



**Regular Session**

**RS**

**Milwaukie City Council**

**COUNCIL REGULAR SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

2324<sup>th</sup> Meeting

**REVISED AGENDA**

**OCTOBER 20, 2020**

(Revised October 16, 2020)

**Video Meeting:** due to the governor's "Stay Home, Stay Healthy" order, the City Council will hold this meeting through Zoom video meetings. The public is invited to watch live on the [city's YouTube channel](#), Comcast Cable channel 30 in city limits, or by joining the Zoom webinar (visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-286> for details).

**Written comments** may be submitted by email to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov). Council will take verbal comments. **To speak during the meeting**, see the Zoom information (meeting link above).

**Note:** agenda item times are estimates and are subject to change.

**Page #**

1. **CALL TO ORDER (6:00 p.m.)**
  - A. Pledge of Allegiance
  - B. Native Lands Acknowledgment
2. **ANNOUNCEMENTS (6:01 p.m.)**
3. **PROCLAMATIONS AND AWARDS (6:05 p.m.)**
  - A. Milwaukie High School (MHS) Outstanding Student Achievement - Award  
Presenter: Carmen Gelman, MHS Principal
4. **SPECIAL REPORTS**
  - A. None Scheduled.
5. **COMMUNITY COMMENTS (6:20 p.m.)**

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov)), or in person to city staff.**
6. **CONSENT AGENDA (6:25 p.m.)**

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

  - A. Approval of Council Meeting Minutes of:
    1. August 18, 2020, Work Session;
    2. September 8, 2020, Study Session;
    3. September 15, 2020, Work Session; and
    4. September 15, 2020, Regular Session.
  - B. Appointments to the Tree Board - Resolution

6. **CONSENT AGENDA (continued)**
  - C. **Authorization of a Development Agreement for the Monroe Apartments Project - Resolution** 24
  - ~~D. **Authorization of a Contract for the Linwood Avenue Safe Access for Everyone (SAFE) / Safe Routes to Schools (SRTS) Project - Resolution**~~  
(removed from the agenda)
7. **BUSINESS ITEMS**
  - A. **Intersection Murals - Discussion (6:30 p.m.)** 54  
Staff: Ann Ober, City Manager
  - B. **Mental Health - Discussion (7:00 p.m.)** 59  
Staff: Ann Ober, City Manager, and  
Luke Strait, Police Chief
  - C. **Public Tree Code - Discussion (8:00 p.m.)** 62  
Staff: Peter Passarelli, Public Works Director
  - D. **Central Milwaukie Bikeway Connections Project - Discussion (9:00 p.m.)** 188  
Staff: Brett Kelver, Associate Planner
8. **PUBLIC HEARINGS**
  - A. **None Scheduled.**
9. **COUNCIL REPORTS (9:30 p.m.)**
10. **ADJOURNMENT (9:35 p.m.)**

#### **Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice**

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#### **Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)**

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

#### **Executive Sessions**

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



## COUNCIL REGULAR SESSION

Zoom Video Conference  
www.milwaukieoregon.gov

2324<sup>th</sup> Meeting

## MINUTES

OCTOBER 20, 2020

**Council Present:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy, and Mayor Mark Gamba

**Staff Present:** Assistant City Manager Kelly Brooks  
Associate Planners Brett Kelter, Vera Kolas  
City Attorney Justin Gericke  
City Engineer Steve Adams  
City Manager Ann Ober  
City Recorder Scott Stauffer  
Climate Action & Sustainability Coordinator  
Natalie Rogers

Community Engagement Coordinator Jason Wachs  
Communication Program Manager Jordan Imlah  
Planning Manager Laura Weigel  
Police Chief Luke Strait  
Police Detective Kathryn Meier  
Police Officer Mark Inman  
Public Works Director Peter Passarelli

**Mayor Gamba** called the meeting to order at 6:05 p.m.

### 1. CALL TO ORDER

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

### 2. ANNOUNCEMENTS

**Mayor Gamba** announced upcoming activities, including the city's Arbor Day event and leaf drop sessions, drive-thru Halloween events, and a prescription drug turn-in event.

**Councilor Batey** provided an update on the Bring Play to Milwaukie Bay campaign, noting they had raised 60% of their fundraising goal.

### 3. PROCLAMATIONS AND AWARDS

#### **A. Milwaukie High School (MHS) Outstanding Student Achievement – Award**

**Carmen Gelman**, MHS Principal, introduced Eden Johnson and Council congratulated her on her academic and extra-curricular achievements.

**Ms. Gelman** provided an update on the school year. She commented on the challenges of distanced learning and reported that athletic teams may start practicing soon.

### 4. SPECIAL REPORTS

**A. None Scheduled.**

### 5. COMMUNITY COMMENTS

**Mayor Gamba** reviewed the public comment procedures and **Ms. Ober** reported that there was no follow-up report from the October 6 community comments. It was noted that no audience member wished to speak to Council.



## **6. CONSENT AGENDA**

It was moved by Councilor Parks and seconded by Councilor Batey to approve the Consent Agenda as presented.

### **A. City Council Meeting Minutes:**

1. August 18, 2020, Work Session;
2. September 8, 2020, Study Session;
3. September 15, 2020, Work Session; and
4. September 15, 2020, Regular Session.

**B. Resolution 64-2020:** A resolution of the City Council of the City of Milwaukie, Oregon, making appointments to the Tree Board.

**C. Resolution 65-2020:** A resolution of the City Council of the City of Milwaukie, Oregon, authorizing the city manager to execute a development agreement for the development of a residential multi-family development and associated public improvements for the Monroe Apartments development.

Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]

## **7. BUSINESS ITEMS**

### **A. Intersection Murals – Discussion**

**Mr. Imlah** provided an overview of the city’s street intersection mural program, noting the application and approval process, and the role of the Arts Committee in administering the program.

**Stephan Lashbrook**, Lewelling Neighborhood District Association (NDA) Chair, acknowledged the community members who had participated in the mural discussion.

**Ernesto Dominguez** and **Bryan Izquierdo**, Milwaukie residents, discussed the proposed Rainbow Lane street art project in the Lewelling neighborhood. They explained where the idea came from, where the mural would be painted, and the symbolism of the proposed design. They remarked on the process the project had been through, noting discussions at neighborhood meetings and comments received from neighbors about the mural.

**Rebecca Stavenjord**, Milwaukie resident and Girl Scout Troop 10283 leader, commented on the troop’s interest in supporting the mural project. She introduced troop members Ansa and Jules and noted the leadership and presentation skills troop members had gained by participating in the project. She thanked the neighborhood for welcoming the troop into the conversation.

**Mr. Dominguez** and **Mr. Lashbrook** explained that the mural program required 80% of neighbors near a proposed mural site to approve of the project. They reported that five neighbors were opposed to the Rainbow Lane mural, 17 supported it, and nine had not responded. They explained that the no responses had stopped the project because of the program’s approval requirement. **Mr. Lashbrook** commented on other ways to gauge neighbor reaction to a mural. He reported that the Lewelling neighborhood believed Council should revisit the program’s neighbor support requirement.

**Hamid Shibata Bennet**, Arts Committee Chair, expressed the committee’s support for the mural and appreciation for the neighborhood involvement in the project.

**Ms. Ober** remarked that staff would apply any change Council decided to make to the program across the board for all mural projects.

**Mr. Lashbrook** expressed appreciation for the leadership and efforts of Mr. Dominguez, Mr. Izquierdo, and Girl Scout Troop 10283.

**Mayor Gamba** commented that because a couple murals had been approved in the city it was an appropriate time to review the process. He suggested Council revisit program requirements related to contacting neighbors within a 400-foot circle of the mural site and requiring that 80% of neighbors support a project. He remarked on the importance of making sure all neighbors are notified of a proposed project.

**Councilor Batey** noted she had discussed the issue with community members. She commented on whether non-responding neighbors should be able to stop a project and suggested they should not be a factor in determining whether a mural is approved.

**Ms. Ober** noted that the mural program had been originally adopted by Council motion, so an informal Council consensus at the current meeting could provide staff the necessary direction to change the program requirements.

**Councilor Batey** suggested that the 400-foot notification area requirement did not need to be changed, based on the experiences of the approved mural projects to-date.

**Councilor Hyzy** and **Mayor Gamba** remarked on how Council should approach the different program requirements.

**Councilor Parks** asked if the Arts Committee had discussed program changes. She reiterated that program changes would affect future murals and expressed support for changing the weight given to non-responses in terms of the neighbor approval requirement. She wondered if the program changes should be presented for community discussion on the city's new online community engagement platform.

**Council President Falconer** explained that the city's mural program was modeled after the City of Portland's program and had been informed by the neighbor experiences of painting a mural at an intersection on the Milwaukie-Portland border. She suggested it would be appropriate for Council to change the program and commented on whether a 400-foot notification circle was necessary for a mural. She expressed support for changing the neighbor response threshold to remove the weight given to non-responding neighbors. She believed there was no need for a committee to review a proposal if the program objectives and requirements were made clear.

**Councilor Hyzy** expressed concern that changing the program would disturb the peace of the neighborhood. She expressed support for removing vacant lots and non-responding neighbors from the approval requirement. She wondered what 20% of neighbors objecting to a mural meant for the neighborhood. She believed neighbors within 400 feet who are outside city limits should be included. **Mayor Gamba** concurred with Councilor Hyzy's remarks and concerns.

It was Council consensus that proposed mural projects would be allowed to proceed if the mural received 80% support from responding neighbors with non-responses not counting as opposition to the mural. The group noted that a mural applicant would need to document that all neighbors had received the notice.

The group discussed whether the number of people who live in a house should impact that house's response to a proposed mural project and the approval threshold required for the project to proceed. **Councilors Batey and Parks** expressed support for each

house having one vote. **Councilor Hyzy** suggested the program encourage households to discuss proposed murals and report to the neighborhood if there was disagreement.

**Councilor Batey** suggested the required neighborhood notice circle be reduced to 300 or 200 feet. The group discussed how big the notification circle area should be and it was Council consensus that the neighbor notification area for a proposed mural project should be reduced to 300 feet.

The group noted that Council did not want to change the one-house one-vote basis for neighbor responses or any of the other program questions posed by the neighborhood.

**Ms. Ober** noted staff would update the program guidelines to reflect the changes approved by Council. **Council President Falconer** and **Ms. Ober** remarked on program requirements for mural content and concerns about freedom of speech protections that needed to be reviewed by staff and the Arts Committee.

**Mayor Gamba** recessed the meeting at 7:34 p.m. and reconvened at 7:45 p.m.

## **B. Mental Health – Discussion**

**Chief Strait** explained that Detective Meier and Officer Inman would provide an overview of the Milwaukie Police Department's (MPD's) responses to mental health situations through de-escalation and connecting individuals with public health services.

**Officer Inman** and **Detective Meier** introduced themselves, noting their experience working with mental health situations.

**Officer Inman** reviewed service definitions related to the department's response to mental health situations and noted the mental health training MPD staff are required to complete. He provided an overview of how officers respond to mental health calls. He and **Detective Meier** explained how officers determine whether a call is criminal, non-criminal, or a criminal and mental health situation.

**Detective Meier** discussed obstacles that delay or prevent officers from getting help to those in need of mental health and social services. She explained differences between police officer and mental health worker responses to mental health situations. She noted how law enforcement and social service providers work together.

**Detective Meier** and **Officer Inman** discussed situations that MPD officers and mental health professionals had responded to. They noted programs that had been developed in response to recognized needs in the community, including a fund for veterans in mental health crisis and programs that connect individuals with services.

**Brian Dwiggin**, Mental Health Counselor with Clackamas County Behavioral Health, discussed the county's work with law enforcement agencies to provide mental health services. He noted the state's recent mental health investments to fund clinicians who can respond to situations with law enforcement. **Chief Strait** and **Officer Inman** thanked Mr. Dwiggin and the county for their work with law enforcement agencies.

**Officer Inman** presented data comparing mental health calls in Eugene, Oregon, and Milwaukie. He summarized that going forward the MPD would continue to enhance officer training and collaboration with mental health service providers. **Chief Strait** added that the department would continue to evaluate the services it provides and was committed to working with community partners. He asked for Council feedback on how the MPD approaches mental health.

**Councilor Hyzy** asked how many of the mental health callers were repeat calls. **Chief Strait** guessed that about half were repeat callers. He remarked that the MPD worked to find the right solution for repeat callers.

**Ms. Ober** thanked Detective Meier and Officer Inman for their work and remarked on instances where MPD officers have been called to assist an individual several times in a day because of the challenges of seeking help for mental health issues.

**Mayor Gamba** asked how many employees Eugene had in its mental health program. **Mr. Dwiggins** commented on the structure of Eugene's program and suggested they employed more staff than Clackamas County's program. **Mayor Gamba** and **Ms. Ober** remarked on the population size and funding differences between the Eugene and Milwaukie/Clackamas County programs. **Ms. Ober** and **Mr. Dwiggins** commented on mental health program funding and the county's plans to expand its program.

**Mayor Gamba** expressed appreciation for MPD's mental health response and the county's mental health services program. He expressed interest in talking with the county to map out long-term mental health service needs to lobby the state and federal government for resources.

**Councilor Hyzy** expressed appreciation for Eugene's program and noted the challenges of operating a program in a county as geographically diverse as Clackamas. She agreed with the mayor's interest in working with the county to identify what resources are needed to respond to mental health issues.

**Councilor Batey** asked if responding to mental health calls was not about a capacity issue but more about getting individuals to accept services. **Officer Inman** and **Detective Meier** confirmed that MPD officers have been able to find a place for individuals in a mental health crisis to go to, when the individual makes the personal decision to accept the services. **Mr. Dwiggins** remarked on the challenges of finding a place for individuals amid the ongoing coronavirus (COVID-19) pandemic. **Councilor Hyzy** hoped that the voter-approved Metro supportive services bond would address the system-wide issues of finding a place for people to be.

The group discussed the remaining agenda items.

**Mayor Gamba** recessed the meeting at 9:15 p.m. and reconvened at 9:18 p.m.

### **C. Public Tree Code – Discussion**

**Mr. Passarelli** provided an update on the city's work to rewrite the section of the Milwaukie Municipal Code (MMC) that dealt with tree care and management on public property.

**Ms. Rogers** reviewed federal and state protections for birds and trees and noted bird management practices to keep in mind when caring for trees. **Mr. Passarelli** explained that the goal of the proposed code changes was to promote education and outreach efforts and best management practices.

**Mr. Passarelli** discussed proposed changes to fees related to street and public tree removal. He explained that the changes were based on research that found smaller trees have a higher mortality rate and street trees required more protection. He presented and commented on each fee change. He and **Councilor Batey** noted that the proposed fee changes were not for trees located on private property. **Mr. Passarelli**

suggested at a future meeting staff could compare the proposed fees with fees charged by other cities. He remarked that ideally healthy street trees would not be removed.

The group noted a question had been typed into the Zoom chat. **Mr. Passarelli** explained how a tree removal fee would be calculated. He noted that the Master Fee Schedule included all fees the city charged.

**Mr. Passarelli** reviewed the actions that would be exempt from a fee, including the removal of hazardous trees, minor maintenance work, and public improvements. **Mayor Gamba**, **Mr. Passarelli**, **Councilor Hyzy**, and **Ms. Ober** commented on the unknown impacts of charging a fee for a tree removal required for a city project. **Ms. Ober** reported that a fund had been established to collect revenue from Capital Improvement Plan (CIP) projects to support tree replanting.

**Mayor Gamba** and **Mr. Passarelli** noted that required tree plantings for city projects were funded by the utility fund.

**Ms. Brooks** commented that staff worked hard to not remove trees for city projects and suggested that charging a fee removal would cause projects to cost more.

**Councilor Hyzy** reiterated the question about whether the tree fund would be able to fund the planting and maintenance of new trees. **Mr. Passarelli** believed that at some point the fund would have the resources to support the planting and care of new trees. The group noted that the city already adhered to replanting requirements for projects and discussed how a removal fee could help ensure that trees were being replanted.

**Mr. Passarelli** suggested staff was looking for Council feedback to be able to bring adoption-ready code to the November 17 meeting. He reviewed the proposed code language related to the tree removal permit program. He and **Councilor Batey** remarked on the importance of neighbors receiving notice before a tree is removed.

**Mr. Passarelli** reviewed the proposal to offer a low-income assistance program for the tree removal fee. The group remarked on differences between the city's tree removal assistance program and utility assistance program. They commented on the program goals of reducing the number of trees removed and assisting low-income residents in caring for their homes. They noted common reasons people seek tree removal permits and discussed different ways to structure the fee assistance program.

**Ms. Ober** and **Mayor Gamba** observed that Council may not be comfortable adopting the code on November 17 given the number of outstanding issues to address.

**Councilor Hyzy** expressed support for giving staff discretion to determine the assistance program rules to account for various home maintenance costs. **Ms. Rogers** and **Mr. Passarelli** noted the assistance program only covered the city's fee to remove a tree, not the actual cost of hiring an arborist to remove a tree. They commented on how the assistance program had been structured.

**Mayor Gamba** agreed that the city didn't want to encourage tree removal and did not want to cause an undue financial hardship. He encouraged staff to consider the fee structure and find a happy medium. The group remarked on whether there was a city fee for planting a tree and staff agreed to review the fee structure to determine if there was a de-facto fee because of the requirement to get a permit to plant a tree in the public right-of-way (ROW).

The group noted it was 9:58 p.m. and item 7. D. would be moved to a future agenda.

It was moved by Council President Falconer and seconded by Councilor Hyzy to continue the meeting until 10:15 p.m. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]

**Councilor Hyzy** asked who would pay the tree removal fee for a tree on public land that is managed by another agency. The group acknowledged that the city owned its parks but the North Clackamas Parks and Recreation District (NCPRD) managed the parks and would pay a tree removal fee.

**Councilor Hyzy** asked about the reference to a conditional tree removal fee. The group noted the conditional fee may relate to situations where a tree needed to be removed before a permit could be approved.

**Councilor Hyzy** asked how the staff’s experience writing a public tree code would inform the creation of a private tree code. **Mr. Passarelli** remarked that staff hoped the fee structures for public and private trees would be similar.

**Mr. Passarelli** summarized that Council would like to see code language that gave staff some discretion in developing the parameters of the low-income assistance program.

**Ms. Ober** believed Council wanted staff discretion with a tiered fee structure. The group commented on what program requirement language could be in the code.

**Ms. Ober** suggested staff would work on a fee structure that responds to Council’s remarks and would meet with Council members individually to get to a place where it could be adopted on November 17. She asked for confirmation that Council was comfortable with staff looking at ways for the city to self-fund tree planting elements of city projects in the proposed tree code. It was Council consensus that staff should include a self-funding element for planting trees for city projects.

**D. ~~Central Milwaukie Bikeway Connections Project~~** (removed from the agenda)

## **8. PUBLIC HEARING**

**A. None Scheduled.**

## **9. COUNCIL REPORTS**

**Councilor Batey** remarked on an upcoming Portland City Council hearing on their proposed South Willamette Greenway Plan that would include a no wake zone from the Sellwood Bridge to Elk Rock Island.

## **10. ADJOURNMENT**

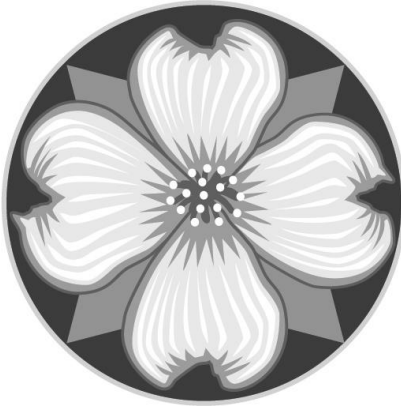
It was moved by Councilor Parks and seconded by Council President Falconer to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]

**Mayor Gamba** adjourned the meeting at 10:11 p.m.

Respectfully submitted,

  
 Scott Stauffer, City Recorder

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**RS Agenda Item**

**2**

## **Announcements**



# ARBOR DAY



## Mayor's Announcements – Oct. 20, 2020

- **Arbor Day – Sat., Oct. 24 (10 AM – 12 PM)**
  - Public Works Campus, 6101 SE Johnson Creek Blvd.
  - Ceremonial tree planting, free trees, & Voodoo doughnuts
  - Tree Board and urban forester to answer questions
- **Clackamas County Scare Fair – Oct. 23-25, 30 & Nov. 1 (7 – 12 PM)**
  - Drive through Halloween experience
  - Clackamas County Fairgrounds, 694 NE 4<sup>th</sup> Ave., Canby, OR
- **Prescription Drug Turn-In Event – Sat., Oct. 24 (10 AM – 2 PM)**
  - Public Safety Building (3200 SE Harrison St.). Drive-thru only. Enter lot from Railroad Ave. and exit onto Harrison St.
  - Have prescriptions in a bag or box to quickly hand off.
  - Please wear face coverings during the exchange.
- **NCPRD Boo Bash – Fri., Oct. 30 (5:30 – 8:30 PM)**
  - Drive-through Halloween event at Aquatic Park (7300 Harmony Rd.)
  - Registration required. Free for NCPRD residents / \$5 for non-residents
- **Leaf Drop Sessions – Sat. Nov. 7, 14 & 21 and Dec. 5 & 12 (7 AM – 2 PM)**
  - Public Works Campus, 6101 SE Johnson Creek Blvd.
  - Must live within the city limits of Milwaukie. Bring along a city utility bill as proof.
  - Face masks are required. Attendees responsible for emptying own leaves.
  - Leaves accepted in paper, plastic, or loose, however paper bags are preferred.
  - Service is free, but city will be collecting non-perishable food for local families.

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**RS Agenda Item**

**5**

**Community Comments**

## RS 5. 10/20/2020 Correspondence

Re: Comments regarding **Agenda 5; Community Comments, and Agenda 7 A, Intersection Murals**, Regular Session, October 20, 2020

Hello: Mayor Gamba, Council President Falconer, and Councilors Batey, Parks, Hyzy; and City Manager Ober.

### Agenda 5, Community Comment:

I **appreciate** the rather **quick response** I get from City Staff, **Steve Adams** our City Engineer, **regarding my testimony this last Regular Session (October 6<sup>th</sup>)**, **regarding the Hillside Park north side connection plan for 29<sup>th</sup> Avenue**. I find it is our City which *preliminarily* recommends to the Clackamas Housing Authority this connection remain a bicycle-and-pedestrian-only connection (with exception for emergency vehicles). Must await further transportation studies to finalize City's position. But I appreciate City staff shedding light on this matter of high importance for the Ardenwald neighborhood.

### Agenda 7 A, Intersection Murals, critique of new City Mural at corner of 40<sup>th</sup> and Harvey.



**New Mural 40<sup>th</sup> & Harvey**

I like the cheery new mural at 40 and Harvey. I do have ***some reservations*** about it, though. First it seems to cast Black people as of the servant class (maybe I am being hyperbolic...but it almost portrays a certain plantation kind of thought). Alternatively, I imagine if you drive into Milwaukie for the first time and see this mural, you might think the town is highly populated by Black people. I should think there is some way to signal our welcoming diversity and being inclusive without maybe – I dare say - falsely advertising what Milwaukie is at this time. Finally, it strikes me as rather coincidental this new mural comes at a time of racial tensions, and for this reason, I get a sense it is inspired by a spirit of identity politics and virtue signaling. Even **Good Art** does evoke thought, hey? Maybe it's part of finding our way forward.

Sincerely,

Elvis Clark, Ardenwald neighborhood, Milwaukie 97222

## Scott Stauffer

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**From:** Scott Stauffer  
**Sent:** Tuesday, October 20, 2020 6:59 PM  
**To:** Scott Stauffer  
**Subject:** 10/20 RS Zoom Chat Log 5. Comments

 Zoom Webinar Chat — □ ×

From E (el/he/him/his) to All panelists:

Hey Scott, what's the best email to send you the presentation for our portion of the meeting today?

From Me to All panelists:

Hi E - you can email it to  
ocr@milwaukieoregon.gov

From E (el/he/him/his) to All panelists:

Or should I just present from my computer?

From Me to All panelists:

I can make you a cohost and you can present it - which would be great - or I can run the slides, either way is fine  
But please email it to me either way for the record

### SCOTT STAUFFER, CMC

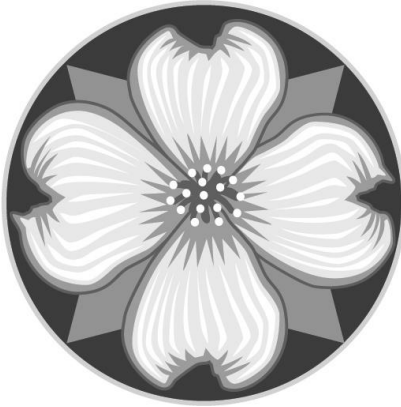
City Recorder

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City of Milwaukie

10722 SE Main St • Milwaukie, OR 97222



**RS Agenda Item**

**6**

**Consent Agenda**





## **COUNCIL WORK SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

## **MINUTES**

**AUGUST 18, 2020**

**Present by Video:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy, Mayor Mark Gamba

<b>Staff Present</b>	Assistant City Manager Kelly Brooks	Climate Action & Sustainability Coordinator Natalie Rogers
<b>by Video:</b>	City Attorney Justin Gericke	Communication Program Manager Jordan Imlah
	City Manager Ann Ober	Community Development Director Leila Aman
	City Recorder Scott Stauffer	Public Works Director Peter Passarelli

**Mayor Gamba** called the meeting to order at 4:03 p.m.

### **1. Arts Committee Annual Review – Discussion**

**Mr. Imlah** provided an overview of the Arts Committee membership and goals for 2020. He reported on the committee's recent events, including a virtual city hall artist gallery tour available on the [city's YouTube channel](#).

**Hamid Shibata Bennet**, Arts Committee Chair, reported on the committee's performance series partnership with the Chapel Theatre. He also reported on the Hearts in Parks partnership with the North Clackamas Parks and Recreation District (NCPRD) to promote chalk art in neighborhood parks.

**Mr. Imlah** provided an overview of the recently completed mural located at Chan's Steakery and noted the positive feedback it had received. He reported that the committee had received more mural applications. He explained that the next mural was scheduled to be painted by Jeremy Davis on the water tank located at 40<sup>th</sup> Avenue and Harvey Street. The water tank mural would feature nineteenth century orchardist Ah Bing and Milwaukie Pastry Kitchen owners Hurtis and Dorothy Hadley. **Mr. Shibata Bennet** added that Mr. Davis was a member of the Black, Indigenous, People of Color (BIPOC) community and the committee wanted to promote BIPOC artists.

**Councilor Batey** asked if a sealant would be applied to the murals and **Mr. Imlah** confirmed that it was part of the contract for artists to apply a sealant and an anti-graffiti coating to preserve the murals.

**Mr. Shibata Bennet** provided an update on the love rocks project the committee was supporting in partnership with Hidden Hearts Milwaukie. He commented on the benefits of having a community art project during the coronavirus (COVID-19) pandemic.

**Mr. Imlah** reported that the committee currently had an open call for art sculptures to be installed at city hall and in Dogwood Park.

**Mr. Shibata Bennet** provided details on the committee's Porchfest concert series. He explained that the citywide event would feature multiple performers across several locations over four consecutive Friday evenings beginning August 21. The committee was encouraging everyone to participate and enjoy socially distant music outside. He explained that Porchfest music events are held across the country and Milwaukie's Porchfest was sponsored by the Lewelling Neighborhood District Association (NDA).

The group discussed the planned Porchfest performances and noted that some performances would be livestreamed at [www.milwaukieporchfest.com](http://www.milwaukieporchfest.com).

## **2. Dogwood Park Framework Plan – Discussion**

**Ms. Brooks** explained that the 2011 concept plan for Dogwood Park did not address recent public inquiries about park usage and features. She provided an overview on the city's work with various community stakeholders to create a framework plan for the park.

**Mayor Gamba** and **Ms. Brooks** commented on the framework plan in relation to the potential future flow of Kellogg Creek. **Ms. Brooks** provided an overview the framework plan elements in relation to current park features. She discussed how the park would integrate with the Main Street plaza and the future home of the Milwaukie Sunday Farmers Market. **Councilor Batey** noted previous farmers market concerns about spacing for vendor booths. The group discussed the farmers market setup at the plaza.

Council commented on the framework plan, including the desire to add more shade elements. **Councilor Batey** commented that the park was a streamside habitat for Kellogg Lake and Creek and should be vegetated with appropriate trees for riparian habitat, which did not include the dogwood. **Ms. Brooks** reported that the Parks and Recreation Board (PARB) felt that a dogwood tree needed to be included in the park to recognize the name of Dogwood Park. **Councilor Batey** suggested the park be renamed to better reflect the area that featured native plants. **Council President Falconer** asked what a renaming process would look like and **Ms. Brooks** and the group commented on the factors and stakeholders involved. **Ms. Ober** confirmed a renaming process would involve the NDA, PARB, and NCPRD, and would require public hearings. **Councilor Hyzy** was curious to understand the Dogwood Park name origins and the history.

**Council President Falconer** commented on the large grass area that the park's framework plan called for. She wondered if the city took more of a native planting approach that could assist the city when applying for grants to support this project and the Kellogg Dam removal project. She and **Ms. Brooks** commented on how the two projects interact and reported on how the city could work on habitat restoration. The group commented on adding trees and native groundcover plants that would provide shade.

**Ms. Ober** clarified that the completion of the framework plan was the last of the city's work on this park. The city created the framework plan to respond to community concerns about future uses of the park. Staff was open to more possibilities moving forward but at this time no further staff time would be dedicated to developing the park. She noted how city partners may assist in future opportunities. **Ms. Brooks** confirmed staff did not have the resources to make additional adjustments. She thanked Council for their feedback and explained how more implementation partnerships could develop.

**Councilor Batey** believed the park was likely founded in 2003 during the city's centennial. The group commented on the dogwood species in the park.

## **3. Adjourn**

**Mayor Gamba** adjourned the meeting at 5:15 p.m.

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II



## COUNCIL WORK SESSION

Zoom Video Conference  
www.milwaukieoregon.gov

## MINUTES

AUGUST 18, 2020

**Present by Video:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy, Mayor Mark Gamba

<b>Staff Present</b>	Assistant City Manager Kelly Brooks	Climate Action & Sustainability Coordinator Natalie Rogers
<b>by Video:</b>	City Attorney Justin Gericke	Communication Program Manager Jordan Imlah
	City Manager Ann Ober	Community Development Director Leila Aman
	City Recorder Scott Stauffer	Public Works Director Peter Passarelli

**Mayor Gamba** called the meeting to order at 4:03 p.m.

### 1. Arts Committee Annual Review – Discussion

**Mr. Imlah** provided an overview of the Arts Committee membership and goals for 2020. He reported on the committee's recent events, including a virtual city hall artist gallery tour available on the [city's YouTube channel](#).

**Hamid Shibata Bennet**, Arts Committee Chair, reported on the committee's performance series partnership with the Chapel Theatre. He also reported on the Hearts in Parks partnership with the North Clackamas Parks and Recreation District (NCPRD) to promote chalk art in neighborhood parks.

**Mr. Imlah** provided an overview of the recently completed mural located at Chan's Steakery and noted the positive feedback it had received. He reported that the committee had received more mural applications. He explained that the next mural was scheduled to be painted by Jeremy Davis on the water tank located at 40<sup>th</sup> Avenue and Harvey Street. The water tank mural would feature nineteenth century orchardist Ah Bing and Milwaukie Pastry Kitchen owners Hurtis and Dorothy Hadley. **Mr. Shibata Bennet** added that Mr. Davis was a member of the Black, Indigenous, People of Color (BIPOC) community and the committee wanted to promote BIPOC artists.

**Councilor Batey** asked if a sealant would be applied to the murals and **Mr. Imlah** confirmed that it was part of the contract for artists to apply a sealant and an anti-graffiti coating to preserve the murals.

**Mr. Shibata Bennet** provided an update on the love rocks project the committee was supporting in partnership with Hidden Hearts Milwaukie. He commented on the benefits of having a community art project during the coronavirus (COVID-19) pandemic.

**Mr. Imlah** reported that the committee currently had an open call for art sculptures to be installed at city hall and in Dogwood Park.

**Mr. Shibata Bennet** provided details on the committee's Porchfest concert series. He explained that the citywide event would feature multiple performers across several locations over four consecutive Friday evenings beginning August 21. The committee was encouraging everyone to participate and enjoy socially distant music outside. He explained that Porchfest music events are held across the country and Milwaukie's Porchfest was sponsored by the Lewelling Neighborhood District Association (NDA).



The group discussed the planned Porchfest performances and noted that some performances would be livestreamed at [www.milwaukieporchfest.com](http://www.milwaukieporchfest.com).

## **2. Dogwood Park Framework Plan – Discussion**

**Ms. Brooks** explained that the 2011 concept plan for Dogwood Park did not address recent public inquiries about park usage and features. She provided an overview on the city's work with various community stakeholders to create a framework plan for the park.

**Mayor Gamba** and **Ms. Brooks** commented on the framework plan in relation to the potential future flow of Kellogg Creek. **Ms. Brooks** provided an overview the framework plan elements in relation to current park features. She discussed how the park would integrate with the Main Street plaza and the future home of the Milwaukie Sunday Farmers Market. **Councilor Batey** noted previous farmers market concerns about spacing for vendor booths. The group discussed the farmers market setup at the plaza.

Council commented on the framework plan, including the desire to add more shade elements. **Councilor Batey** commented ~~on the fact that the park was a streamside habitat for Kellogg Lake and the future Kellogg Creek, and so~~ should be vegetated with appropriate trees for riparian habitat, which did not include the dogwood. **Ms. Brooks** ~~commented~~ reported that the Parks and Recreation Board (PARB) felt that a dogwood tree needed to be included in the park to recognize the name of Dogwood Park. **Councilor Batey** ~~suggested that perhaps trees included in the framework plan and believed~~ the park should be renamed to better reflect the area that featured native plants. **Council President Falconer** asked what a renaming process would look like and **Ms. Brooks** and the group commented on the factors and stakeholders involved. **Ms. Ober** confirmed a renaming process would involve the NDA, ~~the Parks and Recreation Board (PARB),~~ and NCPRD, and would require public hearings. **Councilor Hyzy** was curious to understand the Dogwood Park name origins and the history.

**Council President Falconer** commented on the large grass area that the park's framework plan called for. She wondered if the city took more of a native planting approach that could assist the city when applying for grants to support this project and the Kellogg Dam removal project. She and **Ms. Brooks** commented on how the two projects interact and reported on how the city could work on habitat restoration. The group commented on ~~the desire to add trees~~ adding trees and native groundcover plants ~~that would bring provide shade to the area.~~

**Ms. Ober** clarified that the completion of the framework plan was the last of the city's work on this park. The city created the framework plan to respond to community concerns about future uses of the park. Staff was open to more possibilities moving forward but at this time no further staff time would be dedicated to developing the park. She noted how city partners may assist in future opportunities. **Ms. Brooks** confirmed staff did not have the resources to make additional adjustments. She thanked Council for their feedback and explained how more implementation partnerships could develop.

**Councilor Batey** believed the park was likely founded in 2003 during the city's centennial. The group commented on the dogwood species in the park.

## **3. Adjourn**

**Mayor Gamba** adjourned the meeting at 5:15 p.m.

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II

## COUNCIL STUDY SESSION

Zoom Video Conference  
www.milwaukieoregon.gov

## MINUTES

SEPTEMBER 8, 2020

**Council Present:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy, Mayor Mark Gamba

**Staff Present:** City Manager Ann Ober                      Public Works Director Peter Passarelli  
City Recorder Scott Stauffer

**Mayor Gamba** called the meeting to order at 5:19 p.m.

### 1. Clackamas County Water Environment Services (WES) – Update

**Greg Geist**, WES Director, remarked on the impacts of the Clackamas County wildfires on WES staff and facilities. He discussed WES' funding and reported that the agency had not seen a drop in revenue due to the coronavirus (COVID-19) pandemic. He noted that WES offered a utility payment assistance program.

**Mr. Geist** reported that WES had been working on updating its system development charge (SDC) rate structure to be based on the square footage of a home. **Council President Falconer** encouraged WES to look at including more tiers in the rate structure. **Mr. Geist** and **Mayor Gamba** commented on the challenges of creating an accurate water usage rate structure based on the square footage of a home.

**Mr. Geist** discussed infrastructure improvements at the Kellogg Creek Wastewater Recovery Facility. He noted the facility's capacity and reported that WES believed the facility would be able to handle the projected increased capacity over the coming years. He noted that, like most cities, Milwaukie's wastewater pipe system suffered from inflow and infiltration (I&I) issues. He observed that because of the city's agreement with WES there was dedicated funding each year to work on reducing I&I issues in Milwaukie.

The group discussed the cause of I&I issues, noting the constant challenge of finding and replacing aging pipes. **Mr. Passarelli** reported that the city had done a good job regulating cross connections which were often a source of I&I problems.

**Mr. Geist** discussed WES' work to address climate change and build a resilient system. **Mayor Gamba**, **Mr. Geist**, and **Councilor Hyzy** commented on whether WES facilities could replicate the solar and waste energy upgrades that had been done at a wastewater recovery facility in the City of Gresham, Oregon.

**Mr. Geist** continued to discuss WES' efforts to address climate change, including converting its fleet to smaller electric vehicles and collaborating with regional partners on climate modeling. **Mayor Gamba** and **Mr. Geist** noted that WES annually invested in planting trees and supporting local watershed councils.

**Mr. Geist** noted that the city had its own stormwater system and commented on WES' stormwater management for other service areas. He talked about natural area and wetland rehabilitation work WES had done and planned to do at sites around the North Clackamas area, including the Three-Creeks Natural Area. He reviewed WES' work to diversity its workforce and presented a video on the agency's outreach to high schools.

He and **Ms. Ober** commented on regional efforts to diversify the local workforce and recruit wastewater technicians.

**Mr. Geist** and **Councilor Hyzy** provided an update on the funding managed by the Kellogg Good Neighbor Committee (KGNC) used to address issues at the Kellogg facility. They noted recent turnover on the committee and how funding could be tracked better.

**Mr. Geist** reported that voters in Oregon City would see a ballot measure related to WES' Tri-City plant. The group commented on the wet weather discharge pipe alignment project Oregon City voters would be considering and noted it would not impact Milwaukie.

**Mr. Geist** urged the public to not flush wet wipes down the toilet as they cause big operational issues at the recovery facilities. He and **Mr. Passarelli** noted that WES would work with the city on educational outreach on how to dispose of wet wipes.

**Councilor Batey** and **Mr. Geist** discussed the multi-agency natural area rehabilitation project at the Three-Creeks Natural Area. They noted the outcome had not yet been determined and that there had been previous tree mapping projects done in the area. They noted natural area cleanup events WES supported and the potential to schedule more.

## **2. Kellogg Good Neighbor Committee (KGNC) – Update**

**Mr. Passarelli** and **Councilor Hyzy** reported that the KGNC had allocated some available funds for landscape work and planting around the Kellogg facility. They noted how much funding the committee has managed and how much would be available.

The group noted that due to a lack of members the KGNC had not been meeting very often but would meet soon because new members had been recently appointed.

**Chris Storey**, WES Assistant Director, noted that there were odor control improvements scheduled to be done at the Kellogg facility. **Mr. Geist** added that other improvements at the Kellogg facility would reduce the number of daily trips made by WES trucks. The group remarked on the environmental benefits of the facility improvements that would reduce the number of trips made each day by WES trucks.

**Mr. Storey** and **Mr. Geist** discussed the visual improvements the public would see soon around the Kellogg facility. They expressed WES' desire to work with the city to improve the area around the plant to be a welcoming natural and educational space.

## **Water Main Break and Clackamas Wildfires Updates**

**Mr. Passarelli** provided a brief update on a water main break in the North Milwaukie Innovation Area (NMIA) that would be repaired as soon as possible.

**Ms. Ober** commented on the status of the wildfires in Clackamas County.

## **2. Adjourn**

**Mayor Gamba** adjourned the meeting at 6:53 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder

## COUNCIL WORK SESSION

Zoom Video Conference  
www.milwaukieoregon.gov

## MINUTES

SEPTEMBER 15, 2020

**Present:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy

**Staff Present:**

Assistant City Manager Kelly Brooks	Community Development Director Leila Aman
Assistant Planner Janine Gates	Development Project Manager Alison Wicks
City Attorney Justin Gericke	Planning Manager Laura Weigel
City Manager Ann Ober	Senior Planner Vera Kolias
City Recorder Scott Stauffer	

**Mayor Mark Gamba** called the meeting to order at 4:02 p.m.

### 1. Downtown Milwaukie Business Association (DMBA) – Update

**Rory Dunnaback**, DMBA President, noted how the smoke from the recent wildfires had affected outdoor seating for downtown businesses. He expressed support for the city's recent skateboarding code work and looked forward to highlighting skateboarding at future First Friday events. He reported that the Sunshine Early Learning Childcare Center had received a grant to expand their daycare operations. He reported that Ovation Bistro had recently opened in downtown.

**Mr. Dunnaback** reported that downtown businesses were still seeing smashed windows and petty crimes. He believed the downtown trick-or-treat event would likely be canceled due to the coronavirus (COVID-19) pandemic though he hoped it could still happen in some way. He noted that the city's winter events like the umbrella parade and tree lighting really help boost downtown businesses. He noted that the DMBA leadership team had a vacancy and that it had been a busy time for business owners.

Council commented on the likelihood that fall and winter events would happen this year.

**Mr. Dunnaback** noted the importance of thinking creatively about events and wondered how businesses could better leverage the Sunday Farmers Market. He commented on the DMBA's role and ability to organize and plan events.

**Ms. Brooks** reported that staff had been brainstorming ways to hold the scarecrow contest, umbrella parade, and winter solstice events in compliance with COVID-19 guidelines. Staff would provide an event update in October. **Ms. Wicks** reported on the city's successful outdoor seating program that six businesses had participated in. She noted that staff was working to identify options in the public right-of-way (ROW) so businesses could use tents and heaters.

**Ms. Wicks** reported that the city would be announcing the second round of business relief fund checks to 15 businesses. She reported that Business Oregon had given the city additional grants for the second and third rounds of business relief checks.

**Mayor Gamba** hoped that a dispersed umbrella parade could take place and he thanked everyone for their work. **Councilor Batey** noted that the Milwaukie Parks Foundation would be conducting an October campaign to "Bring Play to Milwaukie Bay," and observed that some downtown restaurants were helping promote the campaign.

## **2. Kellogg Creek – Update**

**Neil Schulman**, North Clackamas Watersheds Council (NCWC), provided an overview of the community's desire to remove the Kellogg Dam. He noted the importance of returning to a free-flowing Kellogg Creek and the return of salmon into the watershed. He reported that the removal of the dam was still recognized as a top priority by NCWC, the Oregon Department of Transportation (ODOT), and the Oregon Department of Fish and Wildlife (ODFW). He observed that city leadership and public support was strong and pointed out it was a complex project with multiple solutions.

**Mr. Schulman** remarked on the benefits to removing the dam. He noted the project tagline "Kellogg for Coho" and explained that other fish beyond salmon would benefit from the dam removal, in addition to the climate benefits it would bring. He discussed how to move the project forward, noting there had never been serious design work done on what the restored lake and creek channel would look like. He discussed possible state and federal funding sources given the complexities of the dam removal and required replacement of the Hwy 99E bridge which ran over the dam, as well as the water channel restoration.

**Mr. Schulman** reported on recent developments, including NCWC's stakeholder engagement and meetings with the governor's office. He noted project stakeholder agencies and groups, and shared takeaways from Regional Solutions meeting. He explained that the next step was to design what the restored channel would look like. He noted the costs and timeline for the project to be shovel ready. He and **Councilor Batey** noted that a topic during the Regionals Solutions meeting had been how much of the basalt dike in the dam needed to be removed. **Mr. Schulman** noted the dam layout, noting that the bridge sat on the dam and there was a basalt dike under the dam.

**Mr. Schulman** reported that NCWC had raised \$75,000 of the \$100,000 needed for the design work. He thanked the city for being the first to provide funding. He reported that NCWC had received two design proposals from consulting firms. He commented on the design scope and noted it included the area from Oatfield Road to the Willamette River.

**Mr. Schulman** explained that after the design work the next step involved working with ODOT to meet mitigation needs while updating aging infrastructure. He noted stakeholder engagement plans and that NCWC was monitoring federal funding opportunities. He thanked the city for their support. He discussed the role of city staff in the design and how public support could be used as the project developed.

**Councilor Hyzy** noted ODOT's priorities and believed the state legislature needed to clarify the project's prioritization to move on the project. She asked when a good time would be to start the conversation about legislative support. She and **Mr. Schulman** discussed the legislative and political approaches to promote the project.

**Mayor Gamba** noted that the project included a box culvert. He reported that ODOT had a fund for box culvert removals and that the project could use ODOT's entire yearly culvert budget. He and **Mr. Schulman** commented that the project was ODOT's number one priority.

## **Introduction of New Planning Staff**

**Ms. Aman** introduced Ms. Weigel, the city's new planning manager, and Ms. Gates, the city's new assistant planner. **Ms. Weigel** and **Ms. Gates** introduced themselves and the group welcomed them to Milwaukie.



### **3. Comprehensive Plan Implementation – Update**

**Ms. Kolias** reported that the city's recently updated Comprehensive Plan and Oregon House Bill 2001 (HB 2001) had resulted in the expansion of middle housing options. She noted that the city's first phase of the Comprehensive Plan implementation project would focus on housing and related parking and tree protection code changes.

**Ms. Kolias** reported that the city had signed a contract with Urbsworks to help with the Comprehensive Plan implementation project. She also reported Urbsworks would help staff with the initial code audit work. She provided an overview of the topics covered at the Comprehensive Plan Implementation Committee's (CPICs) second meeting and what would be discussed at its next meeting. She shared a timeline for the plan implementation, noted next steps, and discussed planned public engagement work.

**Councilor Batey** and **Ms. Kolias** discussed when the state legislature would have regulations and guidelines for implementing the provisions of HB2001.

