Council for these violations, up to and including approving a resolution censuring the Councilor. Among these standards are:

- I. Councilors shall review and observe the requirements of the State Ethics Law ([ORS 244.010 to 244.390](#)) dealing with use of public office for private financial gain.
 - A. Councilors shall give public notice of any conflict of interest or potential conflicts of interest and the notice will be reported in the meeting minutes. In addition to matters of financial interest, Councilors shall maintain the highest standards of ethical conduct and assure fair and equal treatment of all persons, claims, and transactions coming before the Council. This general obligation includes the duty to refrain from:
 1. Disclosing confidential information or making use of special knowledge or information before it is made available to the general public.
 2. Making decisions involving business associates, customers, clients, and competitors.
 3. Promoting relatives, clients or employees for boards and commissions.
 4. Requesting preferential treatment for themselves, relatives, associates, clients, coworkers or friends.
 5. Seeking employment of relatives with the City.
 6. Actions benefiting special interest groups at the expense of the City as whole.
- II. Repeatedly violating the Council Rules.

Executive Sessions. An executive session (meeting closed to the public) may be held in accordance with the appropriate statutory limits of [ORS 192.660\(2\)](#). All executive sessions shall be audio recorded as provided for in [ORS 192.650\(2\)](#) unless the Council determines that written minutes should be taken.

Material discussed during an Executive Session should not be disclosed, as provided in [ORS 192.610 and 192.660](#).

Exhibits. Exhibits presented before the Council in connection with its deliberations on a legislative, quasi-judicial or other substantive matter shall be accepted by the Council and made part of the record. The exhibit shall be marked for identification and referenced in the minutes. The exhibit or a copy thereof shall be provided to the meeting recorder.

Ex Parte Communications. When Council receives any ex parte communication, Council should inform the citizen that the Council is interested in his or her perspective; however, because the Council is hearing the associated land use application, Council are advised to refrain from reading and responding to information outside of the public hearing process. Council should inform the citizen that the information received is being forwarded to staff for inclusion in the public record. Council shall then forward all ex parte correspondence received to staff as soon as possible for inclusion in the land use file, and if possible, the record.

Ex-Parte Contacts and Disqualifications. In the case of quasi-judicial decisions, Ex-parte contacts consist of being party to any written or verbal communication by a party about a fact that relates to any issue of the hearing that occurs when other interested parties are not present or able to receive the information.

Councilors are advised to refrain from engaging in discussions about a pending quasi-judicial decision outside of the public hearing. However, if a Councilor partakes in or receives written or oral ex-parte contact prior to any such hearing, the Councilor shall disclose the communication for the record and/or reveal the contact and substance of the contact prior to the commencement of the hearing. The Councilor will state whether such contact affects his/her ability to vote on the matter in an impartial manner and whether he/she will participate or abstain. The presiding officer shall then announce the right of interested parties to rebut the substance of the communication. If the Council determines that the Councilor should step down for the hearing by a majority vote, the Councilor would then be allowed to participate in the proceedings as a private citizen.

Expenses and Reimbursement. With the exception of quarterly stipends, Councilors will follow the same rules and procedures for reimbursement as those which apply to City employees, set forth in the policy manual. Councilor expenditures for other than routine reimbursable expenses (e.g., conference registration, travel, etc.) will require advance Council approval according to the purchasing rules which apply City wide.

Filling Vacancies on the Council. Upon declaring a vacancy on the City Council, the Council will fill the vacancy under provisions of the City Charter. The vacancy will be advertised and applications will be accepted. After the filing deadline has passed, the Council may conduct public interviews of applicants. The Council will make a decision to fill the vacancy in a public meeting.

Filling Vacancies on Boards, Commissions and Committees. When a vacancy occurs on any standing commission, board or committee, a public announcement of the vacancy will be made with sufficient time and information provided regarding the duties of the positions and the process of filing an application.

The Council will interview applicants for the Planning Commission and Budget Committee and may also include interviews for other Boards and Committees. The Mayor, with the approval of the Council, shall fill all vacancies of City committees, boards and commissions.

Flags, Signs and Posters. No flags, posters, placards or signs may be carried or placed within the Council chambers in which the Council is officially meeting. This restriction shall not apply to arm bands, emblems, badges or other articles worn on personal clothing or individuals, provided that such devices do not interfere with the vision or hearing of other persons at the meeting or pose a safety hazard.