**Councilor Hyzy** asked about the type of engagement work that would be done around CPIC's effort to engage with the city's Black, Indigenous, and People of Color (BIPOC) community. **Ms. Kolias** remarked on staff's work to develop and implement a robust engagement plan.

**Mayor Gamba** asked when CPIC would begin to dig into code concepts. **Ms. Kolias** reported that code discussions would occur during the committee's November and December meetings.

### **4. Adjourn**

**Mayor Gamba** adjourned the meeting at 5:29 p.m.

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II

**COUNCIL REGULAR SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

2322<sup>nd</sup> Meeting

**MINUTES**

SEPTEMBER 15, 2020

**Council Present:** Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy, and Mayor Mark Gamba

<b>Staff Present:</b> Accounting & Contracts Specialist Kelli Tucker	Code Compliance Coordinator Tim Salyers
Assistant City Engineer Jennifer Garbely	Community Development Director Leila Aman
Assistant City Manager Kelly Brooks	Human Resources Director Gary Rebello
Assistant Finance Director Keith McClung	Police Chief Luke Strait
Building Official Samantha Vandagriff	Police Officers Lindsey Nold, Eduardo
City Attorney Justin Gericke	Sanchez, Kenny Simac
City Manager Ann Ober	Senior Planner David Levitan
City Recorder Scott Stauffer	

**Mayor Gamba** called the meeting to order at 6:02 p.m.

**1. CALL TO ORDER**

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

**2. ANNOUNCEMENTS**

**Mayor Gamba** announced upcoming community events, city meetings, and home energy score and Clackamas watersheds webinars.

**3. PROCLAMATIONS AND AWARDS****A. Milwaukie Police Department (MPD) Lifesaving Awards**

**Chief Strait** presented lifesaving awards to MPD officers Eduardo Sanchez, Lindsey Nold, Kenny Simac, Scott Hutson, and David McVeigh. He described the situations where the officers earned the awards. Council remarked on the officers' actions and thanked them for their service to Milwaukie.

**B. National Preparedness Month – Proclamation**

**Councilor Batey** introduced the proclamation and Julie Tanz and Judy Batt with the Milwaukie Community Emergency Response Team (CERT). **Ms. Tanz** presented information on being prepared for disasters and **Ms. Batt** noted CERT training courses available to the public. The group discussed the growth of CERT programs in Milwaukie and across the country. **Ms. Ober** thanked the first responders and volunteers who had worked to contain the recent wildfires. **Mayor Gamba** proclaimed September to be National Preparedness Month in Milwaukie.

**C. Distraction Free Driving Awareness Week – Proclamation**

**Mayor Gamba** introduced the proclamation and commented on the importance of not driving distracted. He proclaimed October 5-12, 2020 to be Distraction Free Driving Awareness Week in Milwaukie.



#### **D. Bring Play to Milwaukie Bay Campaign – Proclamation**

**Councilor Batey** and the Milwaukie Parks Foundation's **Lisa Gunion-Rinker** and **Emily Gilchrist** introduced the proclamation. They discussed the foundation's campaign to raise funds to install nature play equipment in the Milwaukie Bay Park. **Mayor Gamba** proclaimed October 2020 to be Bring Play to Milwaukie Bay Park Month.

#### **4. SPECIAL REPORTS**

**A. None Scheduled.**

#### **5. COMMUNITY COMMENTS**

**Mayor Gamba** reviewed the public comment procedures. **Ms. Ober** reported that there was no follow-up report from the September 1 community comments. **Chief Strait** provided an update on the recent fire on Elk Rock Island. It was noted that no audience member wished to speak to Council on a topic that was not on the agenda.

#### **6. CONSENT AGENDA**

**Mayor Gamba** noted he would remove 6. C. for separate consideration...

It was moved by **Council President Falconer** and seconded by **Councilor Hyzy** to approve Consent Agenda items A. and B.

**A. City Council Meeting Minutes:**

1. August 11, 2020, Study Session.

**B. Resolution 61-2020: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, authorizing execution of a contract with OpenGov for budgeting performance software.**

~~**C. A resolution authorizing execution of a sole source contract with OpenEdge for merchant card payment services.**~~ (removed for separate consideration)

Motion passed with the following vote: **Councilors Falconer, Batey, Parks, and Hyzy** and **Mayor Gamba** voting "aye." [5:0]

**C. Authorization of a Contract for Merchant Card Payment Services – Resolution**  
(removed from the consent agenda)

**Mayor Gamba** pulled the item from the consent agenda because he was concerned that the city only had one payment card services vendor, OpenEdge, to choose from. He asked why the city's financial software provider, Tyler Technologies, only worked with one vendor. He and **Councilor Batey** expressed concern that Tyler Technologies was creating a monopoly for OpenEdge, a vendor that had ties to the fossil fuels industry.

**Ms. Dennis** agreed that Tyler Technologies had given the city only one vendor to work with. She explained that the city used Tyler Technologies' Incode financial software which was only able to communicate with OpenEdge. She and **Mayor Gamba** discussed Tyler Technologies' plans for future Incode integration with other systems. **Ms. Tucker** and **Mr. McClung** remarked on the trend of corporate consolidation in the commercial card industry. The group noted the feasibility of integrating Incode with other systems.

**Mayor Gamba** expressed disapproval of Tyler Technologies' decision to only work with OpenEdge. He suggested the city sign the shortest-term contract possible with OpenEdge, talk with Tyler Technologies about expanding the number of vendors available, and explore finding a new financial services vendor. **Ms. Ober** noted that finding a new financial software would require a lot of staff time.

The group noted that finding a new financial services vendor had not been included in the staff workplan and that other vendors may cost more than Tyler Technologies. **Councilor Batey** commented that it would be nice to better understand what the city's options were.

**Councilor Hyzy** agreed with Mayor Gamba's concerns and agreed that staff didn't have time to find a new financial software. She remarked on the tie of American banks to the fossil fuels industry and noted that the city had recently decided to switch banks to address that issue. She wasn't sure that card payment vendor issue was a fight the city could win but believed the city should ask Tyler Technologies for change.

**Mayor Gamba** wanted to talk to Tyler Technologies about the situation and reiterated his request that the contract with OpenEdge be for the shortest possible term. **Ms. Ober** did not have concerns about the city taking to Tyler Technology and seeking a short contract term. She reiterated that staff did not have the capacity to switch financial software.

**Council President Falconer** remarked that short-term contracts usually took more of an organization's resources. The group remarked on the need to find out if the contract service rates would change by going to a shorter contract.

**Mayor Gamba** remarked on the message sent to Tyler Technologies by the city signing a standard three-year contract. He suggested if the rate difference for a shorter contract was a few thousand dollars more the city should go with it. **Ms. Ober** suggested the city needed to call Tyler Technologies to get answers. She noted the city needed to be able to take credit card payments and acknowledged the work done by staff and Council on the proposed contract.

**Mayor Gamba** and **Ms. Ober** noted that the proposed contract did create some budget savings, which could be used to cover any fee increases of a shorter contract term.

The group noted next steps in contract discussions and that the item would be moved to the October 6 regular session agenda for Council consideration.

It was noted that Council would next hear agenda item 7. A., then 8. A. followed by 7. B.

## **7. BUSINESS ITEMS**

### **A. Police STOPS Data – Discussion** (moved up the agenda)

**Ms. Ober** introduced Steven Schuback, the city's human resources attorney, and Ken Sanchagrin with the Oregon Criminal Justice Commission (OCJC). She remarked on the city's work on the Council's equity, justice, and inclusion goal.

**Mr. Sanchagrin** introduced the Statistical Transparency of Policing (STOP) program. He explained how the program collects and reports data and noted the state legislature's goals in creating the program. He discussed how traffic stop data had been collected historically and how the historic data had created research challenges which the program aimed to address. He presented and commented on preliminary STOP data from Milwaukie, noting the impact that travel patterns and the coronavirus (COVID-19) pandemic had on traffic stops. He explained how STOP data is modeled and analyzed, accounting for the time of day, year, and what happens during a traffic stop. He and **Councilor Hyzy** commented on the source of national traffic stop data.

**Mr. Sanchagrin** and **Council President Falconer** noted that complete STOP data for Tier 2 agencies like the Milwaukie Police Department (MPD) would be made available to the public on December 1.

**Ms. Ober** commented on the importance of the city being honest and transparent about traffic stops in Milwaukie. She noted that STOP data and information about the city's equity work was available online at [www.milwaukieoregon.gov/equity](http://www.milwaukieoregon.gov/equity). **Council President Falconer** and **Mr. Sanchagrin** remarked on the importance of being transparent and noted that STOP data boiled down many individual experiences to numbers. **Ms. Ober** added that it was important for all voices to be heard including MPD officers.

**Mayor Gamba** recessed at 7:58 pm reconvened at 8:06 p.m.

## **8. PUBLIC HEARING**

### **A. Protest of Abatement at 12550 SE 43<sup>rd</sup> Avenue** (moved up the agenda)

Call to Order: **Mayor Gamba** called the public hearing on the protest of the city's decision to abate the property located at 12550 SE 43<sup>rd</sup> Avenue to order at 8:07 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to hear the property owner's protest regarding the city's abatement of the property.

Conflict of Interest: No Council member wished to declare a conflict of interest.

Staff Presentation: **Mr. Salyers** reviewed the code compliance process and the city's multi-year effort to work with the property owner to clean up the property. He noted Council's options and the group reviewed photos of the property.

Correspondence: it was noted that emails on the matter had been received from Milwaukie residents Bob and Sue Richardson, David Mullins, Kevin Stahl, Susanna Pai, and Nancy Watt.

Conduct of Hearing: **Mayor Gamba** reviewed the testimony procedures.

Audience Testimony: **Lowell Wittke**, property owner, introduced himself and commented on the insurance money he was to receive to repair the home following the 2018 fire. He suggested that his effort to repair the home had been hampered by the pandemic. He reported that he planned to hire someone to remodel the house following the original designs and planned to move into the house himself.

**Mayor Gamba** asked why Mr. Wittke had not paid to fix the house earlier. **Mr. Wittke** commented on his discussions with his insurance company and bank, and his considerations in hiring a contractor.

**Councilor Batey** noted that the property had been posted as a nuisance for a year and asked what had been done to clean up the property since then. **Mr. Wittke** reported that the plans were the same as before and that the city's building department had not issued a permit yet. **Councilor Batey**, **Mayor Gamba**, and **Mr. Wittke** noted that the building regulations had changed since the house had been built. They commented on the extent of the damage done by the fire and what reconstruction needed to be done.

**Ms. Vandagriff** reported that the city had not received an application to rebuild the house. She had been in communication Mr. Wittke and had instructed him to hire a structural engineer to identify what needs to be done. She and **Mr. Wittke** discussed what Mr. Wittke's engineers had provided and what needed to be done to rebuild the house.

**Mr. Gericke** noted the hearing was for Council to determine if the property was a nuisance so the city could move forward with the abatement process. **Mr. Salyers** noted what the abatement timeline would be as outlined in the Milwaukie Municipal Code (MMC) should

Council find the property to be a nuisance. He noted there could still be time for Mr. Wittke to begin the rebuilding process and avoid having the city clean up the property.

**Councilor Parks** asked for confirmation that if Council did not find the property to be a nuisance there would be nothing to require Mr. Wittke to clean it up. **Mr. Salyers** noted staff could issue citations even if Council did not agree the property was a nuisance.

**Mr. Wittke** questioned some of the statements listed on the citations issued by Mr. Salyers regarding the damaged house.

The group noted the emails received on the matter.

Close Public Hearing: **It was moved by Council President Falconer and seconded by Councilor Hyzy to close the public hearing. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

**Mayor Gamba** closed the public hearing at 8:49 p.m.

Council Discussion: **Council President Falconer** thanked Mr. Wittke for providing an update on his plans to clean up the property. She had not heard anything that contradicted the evidence that the property was a nuisance. She encouraged the Wittke family to take steps to clean up the property. **Councilor Hyzy** agreed and encouraged Mr. Wittke to work with staff to clean up the property. **Councilor Parks** agreed and commented that it had been years since the home had been damaged. **Councilor Batey** agreed and noted that Mr. Wittke had failed to appear in municipal court to raise his concerns about the citations. **Mayor Gamba** agreed and encouraged Mr. Wittke to move quickly to clean up the property.

Council Decision: **It was moved by Councilor Parks and seconded by Councilor Batey to declare the property located at 12550 SE 43<sup>rd</sup> Avenue a nuisance and to uphold the staff decision to abate the property. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

## **7. BUSINESS ITEMS (continued)**

### **B. Equity and Policing – Update**

**Ms. Ober** introduced the topic and the city’s human resources attorney Steven Schuback.

**Mr. Schuback** provided an overview of police reform laws recently adopted by the state legislature. He noted that the MPD’s policies already aligned with the reform measures but would be updated to ensure they followed the new laws. He explained that the policies would be presented to Council and the public for consideration after the initial legal review.

**Ms. Ober** thanked the Milwaukie Police Employees Association (MPEA) for partnering with the city to review MPD’s policies. **Mr. Schuback** commented that the city had a good relationship with the MPEA and noted the importance of having the union’s support in discussing the policy changes.

**Ms. Ober** reiterated that the legal review was the beginning of the process to update the policies. Council and the public would have a chance to comment on them. She and **Council President Falconer** noted that the current policy was publicly available online but was long and not easy to read. They discussed the importance of developing a strategic plan to ensure the policy review included a robust public engagement process and achieved the community’s desired outcomes.

It was noted that no audience member wanted to speak to Council regarding policing.

**Chief Strait** provided an overview of the MPD's approach to equity in policing. He and **Councilor Batey** commented on the department's policy on use of force and tasers.

**Chief Strait** reported that the use of force policy was constantly reviewed and noted that a goal of the policy review was to make it easier to read. He explained the factors that determine if an officer uses force, the roles of officers and command staff when force is used, and how a use of force incident could turn into an internal misconduct investigation. He presented data on incidents the MPD had responded to in a 12-month period, noting that less than one percent of arrests had been the result of use of force. He presented data on MPD's mental health related incidents and emphasized the department's commitment to crisis intervention and de-escalation training. **Ms. Ober** reported additional information about the MPD's approach to mental health situations would be presented at a future Council meeting.

**Chief Strait** discussed the MPD's response to the "8 Can't Wait" campaign and the movement to reduce the use of police force. He commented on department policies related to the movement that dealt with de-escalation, warning calls before shooting, comprehensive force reporting, and a ban on chokeholds. He commented that the department was continually working to improve its practices.

**Ms. Ober** reported that all MPD officers had taken implicit bias training and city staff was in the process of taking equity and inclusion training. She noted that the city would be hiring an equity program manager. She asked for Council feedback on the recently held Black, Indigenous, and People of Color (BIPOC) community listening sessions.

**Councilor Parks** remarked that she learned that BIPOC community members did not think the events and information in the city newsletter was meant for them. She thought the city needed to reevaluate how it clearly states that such information is for everyone.

**Councilor Batey** thought the sessions had been helpful. She commented on the stories told about BIPOC experiences at Milwaukie High School (MHS) many years ago.

**Councilor Hyzy** reported that participants in the Spanish-speaking session were long-time residents of Milwaukie who did not feel connected to the city. She remarked on the challenges of making Milwaukie a welcoming and inclusive place for all residents.

**Mayor Gamba** observed that many people's feelings about Milwaukie and the MPD are shaped by national movements and events. He reported that session participants had positive things to say about the city and MPD and he underscored that the sessions were just the start of the city's equity work. He agreed that many residents, including the BIPOC community, do not feel like the city has been communicating with them.

**Councilor Batey** suggested that members of the BIPOC community had not known each other before and started to come together during the sessions. She credited Ms. Ober for taking steps to bring the community together.

**Council President Falconer** remarked on the things the city could do to help move the conversation and bring the community together. She suggested the city intentionally seek out people to participate in the work of the city, so the city reflected the community.

**Ms. Ober** thanked the BIPOC community members who participated, facilitated, and supported the listening sessions. She encouraged the public to read the session notes. She presented and asked for feedback on Council's recently adopted equity, inclusion, and justice goal.



The group noted recent wildfires in the region, and that the third listening session notes were not yet available. They agreed to revisit the Council goal at a future meeting.

**Ms. Ober** noted how BIPOC community members could contact her, Mr. Sanchagrin, and Chief Strait for more information on equity and inclusion. She thanked Chief Strait for his work on policing and equity. **Mayor Gamba** thanked staff for their equity work amid several ongoing crises. **Chief Strait** expressed appreciation for those who had participated in the sessions.

## **9. COUNCIL REPORTS**

**None.**

## **10. ADJOURNMENT**

**It was moved by Councilor Hyzy and seconded by Councilor Parks to adjourn the Regular Session. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

**Mayor Gamba** adjourned the meeting at 10:07 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Date Written:** Oct. 5, 2020

**Reviewed:** Peter Passarelli, Public Works Director, and  
Amy Aschenbrenner, Administrative Specialist

**From:** Scott Stauffer, City Recorder

**Subject:** **Tree Board Appointments**

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**ACTION REQUESTED**

Council is asked to consider approving a resolution making appointments to the Tree Board.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

On April 1, 2020, position 6 became vacant when Ann Leenstra declined to be reappointed.

On October 1, staff became aware that several members of the board had recently moved out of city limits, which meant that three members were non-residents. Because Milwaukie Municipal Code (MMC) 16.32.015 limits the number of non-resident Tree Board members to two, staff contacted a non-resident member who had previously indicated a willingness to resign due to the residency requirement. In response to staff's inquiry, non-resident board member Britt McConn resigned as of September 30, vacating position 4.

In response to these vacancies, the city recruited volunteers to apply for the open board positions. During the spring and summer of 2020, several applications were received. On October 1, an interview panel that included two members of Council, the staff liaison to the board, and the board chair, met and interviewed four candidates. The individuals named below have been nominated by the interview panel for appointment to the board.

**ANALYSIS**

Authority to fill city board and committee vacancies is granted to the Mayor and Council by Section 26 of the City Charter. To fill vacant positions, members of Council, along with appropriate staff liaisons and committee chairs, recruit volunteers and usually conduct interviews from applications received by the city. Interviews are not required by the MMC. Appointed individuals serve for a term length determined by the MMC. Upon the completion of a term, if the individual is eligible, they may be reappointed by Council to serve another term.

Committee appointments are made when a term has expired or when a position has been vacated. Generally, position terms expire in March or June, but appointments are also made as needed to fill vacancies. Some committees have positions nominated by neighborhood district associations (NDAs) instead of by an interview panel. NDA-nominated appointments are noted if applicable.

All board and committee positions are term-limited, meaning there is a limit to the number of times that members can be re-appointed. The nominated individuals would be appointed to terms that have already started. These individuals would be serving in zero-terms with end dates set for March 31, 2022 or 2023, respectively.



Christina Harris has been nominated to fill position 4. She has lived in the city for three years and is a field technician for Clackamas County Vector Control. She is a certified urban tree steward and has experience working as a park ranger for the City of Portland..

Madison Tucker has been nominated to fill position 6. She grew up in Milwaukie and works in marketing for Regence. She has experience volunteering with Friends of Trees and the Citizens Climate Lobby and is part of her employer's environmental work group.

#### **BUDGET, WORKLOAD, AND CLIMATE IMPACTS**

There are no fiscal, workload, or climate impacts associated with the recommended actions.

#### **COORDINATION, CONCURRENCE, OR DISSENT**

Staff worked with Council members and the Tree Board staff liaison and chair to conduct interviews and confirm these nominations.

#### **STAFF RECOMMENDATION**

Staff recommends the following appointments:

**Tree Board:** 3-year terms, limit of 3 consecutive terms.

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
4	Christina Harris	10/20/2020	3/31/2022
6	Madison Tucker	10/20/2020	3/31/2023

#### **ALTERNATIVES**

Council could decline to make the recommended appointments which would result in vacancies on the committee.

#### **ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
MAKING APPOINTMENTS TO THE TREE BOARD.**

**WHEREAS**, Milwaukie Charter Section 26 authorizes the Mayor, with the consent of the Council, to make appointments to boards and committees; and

**WHEREAS**, vacancies exist on the Tree Board; and

**WHEREAS**, the city received applications and convened a panel of Council members, the board chair, and staff liaison to conduct interviews of qualified applicants; and

**WHEREAS**, the interview panel has nominated the following individuals for appointment to the board:

**Tree Board**

Position	Name	Term Start Date	Term End Date
4	Christina Harris	10/20/2020	3/31/2022
6	Madison Tucker	10/20/2020	3/31/2023

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the individuals named in this resolution are hereby appointed to the identified city board for the term dates noted.

Introduced and adopted by the City Council on **October 20, 2020**.

This resolution is effective immediately.

ATTEST:

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Mark F. Gamba, Mayor

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Date Written:** Oct. 13, 2020

**Reviewed:** Leila Aman, Community Development Director, and  
Kelly Brooks, Assistant City Manager

**From:** Steve Adams, City Engineer, and  
Vera Kolias, Senior Planner

**Subject:** **Development Agreement Authorization for Monroe Apartments**

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**ACTION REQUESTED**

Council is asked to adopt a resolution authorizing the city manager to execute a development agreement with JDA West, LLC for the development of a residential multi-family development and associated public improvements commonly referred to as the Monroe Apartments development.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

February 5, 2020: The planning director issued a [Notice of Decision](#) to approve the conditions of master land use file #[DEV-2019-009](#), approving applications for development review, transportation facilities review, and a variance for the Monroe Apartments development. See Attachment 2. A condition of approval was the execution of a development agreement that “defines and clarifies the responsibilities of both the developer and the city, estimated costs, and estimated Transportation SDC credits/reimbursements for design and construction of the segment of the Monroe Street Neighborhood Greenway connection from the Oak Street/Railroad Avenue/Monroe Street intersection to the 37th Avenue/Washington Street intersection.” See Attachment 3.

**ANALYSIS**

The Monroe Street Neighborhood Greenway (“Monroe Greenway”) project is identified in the city’s Capital Improvement Plan (CIP). The Monroe Greenway is currently funded, and the city is in the early stages of developing a design agreement with the Oregon Department of Transportation (ODOT). A key portion of the Monroe Greenway intersects the development and the city and the developer understand the importance of creating an attractive and functional pathway that will traverse the development in a mutually beneficial way.

Under current city policy, the cost of design and construction of frontage improvements along Monroe Street, 37<sup>th</sup> Avenue, and Oak Street are the responsibility of the developer as detailed in the agreement. The developer has agreed to design and construct portions of the Monroe Greenway lying adjacent to the development, but otherwise outside of the developer’s responsibility, in exchange for credit/reimbursement of transportation system development charges (SDCs) provided by the city, and the city assuming future responsibility for constructing frontage improvements along Oak Street and 37th Avenue, south of Washington Street.

This development agreement describes the allocation of work and reimbursement/credit obligations as agreed upon between the city and developer as being fair and equitable and represents a proportional allocation that benefits the public and the developer.

The developer will be solely responsible for all up-front costs associated with development improvements as described in Section III of the agreement, and as approved in the Notice of Decision for land use application master file #DEV-2019-009 dated February 5, 2020.

### **BUDGET IMPACT**

The city and developer have agreed that the developer's costs subject to transportation SDC reimbursement/credit are estimated at \$135,935.15. This amount is subject to a final reconciliation after construction is completed, based on the actual costs of the contractor. Anticipated transportation SDC's to be generated with this project are estimated at a little more than \$200,000, depending on building permit submittal date(s).

### **WORKLOAD IMPACT**

Staff from the engineering, building, planning, and public works departments will be performing the development permit review. Engineering and building staff will provide construction inspection as is typical with a private development project.

### **CLIMATE IMPACT**

An outcome of this development agreement is the requirement to construct a cycle track to connect sections of the Monroe Greenway, which will provide a safe bicycle and pedestrian route through the city running west to downtown. This provides a positive alternative to vehicular travel in the city.

### **COORDINATION, CONCURRENCE, OR DISSENT**

The assistant city manager, community development department, and the city attorney have reviewed and concur with this staff report and recommendation.

### **STAFF RECOMMENDATION**

Staff recommends that Council adopt a resolution authorizing the city manager to execute a development agreement with JDA West, LLC for the development of a residential multi-family development and associated public improvements commonly referred to as the Monroe Apartments development.

### **ALTERNATIVES**

Council could direct staff to revise the agreed-upon development agreement and re-open discussions and negotiations with JDA West, LLC.

### **ATTACHMENTS**

1. Resolution
2. DEV-2019-009 Notice of Decision
3. Development Agreement

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF A RESIDENTIAL MULTI-FAMILY DEVELOPMENT AND ASSOCIATED PUBLIC IMPROVEMENTS FOR THE MONROE APARTMENTS DEVELOPMENT.**

**WHEREAS**, the planning director issued a Notice of Decision to approve with conditions the Monroe Apartments development on February 5, 2020; and

**WHEREAS**, a condition of approval was the execution of a development agreement that defines and clarifies the responsibilities of both the developer and the city, estimated costs, estimated transportation system development charges (SDCs), and credits/reimbursements for design and construction of the segment of the Monroe Street Neighborhood Greenway connection from the Oak Street/Railroad Avenue/Monroe Street intersection to the 37th Avenue/Washington Street intersection; and

**WHEREAS**, the city and JDA West, LLC have worked together to finalize the required development agreement that clearly identifies the construction responsibilities of both parties that will result in the construction of a cycle track along the development's frontage.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to execute a development agreement with JDA West, LLC for the development of the residential multi-family development and associated improvements for the project known as the Monroe Apartments development.

Introduced and adopted by the City Council on **October 20, 2020**.

This resolution is effective immediately.

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Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney



# CITY OF MILWAUKIE

February 5, 2020

Land Use File(s): DEV-2019-009; TFR-2019-001; VR-2019-012

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 5, 2020.

<b>Applicant(s):</b>	Dean Masukawa, LRS Architects
<b>Location(s):</b>	37 <sup>th</sup> Ave and Monroe St
<b>Tax Lot(s):</b>	11E36AB03003 and 11E36AA19203
<b>Application Type(s):</b>	Development Review; Transportation Facilities Review; Variance
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	<p>Milwaukie Municipal Code:</p> <ul style="list-style-type: none"><li>• MMC Title 12 Streets, Sidewalks, and Public Places</li></ul> <p>Milwaukie Zoning Ordinance:</p> <ul style="list-style-type: none"><li>• MMC 19.303 Commercial Mixed-Use Zones (including the GMU zone)</li><li>• MMC 19.500 Supplementary Development Regulations</li><li>• MMC 19.700 Public Facility Improvements</li><li>• MMC 19.906 Development Review</li><li>• MMC 19.911 Variances</li><li>• MMC 19.1005 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Ardenwald-Johnson Creek Hector Campbell Historic Milwaukie

**Appeal period closes: 5:00 p.m., February 20, 2020**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Kolias, Associate Planner, at 503-786-7653 or [koliasv@milwaukieoregon.gov](mailto:koliasv@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/DEV-2019-009](http://www.milwaukieoregon.gov/planning/DEV-2019-009).

**This decision may be appealed by 5:00 p.m. on February 20, 2020, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

### **Findings in Support of Approval**

The Findings for this application are included as Exhibit 1.

### **Conditions of Approval**

1. Prior to the issuance of a building permit, Applicant must enter into a Development Agreement with the City that defines and clarifies the responsibilities of both the developer and the city, estimated costs, and estimated Transportation SDC credits/reimbursements for design and construction of the segment of the Monroe Street Neighborhood Greenway connection from the Oak Street/Railroad Avenue/Monroe Street intersection to the 37<sup>th</sup> Avenue/Washington Street intersection. See also Conditions 6 (h) and (j), and 9.
2. Applicant must construct the project in compliance with all Public Works Standards and the requirements identified in Other Requirements.
3. Post-occupancy: should the driveway entry gate off 37<sup>th</sup> Ave cause queuing that extends on to 37<sup>th</sup> Ave as reasonably determined by the City to materially impact public travel or safety on 37<sup>th</sup> Ave, the property owner, or their designee, must work with the City to resolve these queuing or safety issues in a manner as quickly as feasible and to the

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<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.



reasonable satisfaction of the City. Such resolution could include, but not limited to, modifications to, or removal of, the entry gate.

4. The main entrance to the development is proposed to be located to create a de facto intersection with Washington St to comply with a variety of code requirements related to access spacing standards and sound engineering practices. The submitted Transportation Impact Analysis (TIS) includes future vehicle trip distribution related to the development based on the impact of the development combined with background growth. In this case, peak impact for vehicle trips resulting from the development is during the morning and afternoon peak hours (commuting time). According to the analysis, no vehicles are anticipated to travel from the site to Washington St during the morning and afternoon peak hours. Post-occupancy: should vehicle travel on Washington St cause public safety issues or vehicular traffic exceeding maximum greenway levels, as reasonably determined by the City to materially impact the functionality of the Washington St section of the Monroe Street Neighborhood Greenway, the City may choose to look at other physical design or signage options that could be used at this intersection to create safer conditions.

5. Environmental Quality

Due to the contaminated soil on Parcel 2, site development work requires Department of Environmental Quality (DEQ) Cleanup Program review and approval of all plans before construction. DEQ and the City will review and approve all plans to ensure the proper controls are in place to protect human health and the environment.

Detailed project requirements for construction and site maintenance for Parcel 2 are in the Consent Decree, Record of Decision (ROD), and Easement and Equitable Servitude (EES). These documents are located at:

<https://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=887&SourceIdType=11> in the Site Documents section under the following titles: *EES (October 10, 2001).pdf*, *LDM Consent Decree 2014060410221.pdf*, and *Idmrod 201406041001.pdf*.

The EES is recorded and is attached to the property and will detail all long-term obligations of the property owner, including:

- (1) Groundwater monitoring/reporting
- (2) Confirmation monitoring of vapor control systems
- (3) Maintaining site cap after construction
- (4) Recording the EES

Additional requirements related to environmental quality are:

- a. A Contaminated Media Management Plan, which provides information needed to identify, properly manage, and dispose of contaminated media (materials) must be developed. The plan will include monitoring of dust, odors, and chemical screening to ensure work is protective. Soils excavated at Parcel 2 are considered hazardous materials unless analytical characterization determines the material to not be hazardous.

- b. Construction work of the proposed clubhouse, garage structures and utility lines will require engineering controls due to this risk of vapor intrusion. The project will require plans, prepared by an Oregon registered professional to prevent vapor migration into structures on Parcel 2 (clubhouse, garages, and vapor dams in utility trenches). The engineering controls will include a monitoring plan for any sub-surface controls to assure that the system remains protective.

6. Building Permit Submittal

The applicant must submit a Type I Development Review application with final plans for construction of the project. The purpose of the Type I Development Review is to confirm that the final construction plans are substantially consistent with the land use approval. The final construction plans must address the following:

- a. Final plans submitted for construction permit review must be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on July 26, 2019, and revised through October 18, 2019, except as otherwise modified by these conditions.
- b. Provide a narrative describing all actions taken to comply with these conditions of approval.
- c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
- d. Provide confirmation from a certified third-party green building assessor that the buildings are designed to meet the green building design requirements in Earth Advantage, or an equivalent program as identified in MMC 19.510.
- e. Final plans submitted for construction permit review must include details of the bike stall dimensions to confirm that the applicable standards are met.
- f. Final plans submitted for construction permit review must include a new photometric plan showing compliance with lighting standards.
- g. Final plans submitted for construction permit review must demonstrate that there is sufficient space for a 5-ft sidewalk, 5-ft landscape strip, and a 5-ft bike lane along the west side of 37th Ave between the entrance driveway and the railroad tracks. If needed, the applicant shall dedicate sufficient right-of-way to accommodate the above facilities.
- h. For this segment of the Monroe Street Neighborhood Greenway, the final plans submitted for development permit review must include engineering design plans that are substantially consistent with the Alternative B concept plan provided by Alta Planning, dated November 7, 2019 and as approved by the City Engineer. The cost of design and construction of elements of the Monroe Street Neighborhood Greenway project lying adjacent to the Development but outside of the developer's responsibility will be subject to a Transportation SDC credit/reimbursement provided by the City.

- i. To assure that the driveway on Monroe St functions as a right-out only egress, as conditioned, the Applicant must construct a minimum 80-ft long concrete median, centered on the driveway, at the new centerline of Monroe St.
  - j. The addition of the cycle track will require the applicant to provide public bicycle, pedestrian, and sidewalk easements along Monroe St and 37<sup>th</sup> Ave for those portions of the sidewalk lying outside of the public right-of-way. Along Oak St the applicant must dedicate sufficient right-of-way for future construction of the landscape strip, cycle track, and sidewalk (16.5-ft from face of curb).
  - k. Final plans submitted for construction permit review are not required to include the 15-ft wide area, or the easement, previously shown for the multi-use path. Garages may be located along the rear property line with the design proposed in the July 26, 2019 plan set. The Development Review application materials must clearly identify how the plans submitted for construction permit review have changed to account for this additional area along with a narrative describing how the changes satisfy all relevant code requirements.
7. Prior to issuance of development permits, the following must be resolved:
- a. Prior to commencement of any earth-disturbing activities, the applicant must obtain an erosion control permit from the City. The plan must demonstrate that dust and tracking from the contaminated portions of the site will be contained on the site. Any failure of the developer to meet the requirements of the plan will be considered a violation of zoning ordinance and result in stoppage of all work until a corrective action is approved by DEQ and City.
  - b. Thirty days prior to commencement of any earth-disturbing activities, the applicant must do the following:
    - (1) Host a public outreach meeting to inform the community of the construction plans. Applicant will coordinate this meeting with city staff; and
    - (2) Provide to city staff a detailed project fact sheet including, but not limited to, the following information:
      - (a) estimated construction start date;
      - (b) summary of construction timeline;
      - (c) summary of protection measures and safeguards for workers and the public; and
      - (d) a list of site contacts with business and after hours contact information for the lead site contractor, DEQ staff contact, and emergency contact information.

City staff will make this fact sheet available to NDA leadership for distribution and will post it on the project and Central Milwaukie webpages.

- c. Signs with project manager contact information must be posted and maintained at the site entry(ies) for the duration of the project.
8. Prior to final occupancy, the following must be resolved:
  - a. Applicant must submit certification that the buildings meet the green building design requirements in Earth Advantage, or an equivalent program as identified in MMC 19.510.
  - b. Frontage Improvements as shown on the plans received by the City on July 26, 2019, and revised through October 18, 2019, except as otherwise modified by these conditions.
  - c. Dedication/Easement Requirements as shown on the plans received by the City on July 26, 2019, and revised through October 18, 2019, except as otherwise modified by these conditions.
9. Timing and amount of Transportation SDC credit / reimbursement will be determined in the Development Agreement (see Condition 1).

#### **Other requirements**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. The level of use approved by this action shall be permitted only after issuance of a certificate of occupancy.
2. Limitations on Development Activity.

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as provided in MMC Subsection 8.08.070(I).
3. Landscaping Maintenance.

As provided in MMC Subsection 19.606.2.E.3, required parking area landscaping shall be maintained in good and healthy condition.
4. Applicant should coordinate their construction activities with the Union Pacific Railroad Company (UPRR) (Aaron Galley, ph. 402-544-8043) as necessary during project construction to ensure safety and that there are no impacts to railroad operations during construction. Applicant is advised by UPRR to coordinate with the Oregon Public Utility Commission and other relevant parties to discuss potential impacts of the project to railroad operations.
5. Applicant must submit an access and water supply plan as required by the Clackamas Fire District #1 for full review and approval.

6. Final plans submitted for construction permit review must include details to show the exact distance from the driveway to the rail crossing. The entrance driveway on 37<sup>th</sup> Ave is very close to the location of the Advanced Pavement Marking, which is within the safe stopping distance of the public rail crossing. If the access is located within the safe stopping distance, a crossing order will be required.
7. Prior to final inspection, the following must be resolved:
  - a. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
  - b. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
  - c. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
  - d. Provide a payment and performance bond for 100 percent of the cost of the required public improvements.
  - e. Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
  - f. Install all underground utilities, including stubs for utility service, prior to surfacing any streets.
  - g. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
8. Other Engineering Requirements.

Submit a final stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 - Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the stormwater management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.

The stormwater management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, inclusive of any existing stormwater management facilities serving the development site.

The stormwater management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.

Development/building permits will not be issued for construction until the stormwater management plan has been approved by the City of Milwaukie.

#### **Director's Declaration of Impartiality**

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or

ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

**Decision**

- ☐ Approved  
☒ Approved with Conditions  
☐ Denied



---

Dennis Egner, FAICP  
Planning Director

**Exhibits**

1. Findings in Support of Approval
2. Technical Memorandum prepared by Alta Planning and Design dated November 7, 2019

cc: Dean Masukawa, LRS Architects (via email)  
Marc Wyzykowski, Johnson Development Associates, Inc. (via email)  
Planning Commission (via email)  
Leila Aman, Community Development Director (via email)  
Justin Gericke, City Attorney (via email)  
Steve Adams, City Engineer (via email)  
Engineering Development Review (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Tim Salyers, Code Compliance Coordinator (via email; for variances only)  
Matt Amos, CFD#1 (via email)  
NDA(s): Ardenwald-Johnson Creek, Hector Campbell, Historic Milwaukie (via email)  
Interested Persons  
Land Use File(s): DEV-2019-009

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF MILWAUKIE, OREGON  
AND JDA WEST, LLC**

This Development Agreement (“Agreement”) is entered into by and between the **City of Milwaukie**, an Oregon municipal corporation (“City”), and **JDA West, LLC**, a South Carolina limited liability company, its successors and assigns (“Developer”). The effective date of this Agreement is the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”). The City and Developer may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS**

- A. Developer proposes to construct a residential multi-family housing development commonly referred to as the **Monroe Apartments** (“Development”). The project site is depicted on the map attached as **Exhibit A** (“Developer Property”).
- B. The City’s Capital Improvement Plan (“CIP”) identifies the Monroe Street Neighborhood Greenway (“Monroe Greenway”) project, a major bicycle and pedestrian linkage to be constructed that extends east/west across the City. A key portion of the Monroe Greenway intersects the Development and the City and the Developer understand the importance of creating an attractive and functional pathway that will traverse the Development in a mutually beneficial way.
- C. The City currently possesses a sanitary sewer easement traversing the Developer Property from 37<sup>th</sup> Ave. / Washington Street to Monroe Avenue near Oak Street (“Sewer Easement”). The City is willing to abandon the Sewer Easement in exchange for the Developer constructing a portion of the Monroe Greenway.
- D. Developer presented to the City a site plan for the Development, which is depicted on **Exhibit B**. The Development includes, but is not limited to, the following improvements:
  - a. A multifamily development consisting of 234 units with associated on-site improvements, including parking, landscaping, and an amenities building.
  - b. An approximately 1,300-foot long, 16-foot wide multi-use path (“Cycle Track”) from Oak Street to Washington Street, following the south side of Monroe Street and the west side of 37<sup>th</sup> Avenue. A 10-ft wide section of the Cycle Track must be designated and striped as a 2-way cycle track as part of the Monroe Greenway.
  - c. Realignment of the curb and adjusting the street widths along Monroe Street and 37<sup>th</sup> Avenue.



- E. Under current City policy, the cost of design and construction of the portion of Monroe Street adjacent to the Development, the portion of 37<sup>th</sup> Avenue adjacent to the Development, and as the frontage improvements along the portion of Oak Street adjacent to the Development as depicted on **Exhibit C**, are the responsibility of Developer as further described in this Agreement.
- F. Neighborhood and citizen comments support construction of the Cycle Track along the south side of Monroe Street and the west side of 37<sup>th</sup> Avenue as depicted on **Exhibit C**.
- G. Developer has agreed to design and construct portions of the Monroe Greenway lying adjacent to the Development, but otherwise outside of the Developer's responsibility, in exchange for credit/reimbursement of Transportation System Development Charges ("SDCs") provided by the City, and the City assuming responsibility for constructing frontage improvements along Oak Street and 37<sup>th</sup> Avenue, south of Washington Street and adjacent to the development, including obtaining a permit(s) from Union Pacific Railroad (UPRR) for improvements that will occur within the UPRR crossing safety areas on both Oak Street and 37<sup>th</sup> Avenue.

The City and Developer agree that the allocation of work and reimbursement/credit obligations between the City and Developer set forth in this Agreement is fair and equitable and represents a proportional allocation that benefits the public and the Developer.

Developer will be solely responsible for all up-front costs associated with Development Improvements as described in **Section III** of this Agreement, and as approved in the Notice of Decision for land use application master file #DEV-2019-009 dated February 5, 2020 ("Notice of Decision").

## **AGREEMENT**

In consideration of the foregoing Recitals, which are incorporated by this reference, the Parties agree as follows:

### **I. NEW DEVELOPMENT**

Developer intends to construct the Development, and as required in connection therewith, to construct a portion of the Monroe Greenway lying adjacent to the Development, and design and construct a realignment and adjustment of portions of Monroe Street and 37<sup>th</sup> Avenue adjacent to the Development, subject to the Notice of Decision and the terms of this Agreement.

Developer will dedicate as public right-of way, such property (up to 16.5 feet from the face of the existing curb along Oak Street) as may be necessary to allow the City to construct the Cycle Development Agreement – Johnson Development Associates, Inc.

Page 2

Track as depicted on **Exhibit C**.

Developer will pay all fees required by the City for approval and construction of the Development and will obtain all permits required by the City for construction of the Development. Developer accepts all responsibility for the Development as approved by the City as set forth in the Notice of Decision for land use application master file #DEV-2019-009 dated February 5, 2020, subject to the City Obligations and the SDC credits/reimbursements set forth in this Agreement.

## **II. CITY'S IMPROVEMENTS (City Obligations)**

**Section 2.1 – Description of City Improvements and Obligations.** The City agrees to construct the following described improvements and obligations (“City Improvements”), at a time to be determined by the City and as generally shown on **Exhibit B** and **Exhibit C**, and which are generally described as follows:

- 2.1.1 Bicycle/pedestrian improvements west of Oak Street and east of 37<sup>th</sup> Avenue will be included in the City’s Monroe Greenway project and/or other future bicycle/pedestrian projects (Railroad Avenue, 29<sup>th</sup>/32<sup>nd</sup> Greenway, or others),.
- 2.1.2 Any upgrades/enhancements of the frontage improvements typically required of the Developer (and any additional improvements that may be desired by the City) to the vehicular/bicycle/pedestrian crossings at Oak Street and at 37<sup>th</sup> Avenue (South of Washington Street), will be designed and constructed as needed by the City as the Monroe Greenway project is developed.
- 2.1.3 Upgrades/enhancements to the bicycle/pedestrian crossings of the UPRR tracks at Oak Street and at 37<sup>th</sup> Avenue will be designed and constructed as needed by the City as the Monroe Greenway project is developed. The City acknowledges and agrees that no upgrades or enhancements to the bicycle/pedestrian crossings of the UPRR tracks are required for occupancy and/or operation of the Development as currently designed and approved.
- 2.1.4 Due to the possible complexity of obtaining timely permits from UPRR, the City agrees to perform any work required along Oak Street (south of Railroad Avenue/Monroe Street) and any work required south of the proposed driveway at Washington Street along SE 37<sup>th</sup> Avenue, as shown on **Exhibit C**. The overall costs of such work is anticipated to be as set forth in **Exhibit D**. The City acknowledges and agrees that any work or improvements in these areas requiring the approval of UPRR is not required for occupancy and/or operation of the Development as currently designed and approved.

- 2.1.5 The City shall abandon its sewer easement that runs through the Developer Property from 37<sup>th</sup> Ave. / Washington Street to Monroe Avenue near Oak Street on or prior to thirty (30) days after execution of this Development Agreement.

### **III. DEVELOPER'S IMPROVEMENTS (Developer Obligations)**

#### **Section 3.1 – Description of Developer Improvements**

Developer agrees to construct the following improvements (“Developer Improvements”), as generally shown on **Exhibit B and Exhibit C**, and generally described as follows:

- 3.1.1 Developer is constructing and installing all infrastructure and utilities as required under the Milwaukie Municipal Code and Public Works Standards as a condition of approval for the Development. Depending on submittal of final construction drawings, infrastructure may include, but is not limited to, frontage improvements along Monroe Street and 37<sup>th</sup> Avenue (demolition, asphalt overlay, signage and striping, curb and gutter, street lighting, landscape and irrigation, root barriers, sidewalks and cycle track, Americans with Disabilities Act (“ADA”) requirements, etc.), connections to public water, sanitary and storm pipes, street repair if work is done in the public right-of-way, and all internal improvements of the Development including, but not limited to, drive aisles, parking areas, gated access, sidewalks and pathways, landscape and irrigation, stormwater collection, treatment and detention, sanitary and water connections, etc.
- 3.1.2 Construction of all internal sanitary, water, and stormwater lines and laterals to serve the Development.
- 3.1.3 Construction of all stormwater facilities on the Developer's Property in compliance with conditions of approval and Public Works Standards.
- 3.1.4 Construction of all internal drive aisles and driveway connections to Monroe Street and 37<sup>th</sup> Avenue in compliance with conditions of approval and Public Works Standards.
- 3.1.5 Construction of street improvements along Monroe Street and 37<sup>th</sup> Avenue (north of Washington Street) in compliance with conditions of approval and Public Works Standards. At a minimum, this obligation must include:

- Demolition of existing curb and portions of existing street adjacent to the Development along both Monroe Street and 37<sup>th</sup> Avenue.
- Construction of new curb and gutter, relocation of fire hydrant, landscape and irrigation, ADA-compliant ramps, street lighting as required by the conditions of approval, signage, and striping.
- Coordination with PGE and other utilities to relocate existing overhead utility poles as needed, and underground the existing overhead utility lines along Monroe Avenue (provided that, unless required by PGE as a condition of PGE's approval of undergrounding or relocating the existing overhead lines along the Development side of Monroe Avenue, the City shall not require Developer to coordinate and perform relocation of overhead lines located on the opposite side of Monroe Avenue from the Development, and the City shall be responsible to obtain necessary easements or licenses for any such required work which is located on property that is not owned by either Developer or the City).

3.1.6 Construction of an approximate 1,300-foot segment of the Cycle Track, from Oak Street to the proposed driveway on 37<sup>th</sup> Avenue as a segment of the Monroe Greenway project. The 6-foot wide pedestrian portion must be constructed of Portland Cement Concrete (minimum 4" PCC over 6" base rock); the 10-ft cycle track portion must be constructed of asphalt pavement (minimum 3" AC over 8" base rock). The Cycle Track shall include pedestrian markings on the sidewalk every 300-ft, and a continuous 4" white centerline stripe, and bicycle symbol markings every 300-ft indicating bike path and direction of travel. Striping and markings are eligible for Transportation SDC credits/reimbursement.

## Section 3.2 – Developer Improvement Costs

An itemized estimate of the anticipated hard and soft costs of all City Improvements and Developer Improvements contemplated by this Agreement has been provided by Developer and approved by the City, and is included in **Exhibit D**. The Developer Improvements must be constructed by Developer at Developer's sole expense, provided that for the items for which Developer is entitled to reimbursement from the City (as itemized in **Exhibit D**), the Developer will be reimbursed by the City (which reimbursement may be in the form of Transportation SDC credit or monetary reimbursement) in an amount equal to the contract bid costs plus soft costs expended by Developer, as may be modified or adjusted as provided in Section 3.3 below. Reimbursable expenses shall include all costs not expressly excluded under Section 3.3 below and will include, soft costs as provided in Section 3.3.3 for design and construction of the Cycle

Track and associated improvements (including, without limitation, additional drainage, lighting, striping and marking), costs of street and curb demolition at the intersection of Oak Street/Monroe Street and 37<sup>th</sup> Avenue/Monroe Street, construction of new curb and gutter at the intersection of Oak Street/Monroe Street and 37<sup>th</sup> Avenue/Monroe Street, relocation of the fire hydrant on Monroe Street to a location two feet behind the new curb, landscaping and irrigation, the cost of the ADA compliant ramp shown on Exhibit C, and costs associated with undergrounding utilities in connection with any of the foregoing.

- 3.2.1 Transportation SDC credit/reimbursement from the City relating to construction of an approximate 100-ft segment of the Cycle Track as depicted on **Exhibit C** (alignment through the City's Monroe Triangle Park).
- 3.2.2 The cost of street and curb demolition at the intersection of Oak Street / Monroe Street and 37th Avenue / Monroe Street, construction of new curb and gutter, relocation of the fire hydrant to a location two feet behind the new curb, landscaping and irrigation, and the cost of one ADA compliant ramp as shown on **Exhibit C**, and more specifically detailed in **Exhibit D**.
- 3.2.3 Final completion of the Developer Improvements shall not be required for temporary certificates of occupancy or final certificates of occupancy on Developer's first four (4) residential buildings. Notwithstanding the status of the first four (4) residential buildings, the Developer Improvements must be completed, inspected by the City, and deemed completed and accepted by the City before the City will issue the temporary or final certificates of occupancy to Developer for the last of Developer's residential buildings. To the extent any of the Developer Improvements require work to be performed on property that is not owned by Developer, the City represents and warrants that it has the title and right to grant the necessary licenses and/or permits to allow Developer to perform such work. Furthermore, acceptance of the Developer Improvements by the City after inspection and deeming the same substantially complete shall be de facto confirmation of the Developer Improvements' compliance with all applicable standards then in effect, and the City agrees to hold Developer harmless from third-party claims, loss, damage, costs, charge or expense incurred by Developer arising out of the design and/or construction of such improvements or the use thereof by the City and/or the public, except as may arise out of the gross negligence or willful misconduct of Developer or its agents, employees or contractors.

### **Section 3.3 – True-up of Developer's Cost and Receipt of SDC Credit/Reimbursement**

Developer is entitled to Transportation SDC credit/reimbursement pursuant to Section 3.2 (the "Reimbursable Expenses") as set forth in **Exhibit D**, unless reimbursement is

specifically excluded under this Section 3.3. Developer must submit a request for SDC credit/reimbursement to the City within ninety (90) days of written acceptance of the Developer Improvements by the City. A cover page with Developer's letterhead must accompany the request for SDC credit/reimbursement. Developer must submit sufficient documentation for specific costs related to the Reimbursable Expenses in a format acceptable to the City. Developer must also submit a signed letter of completion certifying payment in full to all subcontractors and suppliers for work related to the Reimbursable Expenses. If Developer fails to submit an acceptable request for SDC credit/reimbursement within ninety (90) days from the date of Developer's receipt of the City's letter of acceptance, Developer forfeits its right to receive the SDC credit/reimbursement unless the Parties agree otherwise in writing.

3.3.1 Excluded Costs. The Parties agree that the Reimbursable Expenses do not include the cost of any property or any easement, right of entry, or license for any of Developer's property necessary to be dedicated, or otherwise transferred by any of the respective Parties, to the City for the infrastructure improvements provided for in this Agreement and which must be provided to the City without cost to the City.

3.3.2 Final Estimates and True-Up. In order to secure a right-of-way permit for the infrastructure provided for herein, plans for the construction of the infrastructure must be provided to and approved by the City. In constructing the infrastructure, the approved plans must be followed and, to ensure the cost for providing the infrastructure is reasonable, and thus any credit/reimbursement entitlement for the Reimbursable Expenses is reasonable, Developer must provide the itemized construction contract costs for the Development Improvements to the City as the final estimate for the City's review and approval, which approval shall not be unreasonably withheld. The final cost, SDC credits, and reimbursements must be based on actual costs true-up from the construction contract costs, provided however that for any such true-up change cost, the Parties must mutually agree they are reasonable.

3.3.3 Soft Costs. Developer shall be entitled to certain soft costs related to design and construction of the City's obligation as described in **Section 3.1.6** and shown in **Exhibit D**. Transportation SDC credit/reimbursement for Developer's soft costs shall not exceed 20.5% of the total reimbursable construction cost and must be based on the approved final estimate of construction costs. Soft costs shall be determined as follows:

- 10% Engineering design
- 5% Engineering project management

- 5.5% Reimbursement of City right-of-way permit fee

3.3.4 Provide SDC Credit or Payment. The City shall provide the Transportation SDC credit or pay the reimbursement within 30 days of receiving the final construction costs request for credit/reimbursement, provided there is mutual agreement on any true-up charges. If there is a disagreement on any or all of the true-up charges, that true-up sum(s) may be withheld until such time as any such disagreement is resolved (whether resolved through the Dispute Resolution procedures set forth below or earlier upon agreement between the Parties), with that sum(s) being paid within 7 days of such resolution.

Upon Developer's submission of a complete package request for SDC credit/reimbursement as set forth in this Section 3.3, and provided any dispute regarding any of the true-up charges has been resolved as set forth in this Section 3.3.4, the SDC credit will be applied to the SDCs to be assessed against the remainder of the Development for which Developer has not yet obtained building permits. If Developer has obtained all the building permits for the Development before timely submitting the request for SDC credit, Developer will receive an SDC reimbursement. If the SDC credits/reimbursement due to the Developer exceed the outstanding SDCs on the remaining Development that has not yet obtained building permits, Developer will receive a combination of credits on the remaining Development and reimbursement against SDCs already paid.

#### **Section 3.4 – Developer Bonds for Improvements within the Right-of-Way/Public Infrastructure**

Prior to commencement of construction of any infrastructure set forth in this Agreement that is to be constructed by Developer within a public right-of-way or any infrastructure that the City will own upon completion, and prior to receiving a right-of-way permit from the City, Developer must provide to the City performance and payment bonds in a form and amount satisfactory to the City. Prior to commencement of construction, Developer must also name the City as an additional insured on the applicable contractor's insurance policy for the construction of the respective infrastructure provided for in this Agreement, in amounts and coverages satisfactory to the City.

#### **Section 3.5 – Developer Compliance with City Code and Public Works Standards**

Developer agrees to adhere to the purpose, terms, conditions, guidance, regulations, and requirements contained within the Milwaukie Municipal Code and City Public Works Standards.



## IV. DISPUTE RESOLUTION

### Section 4.1 – All Disputes

- 4.1.1 Mediation. All disputes arising out of this Agreement must first be submitted to mediation. Any Party desiring mediation must provide the other Party with a written notice (“Request to Mediate”), which shall set forth the nature of the dispute. The Parties must in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties’ sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to **Section 4.1.2**.
- 4.1.2 Arbitration or Litigation. Any dispute arising under **Section 4.1.1** of this Agreement that is not resolved through mediation, upon mutual agreement of the Parties may be submitted to arbitration to be conducted in Milwaukie, Oregon, before a single arbitrator selected by mutual agreement of the Parties. The arbitrator must have substantial experience in commercial real estate and construction disputes. If the Parties do not agree to arbitrate or are unable to mutually agree upon and select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate unless otherwise required by Oregon law. If arbitrated, judgment upon the arbitrator’s award may be entered in any court having jurisdiction of the matter.
- 4.1.3 Equitable Remedies. Even if the Parties undergo mediation or arbitration, the City may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The Parties will otherwise agree to abate the court case pending completion of the mediation or arbitration.

## V. RECORDING

The Parties agree that this Agreement is personal to the interest of Developer and its permitted assigns and, until Developer or its permitted assignee has acquired title to the land that is subject to this Agreement, as further identified in **Exhibit A** (the “Land”), this Agreement shall remain personal to Developer and shall not run with the Land. Upon acquisition of the Land by Developer or its permitted assignee, this Agreement shall run

with the land, and thereafter, all further successors, assigns, or subsequent owners of all or any portion of the Land shall be subject to the terms and conditions of this Agreement. Neither this Agreement nor a memorandum of this Agreement will be recorded by the City with the Clackamas County Recorder's Office prior to Developer's (or its permitted assigns') acquisition of the Land, provided that Developer agrees on behalf of itself and its permitted assigns that either this Agreement or a memorandum of this Agreement shall be recorded by Developer or its permitted assign within ten days of acquisition of the Land.

## **VI. MISCELLANEOUS PROVISIONS**

### **Section 6.1 – Further Assurances**

Each Party will cooperate and perform such acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties. Developer understands and agrees that no final certificate of occupancy will be granted for the Development until the Development Improvements have been completed and approved by the City.

### **Section 6.2 – Modification or Amendment**

No amendment, change, or modification of this Agreement will be valid unless in writing and signed by the Parties.

### **Section 6.3 – Relationship**

Nothing in this Agreement may be construed to create an agency relationship or a partnership or joint venture between the Parties.

### **Section 6.4 – Maintenance**

Upon final completion of any required improvements within the right-of-way or any infrastructure that the City will own upon completion, the Developer shall provide the City with a one-year warranty & maintenance bond. During and beyond the warranty period, developer shall maintain all landscape and sidewalk improvements as provided in the Milwaukie Public Works Standards and Milwaukie Municipal Code. The Parties acknowledge and agree that except for the above-referenced code-required landscape and sidewalk maintenance, Developer shall not be responsible for the Cycle Track beyond the warranty period and any of the other Development Improvements that are located outside the inner edge of the sidewalk bounding the property as depicted on Exhibit C.

### **Section 6.5 – Burden and Benefit**

The covenants and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

#### **Section 6.6 – No Continuing Waiver**

The waiver of any Party of any breach of this Agreement will not operate or be construed to be a waiver of any subsequent breach.

#### **Section 6.7 – Applicable Law**

This Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

#### **Section 6.8– Legal Fees**

If any Party commences legal proceedings, including arbitration or bankruptcy, for any relief against any other Party arising out of or related to this Agreement, or the breach thereof, such Party must pay the prevailing Party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorney fees, and expert witness fees.

#### **Section 6.9 – Time of Essence**

Time is expressly declared to be of the essence of this Agreement.

#### **Section 6.10 – Notices**

All notices, demands, consents, approvals, and other communications that are required or desired to be given by any Party to each other hereunder must be in writing and must be faxed, hand-delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier, provided that if any such notice or other communication must also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City:                      City of Milwaukie  
                                      Attn: Steve R. Adams, City Engineer  
                                      6101 SE Johnson Creek Blvd.  
                                      Milwaukie, OR 97206

To Developer: Johnson Development Associates, Inc.  
Attn: General Counsel  
100 Dunbar Street, Suite 400  
Spartanburg, SC 29306

#### **Section 6.11 – Rights Cumulative**

All rights, remedies, powers, and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

#### **Section 6.12 – Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.

#### **Section 6.13 – No Third-Party Beneficiaries and No Assignment**

None of the duties and obligations of any Party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties or their respective heirs, successors, and assigns. Developer may not assign its rights under this Agreement without the prior express written consent of the City; provided, however, that notwithstanding the foregoing, Developer shall be permitted to assign this Agreement, without seeking City's prior consent, to an affiliate of Developer or other entity under common management, ownership and/or control with Developer, or to any subsequent purchaser of the Land from Developer.

#### **Section 6.14 – Representations and Warranties**

Each Party signing on behalf of Developer and the City warrants actual authority to bind their respective Party. The Parties signing below also warrant that entry into this Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted by this Agreement.

#### **Section 6.15 – Legal Review**

All of the Parties to this Agreement affirm that they have been represented in the

negotiation of the Agreement by their own independent legal counsel who have reviewed its terms and advised their respective client concerning the same. Therefore, it shall be interpreted accordingly and shall not be construed against the drafter.

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

JDA WEST, LLC,  
a South Carolina limited liability company

By: Johnson Development Associates, Inc.  
Its: Sole Member

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

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

CITY OF MILWAUKIE,  
a municipal corporation

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

Print Name: Ann Ober

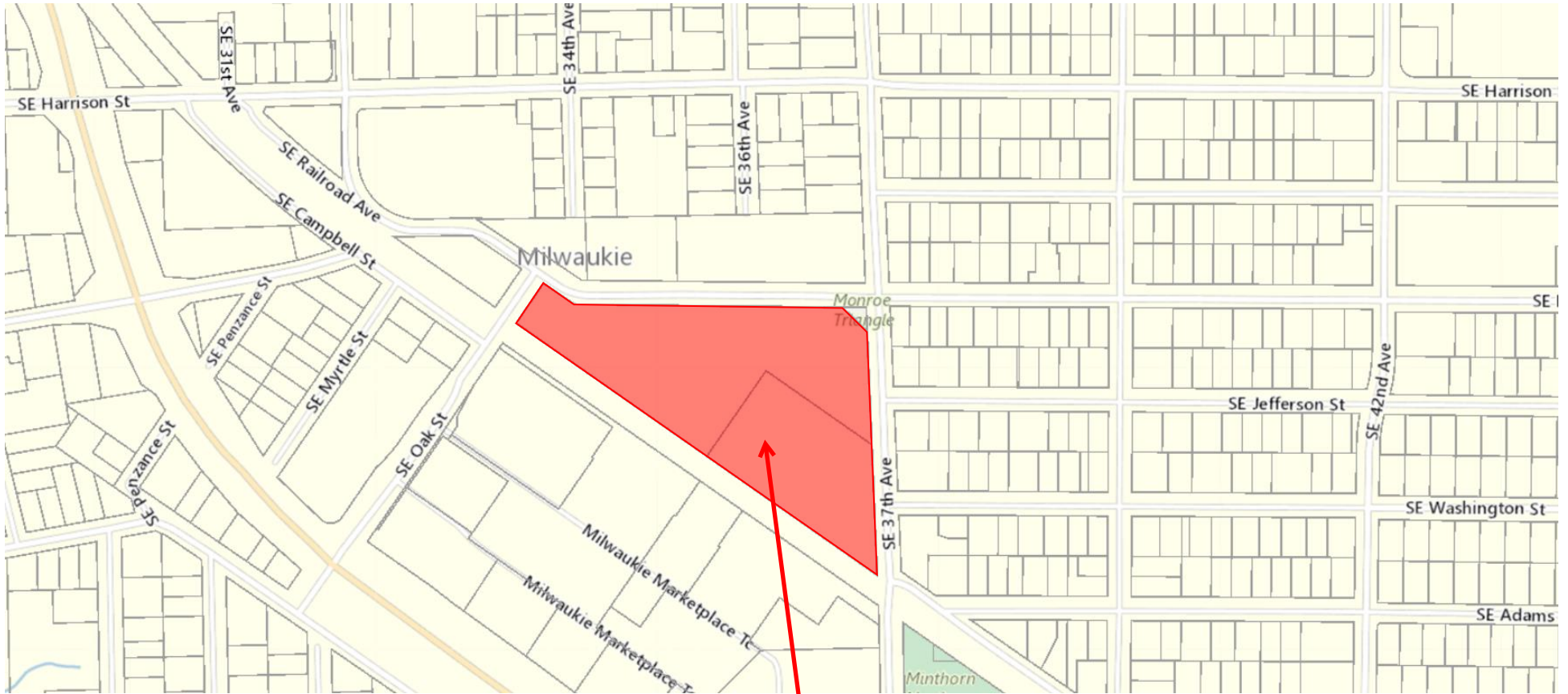
As Its: City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Justin D. Gericke  
City Attorney

# Proposed Monroe Apartments

EXHIBIT A



Project site



- KEYNOTES-**
- 01 ENTRY / EXIT DRIVEWAY
  - 02 CLUBHOUSE, 2 STORY, 5,784 SF
  - 03 BUILDING 1, 5 STORIES, 84 UNITS, TYPE III, 74,641 SF
  - 04 BUILDING 2, 3 STORIES, 36 UNITS, TYPE V, 30,000 SF
  - 05 BUILDING 3, 3 STORIES, 36 UNITS, TYPE V, 30,000 SF
  - 06 BUILDING 4, 3 STORIES, 36 UNITS, TYPE V, 30,000 SF
  - 07 BUILDING 5, 3 STORIES, 42 UNITS, TYPE V, 34,200 SF
  - 08 GARAGE 1 (G1), 18 PARKS, 4,963 SF
  - 09 CARPORT 1 26 PARKS, 3,628 SF
  - 10 GARAGE 3 (G3), 17 PARKS, 4,704 SF
  - 11 CARPORT 2 11 PARKS, 1,824 SF
  - 12 GARAGE 5 W/ ADA STALL (G5), 13 PARKS, 3,795 SF
  - 13 CARPORT 3 12 PARKS, 1,872 SF
  - 14 BIOSWALE
  - 15 GATED FIRE ACCESS & RIGHT OUT ONLY
  - 16 42" CONTINUOUS GATED FENCE
  - 17 PUBLIC SIDEWALK EASEMENT AND ROW
  - 18 6' ROW DEDICATION FOR FUTURE SIDEWALK
  - 19 6' BIKE LANE (EXISTING)
  - 20 LIVE WORK UNIT, TYPICAL
  - 21 AERIAL APPARATUS, 26' WIDE
  - 22 EXISTING ADA RAMP
  - 23 ENHANCED PUBLIC POCKET PARK
  - 24 NEW 5' PUBLIC SIDEWALK, CURB, AND GUTTER
  - 25 MONUMENT SIGN ON WALL
  - 26 15' MINIMUM SETBACK 20' MAXIMUM
  - 27 GUARDRAIL
  - 28 10' PEDESTRIAN PATH / 15' EASEMENT
  - 30 FIRE TRUCK AERIAL ACCESS LOOP
  - 31 DOG WALK
  - 32 OUTDOOR AREA
  - 33 ODOT REQUIRED 8' HIGH WIRE FENCE, BLACK
  - 34 GARDEN
  - 35 PLAZA
  - 36 PERSONAL STORAGE, 10 UNITS
  - 37 PLAYGROUND
  - 38 BIKE PATH
  - 39 TRASH AREA
  - 40 RAIL LINE
  - 41 BIKE STORAGE WITH DOUBLE DOCKER RACKS - 24 PARKING
  - 42 BIKE RACKS - 3 PARKING
  - 43 BIKE RACKS - 3 PARKING
  - 44 BIKE RACKS - 4 PARKING
  - 45 BIKE RACKS - 6 PARKING
  - 46 BIKE RACKS - 3 PARKING
  - 47 5' DEEP PATIO, TYP.
  - 48 ODOT REQUIRED 8' HIGH PRECAST CONCRETE WALL
  - 49 6' HIGH WIRE FENCE, BLACK
  - 50 RIGHT TURN ONLY
  - 51 ACCESS GATE
  - 52 TRELLIS

GMU

R-3

R-7

R-5

C-CS

0 50' 100'

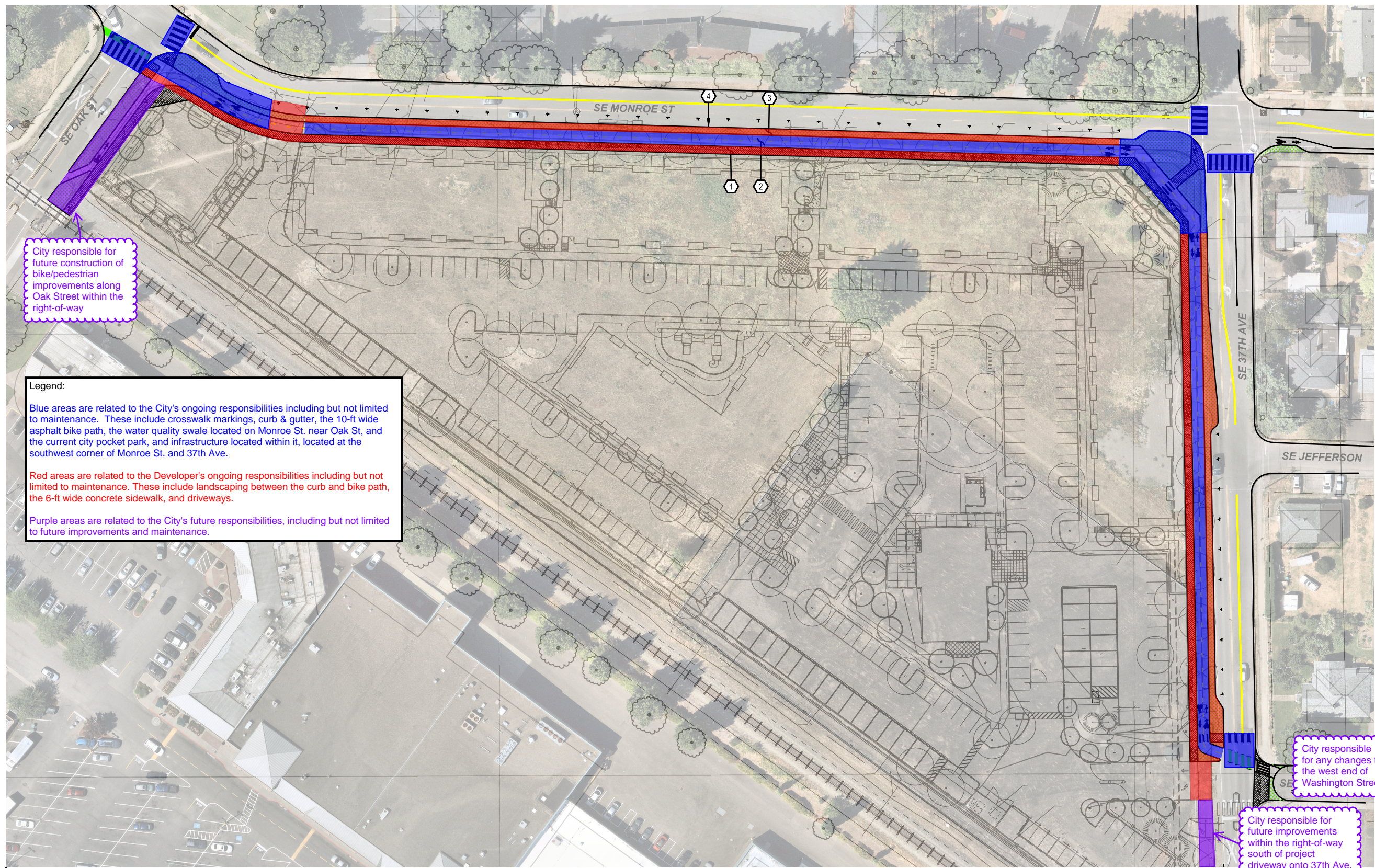
SCALE: As indicated



KEYNOTES

- 1. 6' SIDEWALK
- 2. 10' TWO-WAY BIKE FACILITY
- 3. 5' PLANTER
- 4. PROPOSED CURB

Line measures 1 inch on full scale drawing, if not 1 inch scale accordingly.



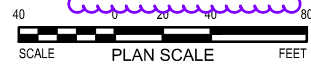
**Legend:**

Blue areas are related to the City's ongoing responsibilities including but not limited to maintenance. These include crosswalk markings, curb & gutter, the 10-ft wide asphalt bike path, the water quality swale located on Monroe St. near Oak St, and the current city pocket park, and infrastructure located within it, located at the southwest corner of Monroe St. and 37th Ave.

Red areas are related to the Developer's ongoing responsibilities including but not limited to maintenance. These include landscaping between the curb and bike path, the 6-ft wide concrete sidewalk, and driveways.

Purple areas are related to the City's future responsibilities, including but not limited to future improvements and maintenance.

**PLAN**  
SCALE: 1" = 80'



INFO  
PROJECT NO: 00-2019-248  
CAD DWG FILE: MONROE SHEETS  
DESIGNED BY: KTP  
DRAWN BY: SEW  
REVIEWED BY: KTP  
DATE: 11.6.2019  
SCALE: AS NOTED



SHEET TITLE  
MCFARLAND PROPERTY  
**STREET ALIGNMENT (B)**  
**NO EASTBOUND BIKE LANE**

SHEET NO.  
**2**  
SHEET 2 OF 3



# EXHIBIT D

Exhibit D Spreadsheet for Milwaukie Development Agreement		Description of Construction Work		March 2020 Plans		
Estimated Developer Costs to be Reimbursed		Quantity	Unit	Unit Costs	Cost	Notes
Mobilization		\$ 164,858.86	LS	1.0%	\$ 1,648.59	Guidance from construction on cost % compared to overall work.
Traffic control		\$ 164,858.86	LS	0.1%	\$ 164.86	Guidance from construction on cost % compared to overall work.
Erosion control		\$ 164,858.86	LS	0.4%	\$ 659.44	Guidance from construction on cost % compared to overall work.
Corner Street Improvements	Flatscaped public park at corner of Monroe and 37th	783	SF	\$ 9.20	\$ 7,203.60	
Bike Lane	10 Ft Asphalt Path	12881	SF	\$ 10.25	\$ 132,030.25	
Curb and Gutter	City park at Monroe and 37th, WQ facility Monroe at Oak	197	Linear FT	\$ 33.00	\$ 6,501.00	City only reimbursing for curb as shown in Exhibit D: 86 LF at west end of Monroe, 111 LF at Monroe/37th intersection.
Planting Strip (ROW)	5 Ft landscape	2780	SF	\$ 5.00	\$ 13,900.00	City only reimbursing for curb as shown in Exhibit D: 1,050 SF at west end of Monroe, 1730 SF at Monroe/37th intersection.
ROW Sidewalk	6 Ft Concrete Sidewalk	353	SF	\$ 8.17	\$ 2,884.01	City sidewalk responsibility is only at the corner of Monroe/37th Ave, for that piece from the bike path to back of curb.
Driveways at bike path	Concrete aprons	260	SF	\$ 9.00	\$ 2,340.00	one 26-ft wide driveway X 10-ft wide path = 260 SF
					<b>\$ 167,331.74</b>	<b>Gross Developer's Costs to be Reimbursed</b>
Estimated Costs of Developer Obligations the City has agreed to perform (Section II)		Quantity	Unit	Unit Costs	Cost	Notes
Work with UPRR for permitting		40	hrs	\$ 115.00	\$ 4,600.00	Best guess estimate
Oak Street Improvements	Match existing curb, sidewalk and planting strip conditions	1754	SF	\$ 8.44	\$ 14,800.00	<b>City's costs of Developer responsibilities</b>
37th Street S of Washington Improvements	Match existing curb, sidewalk and planting strip conditions	3238	SF	\$ 8.28	\$ 26,800.00	
					<b>\$ 8,320.00</b>	Add BOLI wage increase factor, 20% increase
					<b>\$ (54,520.00)</b>	<b>City's costs of Developer responsibilities</b>
					<b>\$ 112,811.74</b>	<b>Net Estimated credits/reimbursement from City to Developer</b>
					<b>\$ 23,126.41</b>	<b>20.5% soft cost reimbursement (Section 3.3)</b>
					<b>\$ 135,938.15</b>	<b>Total Credits/Reimbursement from City to Developer, w/ soft costs</b>



**RS Agenda Item**

**7**

## **Business Items**

## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
**Reviewed:** Jason Wachs, Community Engagement Coordinator and  
Brenna Cruz, Event Coordinator  
**From:** Jordan Imlah, Communication Program Manager, and  
Ann Ober, City Manager  
**Subject:** **Intersection Mural Painting Program**

**Date Written:** Oct. 1, 2020

### ACTION REQUESTED

Council is invited to hear from community members who recently participated in the painted intersection approval process in the Lewelling neighborhood.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[Oct 6, 2015:](#) Council discussed painted intersections with engineering department staff and supported adding the activity to the engineering right-of-way (ROW) permit program.

### ANALYSIS

#### Background

The city's painted intersection program is an opportunity for community members to beautify intersections on local streets around Milwaukie. The program uses street murals to help neighborhoods create a sense of identity and community pride.

In 2015, the Ardenwald–Johnson Creek neighborhood created the first painted intersection in Milwaukie. Located at the intersection of Sherrett Street and 30th Avenue., Located on the border between Milwaukie and Portland, the mural features a dogwood for Milwaukie and a rose for Portland, along with perimeter drawings representing different facets of the community.

In October 2018, the Island Station neighborhood created a painted intersection at Eagle Street and 19<sup>th</sup> Avenue. The wildlife-themed design depicts an eagle and salmon, complementing the nearby views of the Willamette River.

#### Current Process for Painting an Intersection in Milwaukie

To obtain the required ROW permit, neighbors must complete a permit application and include the following:

- Completed Arts Committee Painted Intersection Design Review Application, including artwork designs.
- Signed petition with 80% approval of all residents living within 400 feet of the chosen intersection.

Other considerations for approval:

- Location: Painted intersections must be on local streets that are not designated Public Transit Routes and must be located at least five feet from traffic control devices (stop signs, etc.).
- Materials: Intersections must be painted using approved traffic paint.
- Maintenance: Permit applicant(s) are responsible for future maintenance and repair of the artwork.

### **Lewelling Neighborhood Project**

In the summer of 2020, community members in Lewelling began the process of seeking a permit to paint an intersection in their neighborhood. Their experience highlighted some considerations about how the program might be changed or improved. Some related issues were raised during the city's Black, Indigenous, and People of Color listening sessions that were held this summer. A letter from the Lewelling Neighborhood District Association (NDA) is attached to this staff report to provide additional information.

### **BUDGET & CLIMATE IMPACT**

Not applicable.

### **WORKLOAD IMPACT**

Preparing for this discussion has had minimal impact on staff. If Council is interested in increasing engagement, however, staff would support use of the city's new engagement platform to seek community feedback about the program. That work would be completed by the Arts Committee's staff liaison. Staff would then return with any community feedback received prior to asking Council to act.

### **STAFF RECOMMENDATION & ALTERNATIVES**

Not applicable.

### **ATTACHMENTS**

1. Lewelling NDA Letter

To: Mayor Gamba and Milwaukie City Council  
From: Stephan Lashbrook, Lewelling NDA Chair and  
Ernesto Dominguez, Rainbow Lane Street Mural Project Manager  
Date : October 14, 2020

Dear Mayor Gamba and other Councilors:

Thank you for allocating time on your agenda for a discussion of the proposed Rainbow Lane street mural project and the neighborhood concerns raised by that project.

**BACKGROUND:**

The idea for this project was brought to the NDA at a regular meeting in the spring. It was agreed that special meetings should be held to focus just on this topic. Ernesto agreed to be the project manager and Stephan agreed to create an NDA subcommittee for this purpose. Subcommittee meetings were held over a number of weeks and all interested persons were welcome to participate. Numerous designs were discussed, with six finally taken to the subcommittee to select two alternative designs for neighbor consideration. Both of those final designs consisted of rainbow color schemes, with a hand of different flesh colors: one having a raised fist and the other having a hand showing the peace sign. The subcommittee continued to work through the summer (even though the Lewelling NDA typically does not schedule meetings in July or August). A number of people participated in those subcommittee meetings who don't normally attend our NDA meetings. One noteworthy example was the local girl scout troop, which included strong supporters of the proposed street mural.

Before finalizing work on designs, members of the subcommittee attended a City Arts Committee meeting seeking their support. The Arts Committee was supportive of both designs and encouraged the group to move forward.

A letter was crafted and mailed out to neighbors within 400 feet of the project intersection, explaining the need for 80% support if the project was to go forward. Other NDAs were contacted seeking their support as well as a small financial contribution. The hope was to have the mural completed before the arrival of fall weather.

As you know, work on this project came to a halt when the Lewelling NDA was not able to gain the affirmative support of 80% of property owners within 400 feet of the project location (the intersection of SE 55th Ave and Rainbow Lane). The following information may help to inform further conversation:

1. Number of occupied residences within 400 feet of the intersection: 31
2. Number of affirmative responses (supporting either or both designs): 17
3. Number of negative responses (opposed to either design): 5
4. Number of occupied residences where no response was given: 9
5. Number of residences within 400 feet that are outside the City limits: appears to be 4

#### QUESTIONS RAISED:

1. Is 80% approval an appropriate threshold? Would 20% objections to block a project be more appropriate?
2. Should a party's decision to not respond be counted either way? Under the current system, it has the same effect as a "no" vote.
3. Should each residence have only one vote? What if six people live there and they have varying opinions?
4. Should properties outside the City limits have the same right to participate as those within?
5. What if some of the properties within 400 feet front on a street that has no direct connection to the subject intersection? What if they are on the far side of a creek or the far side of a busy street, railroad or highway? Should they still be able to affect the outcome?
6. Given the obvious stress of life in a pandemic, does it make sense to have a process that virtually forces proponents to go door-to-door seeking signatures? Many people do not want to answer their doors these days.

#### CONCLUSIONS AND RECOMMENDATIONS:



This process has led a number of us to believe that there are ways that the City can add clarity and reasonableness for anyone hoping to complete a street mural. We would ask and recommend that the City Council create a task force or work group from interested community members to propose changes. We believe that such a group should include NDA representatives and people from the Arts Committee. We would also ask for a quick resolution to this process so any new rules can be in place by next spring.

Thank you.

## Scott Stauffer

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**From:** Scott Stauffer  
**Sent:** Tuesday, October 20, 2020 7:55 PM  
**To:** Scott Stauffer  
**Subject:** 10/20 RS Zoom Chat Log 7. A. Intersection Murals

From Hamid Bennett to [All panelists:](#) 06:56 PM  
Former senior patrol leader of boy scout  
troop 235 here... welcome Girl Scouts!

From Rebecca St... to [All panelists and attendees:](#) 07:00 PM  
Thank you Hamid! Happy to be here. :)

From Anza Schmidt (she/her) to [All panelists:](#) 07:00 PM  
yes thank you :)

From E (el/he/him/his) to [All panelists:](#) 07:00 PM  
So happy to see ya Anza and Jules! Love the  
hair Anza.

From Hamid Bennett to [All panelists:](#)  
thank you for sharing and attending tonight!

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From E (el/he/him/his) to [All panelists:](#)  
Just to clarify, the lot has a home, but the  
mail has been stopped from being delivered  
and no one has lived there for over a year.

From E (el/he/him/his) to [All panelists:](#)  
How old do you have to be to have a vote?  
Or for that matter, how young do you have  
to be?

### SCOTT STAUFFER, CMC

City Recorder  
he • him • his  
p: 503.786.7502 f: 503.786.7540  
City of Milwaukie  
10722 SE Main St • Milwaukie, OR 97222

**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Ann Ober, City Manager

**Date Written:** Oct. 8, 2020

**From:** Luke Strait, Chief of Police, and  
Kathryn Meier, Police Detective

**Subject: Mental Health**

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**ACTION REQUESTED**

Council is asked to receive an overview of how the police department currently engages in mental health-related calls.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

[August 18, 2020:](#) Council approved a resolution changing its goals to include one focused on equity, inclusion, and justice.

[September 15, 2020:](#) Council received an equity update from the city manager and police chief. Included in that update was data on mental health-related calls for service, data related to police use of force, and notes from the three listening sessions with Black, Indigenous, and People of Color (BIPOC) in the Milwaukie community.

**ANALYSIS**

On August 18, Council amended its goals to include a goal focused on equity, inclusion, and justice. The resolution revising the goals asserted several actions for city staff and Council, which included:

- Conduct listening sessions and create subsequent changes to city practices, policies, and codes.
- Work on relationship-building with Milwaukie's BIPOC residents and define the next steps forward for this work.

The Milwaukie Police Department (MPD) is working collaboratively with other city staff and the community on an objective analysis of how the department provides police services. That process includes listening to community members questions, experiences, and requests, and listening to department staff explain how services are provided. The goals of this process include:

- Facilitate objective analysis of systems and information, seeking ways to improve service and meet the evolving needs of the community.
- Provide transparency as the city works through these processes.

Police calls for service that have a nexus with mental health needs can come from a wide variety of call types or police contacts. Those can include but are not limited to suicide threats, suspicious person calls, trespass or unwanted person calls, disturbance calls, domestic violence calls, assaults, and welfare checks. In many cases, the nature and extent of mental health issues that might contribute to the outcome of a police contact are not clear prior to police arrival. In

all of these cases, there is inherent risk involved in responding to and assessing the situation. That risk will continue to be a significant factor in determining who is willing to respond to these calls. To prevent unnecessary escalation, law enforcement strives to proactively assess a given situation before a responding officer arrives at the scene.

As one of the few services available 24/7 for immediate response, the MPD is responsible for responding to and triaging a wide variety of situations in which mental health is a factor. The city and the MPD strive to provide resources to the officers responding to these situations including specific training on how to handle mental health-related calls. The MPD also continues to monitor emerging trends and response models to evaluate their potential effectiveness in Milwaukie.

Crisis Intervention Training (CIT) is one method the department uses to prepare staff to deal with these types of calls. The CIT model is nationally recognized and certified, and focuses on several objectives:

- Provide information and resources to law-enforcement personnel who find themselves handling calls involving individuals in some form of mental health crisis.
- Increase the ability of law enforcement to successfully manage people in mental health crisis.
- Reduce the number of unnecessary incarcerations involving people suffering from mental illness.
- Provide relief to an overburdened criminal justice system.
- Implement a response system for people experiencing crisis.
- Develop and sustain officer interest in calls involving mental health crisis.
- Continue to develop collaborative relationships between law enforcement, mental health service providers, and those suffering from mental health and mental illness.

The city also utilizes the services of the [Crisis Negotiation Team](#), an interagency team sponsored and coordinated by the Clackamas County Sheriff's Office. Two MPD officers are currently members of this team and receive an initial 40 hours of nationally recognized and certified CIT training. In addition, they receive approximately 150 hours of training per year while they are on the team. Team members are trained in a variety of areas to help prepare them to assist with the crisis needs of a diverse population. Among other areas, this includes training specific to LGBTQIA+, juveniles, veterans, and those effected by severe and persistent mental illness. Members of the CIT respond to critical incidents throughout Clackamas County and develop additional expertise in dealing with those in crisis, both in-person and on the phone. Consistent with law enforcement in general, the goal of the CIT is the preservation of life through the use of de-escalation strategies that help resolve critical incidents safely for everyone involved.

The Behavioral Health Unit (BHU), which is a division of Clackamas County's Health, Housing and Human Services Department (H3S), also provides support to law enforcement and the community. BHU is typically comprised of three mental-health clinicians that consult with officers over the telephone related to calls or respond to assist if they are available and the situations warrants their involvement. The goal of BHU clinicians is to reduce unnecessary emergency room visits and incarcerations through de-escalation, referrals, and assistance accessing additional social services.

The MPD's [PEER Support and Wellness Program](#), Lexipol Police Policy 321, provides the department's internal system approach for early identification and intervention to maintain the

long-term mental health of our staff. Staff recognize this can be a very demanding profession and it is our obligation to each other and our commitment to the community to be proactive in managing the stressors of life in general and this career. This program was redesigned in 2018 and the department actively collaborates with [Clackamas County Chaplaincy](#), mental health professionals, and [Responder Life](#).

### **Next Steps**

Over the past several months, staff have discussed several possibilities for how policing/public safety services can be provided differently in Milwaukie. Several communities in the region are considering additional mental health services to assure more consistent and timely responses. We are aware of two cities adding mental health professionals directly to their police departments. There are also related services such as Project Hope, provided through Clackamas Fire District #1 and H3S, and the CAHOOTS model developed by the City of Eugene. Based on the size of Milwaukie and the call volume, staff does not believe a comprehensive mental health team would be the best use of funding or resources. However, programming that partners with neighboring cities that are expanding their capabilities or further collaboration with the county could provide enhanced services in the future.

### **Questions for Council**

Are there models or considerations Council would like to share with staff to assist us with this research?

### **BUDGET IMPACT**

With this report and presentation, staff is providing information on how the MPD currently delivers services. If Council recommends changes to how police services are provided or how community needs related to mental health are met, additional analysis of budget and workload impacts would be required.

### **CLIMATE IMPACT**

None.

### **COORDINATION, CONCURRENCE, OR DISSENT**

None.

### **STAFF RECOMMENDATION**

Staff intends to work closely with the city's new equity manager to develop the best path forward as we continue to focus on enhanced training and collaboration with social service providers.

### **ATTACHMENTS**

None.

# POLICING AND MENTAL HEALTH

Detective Kathryn Meier  
Officer Mark Inman

With support from

Chief Luke Strait  
Brian Dwiggin, Clackamas County  
Behavioral Health Crisis Program Supervisor



- Introduction / Experience
- Definitions
- Officer Training
- Response to Mental Health
- Resources/services
- Data



# DEFINITIONS

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- ORS – Oregon Revised Statutes
- Dispatched calls – came through 911 or non-emergency
- Police Report – Formal written report; defined by classification “Info, Mental health..”
- Arrests – A person was taken to jail or cited and released at the scene for a crime
- Behavioral Health Unit – Three full time mental health clinicians who can assist police with calls involving mental health
- Mobile Crisis Response Team – County Program To be described by Brian Dwiggin
- Use of Force – Defined as “The Application of physical techniques **or tactics**, chemical agents or weapons to a person”...
- CNT – “Crisis Negotiation Team”, interagency specialized intervention team
- **POH – Police Officer Hold (ORS426.228 “Custody”)**: Physically restraining someone in handcuffs because they’re a danger to themselves or others and transporting them to a facility which provides psychological/psychiatric services.
- **Director’s Hold (ORS 426.233**  
**Authority of community mental health program director and of other individuals)**





# OFFICER MENTAL HEALTH TRAINING

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- 40-hour Crisis Intervention training
- Moyer consulting De-escalation training (annual)
- On going Roll-Call training on critical incident debriefing
- Roll-Call training provided by third party partners ex; Project Hope, Clackamas County LEAD, CCDA, Central City Concern, Cascadia Behavioral Health



# OFFICER RESPONSE TO MENTAL HEALTH CALLS

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**How the Milwaukie Police Department typically processes mental health issues in their routine response to calls**

- Police calls for service which have a nexus to mental health needs can come in the form of a wide variety of call types or police contacts. Those can include but are not limited to:
  - Welfare checks
  - Suicide threats
  - Suspicious person calls
  - Trespass or unwanted person calls
  - Disturbance calls
  - Domestic Violence calls
- Calls are often referred to police by the crisis line or medical professionals requesting a welfare check and asking for Police intervention based on safety concerns.



# CRIMINAL VERSUS NON-CRIMINAL POLICE CALLS

---

- CRIMINAL

- Police calls that involve a crime being committed. Some frequent crimes Officers respond to that are typically linked to mental health are:

- \* Trespassing, Disorderly conduct, Menacing, and Harassment

- NON-CRIMINAL

- Police calls that involve non-criminal activities. Some examples include but are not limited to:

- \* Welfare check, Disturbance (out of control kid, domestic, stranger), Unwanted, And suicide threat.

Dispatched calls are not always an accurate account of what is really happening. Police must decide if the call is criminal or a mental health issue, both, or possibly none. Officers then determine the best course of action while considering if a crime occurred, if so, is the victim a person, a business or the state and if it requires a mandatory arrest per statute.



# CRIMINAL VERSUS NON-CRIMINAL POLICE CALLS CONT.

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## 1. When it is solely criminal

- Police investigate and if there is probable cause exists, they either make an arrest, or submit charges to the District Attorney Office.

## 2. When it is solely mental health

- Police begin working on a plan which can include referring to appropriate resources, requesting assistance as needed (BHU, CNT), assisting with a voluntary transport to a hospital or mental health clinic, and Police Officer Hold (POH.)

## 3. When it is both

- Police use discretion to decide best course of action based off many evolving factors. Examples could include:

- \* Arrest
- \* POH/hospital in lieu of arrest
- \* Cite and Release
- \* Third Party Intervention (TPI)
- \* De-escalate/resolve and leave
- \* Combination of above to include Referrals and follow up.



# WHAT OTHER OBSTACLES EXIST IN GETTING HELP TO THOSE IN NEED?

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- POH – Officers must be able to articulate the person is an actual danger to themselves or others (not that they COULD BE) and in need of a hospital/mental health care. Many crisis situations don't necessarily meet this standard. Officer's then must find other resources/assistance for the person.
  - Personal insight regarding willingness - When people are in crisis or experiencing mental health symptoms and they don't meet POH or Director Hold standards, police and mental health workers have no authority to *force* assistance. They must accept help/assistance willingly. If they are unwilling to accept help or unable to understand how much they need it, Officers and mental health workers have limited options other than offering resources the person often won't use. It's generally the person's choice if they want to accept help or use the resources. (some programs include outreach, but criteria must be met.)
- \* what does it look like to be in crisis or be experiencing mental health symptoms but NOT meet POH or director hold requirements?