Gifts. On occasion, and within the approved budget, the Council may wish to purchase a gift or memento for someone with City funds. Expenditures of this type shall receive prior approval from the Mayor or a consensus of the Council.

Legal Advice. Requests to the City Attorney for advice requiring more than fifteen minutes of legal research shall not be made by a Councilor or the Mayor except with the concurrence of the majority of the Council. Before requesting research or other action by the City Attorney, the Council is encouraged to consider consulting with the City Manager to ascertain whether the request or action can be accomplished more cost-effectively by alternate means. Outside a Council meeting, a Councilor should make requests of the City Attorney through the City Manager. Exceptions to this are issues related to the performance of the City Manager and unique and sensitive personal, yet City business-related requests. The City Attorney shall in either case provide any written response to the full Council and City Manager, except as noted above.

Liaison to Boards, Commissions and Committees. To facilitate the exchange of information between the Council and its advisory bodies and standing committees, the Mayor will at least annually make liaison appointments with Council approval to City boards, commissions and committees with Council approval. Councilors shall respect the separation between policy making and advisory boards, commissions and committees by:

- A. Not attempting to lobby or influence boards, commissions and committees on any item under their consideration. It is important for the advisory body to make objective recommendations to the Council on items before them.
- B. Attending meetings of assigned liaison bodies, but should avoid becoming involved in the body's discussions without first explaining his or her role as a Council liaison.
- C. Not voting at the body's meeting on any item.

Litigation. The Council will meet in Executive Session with the City Manager and City Attorney within 30 days of the City's receipt of:

- A. A statutory notice of claim, or
- B. A judicial or administrative filing which initiates action against the City.

Meeting Staffing. The City Manager will attend all Council meetings unless excused. The City Manager may make recommendations to the Council and shall have the right to take part in all Council discussions but shall have no vote. The City Attorney will attend all regular Council meetings unless excused, and will, upon request, give an opinion, either written or oral, on legal questions. The City Attorney, if requested, shall act as the Council's parliamentarian. The City Manager shall designate a staff or contract person as a meeting recorder who will attend all Council meetings and keep the official journal (minutes) and perform such other duties as may be needed for the orderly conduct of meetings. Department directors or other staff will attend Council meetings upon request of the City Manager.

Meeting Times. In accordance with the Chapter IV, Section 13 of the West Linn City Charter, the City Council shall hold a regular meeting at least once each month. It is anticipated that this meeting will take place on the second Monday of each month beginning at 6:30 p.m. Such meetings may be preceded by a work session at 5:30 p.m. All other Council meetings will be either Work Sessions or Special Meetings and typically scheduled on the first and third Monday of each month beginning at 6:00 p.m. Council meetings which exceed three hours in length shall be continued to the following evening or the following Council meeting unless extended by majority vote of the Council. Should the need arise; any member of the Council may request a short break.

Minutes. Minutes will be taken in accordance with [ORS 192.650 \(1\)](#). [Minutes shall include the following information: \(1\) Members present; \(2\) Motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; \(3\) Results of all votes and the vote of each member by name; \(4\) The substance of any discussion on any matter; and \(5\) A reference to any document discussed at the meeting.](#) All City Council meetings shall be either audio or audio and video recorded unless the Council determines that written minutes are sufficient for a specific meeting. [Staff will post Draft Minutes online within two weeks of the meeting. Minutes will remain draft until approved.](#)

Motions. When a motion is made, it shall be clearly and concisely stated by its maker. Councilors are encouraged to exercise their ability to make motions and to do so prior to debate in order to focus discussion on an issue and speed the Council's proceedings. The Presiding Officer will state the name of the Councilor who made the motion and the name of the Councilor who made the second. When the Council concurs or agrees to an item that does not require a formal motion, the Presiding Officer will summarize the agreement at the conclusion of discussion. The following rules shall apply to motions during proceedings of the Council:

- A. A motion may be withdrawn by the maker at any time without the consent of the Council.
- B. If a motion does not receive a second, it dies. Certain motions can proceed without a second, including nominations, withdrawal of motion and agenda order.
- C. A motion that receives a tie vote fails.
- D. A motion to table is not debatable unless made during a land-use hearing and precludes all amendments or debate of the issue under consideration. If the motion prevails, the matter may be taken from the table only by adding it to the agenda of the next regular Council meeting at

which time discussion will continue. If an item is tabled, it cannot be reconsidered at the same meeting.