# POLICE VS MENTAL HEALTH/CRISIS WORKER RESPONSE

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## POLICE

### PRIMARY OBJECTIVE

- Address criminal activity, violence, emergencies with risk of life or serious injury
- Primary goal focuses on immediate needs i.e. food, water, shelter, medical (mental health and physical health)
- De-escalation and conflict resolution

### TYPICAL ADDITIONAL RESPONSE

- Provide resources/information for a variety of social services
- Transportation
- Referral to appropriate service such as, but not limited to Mental health services, crisis counselor (BHU), Homeless outreach, substance abuse services.
- Follow up assistance (Yes, this happens all the time!)

## COUNSELOR/CRISIS WORKER

- Crisis counseling and assessment for immediate assistance i.e.: (\*) Directors Hold.
- Suicide prevention, and assessment (possibly intervention in some cases)
- Assessment and referral for long term assistance with mental health, advocacy, housing, substance abuse services, and other social services.
- Referral and resource connection to outreach and long-term services.
- Additional long-term counseling and case management as appropriate.

\* ORS 426.233 - allows a community mental health director to take a person into custody to be involuntarily admitted to the hospital. Typically, requires police assistance.



# DISCLAIMER....

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The team would like to discuss some examples of cases with information about trauma related events that could be triggering for some.



# EXPERIENCE OF POLICE AND COMMUNITY MENTAL HEALTH WORKER

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*\* In any specific examples, names have been changed to protect privacy\**

- Community mental health worker:
  - "Katie's" attempted suicide by hanging
  - "Robert's" struggle with mania

\* Not all my experience with police as a mental health worker were positive or helpful.

- Police Officer:
  - "Nancy" -dispatched to a call about quitting smoking.





# SO WHAT DOES M.P.D. FOLLOW UP LOOK LIKE.....

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- Officer Brad Walther – Assisted a wounded Veteran struggling with addiction and mental health. After repeated calls regarding welfare checks and vice, Officer Walther assisted the person into treatment and services at the VA, and even formed a friendship taking him to do things he enjoyed to remind him what joy felt like.
- Detective Heather Hisel - While talking to a contract employee at the City learned this person was homeless and unable to navigate social services themselves. Detective Hisel spent much of her free time assisting this person until they were able to obtain housing, and then coordinated donations for household supplies and furniture, helping this person settle into their new home.
- Multiple MPD Officers have assisted a local male who was houseless and struggling with heroin addiction. An officer who heard his story, referred him to Project Hope. Project Hope is a program which collaborates efforts from community paramedics from both Clackamas AMR and Clackamas Fire, along with a peer recovery mentor to provide follow up to overdose victims after the emergency call ends.
- Multiple MPD Officers have over the span of multiple years assisted a young male who grew up in the community and as a young adult began experiencing mental health symptoms, and later substance abuse. PD staff recognized he was at potentially high risk to provoke significant use of force. The male has been houseless and often in need of food, clothing, and sometimes even shoes. Officers have provided him basic needs along with a referral to Cascadia Behavioral Healthcare. Staff has reached out to Mental Health and to the D.A.'s office, explaining escalating risk. He has been provided rides to and from his appointments at the clinic as well as court dates, so he was able to avoid further legal issues.



# ACTUAL CALLS – MENTAL HEALTH COMPONENT

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- Specific examples:
- Suspicious person
- Suspicious Circumstance
- Threats with a weapon (gun)
- Referral of Suicidal Person from crisis line
- Officer Initiated welfare check
- Officer Initiated Houseless camper
- Suspicious person – threats with a weapon



# SERVICES WE HAVE ACCESS TO:

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- Behavioral Health Unit (BHU) - Mental health clinicians available to respond to calls 24/7 in person or consult with officers over the phone. They provide referrals and assistance with accessing services and reduce unnecessary incarcerations through de-escalation and assistance accessing social services.
- Clackamas County Urgent Mental Health Walk-In Center (Riverstone clinic) - Trained crisis clinicians who respond to people in need of crisis services. Ranges from telephone intervention (24-hour phone line) to coordinating same day, emergency mental health assessment. Provides crisis stabilization treatment sessions, community consultation, information, and referrals to other social service agencies.
- Cascadia Clackamas Health Center - Community based mental health treatment and care coordination. This is accessed through referral only.
- Crisis Negotiation Team - Interagency team coordinate by the Clackamas County Sheriff's Office comprised of specially trained law enforcement officers. Officers receive 40 hours of certified crisis intervention training, and then approximately 150 hours of specialized training per year. Team members respond to critical incidents throughout Clackamas County with the primary objective of peaceful resolution through de-escalation crisis negotiations. Team members are on call 24/7 and can respond to critical incidents as a team, or individually while on duty to address lower risk behavioral health related calls.



# COMPARING DATA-CAHOOTS

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2018

- Population of Eugene, Oregon; 178,329
- Cahoots 22,000 calls for service – resulting in 150 referrals to police
- Cahoots averages 60 calls per day
- Eugene Police Dispatched Calls for service; 127,425
- 7635 arrests, 3265 specifically Trespassing and Disorderly Conduct
- In other words 43% of EPD's total arrests are Trespass and Dis. Con.
- 5.7% of contacts end in arrests



# MPD DATA JANUARY 2019

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- 27,774 Total police contacts (dispatched calls and Officer initiated stops)
- 4983 Police Reports
- 716 total arrests (averaging 59 per month) to include Police Officer Holds (non-criminal) or 2.5% of total contacts lead to arrest.
- 54 documented use of force incidents or .02% of total police contacts
- Based on CAHOOTS numbers, Milwaukie would handle 7 calls per day related to Mental or Behavioral Health not requiring police assistance. That ratio translates to MPD total contacts reduced to 23,692.



# MPD CALLS RELATED TO MENTAL/BEHAVIORAL HEALTH

- March-August 2020; 771 calls in which mental health was a significant contributing factor.
- Of 771, 162 resulted in formal written reports
- 39 were transported to the Hospital,
- Only 2 resulted in transport to jail
- Mental Health component; 5.5% of calls for service



# SUMMARY AND LOOKING FORWARD

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- Enhanced on-going roll call training.
- Enhanced collaboration and training with external partners.
- Commitment to focusing on increased training in the areas of equity, de-escalation, mental health, and serving a vulnerable and diverse population.
- Continue to evaluate data to guide our path forward.



# QUESTIONS, REQUESTS, GUIDANCE

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- We're in this together
- Our goals will continue to be professional, compassionate service, prioritizing safety, de-escalation, and collaboration with service providers
- Is there anything we're missing?





## Scott Stauffer

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**From:** Scott Stauffer  
**Sent:** Tuesday, October 20, 2020 9:27 PM  
**To:** Scott Stauffer  
**Subject:** 10/20 RS 7 B Mental Health Zoom Chat Log

From Brian Dwiggin to [All panelists:](#) 09:12 PM  
Thanks for having me!

---

### SCOTT STAUFFER, CMC

City Recorder  
he • him • his  
p: 503.786.7502 f: 503.786.7540  
City of Milwaukie  
10722 SE Main St • Milwaukie, OR 97222

## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
Ann Ober, City Manager

**Date Written:** Oct. 5, 2020

**Reviewed:** Blanca Marston (as to form), Administrative Specialist

**From:** Peter Passarelli, Public Works Director, and the  
Tree Board

**Subject:** **Tree Code – Update**

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### ACTION REQUESTED

Council is asked to provide feedback on draft tree code language and proposed fee schedule.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[February 13, 2018:](#) The Tree Board presented and discussed its 2018 work plan and policy goals with the Council.

[October 2, 2018:](#) Council adopted the Milwaukie Climate Action Plan (CAP), which includes two relevant city-led urban forest strategies.

[January 15, 2019:](#) The Tree Board chair and public works director presented the draft Urban Forest Management Plan (UFMP) to Council to obtain feedback in preparation for adoption by Council.

[February 12, 2019:](#) The public works director discussed and provided an update on revisions to the UFMP to Council during the Tree Board annual update.

[March 19, 2019:](#) Council adopted the UFMP.

[August 11, 2020:](#) The public works director provided an update on the draft tree code and provided a copy of draft tree code to Council.

### ANALYSIS

In February 2018, the Tree Board identified three priority areas to focus its efforts:

- (1) create and adopt the UFMP (completed),
- (2) conduct public outreach (continuous), and
- (3) work on updating the tree code.

Since adoption of the UFMP in March 2019, the Tree Board has focused on developing proposed amendments to the tree code related to street trees and public trees. The board has also worked to integrate goals from the UFMP into the city's Comprehensive Plan update.

The board would like to discuss and receive feedback on the items noted below before finalizing the draft code.

## Trees and Wildlife impacts

The board's recommendation on arboricultural work and wildlife impacts is that this item can be best addressed through updates to the Public Works Standards and via public education and outreach. Outreach efforts would be designed to inform community members and tree trimming contractors about impacts to birds that could occur from trimming or removing trees during times of the year when birds are nesting. Existing federal regulations, including the Migratory Bird Treaty Act and Endangered Species Act, provide some protections for nesting birds. In addition, the International Society of Arboriculture (ISA) and the American National Standard Institute (ANSI), which provide best management practices to arborists, include wildlife protection and habitat management in their recommendations. The following references were provided by the board and are included as attachments:

1. Tree Care for Wildlife Best Management Practices in California
2. The City of Portland Bureau of Environmental Services Best Management Practices for Nesting Birds

## Low Income Assistance

Based on consultation with the community development department, the draft tree code uses the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area average median income (AMI) rather than a Milwaukie-specific AMI for low income assistance, which would align the code with our current Home Energy Score (HES) low income assistance program, utility assistance programs, and construction excise tax (CET) programs. In addition, use of the regional AMI aligns with the federal Housing and Urban Development (HUD) Clackamas County housing vouchers. Because the Portland-Metro AMI is higher than the Milwaukie AMI, more Milwaukie residents are likely to qualify for assistance. The board recommended that the city provide financial assistance or waive permit fees to homeowners when the owner demonstrates a household income that is at or below 80 percent of the median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. The 80% threshold is consistent with the HES and CET programs. The utility assistance program is currently set at 50% AMI.

## Fee Structure

In past discussions on tree value, staff and the board used a model that calculates the theoretical value of imaginary public trees using the trunk formula appraisal method. The model is conceptual and is being used to ensure fees are appropriate, but it does not suggest actual appraisal values. The values from the model were compared against cost of removal based on the proposed fee structure shown below.

Calculated Costs	DBH	8"	14"	20"	26"	32"
	Appraisal Value	\$ 700.00	\$ 2,000.00	\$ 4,200.00	\$ 7,100.00	\$ 10,700.00
	Master fee	\$ 320.00	\$ 1,260.00	\$ 3,000.00	\$ 3,900.00	\$ 4,800.00
Variance	Fee as % of Appraisal	46%	63%	71%	55%	45%

In consideration of whether the variance between fee and appraisal was not consistent across tree size – as discussed with Council – staff re-evaluated the proposed fee structure to ensure the fees adequately targeted trees that require the most protection.

In the city's urban forest, loss to canopy is through removal and tree mortality. Natural regeneration is negligible for street trees and the main source of new trees is through planting. Arboricultural literature also suggests that mortality is greatest among street trees six (6) inches and smaller. In recognition of this, the fee was increased for smaller diameter trees.

It is important that the younger trees have the opportunity to survive, thrive, and grow. These fees provide additional protection, but the board and staff want to point out the biggest factors in improving street tree survivability are planting during the fall when the climate is favorable and ensuring proper care during the establishment period of the tree. These factors can be addressed through updates to our public works standards, improving specifications for tree protection during construction, improving construction specifications for planting and tree care during the establishment period, and public education and outreach. The fee increase for smaller diameter trees also resulted in a proportional increase in fees for the larger diameter trees. The updated table below provides the newly proposed fee structure's impact on the variance between fee and theoretical appraised value.

Calculated Costs	DBH	8"	14"	20"	26"	32"
	Appraisal Value	\$ 700.00	\$ 2,000.00	\$ 4,200.00	\$ 7,100.00	\$ 10,700.00
	Master fee	\$640	\$ 1,400.00	\$ 3,000.00	\$ 5,200.00	\$ 6,400.00
Variance	Fee as % of Appraisal	91%	70%	71%	73%	59%

With these considerations, the board recommends the following fees and penalties. These fees would be included in the city's Master Fee Schedule:

Fee Type	Amount
Permit Application	\$50
Programmatic Permit	\$2500
<b>Healthy Tree Removal Fee</b>	
2" or less diameter at breast height (DBH)	\$40
2" to 4" DBH	\$60 per inch DBH
4" to 8" DBH	\$80 per inch DBH
8" to 14" DBH	\$100 per inch DBH
14" to 20" DBH	\$150 per inch DBH
20" or greater DBH	\$200 per inch DBH

Planting and Establishment Fee	\$675 per Tree
<b>Enforcement/Restoration Fee</b>	
Damaged Tree	\$225 per inch DBH
Removed Tree	\$450 per inch DBH

### **Capital Improvement Program (CIP) Fee Exemption**

The draft code provides an exemption to the removal fee for removals related to city public infrastructure improvements. Without this proposed exemption, public projects may incur significant additional costs. For example, removal fees would have generated \$43,000 for the removal of 13 large trees at the site of the new stormwater facility located at Railroad Avenue and Oak Street. For the Meek Street stormwater project, this would have represented approximately a 1.7% increase in total project costs. The development of the current CIP included tree removal costs and replanting costs but did not anticipate tree removal fees. The additional fees could potentially impact the feasibility of a project that already is required to comply with public works standards. Conversely, it could be argued that removal fees offer an incentive for the city to consider alternative designs on public projects that would reduce impacts to trees.

### **Summary of Changes**

The board concluded that significant changes to the current city public tree code are necessary to further the community's urban forestry goals as set out by the UFMP and the CAP. The breadth of these changes resulted in a draft code that quickly became very difficult to read when additions and deletions were included. Attachment 1 reflects those changes, while Attachment 2 provides the current code for reference. The table below provides a summary of the types of changes that the board considered in the proposed amendments. Please note that these proposed amendments only apply to trees that exist on public land and/or street trees. The regulation of trees on private land will be considered by the board at future meetings.

<b>Chapter</b>	<b>Section</b>	<b>Disposition</b>	<b>Changes</b>
16.32	Tree Cutting	Amend	Change to title to better reflect focus on tree care
16.32.005	Purpose	Amend	Include language that better recognizes the benefits and importance of trees in the community
16.32.010	Definitions	Amend	Adding relevant definitions that help clarify technical language

16.32.014	Administration	Add	Assign responsibility and authority for implementation and enforcement of the code
16.32.015	Creation and Establishment of a City Tree Board	Amend and move	Adjust role of Tree Board to an advisory role because the city has an arborist on staff. Move to Title 2.
16.32.016	Creation of a City Tree Fund	New	Establish a dedicated funding source for tree related programs
16.32.017	Tree Planting	Amend	Better incorporation of Public Works Standards (PWS)
16.32.018	Public Tree Care	Amend	Style edits
16.32.019	Tree Topping	Amend	Style edits
16.32.020	Pruning, Corner Clearance	Amend	Style edits
16.32.021	Dead or Diseased Tree Removal on Private Property	Amend	Style edits
16.32.022	Removal of Stumps	Amend	Style edits
16.32.023	Interference with City Tree Board	Amend	Inclusion of Urban Forester
16.32.024	Arborists License and Bond	Amend	Minor edits
16.32.026	Permit for Major Pruning or Removal of Street Trees or Trees In Public Right-of-Way and Other Public Land	Amend	Amend language for Urban Forester to administer permitting program, new approval criteria and review factors
16.32.028	Programmatic Permits	New	Permits for work that impacts trees over a wide geographic area

			and duration, i.e. utility tree trimming
16.32.030	Permit and Fee Exemptions	Add	Fee exemption for city public infrastructure improvements
16.32.038	Low Income Assistance	New	Fee exemption for permits, removal, and replanting
16.32.040	Penalty	Amend	Penalty should not be less than cost of permit and tree removal.

### **Next Steps**

The board's primary focus has been on public trees, but the board anticipates significant amendments to the tree code as it relates to development and private property. To ensure consistency, proper style, and integration with other parts of the city code, these development and private property related amendments will be considered in the Comprehensive Plan Implementation Committee (CPIC) process. This will allow for a more robust community engagement process.

### **BUDGET IMPACTS**

The draft code calls for the establishment of a dedicated tree fund in which fees (permit fees, mitigation fees, etc.) associated with the tree code would be directed to assist in funding urban forest activities in future budget years. It is anticipated that a newly established tree fund and the transfer of current tree-related fee revenue will have minimal impact to the general fund. The city historically receives approximately 20-30 tree-related permit applications per year. At a fee of \$50 per application, this results in revenue of approximately \$1,000-\$1,500. As the urban forest program grows, future revenue generated from permits and mitigation fees will generate additional dedicated revenue for urban forest programs. Removal fees could impact city infrastructure improvement budgets if Council determined exemptions for these projects were not appropriate.

### **WORKLOAD IMPACTS**

The proposed amendments will formally shift urban forest and permit application review responsibilities to the public works department and the urban forester.

### **CLIMATE IMPACT**

The board found it necessary to propose amendments to the tree code to further the community's urban forestry goals as set out by the UFMP and the CAP. When adopting the CAP, Council adopted a specific natural resource climate action to increase urban canopy cover to 40% by 2040. The carbon sequestration performed by trees and the additional ecosystem services they provide such as water and air filtration, soil stabilization, and public health

improvements, will be essential as the community faces higher temperatures, increased flooding, and other natural hazards related to climate change.

#### **COORDINATION, CONCURRENCE, OR DISSENT**

The development of the draft tree code amendments has included coordination with the planning and engineering departments, and the city attorney. It is recognized that there are potential challenges involving trees, development, and infrastructure. Successful tree preservation and protection requires commitment, coordination, and involvement of many stakeholders.

#### **STAFF RECOMMENDATION**

Not applicable.

#### **ALTERNATIVES**

Not applicable.

#### **ATTACHMENTS**

1. Draft Tree Code
2. Current Tree Code
3. Tree Care for Wildlife Best Management Practices in California
4. City of Portland Bureau of Environmental Services Best Management Practices for Nesting Birds



**REVISED TREE CODE – DRAFT – 10/05/2020**

## CHAPTER 16.32 TREE CODE

## 16.32.005 PURPOSE

The purpose of this chapter is to establish processes and standards that ensure that the City recognizes and continues to realize the benefits provided by its urban forest. The Tree Code establishes processes and standards designed to minimize uncontrolled cutting or destruction of urban trees or groves within the City. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover on public and rights-of-way within the City and to ensure our urban forest is healthy, abundant, and climate resilient.

This code is designed to:

1. Foster urban forest growth to achieve 40% canopy coverage by 2040.
2. Maintain trees in a healthy condition through best management practices.
3. Manage the urban forest for a diversity of tree ages and species.
4. Manage street trees appropriately to maximize benefits and minimize hazards and conflicts with infrastructure.

## 16.32.010 DEFINITIONS

As used in this chapter:

“Arbor Day/Week” means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment. .

“Arboriculture” means the practice and study of the care of trees and other woody plants in the landscape.

“Caliper Inch” means the national standard for measurement of the diameter of a tree as taken at the trunk 6 inches above the mean ground level at the base of a new tree.

“City” means the City of Milwaukie.

“City Engineer” means the city engineer of the City of Milwaukie or designee.

“City Manager” means the city manager or the city manager’s authorized representative or designee

“Council of Tree and Landscape Appraisers (CTLA)” means the publishers of the Guide for Plant Appraisal.

“Crown” means the area of the tree above the ground measured in mass or volume and including the trunk and branches.

“Cultivar” means tree species cultivated in either a commercial or non-commercial setting solely for their decorative value in gardens and landscaping.

"Cutting" means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. Cutting does not include normal trimming or pruning but does include topping of trees.

"DBH" means the diameter at breast height.

"Dead tree" means a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life as determined by an ISA certified arborist.

"Diameter at breast height or DBH" means the measurement of mature trees as measured at a height 4.5 feet above the mean ground level at the base of the tree. Trees existing on slopes are measured from the ground level on the lower side of the tree. If a tree splits into multiple trunks below 4.5 feet above ground level, the measurement is taken at its most narrow point below the split.

"Drip line" means the perimeter measured on the ground at the outermost crown by drawing an imaginary vertical line from the circumference of the crown, straight down to the ground below.

"Dying Tree" means a tree that is diseased, infested by insects, deteriorating, or rotting, as attested by a professional certified in the appropriate field and that cannot be saved by reasonable treatment or pruning, or a tree that must be removed to prevent the spread of infestation or disease to other trees.

"Grove" means a stand of two or more trees with not more than 20 feet of separation between each tree.

"Hazardous tree" means the condition or location of the tree, or tree part, presents a clear public safety hazard or an imminent danger of property damage as assessed by an ISA Qualified Tree Risk Assessor, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

"Invasive species" means that a tree, shrub, or other woody vegetation that is on the Oregon State Noxious Weed List or listed on the City of Milwaukie Invasive Tree List in the Public Works Standards.

"ISA" means the International Society of Arboriculture.

"Major tree pruning" means the removal of over 20% of the live crown, or removal of or injury to over 15% of the root system during any 12-month period.

"Master Fee Schedule" is the schedule of City fees and charges adopted by City Council for the services provided by the City.

"Minor tree pruning" means the trimming or removal of less than 20% of any part of the branching structure of a tree in either the crown or trunk, or less than 10% of the root area based on ISA's Best Management Practices for Tree Pruning and Root Management within a 12-month period.

“NDA” means Neighborhood District Association.

“Noxious weed” means a terrestrial, aquatic, or marine plant designated by the State Weed Board under ORS 569.615.

“Owner” means any person who owns land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner's written consent.

“Park tree” means a tree, shrub, or other woody vegetation within a City park.

“Person” means any individual, firm, association, corporation, agency, or organization of any kind.

“Planning Director” means the planning director of the City of Milwaukie or designee.

“Private tree” means a tree, shrub, or other woody vegetation on privately-owned land within City.

“Public agency” means any public agency or public utility as defined in ORS 757.005, or a drainage district as defined in ORS 174.116.

“Priority species” means a tree species of special value to the community due to its importance as either a native species or a well-adapted non-native species. A list of Priority Species will be maintained by the Public Works Department.

“Public tree” means a tree, shrub, or other woody vegetation on land owned or maintained by the City, but does not include a tree, shrub, or other woody vegetation in the right-of-way.

“Public Works Director” means the public works director of the City of Milwaukie or designee.

“Right-of-way” means the area between boundary lines of a public way.

“Root zone” means the area of the ground around the base of a tree measured from the trunk to 5 feet beyond the outer perimeter drip line or appropriate distance for that species to maintain root system health.

“Shrub” means any plant with multiple woody stems that does not have a defined crown and does not grow taller than a height of 16 feet.

“Street tree” means a tree, shrub, or other woody vegetation on land within the right-of-way.

“Street Tree List” is the list of approved tree and shrub species for planting within the right-of-way.

“Topping” means a pruning technique using heading cuts on branches and main stem to reduce the height or width of a tree.

"Tree" means any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a defined crown, and that will obtain a height of at least 16 feet at maturity.

"Tree Board" means the city of Milwaukie Tree Board.

"Tree Fund" means the Tree Fund as created by this chapter.

"Tree removal" means the cutting or removal of 50% or more of the crown, trunk, or root system of a plant, the uprooting or severing of the main trunk of the tree, or any act that causes, or may reasonably be expected to cause the tree to die as determined by an ISA Certified Arborist.

"Urban forest" means the trees that exist within the City.

"Urban Forester" means the Urban Forester of the City of Milwaukie, or designee.

"Urban Forest Management Plan" is the management plan adopted by City Council for the management of the City's urban forest.

"Utility" is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines, cable service, and other telecommunication technologies, sewage disposal and treatment, and other operations for public service.

#### 16.32.014 ADMINISTRATION.

- A. The City Manager is authorized to administer and enforce the provisions of this Chapter.
- B. The City Manager is authorized to adopt procedures and forms to implement the provisions of this Chapter.
- C. The City Manager may delegate as needed any authority granted by this Chapter to the Public Works Director, the Urban Forester, the Planning Director, the City Engineer, or such other designee as deemed appropriate by the City Manager.

#### 16.32.015 CREATION AND ESTABLISHMENT OF THE TREE BOARD

- A. Tree Board Composition

The Tree Board established under this section will consist of seven members, at least five of which must be residents of the City, one must be an ISA Certified Arborist, and all seven **must** be appointed by the Mayor with approval of the City Council.

#### B. Term of Office

The term of the seven persons appointed by the Mayor will be three years except that the term of two of the members appointed to the initial Tree Board will serve a term of only one year, and two members of the initial Tree Board will be two years. In the event that a vacancy occurs during the term of any member, their successor will be appointed for the unexpired portion of the term. Tree Board members will be limited to serving three consecutive terms.

#### C. Compensation

Members of the Tree Board will serve without compensation.

#### D. Duties and Responsibilities

The Tree Board will serve in an advisory capacity to the City Council. Its responsibilities include the following:

1. Study, investigate, develop, update, and help administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of the Urban Forest. The plan will be presented to the City Council for approval every five years and will constitute the official Urban Forestry Management Plan for the City;
2. Provide advice to City Council on policy and regulatory issues involving trees, including climate adaptation and mitigation efforts;
3. Provide outreach and education to the community on tree-related issues and concerns;
4. Organize and facilitate the City's tree planting events and other public events involving trees and Urban Forestry education;
5. Assist City staff in preparing recommendations regarding the application, membership, and ongoing participation by the City in the Tree City USA Program;
6. Provide leadership in planning the City's Arbor Day/Week proclamation and celebration; and
7. Provide recommendations to City Council on the allocation of funds from the Tree Fund.

The Tree Board, when requested by the City Council, will consider, investigate, make findings, report, and recommend on any special matter or question coming within the scope of its work. The Tree Board will inform and coordinate with the North Clackamas Park and Recreation District (NCPRD) to ensure that the provisions of this ordinance are complied with during performance of maintenance activities.

#### E. Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members will be a quorum for the transaction of business.

### 16.32.016 CREATION OF A TREE FUND

#### A. Establishment

A City Tree Fund is hereby established for the collection of any funds used for the purpose and intent set forth by this chapter.

#### B. Funding Sources

The following funding sources may be allocated to the Tree Fund:

1. Tree permit revenue;
2. Payments received in lieu of required and/or supplemental plantings;
3. Civil penalties collected pursuant to this chapter;
4. Agreed-upon restoration payments or settlements in lieu of penalties;
5. Sale of trees or wood from City property;
6. Donations and grants for tree purposes;
7. Sale of seedlings by the City; and
8. Other monies allocated by City Council.

#### C. Funding Purposes

The Tree Board will provide recommendations to the City Council during each budget cycle for how the fund will be allocated. The City will use the Tree Fund for the following purposes:

1. Acquiring, maintaining, and preserving the urban forest within the City;

2. Planting and maintaining trees within the City;
3. Establishing a public tree nursery;
4. Supporting public education related to urban forestry;
5. Assessing urban forest canopy coverage; or
6. Any other purpose related to trees, woodland protection, and enhancement as determined by the City Council.

#### 16.32.017 TREE PLANTING ON CITY-OWNED LAND AND PUBLIC RIGHTS-OF-WAY

##### A. Species

Any tree, shrub, or other woody vegetation to be planted on City-owned land or in the public rights-of-way must be a species listed on the Street Tree List..

##### B. Spacing, size, and placement

The spacing, size and placement of street trees, shrubs, and other woody vegetation will be in accordance with the permit issued by the City. The city may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where trees are likely to be planted at a much higher density to mimic natural conditions in forest regeneration and account for expected mortality.

##### C. Permit

No person may plant a street tree without first obtaining a permit from the City.

#### 16.32.018 PUBLIC TREE CARE

The City will plant, prune, maintain, and remove trees, shrubs, and other woody vegetation within all public rights-of-way and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and appearance of the public grounds as determined by the Urban Forester.

The City may remove or cause or order to be removed, any tree, shrub, or other woody vegetation, or part thereof, that is in an unsafe condition, that-poses a risk to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect, or other pest. This section does not prohibit the planting of street trees by property owners adjacent to the street or right-of-way, provided that their selection and location is in accordance with Section 16.32.017 of this chapter.

#### 16.32.019 TREE TOPPING

No person will top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or trees existing under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Urban Forester.

#### 16.32.020 PRUNING, CORNER CLEARANCE

Subject to enforcement under MMC\_Section 12.12.010, any tree, shrub, or other woody vegetation overhanging any street or right-of-way within the City must be maintained by the owner to ensure that no vegetation obstructs the right-of-way.

#### 16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

The owner of any tree, shrub, or other woody vegetation that is dead or diseased must remove any dead or diseased vegetation that poses a significant risk to the public. If the owner fails to do so, the City will have the right to remove any dead or diseased vegetation that poses a significant risk to the safety of the public. The City or its agents will notify, in writing, the owners of such trees.

Removal must be at the owner expense and completed within 60 days after the date of service of notice. After removal is complete, the owners must notify the City in writing. If the owner does not comply with this section, the City will remove the dead or diseased vegetation and charge the cost of removal to the owners pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Council may grant a cost waiver.

#### 16.32.022 REMOVAL OF STUMPS

All stumps of street trees must be removed by the adjacent property owner below the surface of the ground so that the top of the stump does not project above the surface of the ground.

#### 16.32.023 INTERFERENCE WITH CITY

No person will prevent, delay, or interfere with the Urban Forester while engaged in planting, cultivating, mulching, pruning, spraying, or removing any street trees, park trees, or dead, diseased or infested trees on private grounds, as authorized in this chapter.



## 16.32.024 ARBORISTS LICENSE

All businesses doing arboricultural work within the City must have a current business license with the City, and at least one staff member who is an ISA Certified Arborist. The Certified Arborist will be on site for the duration of any arboricultural work being performed and is responsible for certifying that all arboricultural work is performed in accordance with ISA Best Management Practices.

## 16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES IN PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC LAND

### A. Applicability

1. No person will perform major true pruning or remove any tree in the public right-of-way or on public land without first obtaining a permit issued by the City.
  - a. For public trees, only the City, a public agency charged with maintaining the property, or a utility may submit a permit application.
  - b. For street trees, the applicant must be the owner of the adjacent property, or be authorized by the owner of the adjacent property, where the tree will be pruned or removed.
  - c. No person can remove a street tree without first obtaining a permit from the City. Permit approval may be conditioned upon either replacement of the street tree with a tree listed on the Street Tree List or a requirement to pay to the City a fee as provided in the master fee schedule.
2. For trees on publicly-owned land, this chapter shall be applied in conjunction with any applicable standards in Title 19 Zoning.

### B. Permit Review Process

#### 1. Application

A permit application and payment of the permit fee as established in the Master Fee Schedule must be submitted to the City for any major pruning or tree removal.

#### 2. Public Notice and Permit Meeting.

Upon the filing of a permit application, the applicant must post notice of the major pruning or tree removal permit application on the property in a location that is clearly visible from the public right-of-way. The applicant must mark each tree, shrub, or other woody vegetation proposed to for major pruning or removal by tying or attaching orange plastic tagging tape to the vegetation. The City will provide the applicant with at least one sign containing adequate notice for posting, tagging tape, and instructions for posting the notice. . The

notice must state the date of posting and that a major pruning or tree removal permit application has been filed for the vegetation on the property marked by orange plastic tagging tape. The notice must state that any person may request a meeting with the City within 14 days from the date of posting to raise questions or concerns about the proposed pruning or tree removal prior to issuance of the permit.

If a meeting is requested, it must be held within 14 days of the request. The City will consider all concerns raised at the meeting but will have final decision-making authority over issuance of the permit based on the criteria and approval standards set forth in subsection C below.

### 3. Declaration

The applicant will file a declaration on a form provided by the City stating that notice has been posted and that the vegetation proposed for major pruning or removal has been marked.

Once a declaration is filed with the City, the City will provide notice of the application to the appropriate NDA.

### 4. Exemptions from Public Notice

The following trees, shrubs, or other woody vegetation may be removed without public notice subject to the City's review of the application:

- a. A tree, shrub, or other woody vegetation that is considered an unreasonable risk to the occupants of the property, the adjacent property, or the general public as determined by an ISA Certified Arborist in accordance with current ISA Tree Risk Assessment standards.
- b. A tree, shrub, or other woody vegetation that is an invasive species and that is less than 8 inches in diameter at breast height.
- c. A street tree or public tree that is less than 2 inches in diameter at breast height.

## C. Review Criteria and Approval Standards

The City may issue the permit, deny the permit, or may issue the permit subject to conditions of approval. The City's decision shall be final and valid for a period of one year after issuance unless a longer timeframe is conditioned as part of the approval. Notwithstanding the conditions of approval, nothing shall prevent a person from submitting another application if the conditions and circumstances of an unexpired permit have changed.

### 1. Review Criteria

The City, in the absence of extraordinary circumstances, will not permit the major pruning or removal of a healthy, functioning Street Tree or Public Tree. Maintenance or the replacement of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding major pruning or removal of healthy, functioning Street Trees or Public Trees are fact-specific and are made on a case-by-case basis by the Urban Forester. In determining whether extraordinary circumstances exist that warrant the major pruning or removal of a healthy tree, the Urban Forester will consider:

- a. Whether the species of tree is appropriate for its location,
- b. Whether the species of tree is an invasive species;
- c. Whether the crown, stem, or root growth has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
- d. Whether maintenance of the tree(s) creates an unreasonable burden for the property owner; and
- e. Whether the major pruning or removal will have a negative impact on the neighborhood streetscape and any adopted historic or other applicable design guidelines.

## 2. Approval Standards

A permit will be issued only if the following criteria are met to the satisfaction of the Urban Forester:

- a. The proposed major pruning or tree removal will be performed according to current ISA Best Management Practices and an ISA Certified Arborist will be on site for the duration of the tree work.
- b. The tree, shrub, or other woody vegetation proposed for major pruning or removal meets one or more of the following criteria:
  - (1) The tree, shrub, or other woody vegetation is dead or dying and cannot be saved as determined by an ISA Certified Arborist in accordance with ISA standards.
  - (2) The tree, shrub, or other woody vegetation is having an adverse effect on adjacent infrastructure that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.
  - (3) The tree, shrub, or other woody vegetation has sustained physical damage that will cause the vegetation to die or enter an advanced state of decline. The City may require additional documentation from an ISA Certified Arborist to demonstrate that this criterion is met.

- (4) The tree, shrub, or other woody vegetation poses an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist in accordance with the current ISA Tree Risk Assessment.
  - (5) Major pruning or removal of the tree, shrub, or other woody vegetation is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.
  - (6) The tree, shrub, or other woody vegetation is on the Oregon State Noxious Weed List.
  - (7) The tree, shrub, or other woody vegetation is part of a stormwater management system and has grown too large to remain an effective part of the system.
- c. Any approval for the removal of a healthy tree, shrub, or other woody vegetation must require the applicant to pay a fee as established in the Master Fee Schedule.

#### D. Performance of Permitted Work

All work performed pursuant to a permit issued by the Urban Forester must be completed within the time period specified in the permit unless a different time period is authorized in writing by the Urban Forester.

#### E. Replanting

The City will require street tree replanting as a condition of permit approval for the major pruning or removal of a Street Tree on City-owned land or in the public right-of-way.

1. The replanted tree must be a species included on the Street Tree List.
2. The City will consider alternative planting locations for replanted street trees when replanting at the location of removal conflicts with surrounding infrastructure and the interference would impair the replanted tree.
  - a. For street trees, replanted trees must be planted within the right-of-way fronting the property for which the permit was issued or, subject to the approval of the Urban Forester and with the adjacent property owner's permission, within the right-of-way fronting the adjacent property..
  - b. In lieu of replanting and subject to approval of the Urban Forester, the City can require the owner to pay a fee as established in the master fee schedule.

- c. For public trees, replanted trees must be planted on the City-owned land from which the tree was removed unless a different location is approved by the Urban Forester.
3. The optimal time of year for planting is from September through November. If planting is necessary in other months, the City may condition permit approval to require extra measures to ensure survival of the newly planted tree.

#### 16.32.028 PROGRAMMATIC PERMITS

Programmatic permits may be issued by the Urban Forester for routine public facility or utility operation, planned repair and replacement, and on-going maintenance programs on public properties and rights-of-way. The purpose of a programmatic permit is to eliminate the need for individual permits for tree removal, pruning, or for ongoing activities that cover a wide geographic area and may include the pruning or removal of numerous public and street trees. Programmatic permits are evaluated to prevent cumulative adverse impacts to the urban forest and ensure that any permitted activities meet the goals and objectives of the Urban Forest Management Plan.

##### A. Application Requirements

Applications for programmatic permits must be submitted in writing or electronically on forms provided by the City and be accompanied by the correct fee.

##### B. Applicability

Programmatic permits may only be issued to a public agency or a utility as defined in this chapter.

##### C. Application

1. Duration of permit;
2. Geographic area that will be covered by the permit;
3. Requested activities, methods, number, type, location, or timing of activities;
4. Notification plan to neighborhoods, residents and businesses that will be impacted;
5. Monitoring and Performance Plan. Monitoring, performance tracking, and reporting requirements. The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and
6. Traffic control plan.

#### D. Completeness

7. If the Urban Forester determines an application is incomplete, the Urban Forester will provide written notice to the applicant that describes the additional information needed.
8. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
9. If the applicant does not furnish the additional information within 30 days from the date of the notice or any extension granted in writing by the Urban Forester, the application will be denied.

#### E. Notice of Complete Application

When the Urban Forester determines that the application is complete, the Urban Forester must provide written notice that the application is complete to the applicant, and the Tree Board. , The notice must provide instructions for obtaining additional information about the application, commenting on the application, and requesting notification of the Urban Forester's decision.

#### F. Review Criteria

The Urban Forester may approve a programmatic permit upon a finding that the following criteria are satisfied or will be satisfied with conditions:

1. The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement in Section 16.32.005 considering the applicant's proposed performance measures, proposed tree planting, and other activities proposed to improve the overall health of the urban forest.
2. The applicant's proposed outreach and notification program, provides adequate notice to residents, businesses, and the City prior to performing work authorized under the programmatic permit.

#### G. Decision

The Urban Forester must issue the permit, deny the permit, or may issue the permit subject to conditions of approval within 120 days of determining the application is complete. The Urban Forester's decision will be final and valid for a period of up to two years. Nothing shall prevent the applicant from requesting an amendment to a permit if the conditions and circumstances of an unexpired permit have changed. The decision will be based on an evaluation of the application against the applicable review criteria in Section 16.32.028 F.

#### H. Permit

Approved permits must include the following required information. The Urban Forester may modify the permit at any time to respond to any questions, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing.

1. Duration. The Urban Forester may approve a programmatic permit for a period of up to 2 years;
2. Geographic area covered by the permit;
3. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;
4. Procedures and thresholds for providing notice to residents, businesses, and the City impacted by the performance of work under the permit;
5. Monitoring, performance tracking, and reporting requirements. The Urban Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur; and
6. Traffic control requirements.
7. Annual Report

On the anniversary of permit issuance, the applicant must submit an annual report on a form supplied by the City detailing any work performed under the permit and scheduled work to be performed.

8. Tree Size Limits
  - a. The programmatic permit will not allow the removal of trees 6 or more inches in diameter, except as provided in this Section.
  - b. If an applicant requests removal of a healthy tree 6 or more inches in diameter at time of application or during the period in which the programmatic permit is in effect, an opportunity for public comment shall be provided in accordance with Section 16.32.026 B.2
  - c. For any request, the Urban Forester may further limit allowed tree removal in order to meet the review criteria in Section 16.32.028F.
9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA arboricultural practices.

## I. Revocation

1. The Urban Forester may revoke a programmatic permit upon a finding that the applicant is not adhering to the terms of the permit or is acting beyond the activities authorized by permit.

#### 16.32.030 PERMIT AND FEE EXEMPTIONS

##### A. Hazardous Tree

If a tree is determined to be a hazardous tree by the city's Urban Forester, the City may issue an emergency removal permit. The removal shall be in accordance with, ISA best management practices, and be undertaken with the minimum necessary disturbance to eliminate the imminent danger.

##### B. Maintenance

A permit is not required for regular maintenance or minor tree pruning that does not require removal of over 20% of the crown, tree topping, or disturbance of more than 10% of the root system during any 12-month period.

##### C. Public Infrastructure Improvements

Any trees on public property or in the right-of-way that may require removal or pruning to accommodate city public infrastructure improvements will require a permit and must meet replanting requirements imposed by this Chapter and will not be subject to a removal fee.

#### 16.32.038 LOW INCOME ASSISTANCE

To the extent that City funds are available, the City Manager may exempt a property owner from the permit fee, removal fees, replanting fees and /or may provide assistance in removing a dead or diseased tree within in the right of way when the owner demonstrates household income that is at or below 80 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area.

#### 16.32.040 PENALTY

A person who removes a street tree without first obtaining the necessary permit from the City, removes a tree in violation of an approved permit, or violates a condition of an approved permit must pay a fine in an amount established in the Master Fee Schedule. Any fine imposed under this section must not be less than the cost of the



permit and the associated removal fee for which a permit should have been obtained.

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## Milwaukie Municipal Code

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**16.32.005 PURPOSE**

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The purpose of this chapter is to encourage preservation of trees located on City-owned land and in the public right-of-way toward the larger goal of creating and maintaining Milwaukie's urban forest for the livability of its citizens. Trees on City-owned land and in the public right-of-way are a public resource that beautify the streetscape and provide ecosystem services such as reducing the urban heat island effect, reducing stormwater flows, and stabilizing soils. The City may allow the removal or pruning of trees in some situations including, but not limited to, removing hazards, avoiding damage to public and private property, and allowing for construction of right-of-way improvements. Preference should generally be given to authorizing the minimal amount of disturbance to the tree that is necessary to address the situation. The intent of this chapter is also to mitigate the authorized removal of trees within the public right-of-way and on City-owned land by replanting new trees in the public right-of-way and on City-owned land wherever practicable. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011)

**16.32.010 DEFINITIONS**

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The following definitions shall apply for terminology, used in this chapter:

"ANSI" The American National Standards Institute is a private non-profit organization that oversees the development of voluntary consensus standards for products, services, processes, systems, and personnel in the United States.

"Arbor Day/Week" means a day/week designated by the City to celebrate and acknowledge the importance of trees in the urban environment, which can include a variety of public activities such as tree planting or tree maintenance.

"City" means the City of Milwaukie.

"City Tree Board" means the City of Milwaukie Park and Recreation Board (Board) plus a certified arborist to be selected by the City Council, or a separate City Tree Board (including a certified arborist) appointed by the Mayor and approved by City Council.

"Council of Tree and Landscape Appraisers (CTLA)" means the publishers of the Guide for Plant Appraisal.

"Crown" means area of the tree above the ground, including the trunk and branches, measured in mass or volume.

"Cutting" means the felling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. "Cutting" does not include normal trimming or pruning, but does include topping of trees.

"Dangerous tree" means the condition of the tree presents a foreseeable danger of inflicting damage that cannot be alleviated by treatment or pruning. A tree may be dangerous because it is likely to injure people or damage vehicles, structures, or development, such as sidewalks or utilities.

"Dead tree" means the tree is lifeless.

"Drip line" means the perimeter measured at the outermost crown.

"Dying tree" means the tree is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.

"Engineering Director" means the Engineering Director of the City of Milwaukie or designee.

"Hazardous tree" means the condition or location of the tree presents a clear public safety hazard or an imminent danger of property damage, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

“ISA” means the International Society of Arboriculture.

“Large trees” means trees that reach at least 65 feet in height at maturity.

“Major tree pruning” means removal of over 20% of the tree’s crown, or removal or injury of over 10% of the root system, during any 12-month period.

“Medium trees” means trees that at maturity are between 30 and 65 feet in height.

“Minor tree pruning” means trimming or removing less than 20% of any part of the branching structure of a tree in either the crown, trunk, or less than 10% of the root areas based on ANSI A300 and ANSI Z133 standards, within a 12-month period.

“Owner” means and includes, for the purposes of this chapter, any person with a freehold interest in land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner’s consent.

“Park trees” are defined as trees, shrubs, bushes and other woody vegetation in named public parks or to which the public has free access as a park.

“Person” means any individual, firm, association, corporation, agency, or organization of any kind.

“Relative value” may be calculated using the methods described in the “Guide for Plant Appraisal” published by the CTLA. The values reflect the value to the public as a whole, rather than to the individual property owner. For example, a tree growing in full public view may have a high public value but be of low value to the property owner.

“Root zone” means the area of the ground around the base of the tree measured from the trunk to 5 feet beyond the outer base of the branching system.

“Small trees” are those that at maturity are less than 30 feet in height.

“Street tree” is defined as trees, shrubs, bushes and other woody vegetation on land lying within the City right-of-way on either side of all streets, avenues, or ways within the City and on all non-park properties owned or maintained by the City.

“Topping” means the severe cutting back of the main stem and/or limbs to buds, stubs, or laterals large enough to undermine the tree’s crown to such a degree as to remove the normal crown and disfigure the tree.

“Tree removal” means the cutting or removing of 50% or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree; or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.

“Tree” means any living woody plant characterized by one main stem or trunk and many branches, or a multistemmed trunk system with a definitely formed crown at least 16 feet in height at maturity.

“Urban forest” means the trees that exist within the City.

“Utility tree” means a tree that is less than 20 feet in height at maturity and thus suitable for planting under overhead utility lines. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 1836 § 1, 1998)

#### **16.32.015 CREATION AND ESTABLISHMENT OF A CITY TREE BOARD**

##### **A. Creation**

There is hereby created and established a City Tree Board (Tree Board) for the City of Milwaukie, Oregon, which shall consist of 7 members, at least 5 of which shall be residents of the City, and one of which shall be a certified arborist, and all 7 of which shall be appointed by the Mayor with approval of the City Council. The Tree Board may consist of the City of Milwaukie Parks and Recreation Board plus a certified arborist.

##### **B. Term of Office**

The term of the 5 persons to be appointed by the Mayor shall be 3 years except that the term of 2 of the members appointed to the first board shall be for only one year and the term of 2 members of the first board shall be for 2 years. In the event that a vacancy shall occur during the term of any member, his or

her successor shall be appointed for the unexpired portion of the term. Tree Board members shall be limited to 3 consecutive terms.