- E. A motion to postpone to a certain time is debatable and amendable, and may be reconsidered at the same meeting. The question being postponed shall be considered at a later time, at the same meeting, or at a specified time in the future. A motion to postpone indefinitely is debatable and is not amendable and may be reconsidered at the same meeting only if it received an affirmative vote. The object of this motion is not to postpone, but to reject the question without risking a direct vote when the maker of this motion is in doubt as to the outcome of the question.
- F. A motion to call for the question shall close the debate on the main motion and is not debatable. This motion must receive a second and fails without a majority vote. Debate is reopened if the motion fails.
- G. A motion to amend can be made to a motion that is on the floor and has been seconded. An amendment is made by inserting or adding, striking out, striking out and inserting, or substituting.
- H. Motions that cannot be amended include motion to adjourn, agenda order, lay on the table, reconsideration, and take from the table.
- I. A motion to amend an amendment is in order.
- J. Amendments are voted on first, then the main motion as amended.
- K. Council will discuss a motion only after the motion has been moved and seconded.
- L. The motion maker, Presiding Officer, or meeting recorder should repeat the motion prior to voting.
- M. A motion to continue or close a public hearing is debatable.
- N. A point of order, after being addressed by the Presiding Officer, may be appealed to the body.

News Media. The Council recognizes the important role of the news media in informing the public about the decisions, activities and priorities of government. Workspace shall be reserved for members of the press at Council meetings so that they may observe and hear proceedings clearly. See also Executive Sessions. The terms “news media” “press” and “representative of the press” for the purpose of these rules are interchangeable and mean someone who:

- A. Represents an established channel of communication, such as a newspaper or magazine, radio or television station; and either
- B. Regularly reports on the activities of government or the governing body; or
- C. Regularly reports on the particular topic to be discussed by the governing body in executive session.

Order and Decorum. A law enforcement officer of the City may be Sergeant-at-Arms of the Council meetings. The Sergeant-at-Arms shall carry out all orders and instructions given by the Mayor for the purposes of maintaining order and decorum at the Council meeting. If the Sergeant-at-Arms determines that the actions of any person who violates the order and decorum of the meeting constitutes a violation of any provision of the West Linn Municipal Code, the Sergeant-at-Arms may place such person under arrest and cause such person to be prosecuted under the provisions of the Municipal Code, or take other appropriate action as outlined in the West Linn Policy and Procedure Manual.

- A. Any of the following shall be sufficient cause for the Sergeant-at-Arms to, at the direction of the Mayor, or by a majority of the Council present, remove any person from the Council chamber for the duration of the meeting:
1. Use of unreasonably loud or disruptive language, including personal, offensive or slanderous remarks, or actions that are boisterous, threatening or personally abusive.
 2. Making of loud or disruptive noise, including applause.
 3. Engaging in violent or distracting action.
 4. Willful injury of furnishings or of the interior of the Council chambers.
 5. Refusal to obey the rules of conduct provided herein, including the limitations on occupancy and seating capacity.
 6. Refusal to obey an order of the Mayor or an order issued by a Councilor which has been approved by a majority of the Council present.
- B. Before the Sergeant-at-Arms is directed to remove any person from a Council meeting for conduct described in this section, that person shall be given a warning by the Mayor to cease his or her conduct. If a meeting is disrupted by members of the audience, the Mayor or a majority of the Council present may declare a recess and/or order that the Council chamber be cleared.

Order of Business. The City Manager shall have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting with final approval of the Mayor. In general, the order of business will be as follows:

- A. Call to Order and Pledge of Allegiance to the Flag
- B. Approval of Agenda
- C. Community Comments (five minutes per speaker)
- D. Proclamations, Recognitions and Scheduled Presentations to the Council
- E. Consent Agenda
- F. Business Meeting

1. Items removed from the Consent Agenda
 2. Public Hearings
 3. Ordinances and Resolutions
 4. Other Business
- G. ~~Business from the Council~~ [Mayor and City Council Reports](#)
- H. ~~Report of the~~ City Manager [Report](#)
- I. ~~Report of the~~ City Attorney [Report](#)
- J. Adjourn

The Mayor may use the gavel to commence the meeting, after each vote and to close the meeting.

Ordinance Reading and Adoption. All ordinances and resolutions shall be prepared under the supervision of the City Manager and reviewed and approved as to form by the City Attorney. Ordinances and resolutions may be introduced by a member of the Council, the City Manager, the City Attorney or any department head.