#### C. Compensation

Members of the Tree Board shall serve without compensation.

#### D. Duties and Responsibilities

It shall be the responsibility of the Tree Board to study, investigate, develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official urban forestry management plan for the City of Milwaukie, Oregon. The Tree Board will provide leadership in planning the City's Arbor Day/Week proclamation and celebration.

The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work. The Tree Board shall inform and coordinate with the North Clackamas Park and Recreation District (NCPRD) or the City of Milwaukie to ensure that the provisions of this ordinance are complied with during performance of maintenance activities.

#### E. Operation

The Tree Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

### 16.32.017 TREE PLANTING

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#### A. Species

Tree species to be planted on City-owned land or in public rights-of-way are those approved by the Engineering Department of the City for different types of planting in those specified locations.

#### B. Spacing

The spacing of street trees will be in accordance with the permit issued by the Engineering Department and in accordance with Department standards and specifications. Spacing will be determined in the planting plan for each site as determined by the City's Public Works Standards. In addition, the Engineering Director may approve special plantings designed or approved by a landscape architect, or for ecological restoration projects where seedlings or whips are likely to be planted at a much higher density to mimic natural conditions in forest regeneration.

#### C. Distance from Curb and Sidewalk

The City's Public Works Standards shall provide the distance from which small, medium, and large trees may be planted from curbs or curblines and sidewalks.

#### D. Distance from Street Corners and Fire Hydrants

No street tree shall be planted closer than 35 feet from any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet from any fire hydrant.

#### E. Utilities

No utility trees other than those species listed in the City's Public Works Standards may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

#### F. Size

Street trees must meet the size requirements set forth in the City's Public Works Standards for utility, small, medium, and large trees, based on the tree's size at maturity. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

### 16.32.018 PUBLIC TREE CARE

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The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the property lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

The City Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by property owners adjacent to the street or right-of-way, provided that the selection and location of said trees is in accordance with Section 16.32.017 of this chapter. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.019 TREE TOPPING**

No person, firm, or City department shall top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance at the determination of the City Tree Board. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.020 PRUNING, CORNER CLEARANCE**

Pursuant to Milwaukie Municipal Code Section 12.12.010, every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the right-of-way. Enforcement of this section shall be pursuant to MMC Chapter 12.12 and compliant with ISA Best Management Practices (BMPs). (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011; Ord. 1836 § 1, 1998)

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#### **16.32.021 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY**

Owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which may pose a significant risk to the safety of the public. If owner fails to do so, City shall have the right to cause the removal of such trees. The City Tree Board or its agents will notify, in writing, the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. After removal is complete, the property owners shall notify the City in writing. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal to the owners pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Council may grant a cost waiver. Some dead trees which provide wildlife habitat and are not a hazard may be left uncut. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.022 REMOVAL OF STUMPS**

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground, except for circumstances where the stumps do not pose a hazard to the public and may be left to improve wildlife habitat structure. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.023 INTERFERENCE WITH CITY TREE BOARD**

No person shall prevent, delay or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on private grounds, as authorized in this chapter. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.024 ARBORISTS LICENSE AND BOND**

All certified arborists operating in the City of Milwaukie shall be ISA-certified. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

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#### **16.32.025 REVIEW BY CITY COUNCIL**

The City Council shall have the right to review the conduct, acts and decisions of the Tree Board. Any person may appeal from any ruling or order of the Tree Board to the City Council who may hear the matter and make a final decision. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016)

**16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES IN PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC LAND**

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**A. Applicability**

1. No person shall conduct major pruning or removal of any tree in a public right-of-way or on City-owned land, without first receiving a permit issued by the City, except as provided in Section 16.32.030. Minor tree pruning shall not require a permit.
2. For trees on City-owned land, this chapter shall be applied in conjunction with any applicable standards in Title 19 Zoning.

**B. Review Process**

1. A permit application for major pruning or tree removal shall be submitted to the Engineering Department on a right-of-way permit application.
2. The Engineering Department shall post notice of the major pruning or removal permit application on the property in a location which is clearly visible to vehicles traveling on a public street and readable by pedestrians walking by the property.
3. The notice shall state that the tree removal permit is pending for trees on the property marked by an orange plastic tagging tape, shall include the date of posting, and shall state that any person may request a meeting with the Engineering Director within 14 days of the date of the posting. The purpose of the meeting is to provide an opportunity to raise questions or concerns about the major pruning or removal prior to issuance of the administrative decision on the permit. The Engineering Director shall consider all concerns raised at such a meeting, but shall have final decision making authority over the issuance of a permit, based on the Approval Standards in subsection C below.
4. The Engineering Department shall mark each tree proposed to be removed by tying or attaching orange plastic tagging tape to the tree 4 to 6 feet above mean ground level at the base of the trunk.
5. On the date that the tree removal notice is posted on the property, the Engineering Department shall send a letter to the neighborhood district association for the area, the City Tree Board, and the Office of the City Manager, to notify the association of the major pruning or removal request.
6. The applicant shall file an affidavit stating that the property has been posted, the trees have been marked, and notice has been mailed pursuant to Section 16.32.026 or subsection B of this section.
7. The major pruning or tree removal permit shall not be issued for 14 days from the date of filing of the affidavit to allow for the filing of a request for a meeting. The applicant shall maintain the posting and marking for the full 14 days. When a meeting with the Engineering Director is requested, the Engineering Director shall not issue the permit decision until the meeting can be held.

**C. Approval Standards**

The Engineering Director shall issue a permit for major pruning or removal of trees in a right-of-way or on City-owned land only if the following criteria are satisfied. The Engineering Director will consult a certified arborist where necessary to evaluate the criteria.

1. The proposed work will be done according to ISA best management practices, and qualified persons will perform the work.
2. One or more of the following criteria are satisfied:
  - a. It is determined that the tree is dead or dying and cannot be saved, according to current ISA standards.
  - b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.
  - c. The tree has lost its relative value as a street tree due to damage from natural or accidental causes, or for some other reason it can be established that it should be removed.

- d. The tree has been determined to be unsafe to the occupants of the property, or adjacent property, or the general public.
- e. Major pruning or removal is necessary to accommodate improvements in the right-of-way or on City-owned land, and it is not practicable to modify the proposed improvements to avoid major pruning or removal.

#### D. Performance of Permitted Work

All work performed on street trees pursuant to a permit issued by the Engineering Director under this section shall be done within a 60-day period from the issuance of said permit, or within a longer period as specified by the Engineering Director.

#### E. Replanting

The Engineering Director shall, wherever practicable, require tree replanting as a condition of approval for a major pruning or removal permit on City-owned land or in public rights-of-way. For major pruning or removal of trees in the public rights-of-way, replanted trees shall be planted within the right-of-way fronting the property for which the tree permit was issued. For major pruning or removal of trees on City-owned land, replanted trees shall be planted on City-owned land for which the tree permit was issued. The replanted tree shall be a species appropriate for the location where it is planted, as determined by the Engineering Director, in conjunction with the issued permit and in compliance with applicable ANSI standards and ISA best management practices. In addition to the tree maintenance requirements of Milwaukie Municipal Code Section 8.04.110, the abutting property owner shall be responsible for maintaining a replanted tree in a healthy condition for 3 years following replanting.

The optimal time of year for planting is the fall (September-November). If planting is necessary in other months, the Engineering Director may include conditions of the permit that require extra measures to ensure survival of newly planted trees. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011; Ord. 1836 § 1, 1998)

### 16.32.030 PERMIT EXEMPTIONS

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#### A. Dangerous Tree

If a tree is determined to be a dangerous tree, the Engineering Director may issue an emergency removal permit. The removal shall be in accordance with ANSI standards and ISA best management practices and be the minimum necessary to eliminate the imminent danger.

#### B. Maintenance

Regular maintenance or minor pruning which does not require removal of over 20% of the tree's crown, tree topping, or disturbance of over 10% of the root system during any 12-month period.

#### C. Non-City Owned Land

Tree cutting anywhere except in a public right-of-way or on City-owned land. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011; Ord. 1836 § 1, 1998)

### 16.32.040 PENALTY

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Except where otherwise provided, any person, firm, or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$1,000.00. (Ord. 2141 § 1, 2017; Ord. 2116 § 1, 2016; Ord. 2022 § 1, 2011)

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# Tree Care for Wildlife Best Management Practices in California



Tree Care for Birds and Wildlife

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*July 18, 2017*



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# Purpose

This document was written to provide guidance to the California tree care and landscape industry about how to minimize impacts to wildlife during the course of tree work and manage wildlife habitat. While many tree care workers and managers wish to act responsibly around wildlife, little information has been available about how work can best be accomplished while minimizing impacts to wildlife. In addition, Federal and California wildlife regulations are not widely known within the tree care industry, thereby putting uninformed workers at risk of significant fines and public criticism.

This guidance document is meant to be voluntary. These Best Management Practices (BMPs) are not meant to impose new regulations on the tree care industry but rather aim to help those in the industry follow current laws and regulations.

# Introduction

The tree care industry is different from conventional forestry in that it focuses on the selection, planting, and care of trees of all ages located in city centers, suburban neighborhoods, rural areas and some relatively wild areas with human influences such as roads and utility lines. Tree care activities vary in their level of labor intensity, equipment, frequency, noise, and expense. Managing trees is critical to their success and can maximize their potential environmental benefits. At their most basic, tree care activities include planting, pruning, removal, plant health care, ground maintenance activities, utility clearing, planning, and management ([Appendix I - Tree Care Industry Overview](#), page 23).

One of the important values of trees in urban areas is providing habitat for wildlife. Because of habitat loss due to development, urban landscapes are more vital than ever to wildlife. Wildlife (including birds, mammals, reptiles and amphibians) rely on trees and landscapes for food and shelter as they feed, roost, and reproduce. In turn, wildlife control insects, provide food for other wildlife, pollinate plants, distribute seeds, and are good indicators of environmental health. When trees are managed to support wildlife, landscapes can be more diverse and ecologically rich. Knowledge of breeding, nesting, and foraging habits of wildlife can empower tree care workers to positively manage habitat and encourage the enjoyment of wildlife ([Appendix II - Wildlife in California](#) page 26).

The project team determined there is a gap in the resources available to aid the tree care industry in the management of work performed in proximity to wildlife. Unlike most Best Management Practices in the tree care industry, this project:

- is a grassroots project with no large supporting organization,
- has no ANSI A300 Standard on which to base the Best Management Practices,
- is intended for an audience wider than the tree care industry, and
- is focused only on California because of the state's unique environment and regulations.

Extensive expert knowledge of tree care and wildlife biology from the team's roster of professionals provided diverse backgrounds to apply to the writing of this document. The project team also reviewed the limited scientific literature on impacts from tree care practices on wildlife populations and habitats. The scientific literature that exists is primarily conducted in natural areas which may not pertain to most

tree care situations.

There are many federal and state laws and regulations about wildlife pertinent to the tree care and landscape industry in California. Local regulations and policies may also exist and should be researched for individual areas. These laws and regulations are broad and results based. They tend to focus on whether or not wildlife were disturbed, injured, or killed. The agencies provide little information about what type of activities may be in violation of the laws. A list and brief explanation of the relevant laws and regulations can be found in [Appendix III - Laws and Regulations](#) (Page 34). Of particular note are the Migratory Bird Treaty Act and California Fish and Game Codes 3503 and 3503.5 which apply to the majority of birds.

The section *Minimizing Direct Impacts to Wildlife* (Page X) outlines procedures to help keep tree care industry workers from violating these laws and regulations. Many factors go into whether tree care near nesting wildlife is lawful, including: wildlife biology, intensity and duration of work, and proximity of work to nests. These Best Management Practices are recommendations that can help minimize the chance of violating the law but cannot eliminate the possibility. Most importantly, nests with eggs or young should not be removed, moved or worked near. Similarly, these Best Management Practices are only recommendations and should not be viewed as regulations or the only way to minimize impacts to wildlife.

The tree care industry's impact on wildlife goes beyond disturbing nesting wildlife. Habitat structure is altered by pruning and planting trees. The 2017 update to the ANSI A300 Pruning Standard includes "Manage wildlife habitat" as a pruning objective. The section of these Best Management Practices titled [Managing Wildlife Habitat](#) (Page 14) introduces new and old ideas for tree care industry workers to think about while working in landscapes.

Lastly, it was necessary in writing these BMPs to create a hierarchy of various activities and mitigation strategies appropriate for professionals with different levels and types of training in both tree care and wildlife biology. The roles and titles used, like **Wildlife Trained Arborist** and **Wildlife Biologist**, are defined in the text and the [Glossary](#) (Page 18) but do not refer to specific certifications that existed at the time of writing. Rather, the project team hoped to provide recommendations on the type of training and expertise necessary to minimize impacts to wildlife in different situations and to set the stage for the development of certification programs. Educational resources and training information will be available at [www.treecareforbirds.com](http://www.treecareforbirds.com).

# Minimizing Impacts to Wildlife

This section provides guidance to help tree care workers organize their work to comply with California state and U.S. federal laws and regulations. The step-by-step process guides what level of training and expertise may be most appropriate for different situations. Tree care workers should plan projects appropriately. In the field, tree care workers should be aware of wildlife and respond to their presence by involving people with adequate training.

Some companies may choose to develop a programmatic approach to minimizing impacts to wildlife. For example, rather than evaluating BMP recommendations as they apply to each individual work site, a company program could assess their area as a whole for potential conflicts and develop a program specific to their activities and impacts. A company with a program in place may not need the aid of these BMPs, but for a company just starting to develop a program these BMPs may provide a starting point.

Providing training and materials for workers prior to work can aid in the ability to recognize and respond to situations with the potential to harm wildlife. Training materials, an **Awareness Training** video, and other resources can be found at [www.treecareforbirds.com](http://www.treecareforbirds.com).

- Tree care worker with minimal training: **Awareness Training** can be provided by a **Wildlife Trained Arborist** at the project site during the daily job briefing. **Awareness Training** is a brief crew training provided by a **Wildlife Biologist** or **Wildlife Trained Arborist** that covers general information about looking for signs of nesting wildlife or may be specific to a location.
- A **Wildlife Trained Arborist** is a tree care worker with training and/or experience in: determining habitat value, conducting pre-work nesting inspections, identifying signs of nesting wildlife, determining if nests are active, responding to wildlife emergencies, and contacting Wildlife Biologists when needed.
- A **Wildlife Biologist** is a person with knowledge and experience in identifying wildlife species that may occur in an area, and is familiar with wildlife behavior, nesting requirements, tolerance to impacts, and suitable survey methods.

If the project is covered by a California Environmental Quality Assessment (CEQA) determination, the mitigations identified in the final decision must be followed. If the project is covered by US Fish and Wildlife Service or other agency consultation, the conditions of that consultation must be followed. If the project has permit requirements, the requirements must be followed. These BMPs do not attempt to replace those processes in any way.

This section is divided into two phases of work: Project Preparation and Fieldwork. Each phase of work has a narrative. Project Preparation is represented by Table 1 (Page 6), and Fieldwork has a flowchart (Figure 5, Page 10) to guide tree care in ways that minimize impacts to wildlife.

## Project Preparation

The goals of the Project Preparation phase are to establish the breeding season and habitat value of a work site and use this information to select a Category for the Fieldwork phase (Table 1, Page 6). Adult mammals and birds will likely flee when tree care workers arrive to a work area so work can proceed. During nesting, however, eggs and young wildlife cannot move from nests. Because they are vulnerable and stationary during this time period, nesting wildlife are those most likely to be impacted by tree and

shrub care. To minimize impacts, it is critical to identify, avoid, and protect wildlife nests. Nesting wildlife can be found in any type of habitat at any time of year. However, certain types of habitats are more likely to contain nesting wildlife. Most wildlife nest during the spring and summer.

Tree care projects can be divided into three categories based on two criteria: the time of year of the work (breeding season or non-breeding season) and the habitat value of the work area. See [Appendix IV - Bird Group Breeding Information Table](#) (Page 38) for general breeding season periods for various groups of birds. It is important to note that breeding seasons vary by factors such as location and species, and that climate change will also likely impact the breeding season timing in the future. Different types of landscapes have different habitat values. Habitat value is defined by the likelihood of finding wildlife using an area throughout the year. [Appendix V - Pre-work Inspection Form](#) (Page 40) is a pre-work inspection form to help decide the habitat value. The habitat values listed in this document are: **riparian habitat** (Figure 1), **high value habitat** (Figure 2, Page 5), and **low value habitat** (Figure 3, Page 5).



*Figure 1. **Riparian habitat** is the interface between land and constant or intermittent rivers or streams and generally provide the highest value habitat for wildlife. Riparian areas can be identified by their distinctive soils and vegetation, particularly willows (*Salix* spp.), mulefat (*Baccharis salicifolia*), sycamore (*Platanus* spp.), and cottonwood (*Populus* spp). This may include concrete channels when the associated riparian vegetation and soils are present. Illustrator - Brian French*





Figure 2. **High value habitat** generally has low human use, low impervious surfaces, high plant species diversity, high plant structural diversity, close to water bodies, many mature trees, many dead or dying trees, and abundant wildlife. Illustrator – Monica Edwards



Figure 3. **Low value habitat** generally has high human use, high impervious surfaces, low plant species diversity, far from water bodies, few mature trees, few dead and dying trees, and few/no wildlife present. Illustrator - Brian French

Conducting a desktop review of the biological resources potentially present at a project location can help identify the appropriate category choice prior to beginning tree care activities. Sources of information include USFWS Critical Habitat designations and Wetland Mapper, CNDDDB, public lands (USFS, BLM, State Parks, etc.), and local Audubon chapters. Should a desktop review reveal the project location is in or near USFWS designated critical habitat, sensitive species locations, or wetlands/riparian areas, the project activities may require more caution.

Tree care work can be broken into three categories based on the value of the habitat and whether or not the work is scheduled during the breeding season (Table 1). The level of expertise required for these projects may be dictated by other factors. Many construction projects, permit requirements, and CEQA documentation will require **Wildlife Biologists** to be involved in the project. In those cases, a **Wildlife Biologist** should be contacted rather than using the below categories.

Table 1. Determining Category

	Low value habitat	High value habitat	Riparian habitat
Non-breeding season	Category 1	Category 2	Category 3
Breeding season	Category 2	Category 3	Category 3

**Category 1** is **low value habitat** during the non-breeding season where nesting wildlife are least likely to be encountered. A pre-work inspection by a tree care worker with **Awareness Training** is recommended. This inspection should be completed before equipment has been turned on at the site, preferably within a week of the start date as many birds can build nests quickly.

**Category 2** covers two situations. The first is **low value habitat** during the breeding season where nesting wildlife are more likely to be encountered. The second is **high value habitat** during the non-breeding season where sensitive habitats are more likely to be encountered. Sensitive habitats are habitats which are home to special status species or are themselves rare. A pre-work inspection by a **Wildlife Trained Arborist** is recommended.

**Category 3** covers **high value habitat** during the breeding season or **riparian habitat** at any time of the year, nesting wildlife and sensitive habitats are more likely to be encountered. It is recommended a **Wildlife Biologist** be contacted for direction. However, companies who have taken a programmatic approach to protecting wildlife may be able to use a well-trained arborist to minimize impacts in these locations. Ideally the **Wildlife Biologist** provides advice on how the project can proceed. The biologist will collect information about the job, timing, and location to provide recommendations. They may be able to approve the work as planned, but more likely will need to visit the site and may recommend timing or methodological changes to the project. For projects in riparian areas, permits from regulatory agencies may be required for tree and vegetation pruning and removal ([Appendix III](#), Page 34).

Because wildlife can nest year round in any type of habitat, the Category level assessed at the time of planning may change during the fieldwork. Encountering signs of wildlife during fieldwork may require further expertise to handle the situation.

After scheduling the work with assistance from someone with the appropriate level of training based on



the Category, the final step of project preparation is to gather contact information for a **Wildlife Biologist** and local wildlife rehabilitator. Contact information for both of these resources will be important if a wildlife emergency or situation that needs expertise arises during fieldwork. A wildlife emergency is a situation where wildlife are injured, orphaned, or in danger or where nests are abandoned or disturbed.



*Figure 4. A tree care worker conducting a pre-work inspection is looking for signs of wildlife including wildlife breeding behavior such as carrying sticks or food, acting agitated, distress calls, as well as concentrations of bird droppings, nests that may be active, eggs, young, or wildlife reliant on nest. See [Appendix V](#) (Page 40) for a sample pre-work inspection form. Illustrator – Monica Edwards*

## Fieldwork

After following the Project Preparation phase (Page 3) the appropriate Category of BMP determines how to proceed in the Fieldwork phase. For a **Category 1** job, a person with **Awareness Training** should perform a pre-work inspection. For a **Category 2** job, a **Wildlife Trained Arborist** should perform a pre-work inspection. For a **Category 3** job, a **Wildlife Biologist** is recommended to advise workers when and how to safely work in the area. For any job, contact information for a **Wildlife Biologist** and wildlife rehabilitator should be on-hand in the field. Figure 5 (Page 10) is a graphical depiction of this text.

## Category 1

- **Low value habitat** during the non-breeding season,
- Nesting wildlife are unlikely to be encountered, and
- **Awareness Training** is recommended.

A pre-work inspection performed by someone with **Awareness Training** is recommended. This inspection can occur prior to starting work, or in the days before the work is scheduled, but not more than a week before the work is planned to begin. The pre-work inspection can be part of the site walk to discuss the work for the day, safety precautions, etc. but is best done at a quiet time when wildlife activity can be observed. Wildlife being present on a site does not mean that they will be negatively impacted by the work. It is important to look for nests that may be active and signs of wildlife. Signs of wildlife include: wildlife breeding behavior such as carrying sticks or food, acting agitated, distress calls, as well as observing concentrations of bird droppings, nests that may be active, eggs, young, or wildlife reliant on nests. If any of these signs of wildlife are observed during the site walk or during the work, a **Wildlife Trained Arborist** or a **Wildlife Biologist** should be contacted.

If there are no signs of nesting wildlife during the pre-work inspection, the work can proceed as normal. While working, be aware of wildlife, cavities, and nests.

## Category 2

- **Low value habitat** during the breeding season, or
- **High value habitat** during the non-breeding season where
- Nesting wildlife are more likely to be encountered, and
- A pre-work inspection by a **Wildlife Trained Arborist** is recommended.

A pre-work inspection by a **Wildlife Trained Arborist** should be completed before the work is started. This inspection can occur the morning of the work or in the days before the work is scheduled but not more than a week before the work is planned to begin.

If no active nests are found that may be impacted by the tree work, the crew can proceed with the work. If active nests are found that may be impacted by the tree work, the best option is for the **Wildlife Trained Arborist** to delay the work until the young have fledged from the nest and work can safely proceed. Most **Wildlife Trained Arborists** will not be able to identify the species of wildlife and predict when the nest is likely to become inactive, but [Appendix IV](#) (Page 38) provides some typical time frames. In some cases, the **Wildlife Trained Arborist** may be able to suggest that work starts on a portion of the site, but that some areas are left until after the young have left the nest.

When a nest is discovered during the pre-work inspection or during work, a **Wildlife Trained Arborist** should perform an evaluation to determine whether the nest is active. If it cannot be determined whether the nest is active or whether the nest is a raptor nest (typically a platform nest or cavity nest), a **Wildlife Biologist** should make this determination. Raptors may reuse their nests and should not be removed without consulting a **Wildlife Biologist**. If necessary due to tree removal, inactive non-raptor nests can be destroyed provided no possession of the nest occurs. U.S. Fish and Wildlife Service details guidance for nest destruction in their [2003 Migratory Bird Permit Memorandum](#).

### Category 3

- **Riparian habitat** anytime,
- **High value habitat** during the breeding season,
- Nesting and/or sensitive wildlife are likely to be encountered, and
- A pre-work inspection by a **Wildlife Biologist** is recommended.

For **high value habitat** during the breeding season or when working in or adjacent to **riparian habitats**, there is a higher chance of disturbing nesting wildlife or impacting special status species or their habitat. The direction provided by the **Wildlife Biologist** should be followed. This may mean work may proceed as planned similar to **Category 2**, but more likely the **Wildlife Biologist** will recommend an inspection and periodic monitoring until the work is complete.

If no active nests are found that may be impacted by the tree work, the **Wildlife Biologist** will instruct the crew to proceed with work while maintaining awareness of any wildlife in the area. If active nests are found that may be impacted by the tree work, the best option is for the **Wildlife Biologist** to delay the work until the young have fledged from the nest and work can safely proceed. In some cases the **Wildlife Biologist** may be able to suggest alternative methods to use near the nest ([Considerations for Work Performed Near Active Nests](#), Page 11) or suggest that work starts on a portion of the site, but that some areas are left until after the young have left the nest.

### Emergencies

Wildlife emergencies occasionally occur during tree work. While the first priority is to try to avoid these emergencies, the second priority is to respond appropriately. If wildlife are injured or young wildlife and eggs are abandoned by their parents as a result of the tree work, a local wildlife rehabilitator should be contacted. Explain the situation to these experts in wildlife emergencies. The wildlife rehabilitator likely can provide guidance on how to proceed. In some situations, they may advise doing nothing and allowing the parents to return and care for the wildlife. In other situations, they may advise bringing the injured wildlife immediately to a care facility. To continue working after a wildlife emergency, a **Wildlife Biologist** should be contacted.

If no wildlife emergencies occur and no signs of nesting wildlife are observed, continue working while being aware of wildlife, cavities and nests. If at any time the crew feels uncomfortable or unsure of how to work in the area, a **Wildlife Trained Arborist** or a **Wildlife Biologist** should be contacted.

In the case of a human health and safety emergency, a **Wildlife Biologist** can help coordinate permission to remove an active nest with the US Fish and Wildlife Service and the CA Department of Fish and Wildlife. Human health and safety emergencies pose immediate risk to human health and/or safety and require action to alleviate imminent danger circumstances. These agencies can grant permission for removal of an active nest when deemed appropriate. If a tree with an active nest needs to be removed for human health and safety, a Tree Risk Assessment Qualified (TRAQ) arborist should perform a Level 2 inspection and show that tree risk exceeds risk tolerance of the property owner and seek USFWS and CDFW approval. In a time-sensitive situation, action may need to be taken before permission can be received, but this should only be done in the most extreme situations.

## Project Preparation

	Low value habitat	High value habitat	Riparian habitat
Non-breeding season	Category 1	Category 2	Category 3
Breeding season	Category 2	Category 3	Category 3

## Fieldwork

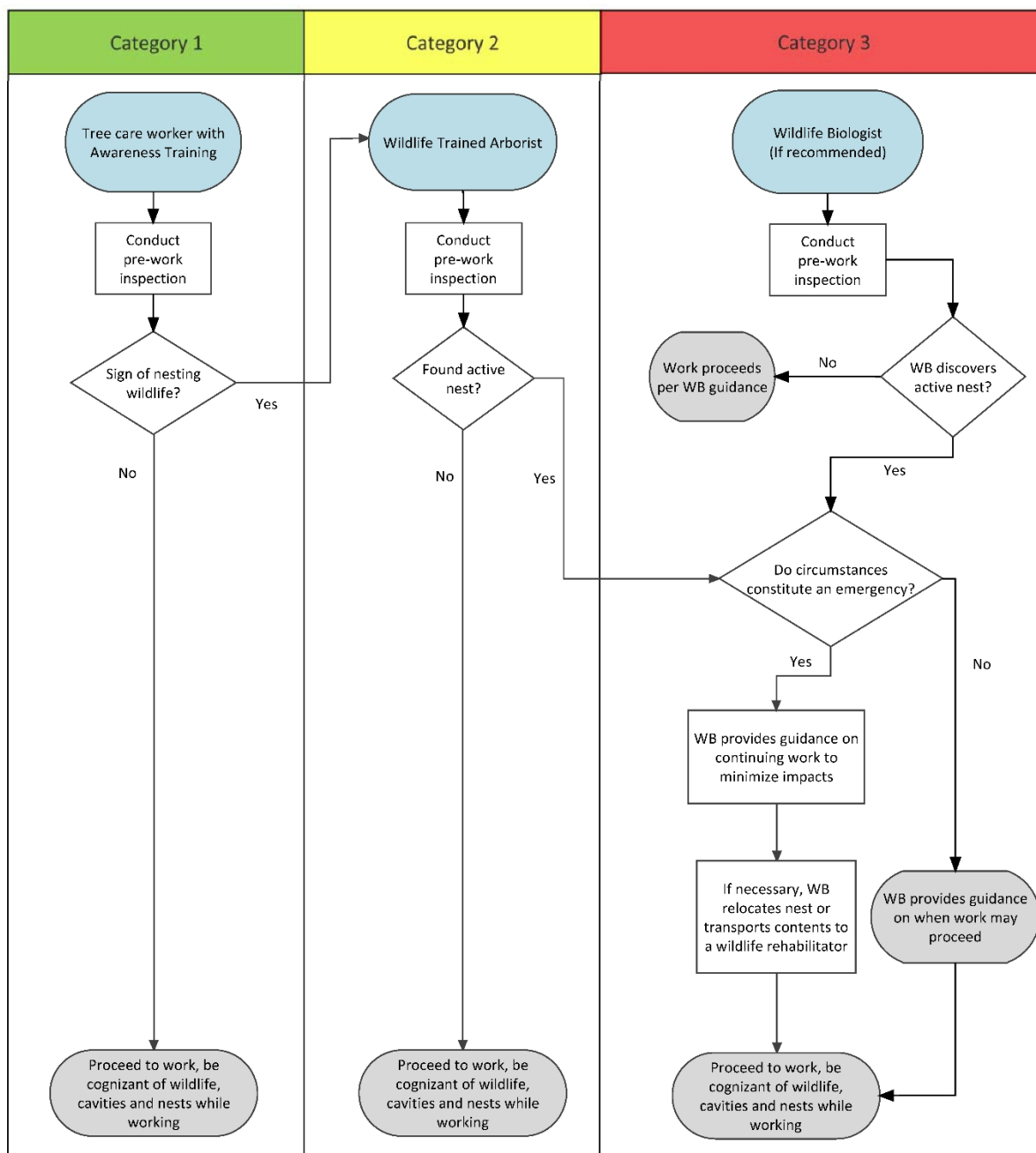


Figure 5: Project Preparation and Fieldwork phase decisions flowchart

## Considerations for Work Performed Near Active Nests

When an active nest is discovered in a work area, it is best to delay work until the nest becomes inactive. In the absence of direction from a **Wildlife Biologist**, setting larger, conservative buffers may help reduce the likelihood of impacts. However, there are circumstances when it may be possible to continue work in the vicinity of an active nest without resulting in the abandonment of a nest. In particular, when circumstances are such that imminent danger exists that may result in an emergency or there is a public safety concern, it may be necessary to complete a minimal amount of work until the nest becomes inactive.

Key considerations for work near active nests include:

- the duration of the work to be completed,
- the tools used,
- the species involved,
- distance of the work to the active nest,
- the status of the nest,
- location specifics (e.g. urban vs. rural), and
- environmental conditions (temperature and wind).

It may be necessary to communicate with a **Wildlife Biologist** to determine the appropriate methods for work to continue. Typically, a no activity buffer should be established around the nest. A nest buffer is an area in which no work should occur in order to prevent the abandonment of the nest by the adults. For example, if an active nest is discovered in a tree near a project, a cylindrical or circular area radiating out from the nest should be established in which no work activities may occur large enough that the adult birds continuing normal activities of tending to the nest (Figure 6, Page 12). [Appendix IV](#) (Page 38) recommends buffers for different types of birds depending on the habitat value of the work area. These buffers should be large for most situations, **Wildlife Biologists** may be able to recommend smaller buffers depending on specific situations.

### Work Duration and Temperature

An active nest is less likely to fail if the work duration nearby is kept to a minimum. Adults kept away from an active nest during moderate weather conditions for 30 minutes or less are unlikely to abandon the nest or have mortality to the eggs or young occur. However, if work duration is several hours or if weather conditions are extreme, the adults are likely to abandon their nest and/or mortality may result due to starvation, predation, or the eggs or hatchlings being too hot or cold. Bird embryos are more sensitive to overheating than to cold.

### Tools

Often disturbance level can be minimized by tool selection. Hand tools may be recommended over gasoline powered tools to reduce noise. It should be taken into consideration that if hand tools significantly increase the duration of work at a location, the benefit from reduction of noise may be canceled out by the longer duration of work.

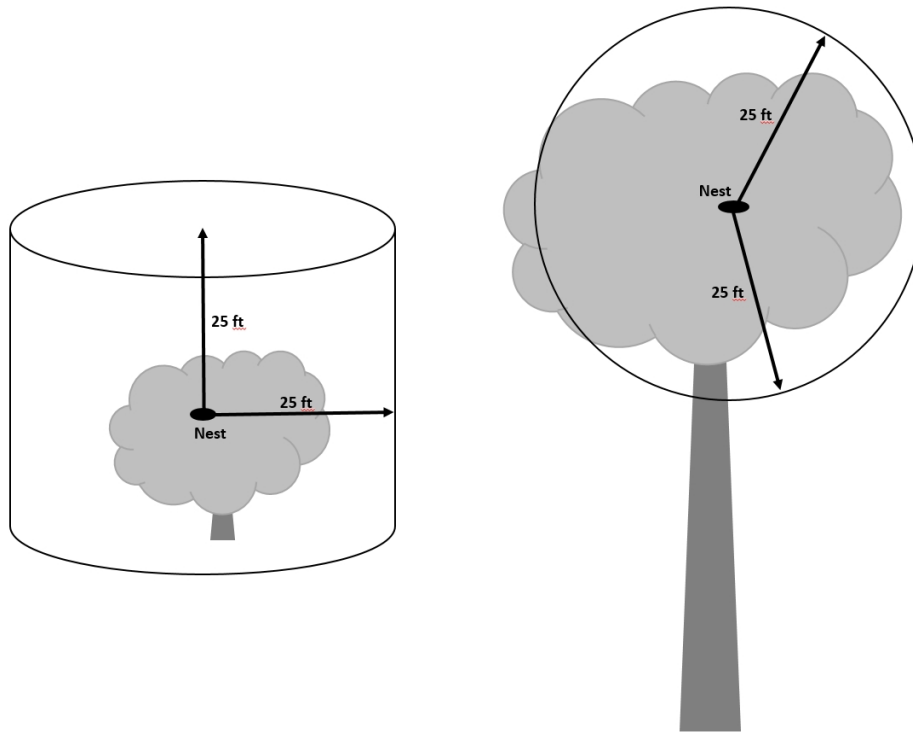


Figure 6: Three dimensional no activity buffer around a nest

### Species, Species Behavior, and Distance Considerations

Buffers for active nests should consider species-specific tolerances for disturbance, if known. Typically, larger buffers are used for large bird species and for species that are not tolerant of disturbance. Smaller buffers are generally used for smaller avian species and also species that have a high tolerance for disturbance, such as those that are commonly found nesting close to development.

Some species differ in tolerance based on location and therefore the appropriate buffer may vary. A blue-gray gnatcatcher (*Poliophtila caerulea*), for example, nesting in a thicket or understory is less likely to be disturbed than one nesting in a more exposed location in a shrub or small tree even though both nests are the same distance from the activity. Likewise, a red-tailed hawk (*Buteo jamaicensis*) that has acclimated to human activities is less likely to be disturbed at its nest than one that is not accustomed to human activity.

For ground-based activities, vertical separation of the nest from the construction area may be considered when selecting the appropriate buffer. Some species build their nests very high in trees and structures. For example, a nest 50 feet off the ground is less likely to be affected by ground work occurring directly below than a nest 10 feet off the ground. Nests close to the ground may be better suited to a cylinder shaped no work buffer area while spherical no work buffer areas may be suitable for nests farther from the ground (Figure 6).

The observed behavior of an individual bird during the nest search process and consequent nest monitoring will help determine the appropriate buffer distance. For example, an incubating adult that appears more skittish and is readily disturbed could receive a larger buffer than an incubating adult that sits tight and appears more acclimated to disturbance.



## **Nest Status**

Generally, nesting birds are most susceptible to failure early in the nesting cycle when fewer resources have been invested towards the nest. Therefore, it is more important to reduce disturbances during egg laying rather than later in the nesting cycle, which could result in the determination of a larger buffer being necessary early on, then reducing its size later in the nesting season.

When a nest is close to fledging, if disturbance occurs young may be more likely to leave the nest prematurely, unable to adequately fly, and therefore more susceptible to predation or injury. Similar to early in the nesting cycle, a larger buffer may be necessary until the young have fledged.

## **Environmental Conditions**

Extreme weather events may produce conditions that would increase the likelihood of nest failure. Combined with the stress of nearby activity, a nest might fail that would otherwise succeed. On unseasonably hot, cold, or windy days, buffers may need to be increased.

## **Summary**

The appropriate buffer (area surrounding the nest in which no activity may occur) for each nest often should be determined in consultation with a **Wildlife Biologist**. The **Wildlife Biologist** can use information from the above categories in combination to judge the buffer size needed to avoid or reduce the likelihood of the abandonment of an active nest. When long work duration is combined with hot weather and the nest is in the early incubation stage, larger buffers will be needed when compared to work that will take only 30 minutes, requires only hand tools, occurs during cool weather, and has a nest of older chicks. Taking into account the variety of factors when establishing buffers minimizes work activity impacts to nesting birds.

# Managing Wildlife Habitat

When tree care crews work in landscapes, they change the structure and availability of potential habitats for wildlife. Many factors go into tree care decisions such as: plant health, branch structure, clearance requirements, aesthetics, risk, and climber safety. Many within the tree care industry are interested in including managing wildlife habitat into their tree care decisions.

The laws protecting wildlife apply to habitat management. Any time that a crew is working near, or may encounter, nesting or sensitive wildlife, they should be following the recommendations for [Minimizing Impacts to Wildlife](#) (Page 3). This section is not intended to provide mitigation for removing active nests or sensitive habitat, but to provide guidance for those managing wildlife habitat.

Managing wildlife habitat includes more than improving habitat. In certain situations, land managers may be looking to decrease the habitat value of their landscapes. Possible reasons include minimizing human wildlife conflicts due to planned construction, excessive feces or noise in use areas, wildlife damaging infrastructure, etc. While this section focuses on improving habitat, the opposite approach may be more appropriate in areas of human-wildlife conflicts. However, the benefits of trees should be considered.

Hundreds of different species of wildlife live in California landscapes. Many of these species have different nesting, dietary, and behavioral needs. It is not possible to guide the management of landscapes to increase or decrease the habitat values for all species. However, research, experience, and common sense can guide tree care workers in managing wildlife habitat. Two approaches can be used separately or together to accomplish habitat goals: a species-specific approach and a diversity approach.

## Species Specific

Land managers may be interested in increasing the numbers of a particular species or type of wildlife. This could be for practical purposes (e.g. increased raptors to reduce rodent populations) or for ecological reasons (e.g. acorn woodpeckers are underrepresented in the area). Research into the life cycle of that species and what is likely restricting its numbers in this area can be conducted. Based on that research, the landscape can be managed in a particular way to potentially increase the numbers of the desired species. For example, Nuttall's woodpeckers typically excavate their nests in trees with heart rot. Rather than remove trees that are declining in health (and selecting those that are not a safety risk), tree care workers may be able to recommend management for tree risk via such means as height reduction and limb removal or reduction, and recommend monitoring their stability for future woodpecker use.

In order to help determine the requirements and management options for specific species, contact a **Wildlife Biologist** or your local Audubon chapter.

## Diversity Approach

In general, single-species habitat management limits the potential benefits to other wildlife. An ideal goal is to encourage landscape managers to consider establishing natural conditions that support a broad variety of wildlife. Larger and more diverse habitats with minimal human disturbance are likely to benefit a greater number of species.



## Plant Management

Generally, expanding landscapes through tree, shrub and ground cover planting will create more habitat for wildlife. Proper pruning, plant health care, planning, irrigation, pest and disease management, and managing risk will be important to keep trees and shrubs from declining. Decades of research and experience have gone into growing and maintaining landscapes and many of these topics are covered in International Society of Arboriculture Best Management Practices. Some practices in the tree care industry that are particularly important to wildlife include:

- Plant young trees and provide young tree care programs: irrigation, support, structural pruning, etc.
- For healthy trees, follow pruning Best Management Practices in which branches are removed only to meet particular objectives. Whenever possible, use a Natural Pruning System and follow the standard that “pruning operations should remove no more living material than what is necessary to achieve specified objectives” (ANSI A300 Pruning Standards). Prune trees only when necessary; trees should be on an inspection cycle not a pruning cycle.
- Use an Integrated Pest Management approach to plant health care. Limit broad spectrum pesticides which kill non-target insects.
- Retain mature trees whenever possible.

## Diversity of habitats

The hundreds of species of wildlife that visit and live in urban landscapes have many different habitat requirements. Each community is different and should offer different habitats within its community and different habitats from neighboring communities. This focus on diversity will also drive resiliency, ensuring that landscapes survive into the future. Some metrics of natural forest structures can be used to manage and improve diversity in landscapes: diversity of species, ages, structures, and distribution.

- Increase tree species diversity. A common recommendation for a city in the tree care industry is to have at least 30-20-10 diversity. No more than 30% of a city’s trees should be of any one family [such as *Fagaceae* which include oaks (*Quercus*), beeches (*Fagus*), and other genera]. No more than 20% of a city’s trees should be of any one genus [such as oaks (*Quercus*)]. No more than 10% of a city’s trees should be of any one species [such as coast live oak (*Quercus agrifolia*)]. These targets may be too high and could be even lower. Regardless of current diversity, when planning tree planting, look to increase species diversity.
- Increase tree age diversity. Diverse landscapes have young trees and mature trees. Young trees are planted each year and mature trees are managed and protected to extend their lifespan.
- Increase dead, dying, and declining trees. Many species of wildlife rely on dead and dying trees or on large dead limbs of live trees for nesting in cavities inside of trees. When risk can be adequately managed, consider retaining defects traditionally removed during tree care. Dead, dying, and declining trees are also important for insects and wildlife that feed on insects. These benefits should be balanced with pest species outbreaks and fire risk.
- Increase groundcover and shrub cover. Landscapes contain shrubs and groundcovers important for wildlife. Habitats of lawns with trees are probably over-represented throughout California. A more diverse groundcover palette accompanied with increased shrub and small tree layers are likely to increase habitat value. The shrub layer is especially important for escape cover, allowing

wildlife to hide from predators and seek shelter from the elements. Ideally a mix of wood chips, ground covers, and bare earth can be used in the landscape.

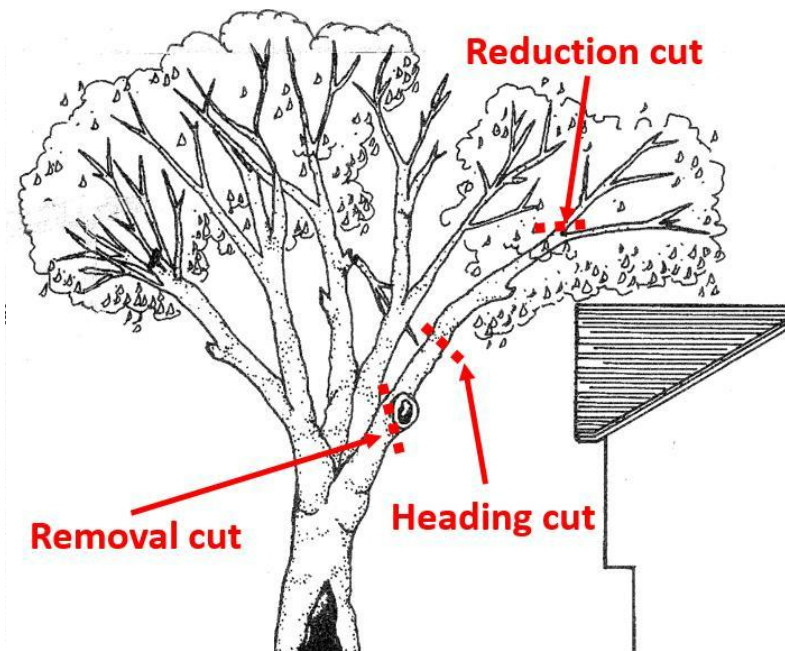
- Increase native species when it is appropriate and where doing so increases diversity. The small number of California native trees currently available in the landscape trade and their low suitability to many urban situations makes it difficult to meet tree diversity targets, including the 30-20-10 guideline, using only native trees. In many communities, native trees can be added to the landscape while still increasing overall species diversity. A wider variety of native bushes and ground covers are available and are underused in many California landscapes.
- Increase spatial diversity. The above factors will be more beneficial if distributed unevenly throughout an area. For example, a new species should be planted throughout a city, not just in one area. But an overly organized pattern is also not ideal because some species require pockets of a particular habitat type.

### **Retaining dead, dying and decaying trees, and branches**

One area that the tree care industry has a high potential to increase habitat in is in dead, dying, and decaying trees and branches. Many wildlife species are reliant on trees or parts of trees that are routinely removed with no thought about the habitat that they provide. Wildlife that nest exclusively in dead, dying, and decaying trees and branches would benefit greatly from greater awareness of their habitat requirements and effort in preserving these types of trees. Local Audubon Chapters and the Cavity Conservation Initiative may be able to help with specific needs and recommendations for a particular area or project.

Priority must be given to human safety when managing dead, dying, and decaying trees and branches; however, when risk does not exceed tolerance, many of these important habitats can be retained. The Tree Risk Assessment Best Management Practices lists cavity openings and nesting holes as positive indicators of decay or internal voids. Trees with cavity nests are given a higher likelihood of failure and recommended for removal more often than trees without cavity nests. Decayed trees and branches are considered less structurally stable because their capacity to withstand force diminishes according to the size and location of decay. However, no scientific studies have conclusively demonstrated the loss of strength from these cavities. Not all dead, dying, and decayed trees can or should be retained, but extending the life of a dead or dying tree a few years could be beneficial to wildlife.

Trees and branches for which risk exceeds risk tolerance do not always need to be removed, other mitigation methods can be employed. Pruning techniques that are not commonly used on healthy trees can be employed on unhealthy or hazard trees in order to preserve the tree while mitigating for risk. For example, Figure 7 shows a branch with a cavity growing over a house. If risk outweighs risk tolerance, a reduction cut is unlikely to adequately mitigate the risk, and a removal cut will remove the potential nesting cavity. A heading cut could adequately mitigate risk and preserve habitat in these cases, though heading cuts are generally not recommended because of the physiological effect on the tree. This branch would likely need to be completely removed to mitigate risk if not using a heading cut, and the branch is already decayed, so future decay from the heading cut is less of a concern.



*Figure 7. Different types of cuts may be appropriate to accomplish different pruning objectives. In this situation a heading cut may be able to preserve a potential cavity nest site and mitigate risk.*

Some mature, declining trees can be severely pruned to reduce risk while leaving some available habitat. Even a tall stump may provide important habitat to cavity nesting wildlife in areas where decayed wood is not abundant. Retrenchment is a natural progression that many trees go through later in life, and retrenchment pruning is practiced more often in the United Kingdom to extend the life of declining mature trees.

Nest boxes may be one way to mitigate loss of cavities from dead, dying, and decaying tree and branch removal. When nest boxes are provided, they can be quickly occupied and sometimes lead to an immediate rise in breeding density. Cavity nesting bird populations are not solely limited by the availability of cavities. When considering creating habitat for these species, the availability of suitable food and types of predators in the habitat need to be considered. Dead, dying, and decayed trees and branches are complex ecosystems and simply attaching a nest box to a young tree cannot replace the lost value of those ecosystems. If installing nest boxes, the correct type, height, protection, and maintenance need to be considered. Local Audubon groups may be able to provide important information regarding these requirements ([Additional Resources](#), Page 21).

Once on the ground, tree parts continue to be used by wildlife and are important features of landscapes. If sections of trunks and branches, brush piles, or toppled trees can be incorporated into the landscape aesthetically and with an acceptable level of risk, wildlife may benefit.

Forestry research has led to more invasive ways of increasing habitat value such as girdling trees to kill them in areas where dead trees are not common, cutting the tops off of trees to create snags, and using chainsaws to cut artificial cavities into trees to increase the habitat value for secondary cavity nesters. Some of these techniques are being experimented with by tree care workers and may become more prevalent as awareness of wildlife increases.

# Glossary

**Awareness Training** - crew training provided by a **Wildlife Biologist** or **Wildlife Trained Arborist** that covers general information about looking for signs of nesting wildlife or may be specific to a location.

**Awareness training** typically takes no more than 15 minutes. A video is available at [www.treecareforbirds.com](http://www.treecareforbirds.com).

**Breeding season** - the time of year when most wildlife breed, nest, and care for offspring that cannot care for themselves. Across the different habitats of California, most wildlife breed between February 1st and August 31st, in most years. However, this varies by region and species. In some years variable weather patterns or abundance of food may cause early or late breeding.

**Buffers** - areas established around an active nest in which no work is allowed to occur to prevent abandonment or destruction.

**Category 1** - For a **low value habitat** during the non-breeding season, no trained personnel are required.

**Category 2** - For a **low value habitat** during the breeding season or a **high value habitat** during the non-breeding season, pre-work inspections by a **Wildlife Trained Arborist** are recommended.

**Category 3** - For a **high value habitat** during the breeding season or **riparian habitat** areas at any time of the year, the project should follow recommendations from a **Wildlife Biologist**.

**Human health and safety emergency** - immediate risk posed to human health and/or safety. Requires action to alleviate imminent danger circumstances.

**Habitat value** - the likelihood of finding wildlife using an area throughout the year.

**Riparian habitat** - areas are the interface between land and constant or intermittent rivers or streams and generally provide the highest value habitat for wildlife. Riparian areas can be identified by their distinctive soils and vegetation, particularly willows (*Salix spp.*), mulefat (*Baccharis salicifolia*), sycamore (*Platanus spp.*), and cottonwood (*Populus spp.*). This may include concrete channels when the associated riparian vegetation and soils are present.

**High value habitat** - generally areas with low human use, low impervious surfaces, high plant species diversity, high plant structural diversity, close to water bodies, many mature trees, many dead or dying trees, and with abundant wildlife.

**Low value habitat** - generally areas with high human use, high impervious surfaces, low plant species diversity, far from water bodies, few mature trees, few dead and dying trees, and few/no wildlife present.

**Nest** - a structure or place made or chosen by wildlife for laying of eggs or sheltering its young.

**Active** - eggs or young present

**Inactive** - no eggs or young present

**Abandoned** - eggs or young present, but adults are no longer returning to tend the nest

**Non-breeding season** - the time of year when most wildlife are not breeding, nesting, or caring for

offspring that cannot care for themselves. Across the different habitats of California, most wildlife are not breeding between September 1st and January 31st, in most years. However, this varies by region and species. In some years variable weather patterns or abundance of food may cause early or late breeding.

**Raptor** - birds of prey such as owls, hawks, eagles, vultures, and falcons which are in the orders *Strigiformes*, *Accipitriformes*, and *Falconiformes*.

**Signs of nesting wildlife** - wildlife breeding behavior such as carrying sticks of food, acting agitated, distress calls, as well as observing concentrations of bird droppings, nests that may be active, eggs, young, or wildlife reliant on nest.

**Sensitive habitat** - habitat that is home to special status species and/or the habitat itself may be rare and could be easily disturbed or degraded by human activities and developments.

**Tree** - a woody perennial, usually having one dominant vertical trunk and a height greater than 15 ft.

**Tree Care Worker** - a term that can describe any professional working with trees including but not limited to arborists, tree climbers, trimmers, ground workers, consultants, managers, etc.

**Wildlife Trained Arborist** - a tree care worker with training and/or experience in: determining habitat value, conducting pre-work nesting surveys, identifying signs of nesting wildlife, determining if nests are active, responding to wildlife emergencies, and contacting **Wildlife Biologists** when needed.

**Wildlife Biologist** - a person with knowledge and experience in identifying wildlife species that may occur in an area and is familiar with wildlife behavior, nesting requirements, tolerance to impacts and suitable survey methods.

**Wildlife rehabilitator** - an individual or organization with training, experience, and (if required) applicable permit(s) allowing them to care for injured or abandoned wildlife.

**Wildlife emergency** - a situation where wildlife are injured, orphaned, or in danger or where nests are abandoned or disturbed.

**Wildlife** - undomesticated living animals especially birds, mammals, amphibians, and lizards.

**Native species** - species that is present by a natural process with no human intervention.

**Non-native species** - species that has been brought to a new geographic region beyond its normal range.

**Invasive species** - species exhibiting a strong ability to colonize an area and harm other species.

**Special status** - species of wildlife that have one or more designations from authorities. The US Fish and Wildlife Service and California Department of Fish and Wildlife each have their own list of endangered, threatened, and candidate (Federal) or species of special concern (California). If there is potential to encounter special status species, contact the agency responsible for the species or a Wildlife Biologist familiar with the species for further guidance. For more information see the CDFW [Special Animal List](#).

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Newton, I. 1994. The role of nest sites in limiting the number of hole-nesting birds: A review. Biological Conservation 70(3):265-276.

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# Additional Resources

Birds of North America, Cornell Lab of Ornithology

<https://birdsna.org/Species-Account/bna/home>

City of Portland Environmental Services. 2016. Avoiding Impacts on Nesting Birds: Best Management Practices for Vegetation and Construction Projects. 44 p.

<https://www.portlandoregon.gov/bes/index.cfm?a=322164>

California Agricultural Extension Offices

[https://ucanr.edu/County\\_Offices/](https://ucanr.edu/County_Offices/)

California Audubon Chapters

<http://ca.audubon.org/about/chapters>

California Department of Pesticide Regulation

<http://calpip.cdpr.ca.gov/county.cfm>

California Forest Practice

[http://calfire.ca.gov/resource\\_mgt/resource\\_mgt\\_forestpractice](http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice)

California List of California Wildlife Rehabilitators

<https://www.wildlife.ca.gov/Conservation/Laboratories/Wildlife-Investigations/Rehab/Facilities>

California Natural Diversity Database (CNDDB)

<https://www.wildlife.ca.gov/Data/CNDDB>

California Snakes

<https://www.wildlife.ca.gov/News/Snake>

California Endangered Species Act Lists

<https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>

California Fully Protected Species

[http://www.dfg.ca.gov/wildlife/nongame/t\\_e\\_spp/fully\\_pro.html](http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html)

California Herps

[www.californiaherps.com](http://www.californiaherps.com)

California Special Animal List

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>

California Wildlife Habitat Relationships

<https://www.wildlife.ca.gov/Data/CWHR>



Cavity Conservation Initiative  
[www.cavityconservation.com](http://www.cavityconservation.com)

Conserving Waterways - Preventing Impacts from Human Activity  
<http://www.rcrcd.org/uploads/files/ConservingWaterways.pdf>

Living with Wild Reptiles and Amphibians  
<http://www.californiaherps.com/info/livingwithherps.html>

NestWatch - All About Birdhouses  
<http://nestwatch.org/learn/all-about-birdhouses/>

U.S. Fish and Wildlife Critical Habitat Online Mapper  
<https://ecos.fws.gov/ecp/report/table/critical-habitat.html>

USFWS Wetland Mapper  
<https://www.fws.gov/wetlands/data/mapper.HTML>

# Appendix I - Tree Care Industry Overview

This section is compiled from excerpts from personal communications with Dr. Jim Clark, updated from *Arboriculture: Integrated Management of Landscape Trees Shrubs and Vines* by Harris, Matheny and Clark, 2004.

The tree care industry generally practices arboriculture that is *concerned with the selection, planting, and care of trees of all ages*. The tree care industry is different from conventional forestry in that it focuses on trees in city centers, suburban neighborhoods, rural areas, and some relatively wild areas with human influences such as roads and utility lines.

*A tree is defined as a 'woody perennial usually having one dominant trunk and a mature height of greater than 5 meters (16 feet)' (International Society of Arboriculture, 2015)... Definitions serve to distinguish trees from shrubs which are normally multi-stemmed and shorter in height. For practical purposes, arborists consider palms trees, even though such plants are not strictly woody.*

Many professional organizations exist for the tree care industry; however, the largest organization is the International Society of Arboriculture (ISA). The ISA *represents more than 24,000 arborists in 47 countries with 37 chapters, 8 associate organizations and four professional affiliations*. California is in the Western Chapter that includes Nevada, Arizona, and Hawaii. The International Society of Arboriculture offers training and testing to become a Certified Arborist. It also offers other types of training and tests to become a Certified Tree Worker Specialist, Tree Risk Assessment Qualified, Certified Arborist Utility Specialist, and others. The tree care industry is a combination of people with and without these certifications and affiliations.

*The International Society of Arboriculture describes arboriculture as a broad field with several areas of specialization:*

**Municipal arborists** (also known as municipal foresters and urban foresters) are involved in the management of publicly owned trees, particularly in cities, towns, and other public locations. They are commonly employed by public agencies either directly or on a contract basis.

**Commercial arborists** operate businesses that provide tree care activities such as pruning, fertilization, health care, planting, and tree removal on a fee basis. Clients include public agencies, private firms and individuals.

**Utility arborists** are involved in the management of trees along utility rights-of-way. Their primary management goal is the maintenance of safe and uninterrupted supply of power. To that end, utility arborists are involved in assessing the need for and scheduling tree selection, pruning, applying tree growth regulators, and tree removal. They may be employed by either the utility itself or contractors who provide vegetation management services.

**Arboricultural consultants** provide technical expertise including problem diagnosis, management programs, and tree appraisal rather than performing service work. Although most consulting arborists operate on a commercial basis, employees of institutions such as the U.S. Department of Agriculture (USDA) Cooperative Extension and state urban forestry programs may also provide consulting expertise.

*The industry has a series of standards of work performance. The American National Standards Institute (ANSI) produces several voluntary standards for arboriculture including those for Tree Care Operations Safety (Z133.1), Standard Practices Pruning (A300), and Nursery Stock (Z60.1).*

The ANSI Standard Practices (A300) cover the topics:

- pruning,
- soil management,
- supplemental support systems,
- lightning protection systems,
- planting and transplanting,
- integrated vegetation management,
- root management, and
- tree risk management.

The ISA Best Management Practices currently cover the topics:

- tree support systems,
- tree planting,
- integrated vegetation management,
- tree risk assessment,
- tree pruning,
- lightning protection,
- root management,
- soil management,
- tree and shrub fertilization,
- tree inventories,
- utility pruning of trees, and
- integrated pest management

and are available for purchase from their website ([www.isa-arbor.com](http://www.isa-arbor.com)).

Tree care activities vary in their level of labor intensity, equipment, frequency, noise, and expense. Managing trees is critical to their survival, success, and maximizing the potential of their environmental benefits within the landscape. At their most basic, tree care activities include:

- **Planting** - After species have been selected, trees are planted. Irrigation and stabilization are often added after planting.
- **Pruning** - Using a variety of tools, tree care workers selectively remove branches to meet a variety of objectives outlined in the ANSI Standards. Pruning is most important and effective when trees are young but often continues on a regular basis throughout the lifespan of a tree.
- **Removal** - Tree care workers cut down trees as requested by tree managers, often for tree health, public safety, and clearance needs.
- **Plant health care** - Treatment of disease and deficiencies often occurs for specially selected trees or stands and is often cost prohibitive at large scales. There are a variety of products used, including contact chemical sprays, injected systemic treatments, fertilizer application, etc.
- **Ground maintenance activities** - Many tree care activities occur on the ground and do not

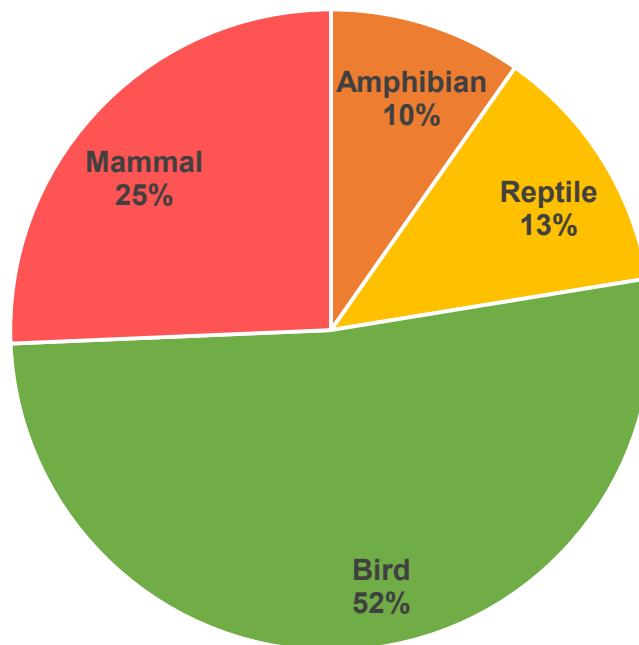
require access to the tree canopy. These activities take place periodically, especially after planting, and include mulching, watering, removing or placing stakes, inspections, etc.

- **Utility clearing** - Utility lines must be cleared for safety, reliability, and fire risk. Tree removal, pruning, and herbicide use are the most common methods of controlling vegetation in the utility right-of-way.
- **Planning and management** - The tree care industry is involved in planning and managing landscapes, but politicians and city staff make many higher level decisions about trees.

## Appendix II - Wildlife in California

Wildlife (including birds, mammals, reptiles, and amphibians) rely on trees and landscapes for food and shelter as they feed, nest, and reproduce. In turn, wildlife control insects, provide food for other wildlife, pollinate plants, distribute seeds, and are good indicators of environmental health. This section discusses wildlife that can be found in the course of tree work that arborists should be aware of.

There are over 700 terrestrial vertebrate species in California (<https://www.wildlife.ca.gov/Data/CWHR>). Of these, over half are birds and one quarter are mammals (Figure 8). California and Federal laws are focused more on birds than the other groups. Because birds are more diverse and more protected than other types of species, these BMPs discuss birds more than other wildlife.



*Figure 8. Percentage of wildlife groups by California Department of Fish and Wildlife*

Adult mammals and birds will likely flee a work area so work can proceed. During nesting, however, eggs and young wildlife cannot move from nests. Because they are vulnerable and stationary during this time period, nesting wildlife are those most likely to be impacted by tree and shrub care. To minimize impacts, it is critical to identify, avoid, and protect wildlife nests.

It is important to keep in mind where the nests in a tree may be found (Figure 9, Page 27). While a nest may be found almost anywhere, different birds prefer to nest in particular locations. Nests may be in trees (including palm trees), shrubs, vines, woodpiles, dead trees, decayed sections of live trees, man-made structures, or burrows in the ground. Nests can also be placed on the ground surface. Tree care workers need to be aware of the variety of types and locations of nests.



*Figure 9. Nest locations may be high in trees, on the ground, and everywhere in between. Certain types of wildlife tend to build nests in certain types of locations.*

## Birds

Hundreds of bird species live in California. Bird species have varied behaviors and life cycles that affect how they interact with the environment. Birds feed on nectar, seeds, fruits, insects (in bark, in the air, on the ground), and other wildlife. To breed successfully, birds must find food, a water source, and a nesting location. When protecting their nests, birds may fly or swoop at apparent threats, make repeated warning calls, or stay put and attempt to camouflage their nests.

Raptors are a subset of birds including hawks, eagles, owls, and falcons that have distinct life cycles and biology. They are typically larger than other birds and are predators and are often referred to as birds of prey. Raptors are also subject to specific protected status ([Appendix III](#), Page 34), and generally have nests protected by regulation even when inactive.

## Mammals

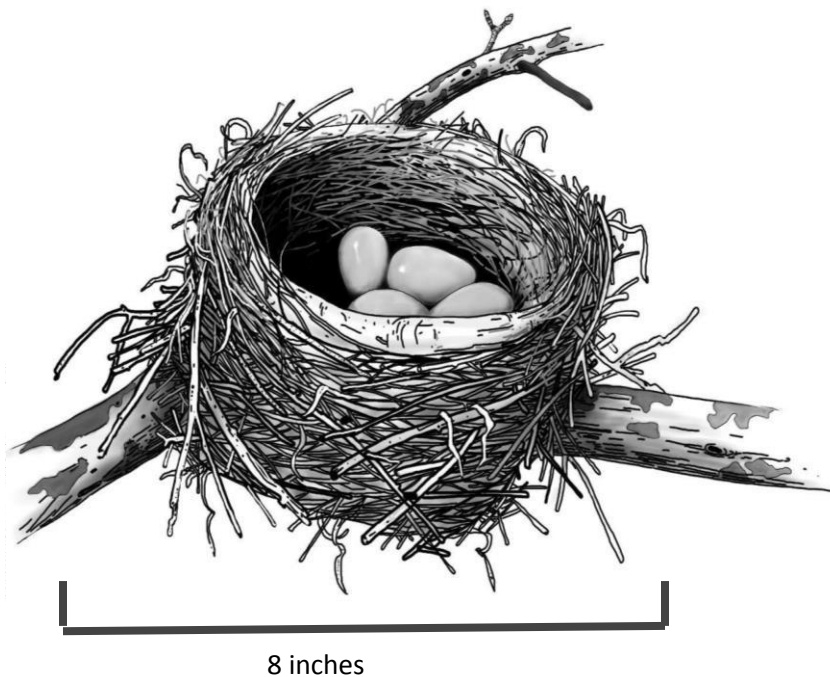
All bats (order *Chiroptera*) and woodrats (*Neotoma* spp.) are protected. Woodrats build large stick nests in tree canopies and at the base of trees. Several species of woodrats have special status (wildlife descriptors, Page 33) and have specific protections. Bats are nocturnal mammals that may use trees as temporary, daytime, and/or long term roosts. They do not construct nests but find shelter in cavities, loose bark, and cracks. Bats are inactive in the day and rarely seen, except at dusk when they emerge from roosts and feed on insects. Many species of bats are in decline.

Some small mammals are considered nuisance species. The black rat (*Rattus rattus*), eastern gray squirrel (*Sciurus carolinensis*), fox squirrel (*Sciurus niger*), and Virginia opossum (*Didelphis virginianus*), which are common in urban areas, are not protected in California. Rats are commonly found nesting in palm trees. Many consider opossums, mice, squirrels, and other rodents a nuisance. Contact your local agricultural extension ([Additional Resources](#), Page 21) for information on the best way to deal with nuisance species in your area.

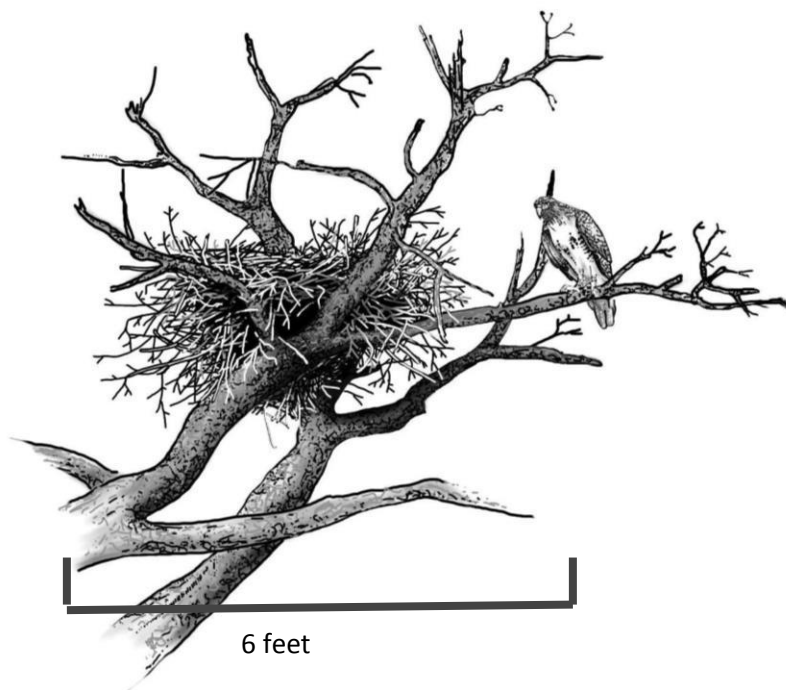
## Reptiles

Shelter and cover are critical to the life cycles of reptiles and amphibians. They are exothermic or “cold blooded” and regulate their body temperatures by moving in and out of the sun. On trees, they can be found basking in the sun and living in cavities. Many live in holes in the ground; however, they are usually not found in turf covered areas. Areas with downed wood, bark, or large pieces of decaying wood are ideal sites for reptiles as they serve as both shelter and food source. Lizards and snakes can help control pests like insects and rodents. All native reptiles and amphibians are also protected in California.

Rattlesnakes are the most common venomous snakes native to California. They are rarely found in trees (though occasionally found in tree cavities) but can be found on the ground or at the base of trees and shrubs. In general, they will only strike when provoked. Arborists should look for snakes when performing pre-work inspections and should not approach them if found. Refer to <https://www.wildlife.ca.gov/News/Snake> for more information.



**Cup nests** are common among small songbirds like robins, finches, and hummingbirds. Whatever their size, cup nests always have a deep depression. They tend to be sturdy, founded on supportive coarse woody twigs, sometimes bound with mud, and are lined inside with softer vegetation or feathers. Illustrator - Brian French



**Platform nests** are most often made by large, heavy birds like raptors, doves, and others. Upper canopies and tree tops are ideal for these large nests. Nest materials are primarily woody. These structures, which take considerable time and effort to construct, can last several seasons. Illustrator - Brian French





**Hanging/pendulous nests**

hang from palm fronds or tree branches and are made by species like bushtits and orioles. These nests are supported by slings of strong but flexible material.

Illustrator - Brian French



**Excavated cavity nests** are among the most difficult to detect and to determine whether vacant or occupied. Their entrances are characteristically round, carefully chiseled, and generally no more than 2-3 inches in diameter and can occur almost anywhere on the trunk or branches. Though initially made by woodpeckers, birds like Western bluebirds, house wrens, owls, and other wildlife use these nests as well. Cavity nesters are especially relevant to the tree care industry because most cavity nesters are wholly reliant on trees for their nesting success and because these cavities indicate potentially weak internal tree structure. Nest boxes are replications of cavity nests.

Illustrator - Brian French



2 feet

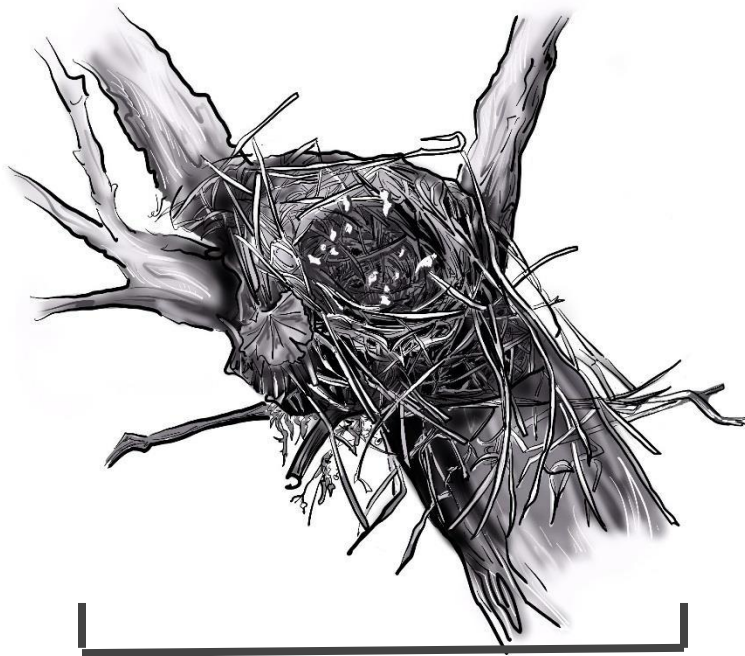
**Natural cavity nests** have openings that are highly irregular in shape and size. Occupancy increases during the nesting season, but some cavity nesters use them as roosts all year. Often these cavities are formed from branch failures decaying in living or dead trees. Mammals also use these cavities during the nesting season.

Illustrator – Brian French

**Scrape nests** are slight depressions on the ground or on ledges that have been slightly cleared to create a nest. They are made by birds such as killdeer, shorebirds, peregrine falcons, and a few owls. Illustrator - Brian French



4 inches



8 inches

**Inactive** non-raptor nests have no eggs or young that are reliant on the nest. These nests can generally be destroyed if required to accomplish tree work objectives.

Illustrator – Monica Edwards



8 inches

**Tree squirrels** build large leafy nests typically found on larger branches of trees or at crotches where two or more branches meet. Tree squirrels typically build multiple nests in a season and may rotate nests while raising their young.

Illustrator – Monica Edwards

## Insects

Insects lack broad legal protection in California. Several species of insects have special status and are protected. For instance, the Valley Elderberry Longhorn Beetle is protected by the Federal Endangered Species Act as a threatened species. The California Department of Pesticide Regulation maintains a database on species status species and sensitivities to pesticides ([Additional Resources](#), Page 21)

Insects are an important part of the food web. High insect diversity can act as a buffer to limit insect pests. Insect populations provide the base of the food web for many species of wildlife and are important pollinators for trees and other plants. Pest species are the vast minority of insects and should be managed when populations exceed thresholds, but healthy insect populations contribute to landscape health.

## Wildland Areas

When working in locations such as wildlife preserves, state parks, National Forest lands, or other open spaces where impact on special status species may be more likely, it may be necessary to gather further information, either by contacting agencies directly, or through performing a desktop review. Prior to performing the work, check to see if any special status species have been recently seen or are known to rely on the area. The desktop review can be done using resources publicly available online such as the California Natural Diversity Database (CNDDDB) (<https://www.wildlife.ca.gov/Data/CNDDDB>) and U.S. Fish and Wildlife Critical Habitat online mapper (<https://ecos.fws.gov/ecp/report/table/critical-habitat.html>). If the desktop review finds sensitive areas a **Wildlife Biologist** should be contacted.

## Wildlife Descriptors

Below are some important terms regarding wildlife in California:

**Native species** - species that is present by a natural process with no human intervention.

**Non-native species** - species that has been brought to a new geographic region beyond its normal range.

**Invasive species** - species exhibiting a strong ability to colonize an area and harm other species.

**Special status** - species of wildlife that have one or more designations from authorities. The US Fish and Wildlife Service and California Department of Fish and Wildlife each have their own list of endangered, threatened, and candidate (Federal) or species of special concern (California). If there is potential to encounter special status species, contact the agency responsible for the species or a Wildlife Biologist familiar with the species for further guidance. For more information see the CDFW [Special Animal List](#).

## Wildlife Impacts

Tree and shrub care can disturb wildlife. These activities may include injuring or killing wildlife and removing a nest with eggs or young wildlife within. However, some activities may not cause direct harm. Pruning branches near a nest with eggs or chicks in it may cause the parents to abandon the nest or the eggs or chicks to become more exposed to the elements or predators. The goal of this document is to help tree care workers to avoid these types of impacts to wildlife. Effective planting and maintenance of trees has the opportunity to both maintain existing and create new habitat to enhance wildlife.

# Appendix III - Laws and Regulations

Below is a list of laws and regulations pertaining to wildlife that are relevant to the tree care and landscape industry. The specific language from these laws is provided in quotations for reference. Language not in quotations is explanatory and paraphrased.

## Wildlife

### Federal Requirements

The primary Federal laws protecting birds as well as other wildlife include:

#### *Migratory Bird Treaty Act (MBTA)*

- Protects most species of birds in North America along with their parts (e.g. feathers), eggs, young, and nests.
- Upland game bird species are not protected by MBTA, but rather are regulated by states.
- “The MBTA provides that it is unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, barter, import, export, or transport any migratory bird, or any part, nest, or egg of any such bird, unless authorized under a permit issued by the Secretary of the Interior. Some regulatory exceptions apply.” Take is defined in regulations as: ‘pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.’”

#### *Endangered Species Act (ESA)*

- Protects species listed as threatened or endangered by U.S. Fish and Wildlife Service. Take is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct”. In addition to protecting species, the Endangered Species Act also protects the habitat a species depends on.

#### *Bald and Golden Eagle Protection Act (BGEPA)*

- Protects bald and golden eagles. Take is defined as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb”. Unlike MBTA, BGEPA also protects eagles from disturbance.
- Eagle nests are protected year-round, regardless of status, and require a permit to remove or destroy.

### State of California Requirements

The primary Fish and Game Code (FGC) sections protecting birds as well as other wildlife include:

#### *Sections 2050-2115.5 - California Endangered Species Act (CESA)*

- Protects species listed as threatened or endangered by the California Department of Fish and Wildlife.

#### *Section 3503 - All Birds*

- Protects all birds and protects nests from needless destruction.
- “It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.”

#### *Section 3503.5 - Raptors*

- Protects birds of prey or raptors, and their eggs and nests. Current taxonomy places these species in three orders rather than the two stated in the Code: *Accipitriformes*, *Falconiformes*, and *Strigiformes*. These include owls, eagles, falcons, hawks, and vultures.
- “It is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.”

#### *Section 3505*

- “It is unlawful to take, sell, or purchase any egret, osprey, bird of paradise, gaura, numidi, or any part of such a bird.”

#### *Section 3511 - Fully Protected Birds*

- This section provides a list of bird species protected from take and possession for which there are no permits allowed except for scientific purposes.
- “The following are fully protected birds:
  - (1) American peregrine falcon (*Falco peregrinus anatum*).
  - (2) Brown pelican.
  - (3) California black rail (*Laterallus jamaicensis coturniculus*).
  - (4) California clapper rail (*Rallus longirostris obsoletus*).
  - (5) California condor (*Gymnogyps californianus*).
  - (6) California least tern (*Sterna albifrons browni*).
  - (7) Golden eagle.
  - (8) Greater sandhill crane (*Grus canadensis tabida*).
  - (9) Light-footed clapper rail (*Rallus longirostris levipes*).
  - (10) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
  - (11) Trumpeter swan (*Cygnus buccinator*).
  - (12) White-tailed kite (*Elanus leucurus*).
  - (13) Yuma clapper rail (*Rallus longirostris yumanensis*). “

#### *Section 3513 - References MBTA*

- Migratory nongame bird as designated in the MBTA, or any part of such migratory nongame bird, except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

#### *Section 3801 – Exceptions*

- House sparrows and European starlings are not protected by section 3503.

#### *Section 86 - Definition of Take*

- To hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

### **Environmental Protection**

#### *California Environmental Quality Act (CEQA)*

It should be uncommon for routine tree care activities to require going through the CEQA process. However, tree care work that is part of a “project” as defined under CEQA would be required to undergo CEQA review and follow any mitigation measures resulting from the environmental document. In such

circumstances, the CEQA environmental document supersedes the guidance provided here.

“The term project refers to the whole of an action that has the potential, directly or ultimately, to result in a physical change to the environment (CEQA Guidelines Section 15378). This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project.” (UC CEQA Handbook 2002).

## **Riparian Habitat**

### *California Fish and Game Code Section 1602*

(a) “An entity may not substantially divert or obstruct the natural flow of, or *substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake*, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:...”

## **Electric Utility**

### State of California

#### *Public Resource Code, Section 4292: Power Line Hazard Reduction*

- Poles and towers of electrical transmission or distribution lines in wildland areas must be at least 10 feet clear of any flammable vegetation.

#### *Public Resource Code, Section 4293: Line Clearance Guidelines*

- Electrical lines in wildland areas must be clear of vegetation at a distance depending on voltage. “Dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard.”

#### *General Order 95, Rule 35: Tree Pruning*

- “Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances the minimum clearances set forth in Table 1, Cases 13 and 14, measured between line conductors and vegetation under normal conditions, shall be maintained.”
- Summary of Table 1 (above) - For Supply Conductors and Supply Cables (750 - 22,500 Volts), the radial clearance of bare line conductors from tree branches or foliage must be 18 inches. The radial clearance of bare line conductors from vegetation in Extreme and Very High Fire Threat Zones in Southern California must be 48 inches.

### Federal

#### *North American Electric Reliability Council (NERC) Standard FAC-003-4: Transmission Vegetation Management Standard*

- “To maintain a reliable electric transmission system by using a defense-in-depth strategy to manage vegetation located on transmission rights of way (ROW) and minimize encroachments from vegetation located adjacent to the ROW, thus preventing the risk of those vegetation-related outages that could lead to Cascading.”
- Provides minimum required clearances from vegetation based on voltage and altitude.

**Tree Care Ordinances**

Tree care is often regulated by local ordinances and policies as well as private organizations (HOA's, tree boards, etc.). These regulations may cover tree species, tree planting spacing and distances from curbs and other infrastructure, pruning and other maintenance practices, tree removal, landscape provisions in community plans and development permits, compliance enforcement, and establishment of an advisory board.



## Appendix IV - Bird Group Breeding Information Table

Bird Group	Typical Breeding Season	Incubation (Eggs)	Chicks	Buffer LHV (Radius in feet) <sup>1</sup>	Buffer HHV/R <sup>2</sup>
Waders (e.g. herons, egrets)	January through August	19-27 days	21-81 days	200	300
Eagles	January through July	35-46 days	10-11 weeks	Bald 660 feet Golden 0.5-1 mile	Bald 660 feet Golden 0.5-1 mile
Birds of Prey (e.g. hawks, vultures, falcons)	February through August	25-36 days	4-7 weeks	300	500
Doves and Pigeons (mourning doves and band-tailed pigeons)	February through November	14-20 days	13-30 days	100	300
Owls Burrowing owl <sup>3</sup>	January through July February through June	26-35 days	28-60 days	300	500
Hummingbirds	December through July	13-18 days	20-23 days	100	300
Woodpeckers Acorn woodpecker <sup>3</sup>	April through August March through October	11-13 days	~30 days	100	300
Many songbirds (e.g. finches, kingbirds, mockingbirds)	February through August	11-17 days	9-25 days	100	300

<sup>1</sup> Low Habitat Value area

<sup>2</sup> High Habitat Value or Riparian area

<sup>3</sup> Burrowing owls and acorn woodpeckers have different breeding seasons than most species in their order

Bird Group	Typical Breeding Season	Incubation (Eggs)	Chicks	Buffer LHV (Radius in feet) <sup>1</sup>	Buffer HHV/R <sup>2</sup>
Corvids (e.g. crows, ravens, jays)	February through August	15-21 days	18 days Jays 35 days Crows 5-6 weeks Ravens	100	300

**Sources:**

Birds of North America, Cornell Lab of Ornithology: <https://birdsna.org/Species-Account/bna/home>

Southern California Edison Nesting Bird Management Plans

The buffer ranges provided in this table are meant as starting points. Refer to [Considerations for Work Performed Near Active Nests](#) for further guidance on determining the appropriate distance work may be conducted from an active nest. It is important to seek the aid of a **Wildlife Biologist** when attempting to work near active nests, especially when work may cause the nest to fail. **Wildlife Biologists** may recommend different buffers based on individual situations, and programmatic approaches may use different sized buffers or a totally different system for minimizing impacts to wildlife.

**Riparian habitat** - the interface between land and constant or intermittent rivers or streams and generally provide the highest value habitat for wildlife. Riparian areas can be identified by their distinctive soils and vegetation, particularly willows (*Salix spp.*), mulefat (*Baccharis salicifolia*), sycamore (*Platanus spp.*), and cottonwood (*Populus spp.*). This may include concrete channels when the associated riparian vegetation and soils are present.

**High value habitat** - generally has low human use, low impervious surfaces, high plant species diversity, high plant structural diversity, close to water bodies, many mature trees, many dead or dying trees, and with abundant wildlife.

**Low value habitat** - generally has high human use, high impervious surfaces, low plant species diversity, far from water bodies, few mature trees, few dead and dying trees, and few/no wildlife present.

# Appendix V - Pre-work Inspection Form

Inspector: \_\_\_\_\_ Certification Level: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_ Weather conditions: \_\_\_\_\_  
Description of work: \_\_\_\_\_ When is work: \_\_\_\_\_  
Wildlife Biologist: \_\_\_\_\_ Wildlife Rehabilitator: \_\_\_\_\_

## Habitat Value

### Low

- ☐ High human use
- ☐ High impervious surfaces
- ☐ Low plant species diversity
- ☐ Low plant structural diversity
- ☐ Far from water bodies
- ☐ Few mature, dead and dying trees
- ☐ Few/no wildlife present

### High

- ☐ Low human use
- ☐ Low impervious surfaces
- ☐ High plant species diversity
- ☐ High plant structural diversity
- ☐ Close to water bodies
- ☐ Many mature, dead and dying trees
- ☐ Abundant wildlife present

### Riparian

- ☐ Within or adjacent to water bodies
- ☐ Within or adjacent to dry water channels
- ☐ Riparian vegetation present

### Breeding Season

- ☐ Breeding Season (Feb. 1 – Aug. 31)
- ☐ Non-breeding Season (Sep. 1 – Jan. 31)

### **Category**

☐ Category 1

☐ Category 2

☐ Category 3

Recommended level of training: \_\_\_\_\_

## **Inspection**

- ☐ Scan the sky, trees, ground, shrubs, and branches.
- ☐ Check trunk or branch cavities and holes in the ground.
- ☐ Listen for wildlife sounds.
- ☐ Look for wildlife flying or running away.

## **Signs of nesting wildlife**

- ☐ Nests that may have eggs or young
- ☐ Concentrations of white colored droppings
- ☐ Wildlife exhibiting breeding behavior
- ☐ Wildlife carrying nesting materials
- ☐ Repeated wildlife visits to area

## **Nest found**

- ☐ Location \_\_\_\_\_
- ☐ Species \_\_\_\_\_
- ☐ Type \_\_\_\_\_
- ☐ Buffer distance \_\_\_\_\_

## **Health and human emergency**

Risks \_\_\_\_\_

Actions \_\_\_\_\_

## **Wildlife emergency**

Situation \_\_\_\_\_

Contacted \_\_\_\_\_

Advice given \_\_\_\_\_

Actions \_\_\_\_\_

## **Active nest? (Y / N)**

- ☐ Nest contains eggs or young wildlife

# PROTECTING NESTING BIRDS

## BEST MANAGEMENT PRACTICES FOR VEGETATION AND CONSTRUCTION PROJECTS



*Version 3.0*  
*May 2017*



ENVIRONMENTAL SERVICES  
CITY OF PORTLAND

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## 1.0 INTRODUCTION

The Terrestrial Ecology Enhancement Strategy (TEES) is part of the City of Portland's Watershed Management Plan (PWMP), and is intended to help achieve the watershed health goals and objectives in the PWMP, particularly those for biological communities. Information about, and agreed-upon conservation and restoration priorities for, terrestrial plant and animal species and habitats in Portland inform the ongoing implementation of the PWMP.

The main elements of the TEES include:

- Identification of priority plant and animal species and terrestrial habitats in need of protection, conservation and/or restoration
- Identification and prioritization of key management issues
- Recommendations for watershed-specific objectives
- Identification of priority strategies and actions
- Selection of species and habitats to be monitored
- *Guidance to city bureaus and citizens for improving habitat and addressing plant and wildlife management issues*

This document provides information about nesting bird species in Portland and guidance that can inform habitat management decisions and in project timing, selection, design and maintenance. Intended audiences include: the Bureau of Environmental Services and Portland Parks & Recreation<sup>1</sup>. Following these guidelines may minimize the chances of City activities (e.g., stream enhancement construction projects, invasive plant species removal and revegetation efforts) resulting in a “take” of nesting birds.

*It should be noted that these guidelines are advisory only, and simply present some precautionary actions to avoid the “take” of native birds protected by the federal Migratory Bird Treaty Act. **They are intended to help facilitate project implementation—not hinder it. If followed, the guidelines will help you avoid conflicts and last-minute delays.** These are “Best Management Practices” for stream and upland restoration projects, above ground construction, and revegetation activities. In order to safeguard migratory birds, employees are encouraged to practice as much due diligence as can reasonably be expected while carrying out their activities. **Because every project presents its own set of challenges (e.g., funding deadlines, weather, public safety), this document recognizes the need for flexibility in selecting strategies. It is recognized that there may be a variety of possible options for consideration on a project-by-project basis.***

<sup>1</sup> These guidelines have not been written to apply to Portland Bureau of Transportation (PBOT). PBOT employees should instead refer to the Oregon Department of Transportation's Highway Division Directive #ENV 01-01.

## 2.0 BIRDS IN PORTLAND

There are over 200 bird species that spend all—or part—of their lives in Portland. Some are “resident” species, meaning they are non-migratory. For example, birds, such as scrub jays, spend their whole life in the same neighborhood and never migrate. Others, such as warblers, are migratory; they spend winters in Central and South America, but may breed here. Still others, such as some shorebirds, pass through this area on their migratory routes to feed and rest.

In addition to native bird species, there are some non-native bird species in Portland. These include rock pigeons (city or “street” pigeons), English house sparrows, European starlings, ring-necked pheasant, domestic ducks and geese, and peacocks. These guidelines do not apply to non-native species.

The City has developed a *Special Status Species* list that includes over 50 birds. These are species that have been placed on Threatened, Endangered, and Sensitive lists or other “watch lists” by agencies and organizations (e.g., U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, Partners In Flight). This list includes some birds that regularly nest in neighborhoods, parks and natural areas, like rufous hummingbirds, willow flycatchers and Vaux’s swifts. Because their populations are in decline, any disturbance to individuals or their breeding habitat is a significant concern.

## 3.0 NESTING BEHAVIOR OF PORTLAND BIRDS

Birds can be found nesting anywhere, even in the most developed areas. This guidance document describes those times of the year that birds are more likely to be present or nesting in a project area within the City of Portland. It also describes actions that minimize the risk of taking an actual bird or disturbing a nest without stopping a project. This guidance follows the adage that a little advanced planning can go a long way, and minimize problems later on. While these guidelines are directed at restoration and revegetation programs, they may be appropriate for a range of BES and Parks’ projects.

### 3.1 Timing

The best way to avoid disturbing birds is to schedule activities outside the nesting season. The nesting season is not the same for all species, and not all sites will have nesting birds present during the entire nesting season. Furthermore, about 100 species of birds build nests, lay eggs and raise young in the City. Determining what can or cannot be done can be challenging. However, here is some guidance so that you don’t have to know the particulars of each species. (But if you *are* interested in individual species, **Appendix A** is a list of average spring arrival dates of birds in the Portland Metro Area).



**Non-nesting Season: August 1 – January 31**

**Nesting Season:** The nesting season can be divided into two major time- frames:

**Early Nesting Season: February 1 – April 15**

Raptors (owls, eagles, falcons and hawks), herons, geese, and hummingbirds are early nesters. Great-horned owls are exceptionally early nesters and may lay eggs in January. Many early nesters have longer breeding cycles and most will not complete breeding until June or July.

**Primary Nesting Season: April 15 - July 31**

This includes songbirds and the majority of species. Willow flycatchers, streaked horned lark, and barn swallows are late nesters, often extending to the end of August.

As they leave the nest, young birds go through the fledgling phase. They are often seen on the ground, flightless and unable to fend for themselves, however the adults are nearby and tending to them. June and July are peak months for fledgling activity. They often take shelter in *low vegetation* and are highly vulnerable to a variety of human disturbances at this critical time.

### **3.2 Nesting Habitats**

**Trees:** Stick nests of hawks, crows, and jays placed in tree canopies are among the most conspicuous and familiar signs of nesting birds on the City. These are the easiest to detect and the easiest to avoid.

**Shrubs:** The majority of nesting birds build a cup nest in dense vegetation in the shrub layer, often close to the ground. These species – sometimes called “tangle nesters” – complicate reasonable efforts to avoid taking protected birds. Willow flycatcher, a species in decline, actually builds nests in Himalayan blackberry, an invasive plant species heavily managed in the City.

**Ground:** Many species place a well concealed nest on the ground in either open areas or forested habitats. Examples include meadowlarks, harriers, killdeer and Wilson’s warblers.