- A. Unless the motion for adoption provides otherwise, resolutions shall be adopted by reference to the title only and effective upon adoption.
- B. The Council may adopt an ordinance in any of the following circumstances:
1. Before being considered for adoption, the ordinance has been read in full at two separate Council meetings.
 2. At a single meeting by unanimous vote of the whole Council, after being read twice by title only.
 3. Any of the readings may be by title only if no Council member requests to have the ordinance read in full or if a copy of the ordinance is provided for each Council member and three copies are provided for public inspection at the City offices not later than one week before the first reading of the ordinance, and if notice of their availability is given forthwith upon the filing, by written notice posted at City Hall and two other public places in the City or by advertisement in a newspaper of general circulation in the City. An ordinance enacted after first being read by title alone may have no legal effect if it differs substantially from its terms as it was thus filed prior to such reading unless each section incorporating such a difference is read fully and distinctly in open Council meeting as finally amended prior to being approved by the Council.
 4. Upon the enactment of an ordinance the custodian of records shall sign it with the date of its passage and the endorser's name and title of office and thereafter the Mayor, or

President of the Council acting pursuant to Section 18 of the City Charter, shall sign it with the date of its passage and the endorser's name and title of office. Failure of the Mayor or the President of the Council to sign it shall not invalidate it.

- C. Ordinances shall be effective on the thirtieth (30th) day following the date of adoption, unless the ordinance provides that it will become effective at a later time. An emergency ordinance which includes a provision that the ordinance is necessary for immediate preservation of the public peace, property, health, safety or morals may provide that it will become effective upon adoption.
- D. Ordinances and resolutions shall be adopted by roll-call vote.

Planning Commission Testimony. In an effort to maintain the impartiality of the Planning Commission, especially in cases where issues can be remanded by the City Council back to the Planning Commission for review, the following rules are established. For legislative land use matters before the Council, Commissioners may testify as a Commissioner, as a Commission-Representative if so designated by the Commission, or as a citizen. For quasi-judicial hearings or petitions for review before the Council, Commission members, who have participated in the preceding Commission decision, may not testify before the Council on the respective matter.

Presiding Officer. The Mayor shall be the Presiding Officer and conduct all meetings, preserve order, enforce the rules of the Council and determine the order and length of discussion on any matter before the Council, subject to these rules. The Council President shall preside in the absence of the Mayor. The Presiding Officer shall not be deprived of any of the rights and privileges of a Councilor. In case of the absence of the Mayor and the Council President, the City Manager shall call the meeting to order and the Council shall elect a chairperson for the meeting by majority vote.

Public Members Addressing the Council on Agenda Items. Each person addressing the Council shall first complete a testimony form and give it to the City Recorder prior to discussion of an item on the agenda. A separate form must be completed for each item desiring to be addressed.

- A. When called by the City Recorder, those wishing to address the Council shall come to the designated area and state their name and city of residence in an audible tone. They shall limit their remarks to five minutes unless the Council decides prior to a particular agenda item to allocate more or less time. A Neighborhood Association President or a designated representative of a Neighborhood Association shall limit their remarks to 10 minutes or less. They should address all remarks to the Council as a body and not to any member thereof.
- B. No person, other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Mayor. Questions from the public shall be asked of a Councilor or staff through the Mayor. No public member will be allowed to speak more than once on a particular agenda item. A member of the public wishing to testify cannot cede their minutes to another.

- C. The Council shall maintain a forum allowing citizens to testify regarding City-related issues, policy, and Council decisions. Any person making personal, offensive, or slanderous remarks, or who become boisterous, threatening, or personally abusive while addressing the Council may be requested to leave the meeting. The Mayor has the authority to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct, and to enforce the rules of the Council. The Mayor may request the assistance of Sergeant-at-Arms to restore order at any meeting.

Public Records. The disposition of public records created or received by Councilors shall be in accordance with Oregon Public Records Law. Written information incidental to the official duties of a member of the City Council, including electronic mail messages, notes, memos and calendars (e.g., Outlook calendars and “Day timers”) are public records and are subject to disclosure under the Public Records Law.

Questioning of Staff by Council Members. Every Council member desiring to question the staff during a Council meeting shall address the questions to the City Manager, who shall be entitled to either answer the inquiry or designate a staff member to do so.

Quorum. The quorum requirement for the conduct of Council business is three Council members.