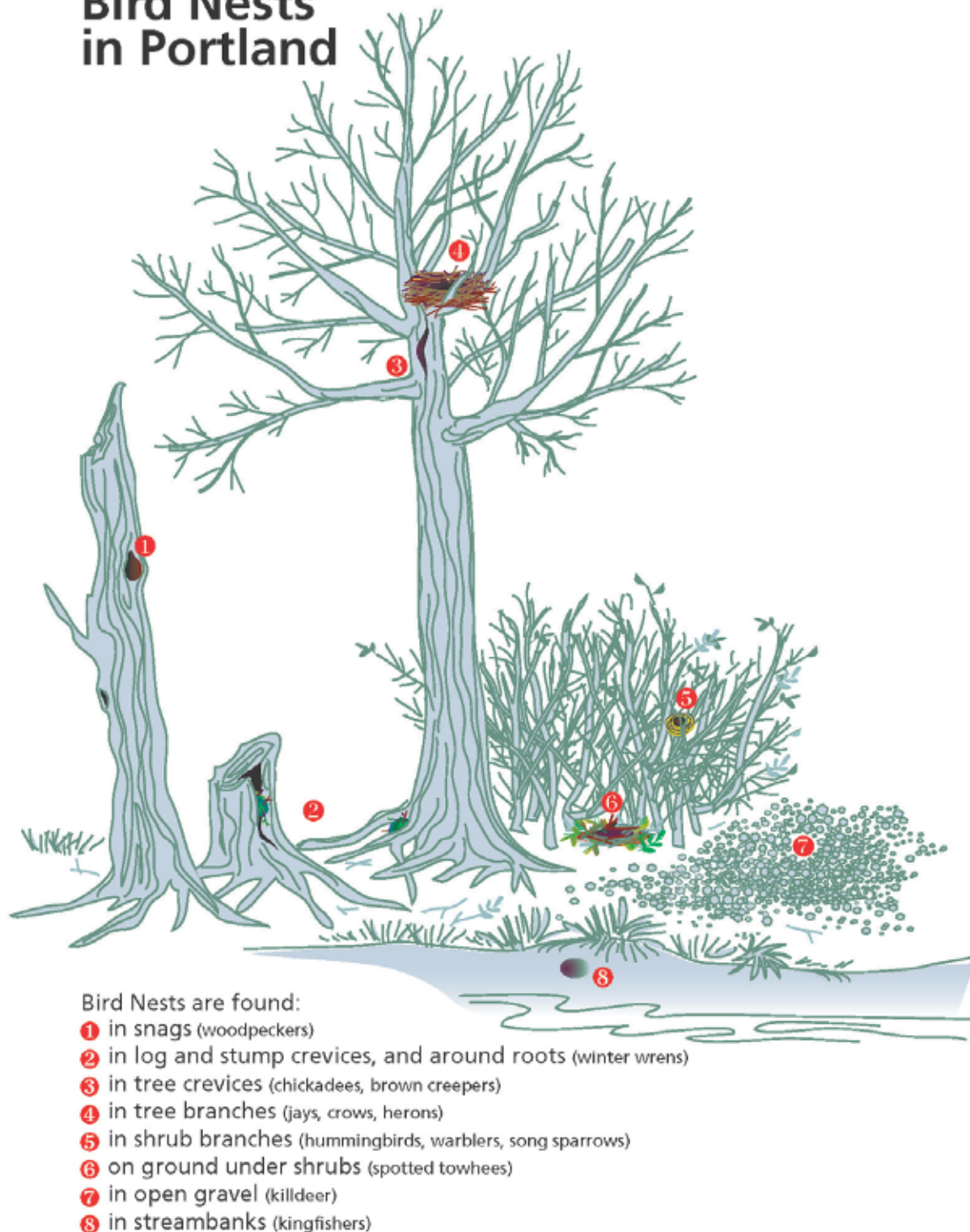
**Cavity:** Rather than concealing a nest in vegetation, dozens of local species use cavities. These are often in dead or dying trees, but can also be in the ground or in a variety of structures in the urban environment. Tree swallows, Bewick’s wrens and downy woodpeckers are common cavity nesters.

**Streambanks:** The northern rough-winged swallow and the belted kingfisher are “cut bank” nesters, meaning they use holes excavated in streambanks for nesting. Sometimes northern rough-winged swallows even use holes on steep slopes of dirt stock piles.

**Structures:** Many birds use human-made structures for nesting. In addition to using bird boxes and platforms that are intended for such use, birds will nest on bridges, under house eaves, on building ledges, utility and light poles, on railroad tracks and even on gravel roads.

**Appendix B** provides a list of Portland area birds and the types of habitats they use for nesting.

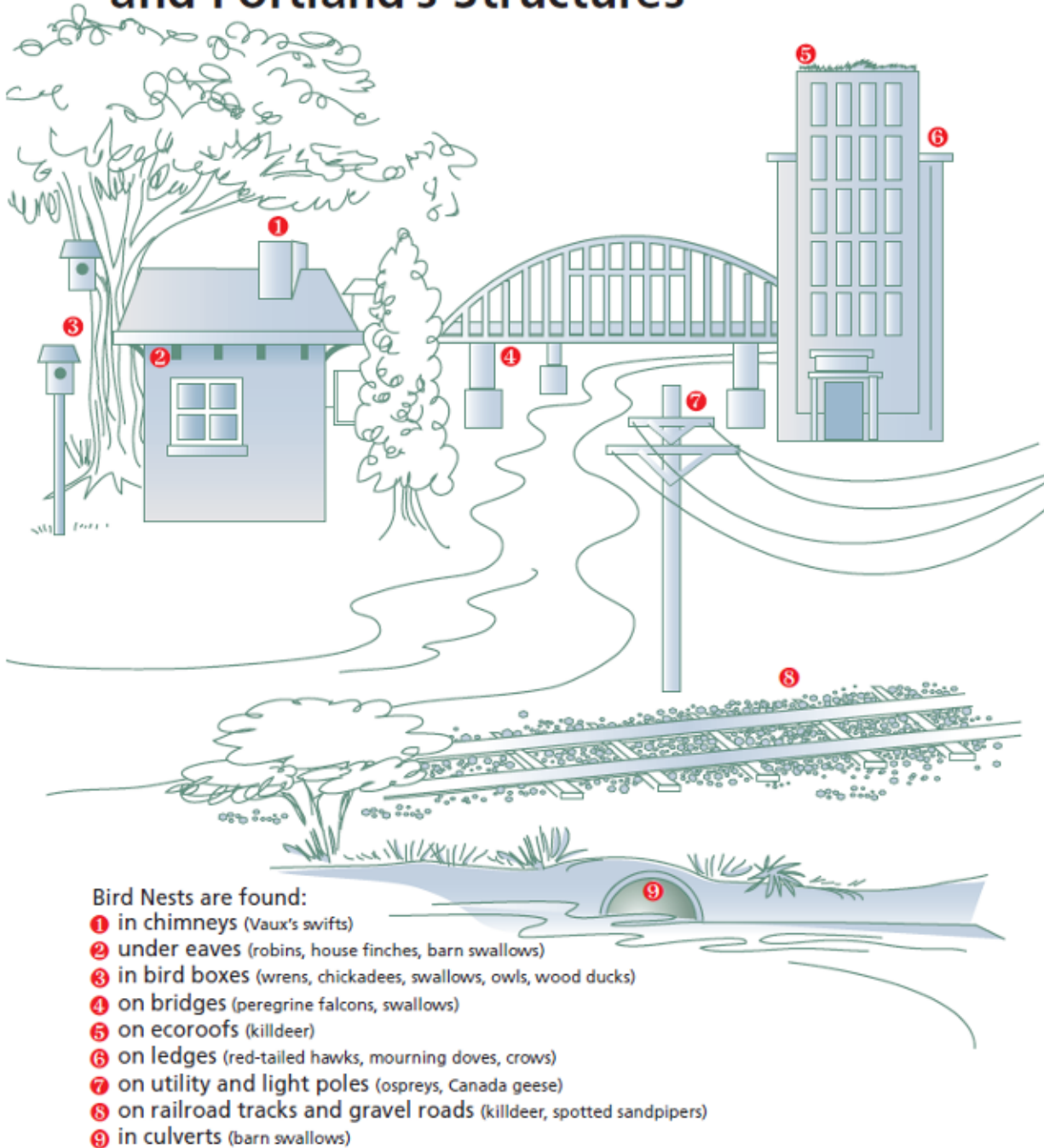
## Bird Nests in Portland



WS 1013 Feb 2010 © Environmental Services City of Portland

**Figure 1.** Bird nest locations in natural environment.

## Bird Nests and Portland's Structures



WS 1022 AUG 2010 © Environmental Services City of Portland

**Figure 2.** Bird nest locations in built environment.

## 4.0 GENERAL GUIDELINES

While many City activities and projects can potentially impact nesting birds, especially construction and maintenance, this guidance focuses on stream enhancement and revegetation projects, mowing, removal and maintenance of structures, and water-level management. Any projects that include removal of live trees or standing dead trees (snags), native or non-native invasive vegetation removal, or grubbing and clearing may disrupt bird nesting. Assessing bird use in the project area prior to construction and altering the timing of plant removal are recommended.

Here are some general guidelines to help you plan project activities, followed by a summary table (*for an overview of management recommendations, please refer to page 20 of this document*). Refer to Appendix C for an illustration of how these bird windows align with regulated in-water work windows.

### When to Plan Disturbance:

**August 1 – January 31** is the best time to plan for tree removal, invasive plant species management, and grubbing and clearing.

### When to Avoid Disturbance:

**February 1 – April 15** is the early nesting season. Disturbance to vegetation, especially trees, should be avoided during this time.

**April 15 – July 31** is the primary nesting season. Disturbance to vegetation should be avoided during this time.

**Note:** If a biologist determines birds are not present during nesting season, vegetation removal and other disturbance activities may proceed.

**Table 1.** Summary of work window dates and best management practices.

Start Date	End Date	Season	Approach
<b>August 1</b>	<b>January 31</b>	Non-breeding season	<ul style="list-style-type: none"> <li>▪ best time for disturbance</li> </ul>
<b>February 1</b>	<b>April 14</b>	Early Breeding Season	<ul style="list-style-type: none"> <li>▪ be aware of impacts</li> <li>▪ consider early species</li> <li>▪ survey</li> </ul>
<b>April 15</b>	<b>July 31</b>	Primary Breeding Season	<ul style="list-style-type: none"> <li>▪ avoid disturbance</li> <li>▪ survey if unavoidable</li> </ul>

#### 4.1 What If Work Must Occur During Avoidance Periods?

If work must occur in the recommended avoidance time frames, the project area and specific vegetation impacted should be surveyed for nesting birds by a biologist. Appendix D provides specific guidance for surveying, monitoring, and protecting active nests in project areas. “Active” nests are defined as those with eggs or young. Biologists should follow the guidance provided in Appendix D if work must occur during avoidance periods.

#### 4.2 Who Conducts A Nesting Bird Survey?

BES and Parks biologists and ecologists who can identify bird species are encouraged to fill out the General Avian Survey Form and/or Nest Monitoring Form (see Appendix D). However, because some teams may not have the technical expertise or time to conduct bird surveys, there are other options:

- Staff with Watershed Services Science Integration Division may be called upon.
- The services of an on-call contractor (environmental consultant) with avian experience may be used (this is encouraged for projects that cover large areas or large numbers of trees).

### 5.0 SPECIFIC GUIDELINES

Below are some recommended guidelines for four broad types of actions—stream enhancement projects, invasive plant species removal, other vegetation removal, and other management activities. These are summarized in matrix format in **Appendix E**.

#### 5.1 Stream Enhancement Construction Projects

Since many City projects have in-water work windows from June 1 to October 31 (see **Appendix C**), the bird nesting period can best be avoided if:

Vegetation removal and erosion control occurs prior to February 1

*or*

All construction activities begin after July 31.

*If vegetation disturbance, removal or other work must occur during nesting season, please confer with the Watershed Services Science Integration Division for project-specific guidance.*

#### 5.2 Invasive Species Management

There are a number of programs and efforts that are specifically aimed at removing invasive plant species (e.g., BES Watershed Revegetation Program, BES Early Detection and Rapid Response Program, Parks’ Protect the Best Program, Parks’ Volunteer Stewards, Parks’ Ecologists). It is important to plan invasive species removal to coincide with times best for



eradication *and* to avoid disturbance to nesting birds. The following recommended guidelines will help avoid disturbance to nesting birds:

**Blackberry** – One of the most beneficial invasive plants for native birds. Heavily used by a myriad of species for nesting, foraging and winter cover.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Blackberry spraying and removal is generally fine EXCEPT for areas with willow flycatchers (such as Johnson Creek, Columbia Slough and Powell Butte areas). The willow flycatcher is a sensitive species in serious decline and a late nester, often until the end of August.
- Early Nesting Season (February 1 – April 15) – Blackberry spraying and removal is OK. Watch for Anna’s hummingbirds which are early nesters and defend their territory with displays that are easily heard and seen.
- Primary Nesting Season (April 15 – July 31) – Avoid major spray and removal. Maintenance management and volunteer efforts are OK, but watch for song sparrow, spotted towhee and California quail nests, which are on ground or in blackberry plants. AVOID if present.
- Remember: Willow flycatchers’ nesting season extends through August. Therefore, avoid April 15 – August 31 in riparian and wetland habitats

**Clematis** – Growth form provides the type of cover many nesting birds are seeking. Although not well-documented, it is likely that many local species are placing nests in or under clematis clumps

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Air gapping and root grubbing is OK.
- Early Nesting Season (February 1- April 15) - Air gapping and root grubbing is OK. Be sure to leave vines in trees to decompose in case there is an early tree nester.
- Primary Nesting Season (April 15 – July 31) – Air gapping is OK. Avoid root grubbing and pulling vines down. Watch for nearby active nests on the ground and in shrubs.

**Garlic Mustard** – There is no known use of garlic mustard by nesting birds. However, garlic mustard is typically treated with spot spraying or hand pulling in the nesting season, and there may be nests nearby in other plant species.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Spraying and hand pulling is OK.
- Early Nesting Season (February 1- April 15) - Spraying and hand pulling is OK. Watch for ducks, killdeer or other ground nesters when treating garlic mustard along streams or along parking areas.

- Primary Nesting Season (April 15 – July 31) – Spot spraying and hand pulling is OK. Watch for nests low to the ground. If a nest is found, leave the surrounding vegetation.

**Hawthorne** – Cedar waxwings and American robins are two species that commonly build open cup nests in hawthornes.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Generally removal is OK. However, if removing hawthornes in willow flycatcher areas such as Powell Butte, avoid removal **until after August 31**.
- Early Nesting Season (February 1- April 15) – Girdling is OK. Avoid tree removal.
- Primary Nesting Season (April 15 – July 31) – Avoid removal.

**Holly and Laurel** – Although these invasive trees are a threat to native habitats, many birds will use them to build nests and raise young.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is the best time for intensive first treatments to areas with dense holly and laurel stands.
- Early Nesting Season (February 1- April 15) – Removal is likely OK. Watch for nesting behavior and avoid if observed.
- Primary Nesting Season (April 15 – July 31) – Avoid intensive first treatments. If removal is required, visually inspect smaller trees (i.e., under 10 feet) for small cup nests. If there are larger specimens to be removed, a more thorough survey is recommended. Watch for robin and other nests and avoid if present.

**Ivy: Ground Ivy** – There are no native birds known to exclusively use ground ivy, but typical ground and low shrub nesters are spotted towhees and song sparrows. Pulling ivy in the primary nesting season could disturb native vegetation, or the presence of a group of people for an extended period of time could cause nest to be abandoned.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Foliar spray and hand pulling is OK
- Early Nesting Season (February 1- April 15) – Foliar spray and hand pulling is OK.
- Primary Nesting Season (April 15 – July 31) - Avoid pulling and foliar spraying if possible. Hand pulling can take place, but with caution. Look and listen for winter wrens, and watch for nesting birds nearby. If there is an active nest in the area, do not work in there.

**Ivy: Tree Ivy** – There are no native birds known to exclusively use tree ivy, though there are many that use branches on the infested tree such as robins and vireos. Pulling ivy down after cutting could pull active nests down.



**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Air-gapping is OK.
- Early Nesting Season (February 1- April 15) - Air-gapping is acceptable, but leave ivy in trees to decompose slowly.
- Primary Nesting Season (April 15 – July 31) - Air-gapping is acceptable, but leave ivy in trees to decompose slowly. Watch for nearby active ground and shrub nests and avoid if present.

**Knapweed, Tansy, and Thistle** – Grassland birds will use non-native, weedy areas for nesting.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – Spot spraying is OK.
- Early Nesting Season (February 1- April 15) – Spot spraying is OK, but watch for killdeer nests on the ground. Birds will flush and perform a loud distraction display. Avoid area if present.
- Primary Nesting Season (April 15 – July 31) - Spot spraying of herbicides is acceptable any time, but watch for Savannah sparrows, common yellowthroats, American goldfinches and nests in nearby shrubs and grasses. Avoid if present.

**Knotweed** – Use by native birds is not well-known.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is a good time for foliar spray or injection.
- Early Nesting Season (February 1- April 15) – This is a good time for foliar spray or injection.
- Primary Nesting Season (April 15 – July 31) – Treatment is likely OK, but watch for nearby nests.

**Purple Loosestrife** – Wetlands are important to many native nesting birds, and therefore, actions to control purple loosestrife may have the potential to affect them.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is a good time to treat loosestrife.
- Early Nesting Season (February 1- April 15) – Herbicide application is OK until March 1. Watch for ducks in wetlands, as they tend to breed early – typically in March.
- Primary Nesting Season (April 15 – July 31) – Avoid vegetation management. If mid-summer treatment is advised, watch for red-winged blackbirds and American goldfinch nests in plants, and watch for ducks on the ground.

**Reed Canarygrass** – Common yellowthroats, mallards and cinnamon teal have been documented nesting in reed canarygrass at a wetland adjacent to the Columbia Slough. Growing and treatment season for reed canarygrass is March through August, which may conflict with nesting birds, since it's typically mowed in May and June.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is a non-conflict time to cut, spray or grub.
- Early Nesting Season (February 1- April 15) – Typical treatment (hand-spraying) is OK in March and April. Watch for nesting ducks such as cinnamon teal.
- Primary Nesting Season (April 15 – July 31) – Avoid vegetation management. Conduct nest survey if mowing is advised.

**Yellow Flag Iris** – Red-winged blackbirds have been known to nest in patches of yellow flag iris.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is a good time for herbicide application and mechanical removal.
- Early Nesting Season (February 1- April 15) – Herbicide application and mechanical removal is OK until March 1. Watch for duck nests along the shore after March 1, and avoid if present.
- Primary Nesting Season (April 15 – July 31) – Avoid vegetation management. Watch for red-winged blackbird and duck nests along the shore and in reeds.

### 5.3 Other Vegetation Management

At times, it is necessary to remove non-invasive, non-native—or even native—trees, snags, shrubs and ground cover. If so, the following recommendations should be followed.

**Live Tree Removal (Native and Non-Native)** – Native, as well as non-native, live trees can host nesting birds any time from February 1 to August 31. Many of the early nesters are larger birds (e.g., herons, raptors) with larger nests that are easier to detect early in the season prior to leaf-out.

**Management Recommendations:**

- Non-nesting Season (August 1- January 31) – Tree removal and girdling is OK.
- Early Nesting Season (February 1 – April 15) – Avoid tree removal, but girdling is OK. If trees must be removed, watch for early nesters: owls, hawks and Anna's hummingbird (and killdeer on the ground). Scan canopies for any possible nests; if any are found seek assistance to determine if they are active.

- Primary Nesting Season (April 15 – July 31) – Avoid tree removal, but girdling is OK.

**Snag Removal** – Snags (standing dead trees) and standing dead wood play critical roles for many bird species. Snags attract insects, which are a vital source of food for woodpeckers and others birds. They provide perches, and are often the only source of cavities for cavity-nesting birds. In general, the following steps are recommended:

- Leave snags when possible.
- If there is a public safety concern, trim offending branch(es), leaving as much of the snag as possible.
- If all branches are unsafe, trim branches and leave the trunk.
- If the trunk is very tall and considered unsafe, leave 20 – 40 feet.
- If removal is unavoidable and there are no nearby trees appropriate for girdling, consider auguring the removed dead tree trunk into the ground. Use the tree branches for terrestrial habitat elements within the project site so that food sources and perch sites remain in the area.

**Management Recommendations** (if a snag must be removed, or if there is a public safety issue):

- Non-nesting Season (August 1 – January 31) – This is the best time for snag removal.
- Early Nesting Season (February 1- April 15) – Watch for early snag nesting birds such as owls and wood ducks, and avoid removal if possible.
- Primary Nesting Season (April 15 – July 31) – Avoid snag removal if possible.

**Shrub Removal (Native and Non-Native)** – Low, dense shrub cover is vitally important nesting habitat and supports more breeding birds than trees do in the Portland area. Birds will nest at a variety of heights in the shrub layer. For example, spotted towhees build nests from ground level up to about 15 feet.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is the best time for vegetation removal.
- Early Nesting Season (February 1- April 15) – Watch for early nesters such as Anna’s hummingbirds in shrubs; they often produce loud visual displays near their nests. Watch for killdeer which nest on open ground and make loud displays to distract predators from the nest. Be aware of ducks or other birds flushing suddenly off the ground.
- Primary Nesting Season (April 15 – July 31) – Avoid vegetation impacts and removal.

**Grassland Mowing and Ground Cover Removal (Native and Non-Native)** – Many species only build their nests on the ground. Some will build below dense shrub cover (e.g., Wilson’s warbler), while others will conceal their nest in grass (e.g., Savannah sparrow, Western

meadowlark). Still others will build an exposed nest on gravel or bare ground (e.g., horned lark, killdeer). Ground nesters are vulnerable to a variety of disturbances.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – This is the best time for ground cover removal or disturbance like road building.
- Early Nesting Season (February 1- April 15) – Proceed with caution: Be aware of killdeer, often calling loudly and feigning injury when you are near their nest. Be aware of ducks or other birds flushing suddenly off the ground.
- Primary Nesting Season (April 15 – July 31) – Avoid mowing and removal of ground cover.

**Controlled Burn** – This is a useful technique for controlling some plant species and encouraging native grasses. Some birds, such as horned larks and Western meadowlarks, nest in grasslands, however.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – OK to burn.
- Early Nesting Season (February 1- April 15) – OK to burn.
- Primary Nesting Season (April 15 – July 31) – Avoid burning.

## 5.4 Other Management Activities

Several activities that can affect nesting birds do not involve vegetation treatment or management. These include removing structures and manipulating water levels.

**Removing and Maintaining Structures** – Some birds use structures for winter roosting, but may also use them for nesting. Removing structures and maintenance activities (e.g., pressure-washing, painting and repair work) is another activity that can disrupt nesting birds. Osprey nests are often found on artificial structures near water. Barn owls, cliff swallows, barn swallows and Vaux's swifts are examples of protected species that readily use buildings for nesting. From February 1 to July 31, building demolitions should include a survey for nesting birds.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – OK to remove structures, but if birds are using the building for winter roosting, flush the bird from the building and allow them an opportunity to exit (e.g., make loud noises). If removing a roost chimney used by Vaux's swifts, wait until October 10 or later until birds migrate south for the winter.
- Early Nesting Season (February 1- April 15) – Survey for owls, which nest on beams and platforms in old buildings. If present, wait until the young are fully fledged.
- Primary Nesting Season (April 15 – July 31) – Survey for nests of birds such as cliff and barn swallows, which make mud nests in eaves and on ledges. Survey for swifts in chimneys and for house finches in eaves and

cavities. Avoid structure removal if possible, or wait until the young fledge.

**Manipulating Water Levels** – Lowering water levels or flooding areas can have impacts on nesting birds such as waterfowl, red-winged blackbirds, common yellowthroats and marsh wrens, which nest in wetlands. Birds such as kingfishers make nests in streambanks which could be flooded by high water.

**Management Recommendations:**

- Non-nesting Season (August 1 – January 31) – OK to manipulate water levels.
- Early Nesting Season (February 1- April 15) – Consider ducks and other waterfowl which are early nesters (as early as March 1). Duck nests are near or on the ground in wetland habitats.
- Primary Nesting Season (April 15 – July 31) – If inundating wetlands, consider impacts to red-winged blackbirds and other species, which nest in reed canarygrass, cattails and tall reeds.

## 6.0 SENSITIVE AREAS

Certain habitats within the City are recognized by state and federal agencies as being ecologically important and sensitive to disturbance. They are also home to unique nesting species that can be overlooked. These “Special Status Habitats” include wetlands, grasslands, oaks, interior forests (especially late-successional conifer forests), bottomland hardwood forest and riparian habitats, and aquatic habitats (e.g., lakes, rivers and streams). The Special Status Habitats and the Special Status Bird Species most closely associated with them are presented in **Appendix F**.

Specific habitats of concern are wetlands and grasslands, which are often home to ground nesting birds, including Western meadowlarks, rails and other species. Riparian areas – the forest along streams and rivers – host a diverse array of nesting species using all four nesting habitats: ground, shrub, tree and cavity. It is important to be particularly vigilant in these areas to avoid impacts to nesting birds.

## 7.0 SPECIAL CONSIDERATIONS

### 7.1 Species

There are some species that—because of their status or unusual nesting season—deserve special consideration. Special Status Species and their habitat relationships are described in **Appendix F**. The following guidelines will help avoid disturbing birds that require special consideration:

**Willow flycatchers** are a Special Status Species, and are listed by the State of Oregon as Sensitive-Vulnerable. These small songbirds are among the latest nesting species in the City, often extending their breeding activities to the end of August. They occur in riparian and wetland habitats in most of the City's watersheds, sometimes choosing to build nests in Himalayan blackberry and Scotch broom, both invasive plant species. If Willow flycatchers are known or suspected in the project area, the primary nesting season window should be extended to August 31.

**Anna's hummingbirds** are early nesters. Females build tiny nests of lichens and spider webs placed on small branches of shrubs and trees. They can lay eggs as early as mid-February. Nests are very difficult to find, but the presence of a territorial male from February to May is an indication that a nest is nearby and vegetation disturbance should be avoided.

**Killdeer** lay their eggs in gravel areas on the ground and out in the open. Vacant lots, gravel access roads, margins of farm fields, and street shoulders in open grassy areas are likely to have killdeer nests. They are early nesters, usually laying eggs in March and April. Due to the location of their nest, they are highly vulnerable to disturbance. Killdeer are often conspicuous and if they are observed in a project area March to May it should be assumed there is a nest nearby. Once a nest is located it can usually be flagged or fenced with exclusion zone fence and avoided.

**Great-horned owls** are very early nesters, often laying eggs in January and February. In our area, they use stick nests in trees and can often be found by conducting an early season nest survey of the project area.

**Bald eagles** nest high in trees from January 1 to September 1. As of 2016, there are 19 bald known eagle nest sites in the Portland area. Bald eagles and their nests are protected by a special set of federal regulations. Most eagle nests in Portland are in West Hills natural areas, along Columbia Slough, and along the Columbia and Willamette Rivers. Contact a biologist/ecologist with Portland Parks or Environmental Services to determine if there is an eagle nest in or near your project area.

**Barn swallows** commonly build cup-shaped mud nests on structures in the built environment included small bridges and buildings. They have a long nesting season that can extend well into August and even into September. BES biologists have documented new nests with clutches of eggs in late July with fledging in late August.

**Cliff swallows** are less common in Portland than similar barn swallows. They build unique mud nests with a small entrance hole leading to a gourd-shaped cavity. In Portland, they nest in colonies ranging from a half dozen nests to over 500 nests. These are typically located on bridges or buildings along the Columbia River, Willamette River or Columbia Slough.

## 7.2 Other Things To Keep In Mind

Every project is unique and presents its own set of challenges. Here are just a few things to keep in mind as you plan your project:

- Impacts on neighboring properties
- Aesthetics and public perception
- Contractor schedules, permits and funding deadlines
- Human safety
- **Every project has the potential to inform and educate others!**

## 8.0 WHAT IF YOU FIND AN ACTIVE NEST ON A PROJECT SITE DURING PROJECT IMPLEMENTATION?

What should you do if you have followed the above guidelines, have planned activities to avoid disturbance to nesting birds, and you find an active nest during project implementation? “Active” nests are those with eggs or young in them. Contact a biologist/ecologist. **Attachment D.1** will help the biologist/ecologist make the most appropriate decision.

## 9.0 WHAT IF YOU FIND A BABY BIRD OUT OF ITS NEST?

It is normal for many bird species such as scrub jays, robins, crows and owls to leave the nest and spend as many as 2-5 days on the ground before they can fly. Parents will care for them during this period. Unless a bird is injured, it is important that it NOT be taken into captivity, since this will deny them the opportunity to learn survival skills (e.g., finding food, identifying predators, flying) from their parents.

**Attachment G** will help you make the right decision, should you find a baby bird during project implementation. Consult with a biologist/ecologist if you unsure what to do with a baby bird.

## SUMMARY OF RECOMMENDATIONS FOR AVOIDING IMPACTS ON NESTING BIRDS DURING CONSTRUCTION AND REVEGETATION PROJECTS

### **BEST**

*You have at least a year to plan your project.*

- Plan your project at least a year in advance.
- Plan disturbance to occur during the non-nesting season (August 1 – January 31) or complete site preparation prior to April 15.
- Refer to specific guidelines in this document for different kinds of actions/projects.

### **NEXT BEST**

*You do not have time to plan ahead  
and work must occur during the nesting season.*

- Refer to the specific guidelines in this document for different kinds of actions/projects.
- Survey for nesting birds, using the protocol and field forms described in **Appendix D**.
- If survey reveals nesting birds, avoid action until young have fledged, or erect a buffer to exclude all activity around the nest (**Appendix D**).
- If survey reveals no nesting, proceed with action.
- If the survey found no evidence of nesting, but a nest is later found during project implementation, refer to **Appendix D.1**.



## Appendix A

### Average Arrival Dates for Birds in the Portland Metro Area

(Note: Many local species, such as the winter wren, are not listed here because they are year-round residents.)

<u>Average Arrival</u>	<u>Species</u>
Feb 09	Tree Swallow
Feb 25	Rufous Hummingbird
Mar 03	Violet-green Swallow
Mar 04	Turkey Vulture
Mar 16	Osprey
Mar 19	Orange-crowned Warbler
Mar 21	Cinnamon Teal
Apr 02	Cliff Swallow
Apr 04	Common Yellowthroat, Northern Rough-winged Swallow
Apr 05	Black-throated Gray Warbler
Apr 08	Brown-headed Cowbird, Barn Swallow
Apr 12	Cassin's Vireo, Vaux's Swift
Apr 13	Purple Martin
Apr 16	Yellow-headed Blackbird
Apr 18	Chipping Sparrow
Apr 19	Hammond's Flycatcher, Wilson's Warbler
Apr 20	House Wren
Apr 22	MacGillivray's Warbler
Apr 24	Pacific-slope Flycatcher
Apr 26	Warbling Vireo, Western Tanager, Western Kingbird, Bullock's Oriole
Apr 27	Black-headed Grosbeak, Yellow Warbler
Apr 29	Calliope Hummingbird
May 01	Swainson's Thrush
May 02	Olive-sided Flycatcher, Western Wood-Pewee
May 05	Lazuli Bunting
May 13	Yellow-breasted Chat
May 14	Willow Flycatcher
May 28	Eastern Kingbird
May 31	Red-eyed Vireo
Jun 08	Common Nighthawk

## Appendix B

### Nesting Birds by Habitat in Portland

Note: For nesting habitat, trees are generally defined as greater than 7m (~20 feet) and shrubs are less than 7m (~20 feet). The categories below are based on typical nest sites; however some “shrub nesters” will nest in trees and likewise some “tree nesters” can chose a site closer to the ground.

\* On the City of Portland’s “Special Status Species” List, meaning the species has been listed by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, or another entity because it is rare, in decline or otherwise of special concern.

#### Tree Nesting Birds in Portland

American Crow	Great-horned Owl
Bald Eagle*	House Finch
Band-tailed Pigeon*	Mourning Dove
Barred Owl	Olive-sided Flycatcher*
Black-headed Grosbeak	Osprey
Black-throated Gray Warbler*	Pine Siskin
Bullock’s Oriole*	Purple Finch*
Cedar Waxwing	Red Crossbill*
Common Raven	Red-shouldered Hawk
Cooper’s Hawk	Red-tailed Hawk
Double-crested Cormorant	Sharp-shinned Hawk
Eastern Kingbird	Steller’s Jay
Evening Grosbeak	Western Kingbird
Golden-crowned Kinglet	Western Tanager
Great Blue Heron*	

#### Shrub Nesting Birds in Portland

American Goldfinch	Pacific Slope Flycatcher*
American Robin	Red-winged Blackbird
Anna’s Hummingbird	Rufous Hummingbird*
Brewer’s Blackbird	Scrub Jay
Brown-headed Cowbird	Song Sparrow
Bushtit*	Swainson’s Thrush*
Cassin’s Vireo	Warbling Vireo
Green Heron*	Western Wood Pewee*
Hutton’s Vireo*	Willow Flycatcher*
Lazuli Bunting	Yellow Warbler*
Lesser Goldfinch	Yellow-breasted Chat*
MacGillivray’s Warbler	Yellow-headed Blackbird

### Ground Nesting Birds in Portland

American Bittern*	Orange-crowned Warbler*
American Coot	Pied-billed Grebe
Blue-winged Teal	Ring-necked Pheasant
California Quail	Ruddy Duck
Canada Goose	Savannah Sparrow
Chipping Sparrow*	Sora*
Cinnamon Teal	Spotted Sandpiper
Common Nighthawk*	Spotted Towhee
Common Yellowthroat*	Streaked Horned Lark*
Dark-eyed Junco	Turkey Vulture
Killdeer	Virginia Rail
Mallard	Western Meadowlark*
Marsh Wren	White-crowned Sparrow
Northern Harrier*	Wilson's Snipe
Northern Shoveler	Wilson's Warbler

### Standing Snag and Live Tree Cavity Nesting Birds in Portland

American Kestrel*	Northern Flicker
Black-capped Chickadee	Northern Pygmy Owl
Barn Owl	Northern Saw-whet Owl
Barred Owl	Pileated Woodpecker*
Brown Creeper*	Purple Martin*
Bufflehead*	Red-breasted Nuthatch
Chestnut-backed Chickadee	Red-breasted Sapsucker
Common Merganser	Tree Swallow
Downy Woodpecker*	Violet-green Swallow
European Starling (non-native; not protected by laws; OK to destroy)	Vaux's Swift*
Hairy Woodpecker	Western Screech Owl
Hooded Merganser*	White-breasted Nuthatch*
House Wren*	Wood Duck*
House Sparrow (non-native; not protected by laws; OK to destroy)	

### Ground Cavity Nesting Birds in Portland

Two wrens are “nook and cranny” nesters, using cavities on or near the ground in decaying logs, under logs, in root wad tangles, or in the ground at the base of shrubs:

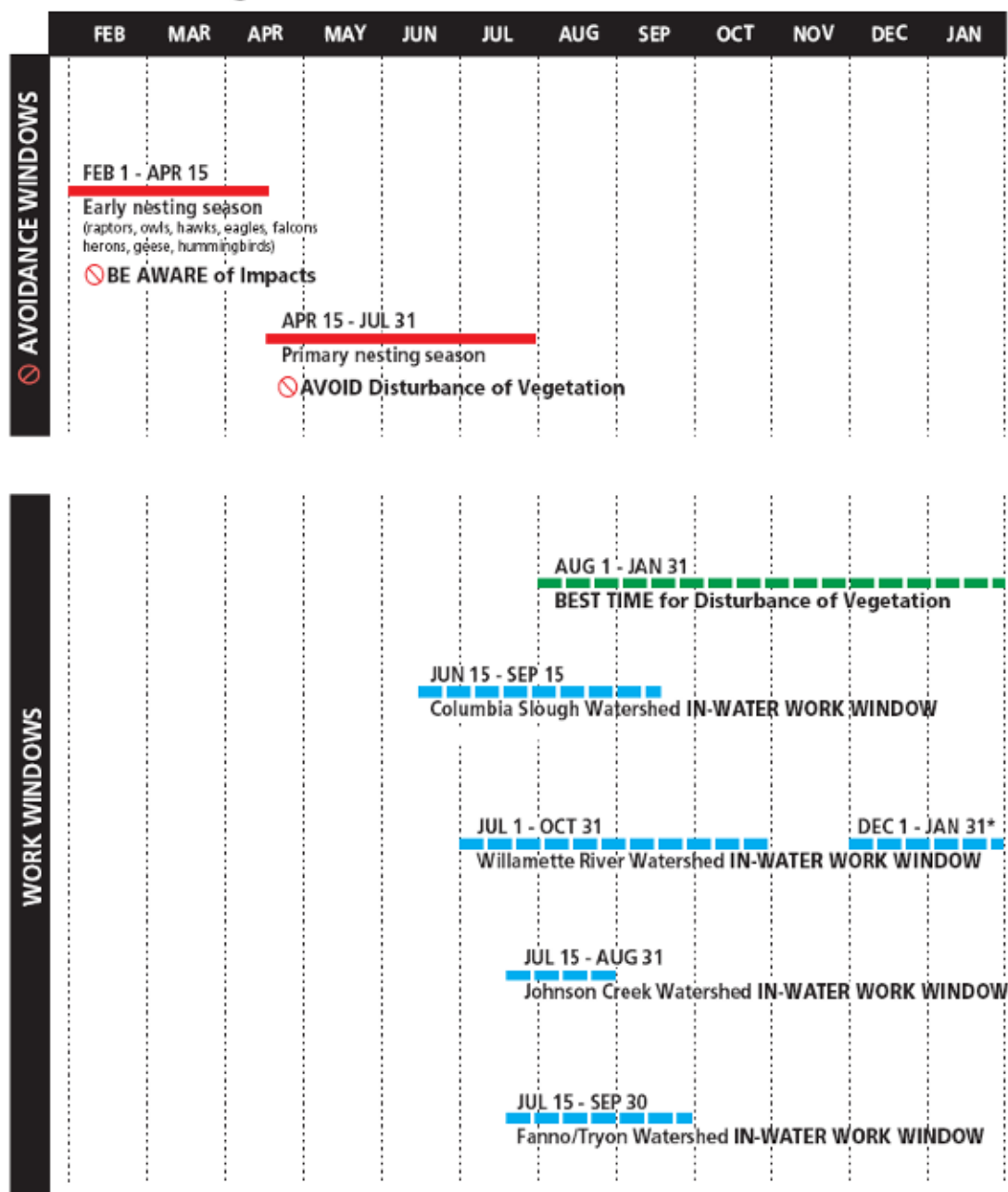
- Pacific Wren\*
- Bewick's Wren

These two birds are “cut bank” nesters that use holes excavated in stream banks or even on steep slopes of dirt stock piles:

- Northern Rough-winged Swallow
- Belted Kingfisher

## Appendix C

## Bird Nesting Season and Work Windows



\* The Oregon Department of Fish and Wildlife acknowledges the in-water work window for the Willamette, and therefore it is officially available. However the National Marine Fisheries Services currently is not approving the winter in-water work window in the Willamette. Realistically therefore it is difficult to get approvals for the winter period.

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**Figure 3.** Bird nesting season and work windows

## Appendix D

### Protocol for Bird Nest Surveys, Buffers and Monitoring

#### INTRODUCTION

This document provides guidelines for nest surveys, monitoring, and the establishment of protection buffers around bird nests in City of Portland project areas. It will help ensure that City projects do not violate the Migratory Bird Treaty Act. The purpose of this protocol is to prevent the destruction (often unintentional) of occupied bird nests (eggs or nestlings present) and to limit adjacent disturbance which may cause nest failure due to abandonment or predation.

Whenever possible, projects should be implemented *outside* of the avoidance periods outlined in section 4.0 of *Avoiding Impacts on Nesting Birds* (p. 9). Nest buffers are therefore a last resort that should only be used if avoiding the nesting season is not possible. Nest buffers are clearly delineated “no-activity” zones that restrict disturbances such as construction, grading, pedestrian traffic, domestic animals, planting, mowing etc. during the nesting period.

This document is intended for biological and ecological staff and vegetation managers at the Bureau of Environmental Services and Portland Parks & Recreation. It was not written to apply to Portland Bureau of Transportation projects (see footnote 1 on page 3). The procedures outlined below should be implemented by biologists with experience in field ornithology, and rely in part on best professional judgement.

#### GENERAL GUIDELINES

These guidelines are of particular relevance to projects involving revegetation, invasive species removal, grading, excavation, stream enhancement, water-level management, mowing, clearing, tree-alteration, and general construction. These activities pose the most immediate threat to nesting birds and their associated habitat. Because such activities are crucial to project objectives and cannot be avoided, extra precaution must be exercised to protect nesting birds.

First and foremost, you must recognize that locating bird nests can be difficult and time consuming, and nests will often be missed, which is why planning and avoidance is strongly preferred. If work must occur during the nesting window (p. 9) use this 3-step sequence to protect nests from disturbance.

1. Survey: The entire project area should be surveyed for nesting birds before disruptive activities begin. A qualified field biologist trained in bird identification, nest searching, and nest monitoring should complete nest surveys early in the day. Sweep the area in a systematic pattern so as to cover it evenly, keeping in mind that birds may be nesting on a variety of substrates (pp. 7-8). Special attention should be paid to vegetation and project areas where the most impact will occur. Walk slowly and quietly searching for nests or signs of nesting behavior (bird carrying nesting material, food or fecal sacs; agitated or aggressive behavior;

distraction displays; courtship etc). If such behavior is observed sit and watch the bird(s) and attempt to locate the nest based on the bird's behavior. Keep track of these locations and revisit them if no nest is found. If a bird flushes suddenly from beneath your feet or next to you while walking, it is very likely that it flushed from a nest at the last possible moment. Stop and search the ground vegetation thoroughly for nests. Some project areas, such as large and densely vegetated sites, may require multiple nest searches over multiple days. The *General Avian Survey Form* (Appendix D.3) should be completed during the initial nest survey.

2. Buffer: If a nest is found it should be mapped and recorded using the *Nest Monitoring Form* (Appendix D.4). Erect an exclusion buffer around the nest as soon as possible (Table 2). The remainder of this document provides guidance for the establishment of nest buffers, including variables such as size, materials, and duration.

3. Monitor: After the buffer has been erected make periodic nest-checks to determine the timing and outcome of the nesting attempt. Each nest-check should be recorded on the *Nest Monitoring Form*. See the "Nest Monitoring" section below for more information on nest-checks, and resources for estimated fledged dates.

## **BUFFER SIZE**

Guidelines for urban buffer sizes are made in Table 2. The size of a nest buffer will vary from species to species, and on a case-by-case basis. Project disturbances will affect birds differently, depending on an array of variables outlined below. Our buffer recommendations represent our best professional judgement after consulting the available scientific literature, published management documents, and wildlife professionals at the USFWS, ODOT, ODFW, and American Bird Conservancy. It is important to note that our buffers are intended for birds living in urbanized environments specifically, and are often smaller than those recommended in the available literature. Most of the available science and management documents are tailored to rural settings and large-scale pipeline or highway infrastructure projects (for reference, Appendix D.2 summarizes buffer recommendations from the available literature). Urban birds are generally acclimated to human presence and disturbance, and therefore require smaller protection buffers than their conspecifics in rural settings. Our buffers are also more realistic in the context of smaller-scale city projects, where large buffers would effectively encompass the entire project area and more. If your project is located in an area with a lower baseline of anthropogenic disturbance, such as rural settings or natural area interiors, you may have to expand the buffers beyond the numbers given below. These represent minimum recommended buffers.

**Table 2.** Minimum buffer sizes for bird nests in the Portland area. When necessary, buffer recommendations are provided for individual species. If a species is not listed, use the buffer listed for the next highest taxonomic level (family or order). These buffers were developed specifically for Portland's highly urbanized environment. Distances were determined after consulting the available scientific literature, published management documents, wildlife professionals at the USFWS, ODOT, ODFW, and American Bird Conservancy, and using our best professional judgement. Table 3 in Appendix D.2 (page 34) provides buffer distances published in literature that were used as baseline information in the development of these Portland minimum buffers.

<b>SPECIES / GUILD</b>	<b>MINIMUM BUFFER FOR PORTLAND'S URBANIZED ENVIRONMENT meters (feet)</b>
Double-crested Cormorant <i>Phalacrocorax auritus</i>	<b>50 m (160 ft)</b>
Herons/Egrets/Bitterns <i>Ardeidae</i>	<b>100 m (330 ft)</b>
Waterfowl (Ducks/Geese/Swans) <i>Anatidae</i>	<b>30 m (100 ft)</b>
Diurnal Raptors <i>Accipitriformes</i>	<b>100 m (330 ft)</b>
Bald Eagle <sup>1</sup> <i>Haliaeetus leucocephalus</i>	<b>200 m (650 ft)</b>
Peregrine Falcon <sup>2</sup> <i>Falco peregrinus</i>	<b>400 m (1310 ft)</b>
American Kestrel <i>Falco sparverius</i>	<b>50 m (160 ft)</b>
Killdeer <i>Charadrius vociferous</i>	<b>25 m (80 ft)</b>
Pigeons/Doves <i>Columbidae</i>	<b>20 m (65 ft)</b>
Band-tailed Pigeon <i>Patagioenas fasciata</i>	<b>30 m (100 ft)</b>
Owls <i>Strigiformes</i>	<b>50 m (160 ft)</b>
Hummingbirds <i>Apodiformes</i>	<b>10 m (30 ft)</b>
Woodpeckers <i>Piciformes</i>	<b>15 m (50 ft)</b>
Songbirds <i>Passeriformes</i>	<b>10 m (30 ft)</b>
Corvids (Crows, Jays) <i>Corvidae</i>	<b>20 m (65 ft)</b>
Cliff Swallow Colonies <i>Petrochelidon pyrrhonota</i>	<b>25 m (80 ft)</b>
Swainson's Thrush <i>Catharus ustulatus</i>	<b>20 m (65 ft)</b>
Western Meadowlark <i>Sturnella neglecta</i>	<b>30 m (100 ft)</b>
Streaked Horned Lark <sup>2</sup> <i>Eremophila alpestris strigata</i>	<b>100 m (330 ft)</b>

Note: These distances represent a radius and should be projected outward in all directions from the nest, resulting in a circular buffer. Its diameter will be twice the distance listed above.