Reconsideration of Actions Taken. A member who voted with the majority may move for a reconsideration of an action at the same or the next regular meeting. The second of a motion may be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration shall be made without unanimous consent of the Council.

Representing the City. When any member of the City Council represents the City before another governmental agency, before a community organization or media, the official should first indicate the majority position of the Council. Upon returning, a reasonable effort should be made by the Council to communicate any information or questions pertinent to City business to the full Council within a reasonable timeframe.

- A. The effectiveness of City lobbying in Salem or in Washington, D.C. depends on the clarity of the City’s voice. When Councilors represent the City in a “lobbying” situation, it is appropriate that the Councilors avoid expressions of personal dissent from an adopted Council policy.
- B. When Councilors attend meetings of organizations such as the League of Oregon Cities or the National League of Cities and their boards and committees, they do so as individual elected officials and are free to express their individual views. If the City Council has an adopted policy relating to an issue under discussion, the Councilor is expected to report that fact.
- C. By resolution, the Council may appoint one or two of its members to act as negotiators with groups, individuals, or other governmental entities. Any agreements made by such negotiators shall require approval of the Council as a whole to take effect.

Parliamentary Procedure. The Council should follow parliamentary procedure such as Robert’s Rules or Sturgis Parliamentary Procedure.

Speaking by Council Members. Any Councilor desiring to be heard shall be recognized by the Mayor, but shall confine his or her remarks to the subject under consideration or to be considered. Councilors will be direct and candid. Councilors will speak one at a time, allowing one another to finish.

Special Meetings. The Mayor, or in the Mayor's absence the President of the Council, may, or at the request of two or more members of the Council, call a special meeting for the Council in accordance with state law. Special meetings are to be utilized only when absolutely necessary, and public comment shall be taken at all special meetings.

- A. Written notice of a special meeting shall be given to the Council, media and public, with as much advance (up to 10 days) notice as possible, and no less than 24 hours in advance of the meeting. The notice shall be served on each member personally or electronically, or if the Councilor is not found, left at his or her place of residence. All notice requirements of [ORS 192.640](#) shall be satisfied before any special meeting can be conducted.
- B. Special meetings of the Council may also be held at any time by common consent of all members of the Council subject to notice requirements being met. Councilors shall keep the City Manager informed of their current telephone numbers.

Televising of Council Meetings. Acknowledging that the citizenry of West Linn is generally a sophisticated and interested viewing audience, regular business meetings of the Council will be covered gavel-to-gavel live on the City's government access cable channel. Video recordings will be kept permanently.

- A. To enhance viewer interest and understanding of the subject matter, televised meetings of the Council shall, whenever practical, employ the highest technical quality and techniques, such as multiple camera angles and informational captioning. The producer/camera operator should set the scene for the viewer of each agenda item with a planned series of shots in accordance with the City's camera operator's guide.
- B. It is intended that Council meetings be televised in an unbiased, even-handed manner, using camera shots that are appropriate for individual Councilors, witnesses and audience members and are relevant to the discussion.
- C. Video and audio shall be deleted only for the purpose of conforming with applicable laws governing public broadcasts. Editing for the above purpose and for the insertion of informational titles and graphics will be allowed. Portions of videotaped Council meetings may be used in other news and informational broadcasts provided they are not portrayed out of context.
- D. Regular business meetings of the Council shall be televised live and simultaneously videotaped for subsequent replay on the government access channel. Meetings shall be televised and taped in accordance with policies and procedures approved by the City Manager, including the camera operator's guide.

Testimony Forms. The testimony forms for land use hearings will have a place for citizens to mark if they are for, against, or neutral on the topic.

Voting. Every Councilor, when a question is taken, shall vote. If a Councilor is planning to abstain, the Councilor must declare the intent to abstain prior to the vote.

- A. No Councilor shall be permitted to vote on any subject in which he or she has a conflict of interest.
- B. The concurrence of a majority of the Council members present at a Council meeting shall be necessary to decide any question before the Council. The meeting recorder shall call the roll, and the order of voting shall be rotated on each question such that each Councilor, excluding the Mayor, has an equal opportunity to vote first and second to last. Since the Mayor acts as chair, the Mayor in all instances shall vote last.

Work Sessions. Work sessions of the City Council shall be held in accordance with the Oregon Public Meetings Law. [ORS 192.630](#). Whenever circumstances require such a session, it shall be called by the Mayor, City Manager, or two or more Councilors.