<sup>1</sup> If a bald eagle nest is found in or near a project site, refer to the USFWS National Bald Eagle Management Guidelines (2007). Bald eagles are protected under the Bald and Golden Eagle Protection Act.

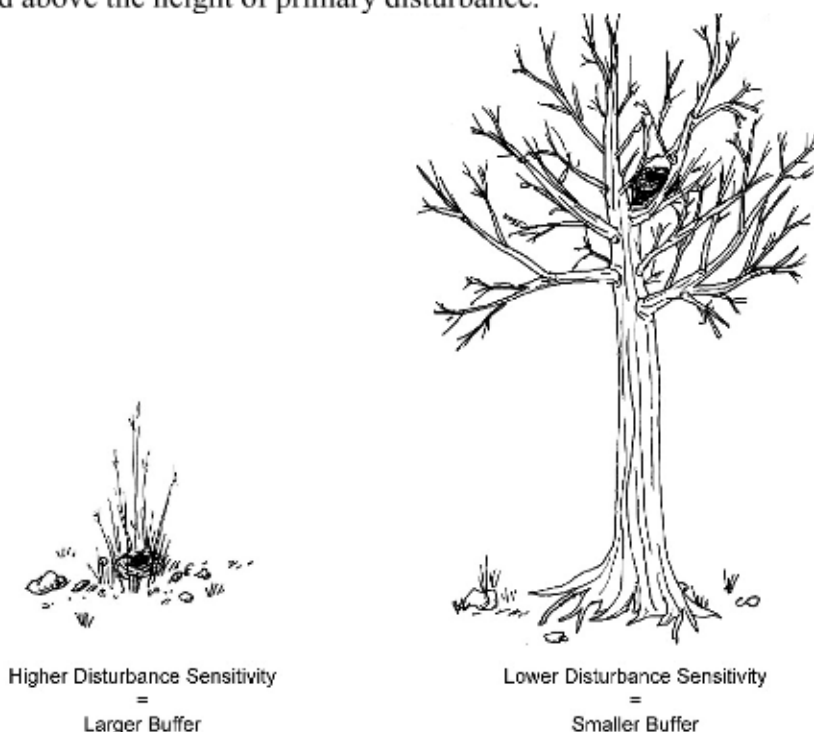
<sup>2</sup> Consult with the USFWS Migratory Bird Office for further direction.



## VARIABLES AFFECTING BUFFER SIZE

Many variables may affect the disturbance level at a nest and, consequently, the buffer size required. The table above provides recommended buffer distances, which may be expanded according to the following considerations. Best professional judgment should be used to determine if a nest buffer should be larger than the recommended buffer.

***Nest Placement:*** A nest's location and substrate can influence the bird's sensitivity to disturbance around it. In Portland nests may be found in trees, manmade structures, snags, understory shrubs, logs and stumps, grass, open gravel, or in stream banks (pp. 7-8). As a general rule, nests on or near the ground are more easily disturbed by human activity than those in tall trees and structures (Fig. 4). Likewise, open nests such as the common cup nest will be more easily disturbed than enclosed nests made in crevices, cavities, or chimneys. Buffer size may vary, then, based on the nest's placement and its susceptibility to disturbances in the project area. Exposed ground or shrub nests may require a larger buffer than those found above the height of primary disturbance.



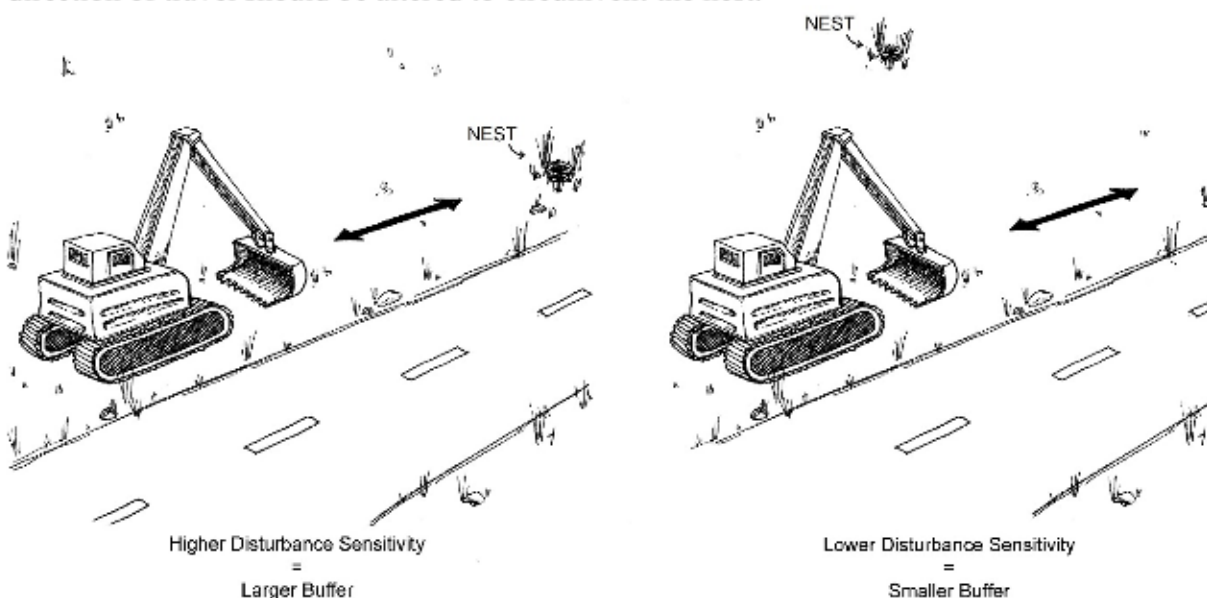
**Figure 4.** Nest placement and surrounding protection may influence the level of sensitivity to disturbance and, therefore, the size of the buffer required.

***Line of Sight:*** Birds generally select a nest location based on the protection and microclimate that it will provide for their young. Predators are the main threat to nest success, so nests are often hidden from their line of sight. A nest in dense vegetation or tucked away in a tree cavity has a short line of sight and is more difficult for a predator to detect. Exposed nests, such as those used by ground-nesting Killdeer, have a long line of sight and are therefore more vulnerable. The threat posed by human activity has a similar effect. Line of sight from the nest to project activity is an important factor in determining buffer size. Accordingly, nests found in exposed and visible areas may require a slightly larger buffer than those found

in dense vegetation. Buildings, natural slopes or other features may also interrupt line of sight and reduce disturbance potential.

***Type of Disturbance:*** A bird's sensitivity may vary depending on the nature of the activity causing the disturbance. Disturbance may come in the form of machinery noise, vibration, vegetation alteration, pedestrian traffic, intensive watering, seed spraying, grading, construction, flooding, or chemical application. The type, frequency and duration of disturbances present on a given project should be taken into account when erecting buffers. For example, disturbances involving significant movement of machinery, or the alteration of terrain or vegetation, and which will persist in a given location for several days, will cause the most disturbance to nesting birds. Conversely, loud noises, light construction, and the gradual alteration of hydrology will cause less disturbance, particularly if those activities are isolated or periodic (i.e. not sustained). Project managers and biologists should use their best professional judgement to assess the types of disturbance present on a given project, and should consider erecting larger buffers around nests in areas of high disturbance.

***Direction of Disturbance:*** The movement of the disturbance relative to the nest should also be considered. Activities (including the movement of machinery, people, spraying, and watering) that approach a nest *directly* may be interpreted by the bird as more threatening than movements that proceed *peripherally* or *laterally* (Fig. 5). Several prominent studies have shown that flight-initiation distances and alert distances are significantly greater when birds are approached head-on, and shorter when the same disturbance activity passes *around* them, even if at a close distance. Thus, if a bird nest is found in an area that may be subjected to repeated disturbance approaching directly, the buffer may need to be slightly larger and/or the direction of travel should be altered to circumvent the nest.



**Figure 5.** Direction of disturbance may influence the level of sensitivity to disturbance and, therefore, the size of the buffer required. In the example illustrated above, an excavator traveling to and from a nest directly would necessitate a larger buffer than if the excavator's path was tangential to the nest site.

## **BUFFER DURATION**

A buffer should be erected as soon as a nest is found, and should remain in place until the nest fledges (the young voluntarily leave the nest and vacate the buffer area) or fails (the nesting attempt is ceased due to predation, weather or abandonment). Additionally, most birds with the exception of raptors will not attempt to re-nest at a given location if the nest fails. Once a nest is deemed to have either fledged or failed, the buffer must be left in place as long as the young remain within the buffer area. Once they have completely vacated the buffer, it may be removed and project activity may recommence. For many species, this be within 2-3 days of fledging. For raptors, fledglings may remain in the area for a week or more. If the fledged young remain within the project area and are not yet capable of flight, additional precautions should be taken to avoid harming them.

## **BUFFER COMPOSITION**

The materials used for your buffer will vary according to the specifics of each project. As a rule, use the least amount of material required to clearly delineate the buffer boundary and exclude any human-related disturbances. This can usually be accomplished with temporary fencing, flagging, and/or signage. The ideal buffer is one that signals a clear boundary to humans while signaling nothing to birds and other animals. The materials used should have minimal impact on the vegetation, line of sight, and flight lines of the bird. Flagging or signage should never be placed at the nest itself. Doing so may cause nest abandonment or invite predation. A standard buffer in an open area such as a grassy field might consist of small pin flags or tape placed at 15-20 ft. intervals, forming a virtual ring at the prescribed distance from the nest. A buffer in densely vegetated habitat or in areas with heavy pedestrian traffic might consist of metal fence posts driven into the ground at 10-20 ft. intervals along the circumference of the buffer. Caution tape may be stretched between the posts to physically enclose the area if required, however such a substantial buffer is more likely to affect nesting behavior.

Project managers should ensure that all personnel working on site are aware of the nests and should provide maps of the buffer locations. This is particularly important if minimal flagging is used to delineated the buffers.

## **NEST MONITORING**

Nest monitoring should be undertaken whenever a nest is found in a project area, regardless of the buffer size or materials used. Routine nest monitoring can be a disturbance in-and-of-itself if not done properly. A basic nest-check protocol intended to minimize disturbance is outlined below.

*Schedule:* In general, nest checks should occur only as often as is required to estimate hatch and fledge dates and verify that a nest is active. For most situations, this will be every 4 or 5 days. This schedule allows the observer to monitor changes in the nest cycle, which can in turn be used to generate predicted dates for fledging and buffer removal. Once a fledge date is

estimated, nest checks can be reduced to avoid disturbance. Under some project circumstances, nest checks may need to occur more frequently to identify a failure or abandonment as soon as possible.

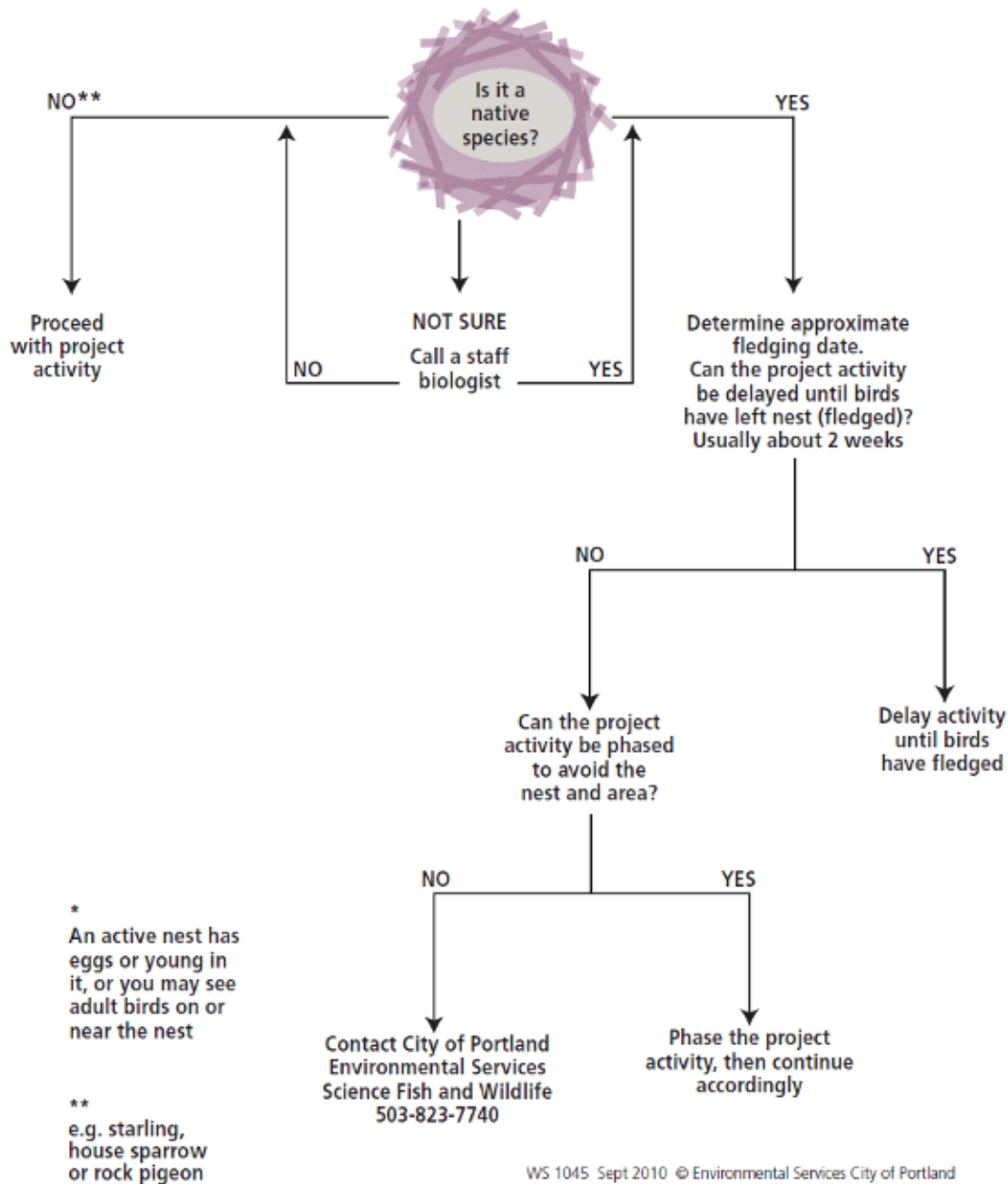
Most song birds have an incubation period of 11-16 days, followed by a nestling period (when hatched young remain in nest) of 10-18 days before fledging. Raptors and larger birds such as herons and egrets may have an incubation period of 25-35 days, with a nestling period of 24-64 days. Waterfowl have an average incubation of 25-30 days, and general vacate immediate area within 2 days. Corvids and woodpeckers have an incubation of 11-16 days, with a nestling period of 17-35 days. Once the nesting bird is identified, consult a verified resource such as *Birds of Oregon* or the *Cornell BNA Species Accounts* to determine the nesting chronology and, importantly, estimate a fledge date. If a fledge date can be estimated, the frequency of nest checks can be reduced to avoid ongoing disturbance. Adjust the timeframe and expectations of your project according to you predicted fledge date.

*Protocol for Nest Visits:* When the nest is first discovered, find a good vantage point into the nest that is as far away as possible, and perform all subsequent nest checks from that location. Approach the nest check location quietly and indirectly while watching for predators such as crows, coyotes, jays, and cats. If a predator is seen, do not approach the nest until it leaves. These predators may use human behavior or a bird's reaction as cues to locate nests and prey. Human scent may also be a cue for predators, so attempt to walk past the nest as you perform the nest check, rather than approaching the nest directly and then turning around. Remain near the nest for as little time as possible; only as much as is required to obtain the information on the *Nest Monitoring Form*. Be particularly cautious not to alter the vegetation arrangement near the nest site. Birds choose their nest sites carefully, and rely on tall grasses, leaves, shrubs and other plants to provide protection. If necessary, peer into the nest to determine the nesting stage, number of eggs/young, and species. A mirror attached to a painter's pole can be used to monitor a nest while minimizing disturbance. If a bird is sitting on the nest, do NOT flush it in an effort to better see the eggs/young. The presence of an adult bird on or near a known nest is an indicator that the nest is still active, and should be left alone.

*Data Forms:* A *Nest Monitoring Form* is available from the Bureau of Environmental Services and is attached in the appendices of this document. It should be used during the initial nest survey, and for all subsequent monitoring. Contact David Helzer for information (David.helzer@portlandoregon.gov).

## Appendix D.1

### If you find an active\* nest on a project site during project implementation



## Appendix D.2

### Summary of nest buffers from the consulted literature

**Table 3.** Nest buffers found in available literature. These provided baseline information that was used to develop our recommended nest buffers for projects in Portland's urban environments (Table 2, page 28).

SPECIES / GUILD	BUFFER IN LITERATURE (m)	SOURCE DOCUMENT(S)
Hérons/Egrets/Bitterns <i>Ardeidae</i>	50-250	Carney & Sydeman 1999, Southern California Edison 2013, Portland Gas & Electric 2015
Waterfowl (Ducks/Geese/Swans) <i>Anatidae</i>	30-100	California Public Utilities Commission 2015, Blumstein 2003, Southern California Edison 2013, Portland Gas & Electric 2015
Diurnal Raptors <i>Accipitriformes</i>	400	Flatiron West 2013
Bald Eagle <i>Haliaeetus leucocephalus</i>	200	USFWS 2007
Osprey <i>Pandion haliaetus</i>	400-1500	Richardson & Miller 1997, Currie & Elliot 1997, Kanab Field Office
Accipiters (Sharp-shinned & Cooper's Hawk) <i>Accipitridae</i>	90-800	Richardson & Miller 1997, Kanab Field Office, Portland Gas & Electric 2015
Red-tailed Hawk <i>Buteo jamaicensis</i>	75-800	Richardson & Miller 1997, Kanab Field Office, Portland Gas & Electric 2015
Northern Harrier <i>Circus cyaneus</i>	800	Ruddock & Whitfield 2007, Kanab Field Office
Peregrine Falcon <i>Falco peregrinus</i>	200-800	ODOT 2002, Southern California Edison 2013
Killdeer <i>Charadrius vociferous</i>	22-46	Southern California Edison 2013, Portland Gas & Electric 2015
Pigeons/Doves <i>Columbidae</i>	25-45	California Public Utilities Commission 2015, Blumstein 2003, Southern California Edison 2013
Band-tailed Pigeon <i>Patagioenas fasciata</i>	22-100	California Public Utilities Commission 2015, Portland Gas & Electric 2015
Owls <i>Strigiformes</i>	90-400	Currie & Elliot 1997, Kanab Field Office, Portland Gas & Electric 2015
Hummingbirds <i>Apodiformes</i>	8-30	California Public Utilities Commission 2015, Southern California Edison 2013, Portland Gas & Electric 2015
Woodpeckers <i>Piciformes</i>	22-53	California Public Utilities Commission 2015, Southern California Edison 2013, Portland Gas & Electric 2015
Songbirds <i>Passeriformes</i>	15-90	Ruddock & Whitfield 2007, San Diego Gas & Electric Co 2013
Thrushes <i>Turdidae</i>	45-150	Ruddock & Whitfield 2007, Southern California Edison 2013, Currie & Elliot 1997
Western Meadowlark <i>Sturnella neglecta</i>	22	Portland Gas & Electric 2015

### REFERENCES FOR SOURCE DOCUMENTS LISTED IN TABLE 3

- Blumstein, D. T. (2003) Flight Initiation Distance in Birds is Dependent on Intruder Starting Distance. *The Journal of Wildlife Management* 67.4: 852-857. Web. 5 July 2014.
- California Public Utilities Commission. "Nesting Bird Management Plan." 2015.
- Carney, K. M. & W. J. Sydeman (1999). A review of human disturbance effects on nesting colonial waterbirds. *Waterbirds* 22: 68-79.
- Currie, F. and G. Elliott. "Forests and Birds: A Guide to Managing Forests for Rare Birds." Forestry Authority, Cambridge and Royal Society for the Protection of Birds. Sandy, UK.
- Flatiron West, Inc. (2013). "Wildlife Pre-Construction Surveys for the Willits Bypass: Pre-Construction Nesting Bird Surveys Protocol and Protective Measures."
- Kanab Field Office. "Appendix 2: Best Management Practices for Raptors and their Associated Habitats." Kanab Resource Management Plan: A2.1-A2.16.
- Oregon Department of Transportation (2002). "Peregrine Falcon Management Plan 2002-2007."
- Portland Gas & Electric (2015). "Nesting birds: Species specific buffers for PG&E activities."
- Richardson, C. T. and C. K. Miller (1997). Recommendations for Protecting Raptors from Human Disturbance: A Review. *Wildlife Society Bulletin* 25.3: 634-638.
- Ruddock, M. and D. P. Whitfield (2007). "A Review of Disturbance Distances in Selected Bird Species." Natural Resource Projects Ltd.
- San Diego Gas & Electric Company (2013). "East Country Substation Project: Nesting Bird Management, Monitoring, and Reporting Plan."
- Southern California Edison (2013). "San Joaquin Cross Valley Loop Transmission Project: Nesting Bird Management Plan."
- United States Fish & Wildlife Service (2007). "National Bald Eagle Management Guidelines."





## Appendix D.4

## Nest Monitoring Form

Nest ID: _____	Species: <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>					Observer: _____

NEST SITE LOCATION	NEST SITE DESCRIPTION
Site Name: _____	Nest Substrate: _____
Coordinates: _____	Height Above Ground (cm): _____
Nearest Address/Survey Point: _____	Surrounding Habitat (within 50m): _____

BREEDING DATA								
Visit #	Date	Time	Nesting Stage	# Host Eggs	# Host Young	# Cwbrd Eggs	# Cwbrd Young	Notes
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								

NESTING ATTEMPT SUMMARY			
1st Egg Date: _____	Nest Outcome:	<input type="checkbox"/> Fledged	<input type="checkbox"/> Failed <input type="checkbox"/> Unknown
Hatch Date: _____	If Failed, Why?:	<input type="checkbox"/> Depredated	<input type="checkbox"/> Parasitism <input type="checkbox"/> Nest Destroyed
Fledge Date: _____		<input type="checkbox"/> Abandoned	<input type="checkbox"/> Weather <input type="checkbox"/> Unknown
	Parasitized:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Comments: _____			

Nesting Stage Codes:	BUILD = nest being built, LAY = eggs being laid, INCUB = incubating eggs NESTL = nestlings, FLEDG = nest fledged, FAIL = nest failed, UNK = unknown
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\*\*\* USE BACK OF SHEET TO DRAW NEST SITE \*\*\*

## Appendix E

### Vegetation and Other Management Recommendations\*

*\*Ideally, all vegetation disturbance/removal should be scheduled to occur between August 1 and January 31. If work cannot occur in this window, please consider the following recommendations. For questions and additional guidance in following these recommendations, contact a member of the Science Integration Division.*

**Table 4.** Recommended dates for stream enhancement, vegetation removal and construction.

Stream Enhancement Construction Projects		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
Vegetation removal	Refer to tables, below.	Refer to tables, below.
Construction activities	Refer to tables, below, if vegetation will be disturbed.	Refer to tables, below, if vegetation will be disturbed.

**Table 5.** Recommended dates for invasive species management and related activity.

Invasive Species Management		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
<b>Blackberry Removal</b>  <i>A beneficial invasive plant for native birds. Heavily used by a myriad of species for nesting, foraging and winter cover.</i>	First treatment for overgrown areas – foliar spraying (mash and spray) and mechanical removal – OK  <b>Watch for Anna’s hummingbirds</b> , which are early nesters, and defend their territories with displays that are easily seen and heard.	Avoid major spray and removal.  Maintenance management and volunteer hand removal work are OK, but <b>watch for active nests</b> (spotted towhee, song sparrow, California quail) and avoid if present. Nests are mostly cups of fine plant material in blackberry, or on the ground.  <b>In August, watch for willow flycatchers</b> , which are found especially in Johnson Creek, Powell Butte and Columbia Slough areas; avoid if present. Willow flycatchers sit out prominently and call “fitz-bew” (easy to learn with some practice). Avoid blackberry removal in August in willow flycatcher territory.
<b>Clematis Removal</b>  <i>Growth form provides the type of cover nesting birds are seeking. Likely that many local species nest in or under clematis clumps.</i>	Air gapping and root removal (grubbing) – OK  Leave vines in trees to decompose in case there is an early tree nester.	Air gapping – OK  Avoid root grubbing and pulling down vines.  <b>Watch for Pacific wrens, spotted towhees</b> and other nearby active ground and shrub nests; avoid if present.
<b>Garlic Mustard Removal</b>  <i>There is no known use of garlic mustard by nesting birds, but there may be nests in nearby plants.</i>	Spot spraying – OK  Hand pulling – OK  <b>Watch for early nesters (e.g., killdeer, ducks) and nests low to the ground</b> <ul style="list-style-type: none"> <li>Killdeer nest on the ground in gravel. Loud adult display to distract predators from nest is a good sign to watch for.</li> <li>If nest is found, leave surrounding vegetation.</li> </ul>	Spot spraying – OK  Hand pulling – OK  <b>Watch for nearby active ground and shrub nests.</b> Avoid if present.

Invasive Species Management		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
<p>Holly and Laurel Removal</p> <p><i>Many birds use these for nesting and raising young. In the fall and winter, berries provide food for many species, including American robin and varied thrush.</i></p>	<p>Removal (by cut and stump treatment) – likely OK.</p> <p><b>Watch for nesting behavior</b> and avoid if observed.</p>	<p>Avoid intensive first treatments.</p> <p>If removal is required, visually inspect small trees (&lt;10') for small cup nests. If there are larger specimens to be removed, a more thorough survey is recommended.</p> <p><b>Watch for active robin nests</b> and avoid if present.</p>
<p>Ivy: Ground Ivy Removal</p> <p><i>No native birds are known to exclusively use ground ivy, but typical and ground and low shrub nesters are spotted towhees and song sparrows.</i></p>	<p>Foliar spraying and hand pulling – OK</p>	<p>Avoid pulling and foliar spraying if possible. Pulling ivy can disturb native vegetation, and the presence of people for an extended period of time can cause nearby nests to be abandoned.</p> <p>Hand pulling OK with caution. <b>Watch for birds.</b> If an active nest is found, do not work in that area.</p> <p>Look and listen for winter wrens.</p>
<p>Ivy: Tree Ivy Removal</p> <p><i>No native birds are known to exclusively use tree ivy, though many use branches on infested trees, such as American robins and vireos.</i></p>	<p>Air gapping – OK</p> <p>Leave ivy in tree – pulling down ivy might result in pulling down nests.</p>	<p>Air gapping – OK</p> <p>Leave ivy in trees.</p> <p><b>Watch for nearby active ground and shrub nests.</b> Avoid if present</p>

Invasive Species Management		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
Knotweed Removal  <i>Use by native birds is not well-known.</i>	Foliar spraying and injection – OK	Treatment is likely OK, but <b>watch for nearby nests prior to treatment.</b>
Purple Loosestrife Treatment  <i>Used by red-winged blackbirds and American goldfinches for nesting. Also, ducks may nest on the ground nearby.</i>	Herbicide application and mechanical removal – OK prior to March 1.  Avoid cutting, spraying and grubbing after March 1.  <b>Watch for ducks in wetlands</b> , as they tend to breed early (typically in March).	Avoid cutting and spraying.  If mid-summer treatment is advised, <b>watch for red-winged blackbirds and American goldfinch nests</b> in plants.  Also <b>watch for ducks</b> on the ground.
Reed Canarygrass Removal/Spray  <i>Common yellowthroats, mallards and cinnamon teal have been documented nesting in Reed canarygrass in the Slough.</i>	Typical treatment (hand spraying) in March and April – OK. <b>Watch for early nesting ducks</b> , and avoid if present.	Avoid any vegetation management. Conduct nest survey if mowing is advised.
Yellow Flag Iris  <i>Red-winged blackbirds have been known to nest in patches of this plant.</i>	Herbicide application and mechanical removal – OK until March 1.  <b>Watch for duck nests</b> along shore and in reeds after March 1 and avoid if present.	Avoid herbicide application and mechanical removal.

**Table 6.** Recommended dates various types of vegetation management.

Other Vegetation Management		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
<p>Live Tree Removal (native and non-native)</p> <p><i>Trees can host nesting birds any time between February 1<sup>st</sup> – August 31<sup>st</sup>. Many early nesters are larger birds (e.g., herons and raptors).</i></p>	<p>Tree removal – Avoid</p> <p>Tree girdling – OK, and preferred to removal, if equally effective for control.</p> <p>If trees must be removed: <b>Watch for early nesters:</b> owls, hawks, Anna’s hummingbirds, and killdeer – Avoid if present</p> <ul style="list-style-type: none"> <li>▪ Raptors have large stick nests—easy to see before trees leaf out.</li> <li>▪ Killdeer nest on the ground in gravel. Loud adult display to distract predator from nest is a good sign to watch for.</li> <li>▪ Anna’s hummingbirds have tiny camouflaged nests, but males defending their territory are detected visually and audibly.</li> </ul>	<p>Tree girdling – OK</p> <p>Tree removal – Avoid</p>
<p>Snag Removal</p> <p><i>Snags (standing dead trees) play critical roles for many bird species. Snags attract insects, which are a vital source of food for woodpeckers and other birds. They provide perches, and are often the only source of cavities for cavity-nesting birds.</i></p>	<p>Watch for early snag nesting birds such as owls, and avoid removal if possible.</p>	<p>Avoid snag removal if possible.</p>

Other Vegetation Management		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
Shrub Removal (native and non-native)  <i>Shrubs support more breeding birds than trees do in the Portland area.</i>	For construction access or other purposes – OK, but <b>watch for early nesters and nesting behavior.</b> For example: <ul style="list-style-type: none"> <li>▪ Killdeer nest on the ground in gravel. Loud adult display to distract predators from nest is a good sign to watch for.</li> <li>▪ Anna's hummingbirds have tiny camouflaged nests, but males defending their territory are detected visually and audibly.</li> <li>▪ Be aware of ducks or other birds flushing suddenly off the ground.</li> </ul>	Avoid.
Grassland Mowing and Ground Cover Removal (native and non-native)  <i>Many species build nests only on the ground. Some will build below a dense, shrub cover, while others conceal their nest in grass.</i>	For construction access or other purposes – OK  <b>Watch for nests</b> (e.g., Wilson's warbler, savannah sparrow, western meadowlark, horned lark) <b>and nesting behavior.</b> For example: <ul style="list-style-type: none"> <li>▪ Killdeer nest on the ground in gravel. Loud adult display to distract predators from nest is a good sign to watch for.</li> <li>▪ Be aware of ducks or other birds flushing suddenly off the ground.</li> </ul>	Avoid mowing and removal of ground cover.
Controlled Burn	OK	Avoid

**Table 7.** Recommended dates for other management activities, such as removing manmade structures and manipulating water levels.

Other Management Activities		
Action	February 1 through April 15 Early Nesting Season	April 15 through July 31 Primary Nesting Season
<p>Removing and Maintaining Structures</p> <p><i>In addition to winter roosting, structures are used for nesting.</i></p>	<p><b>Watch for owls</b> on beams and platforms in old buildings. Delay removal until young are fully fledged.</p>	<p><b>Watch for:</b></p> <ul style="list-style-type: none"> <li>▪ mud nests of cliff and barn swallows in eaves and on ledges</li> <li>▪ Vaux's swifts in chimneys</li> <li>▪ house finches in eaves and cavities</li> </ul> <p>Avoid removing structure until birds have fledged.</p>
<p>Manipulating Water Levels</p> <p><i>Lowering or raising water levels can impact waterfowl and red-winged blackbirds in wetlands, and kingfishers along streambanks.</i></p>	<p><b>Watch for duck and other waterfowl nests</b> after March. Avoid water manipulation if birds are present and activity could impact nests.</p>	<p>Avoid inundating wetlands if red-winged blackbirds are nesting in cattails and tall reeds.</p>



## Appendix F

### City of Portland Special Status Bird Species Most Closely Associated with Special Status Habitats

#### Wetlands

Wetlands are covered or saturated with water during all or part of the year. Permanently wet habitats include backwater sloughs and marshes, while seasonally wet habitats include forested and/or scrub shrub wetlands, emergent marsh, headwater seeps and springs, and wet prairies. Marshes (including emergent marshes) occur in depressions (topographic low areas), fringes around lakes and along slow-flowing streams, especially in valley bottoms. Marshes are seasonally or continually saturated and have water-adapted plants such as sedges, rushes, cattails, and floating vegetation. Marshes can have mucky soils resulting in water with high mineral content. Off-channel habitat (oxbow lakes, stable backwater sloughs, and flooded marshes) is created as rivers and streams change course. In these areas, water moves slowly, providing quiet aquatic habitats important for fish and wildlife. In these off-channel wetland areas, vegetation around the fringe often includes shrub and tree species, such as spirea, ninebark, rose, dogwood, willow, and ash.

**Closely Associated Special Status Bird Species: American bittern, great blue heron, green heron, wood duck, bufflehead, northern harrier, sora, dunlin, short-eared owl, common yellowthroat**

#### Aquatic Habitats – Lakes, Rivers and Streams

Freshwater aquatic habitats include rivers, streams, ponds, lakes, springs, seeps and reservoirs. They occur above the influence of tides and salinity fluctuations. Freshwater aquatic habitats typically contain water year-round (whereas wetlands may dry out through the season).

**Closely Associated Special Status Bird Species: great blue heron, green heron, wood duck, bufflehead, hooded merganser, bald eagle, dunlin, Vaux's swift, purple martin, yellow warbler**

#### Grasslands

Willamette Valley grasslands, or upland prairies, are dominated by grasses, forbs, and wildflowers. Grasslands have well-drained soils and often occur on dry, south facing slopes or shallow-soiled balds. These grassland habitat types are often associated with low-density tree cover (5-30%) savannahs. Historically prairies were maintained by the Native American practice of setting frequent low-intensity fires. With fire suppression (or in abandoned pastures), many such areas have succeeded to forest. The dominant vegetation of these native grasslands were perennial bunchgrasses such as Roemer's fescue and California oatgrass, with abundant and diverse herbaceous plants. Scattered, open-growth trees such as Oregon white oak, Douglas fir, or ponderosa pine within the grassland characterize a savannah. Uncommon now, such savannahs and grasslands once covered about 1/3 of the Willamette Valley.

**Closely Associated Special Status Bird Species:** northern harrier, American kestrel, streaked horned lark, vesper sparrow, western meadowlark

### **Oak Woodlands**

Oak woodlands are characterized by an open canopy dominated by Oregon white oak. In general, the understory is relatively open with shrubs, grasses and wildflowers. Oak habitats can be found in drier landscapes, such as south facing slopes. In Portland, oak woodlands are found in small isolated pockets.

**Closely Associated Special Status Bird Species:** band-tailed pigeon, western wood-pewee, Hutton's vireo, white-breasted nuthatch, black-throated gray warbler, chipping sparrow, Bullock's oriole

### **Bottomland Hardwood Forest (Riparian Habitats)**

Riparian habitats are those adjacent to rivers and streams or occurring on nearby floodplains and terraces. Riparian habitats are shaped and maintained through seasonal flooding, scour, and soil deposition. Riparian habitats vary from sparsely vegetated areas to cottonwood gallery forests. Plant composition is influenced by elevation, stream gradient, floodplain width, and flooding events. Floods replenish nutrients, recharge groundwater, and reset successional processes. Riparian vegetation is mostly dominated by deciduous trees and shrubs, such as big leaf maple, red alder, black cottonwood, Oregon ash, red-osier dogwood, and numerous willow species.

**Closely Associated Special Status Species:** great blue heron, green heron, wood duck, hooded merganser, bald eagle, band-tailed pigeon, downy woodpecker, pileated woodpecker, willow flycatcher, red-eyed vireo, brown creeper, Swainson's thrush, orange-crowned warbler, yellow warbler, black-throated gray warbler, common yellowthroat, Wilson's warbler, yellow-breasted chat, Bullock's oriole

### **Interior Forest (especially Late-successional Conifer Forests)**

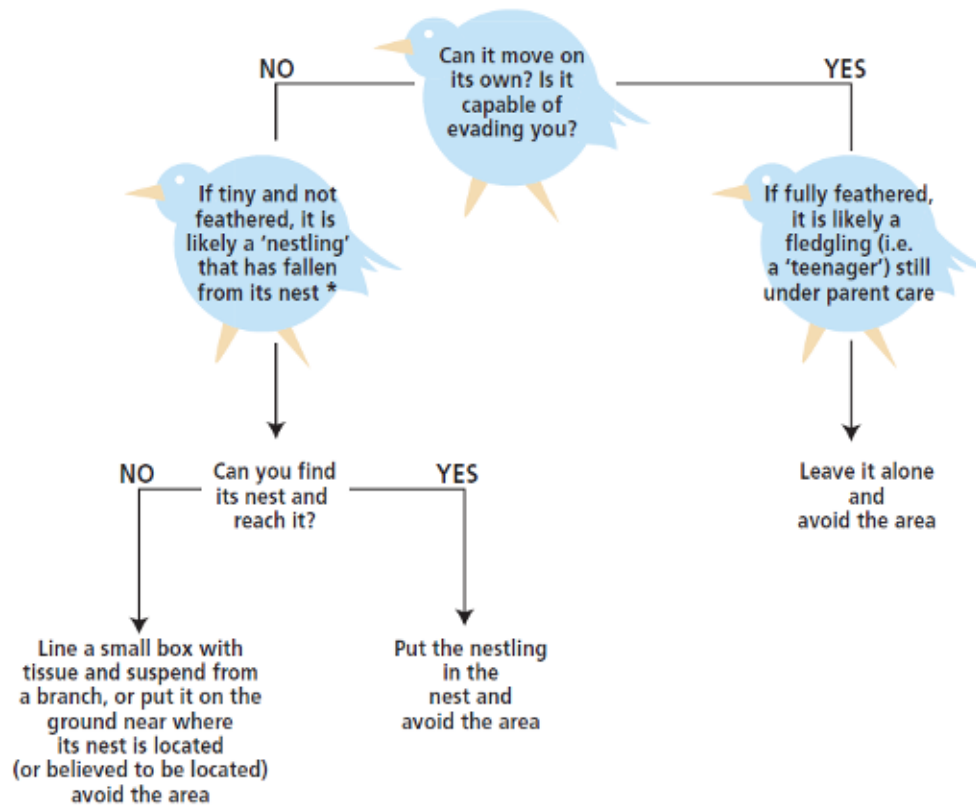
Late successional conifer forests are defined by plant species composition, overstory tree age and size, and forest structure. They include characteristics such as multi-layered tree canopy, shade-tolerant tree species growing in the understory, large-diameter trees, and a high volume of dead wood such as snags and logs. Douglas fir is generally the dominant species, but other species found in these forests, at various stages of succession, include western hemlock, western red cedar, big leaf maple, vine maple, and red alder.

**Closely Associated Special Status Bird Species:** band-tailed pigeon, pileated woodpecker, olive-sided flycatcher, Hammond's flycatcher, Pacific-slope flycatcher, brown creeper, winter wren, Swainson's thrush, varied thrush, black-throated gray warbler, hermit warbler, Wilson's warbler, red crossbill

**Note:** *There are several species are Special Status Bird Species found in Portland that are associated with several habitat types. In some cases, they may be more closely associated with a specific feature that occurs in several habitats, rather than the vegetation of the habitat itself. These species include: merlin, peregrine falcon, common nighthawk, rufous hummingbird, bushtit, house wren, and Nashville warbler.*

## Appendix G

### If You Find a Baby Bird Out of its Nest



\*  
If CLEARLY injured or KNOWN to be orphaned, you may take it to the Audubon Society of Portland Wildlife Center, 5151 NW Cornell Road, 9 am - 5 pm, 7 days a week

WS 1046 Sept 2010 © Environmental Services City of Portland

## Appendix H

### ADDITIONAL THINGS YOU CAN DO TO HELP NATIVE BIRDS

#### ANY HABITAT TYPE

- Be aware of what birds are doing!
  - Are they carrying nesting material in their beaks and bills? If so, watch where they take it; you might be able to identify the specific tree or clump of bushes where a nest is being built. Avoid disturbing that area.
  - Are they carrying insects in their beaks and bills? If so, watch where they take them; they are probably feeding baby birds. Avoid disturbing that area.
- Minimize disturbance to large habitat patches to the extent possible. Some species require interior habitats and have large territories.
- Maintain as much connectivity as possible—between habitat patches and to water sources. Migratory birds (as well as other native animals) need corridors for safe travel, foraging, nesting, raising young, hiding from predators, gene flow between populations, and for other life functions.
- Use native tree, shrub and other plant species in restoration projects, and provide a diversity of species and age classes.
- Birds nest in a variety of places—on the ground to the tops of trees. Different species nest in different areas. Therefore, leave herbaceous plants for ground-nesting species, shrubs for “open-cup” nesters, dead trees and snags for cavity-nesters, and trees for canopy-nesters.
- Let seed-bearing plants and dead tree snags stand through the winter to provide habitat, perches, food and shelter.
- Consider leaving dead standing wood (snags). If this presents a safety concern, leave as much of the snag as possible. A trunk that is 20 – 30 feet high can be an important food source, perch, and/or nesting site. If the entire snag must be removed, consider placing part of the tree in another area for wildlife to use. This can make the landscape visually interesting!
- When possible, girdle invasive trees to create snags, rather than removing them. (Note: This approach may not be effective control for some invasive tree species).
- Reduce lawn cover; when possible allow leaves and twigs to decompose on-site.
- Seek natural alternatives to, and reduce the use of, pesticides, herbicides and fertilizers, when practical.

- Seek to minimize people/wildlife conflicts. For example:
  - ♦ Site trails, picnic areas and garbage cans away from nesting habitat.
  - ♦ Hold outdoor concerts and other public events in natural area parks after birds have fledged.
  - ♦ Provide wildlife viewing opportunities at safe distances from wildlife.
- If a site lacks water, consider putting in a water feature, such as a small pond.
- During project implementation, reduce hazards such as landscape netting and other litter, in which birds can become entangled.
- If you come across a baby bird on the ground, don't attempt to return it to the nest; just avoid them, allowing their parents to attend to them. Be careful to not trample vegetation around the bird or the nest, since that can alert predators to their presence.

## GRASSLAND HABITATS

- Large open fields with several kinds of grasses of varying heights and densities are ideal. Grasses provide places for nesting, hiding, and feeding; and more variety means they will be attractive to more species that have different nesting and foraging needs.
- Wildflowers attract different insects than do grasses. A variety of native wildflowers means a variety of insects—and that will benefit insect-eating birds.
- It's OK to leave some patches of bare ground. Bare ground is important for some birds for dusting and foraging—and sometimes nesting.
- Create singing perches. Singing perches are important for defending territories and attracting mates. Singing perches should extend above the surrounding plants so that males can be seen and heard. A few shrubs or solitary trees (<10% cover/area) will help males establish breeding territories. Fence poles, wires, brush and rock piles also work well.
- Mowing is OK if timed to allow for nesting to occur and young fledged.
- Consider fire as a management tool to help restore and maintain this important habitat type.
- Some species that may benefit: Western meadowlark, American kestrel, Savannah sparrow, American goldfinch, Oregon vesper sparrow.
- Want more information? Take a look at *Landowner's Guide to Creating Grassland Habitat for the Western Meadowlark* and *Oregon's Other Grassland Birds* (a publication of the Oregon Department of Fish and Wildlife).

## RIPARIAN AREAS

- Maintain a vegetative riparian buffer zone of native species along streams (at least 100 feet wide, if possible).
- Maintain snags along stream edges for species such as the belted kingfisher. This is important for nesting as well as perching.
- Maintain or create a dense riparian shrub layer of native plants, which will benefit song sparrows, and several kinds of warblers.
- Because breeding and migratory bird densities in cottonwood habitats are generally the highest of all habitat types in North America, retain all large cottonwood trees. They are important to cedar waxwings, western wood-pewees, brown creepers, and finches—as well as larger birds that need big trees for nests (e.g., bald eagles, great-horned owls, and great blue herons).
- Avoid locating walking and biking trails within the riparian area—both to minimize direct disturbance to birds, but also to reduce the amount of vegetation that is removed.
- Some species that may benefit: belted kingfisher, great blue heron, willow flycatcher, Western wood-pewee, yellow warbler, Bullock’s oriole, purple martin.
- Want more information? Take a look at *Riparian Areas: Fish and Wildlife Havens* (a publication of the Washington State University Extension’s Woodland Fish & Wildlife Bulletin Series, <http://WoodlandfishandWildlife.org>).

## FORESTED HABITATS

- Retain existing large coniferous and deciduous trees and large snags for nesting. But retain smaller snags, too, if possible, since these provide important features for many species—for example, perches for resting and from which to hunt insects, branches that are used for nest-building.
- Create snags through topping and girdling of some green trees. Green replacement tree snags are as important as existing snags because eventually they will replace snags that fall over.
- Retain existing down logs, especially large ones.
- Retain berry and nectar-producing trees and shrubs, and plant additional ones.
- Retain shrub patches.
- Consider creating brush piles, which can provide cover and serve as signing perches.

- Manage for a diversity of native tree species, understory plants and ground cover. Vegetative diversity is usually more important to birds than are plantings of one species.
- Where it's not possible to protect larger trees or create snags, nest boxes might provide some short-term artificial cavities for some species. A useful book is *Birds in Nest Boxes* by Charlotte Corkran (Naturegraph Publishing, Inc. 2004).
- Species that will benefit: pileated woodpecker, hairy woodpecker, Western screech owl, pygmy owl, Vaux's swift, red-breasted nuthatch.
- Want more information? Take a look at:
  - *Managing Small Woodlands for Cavity Nesting Birds* October 1991 (a publication of the World Forestry Center).
  - *Rainforest Birds: A Land Manager's Guide to Breeding Bird Habitat in Young Conifer Forests in the Pacific Northwest* – Scientific Investigations Report 2006-5304 (a publication of the U.S. Department of the Interior, the U.S. Geological Survey and the American Bird Conservancy).
  - *Managing Forest Habitats for Migrant Songbirds* (a publication of the Washington State University Extension's Woodland Fish & Wildlife Bulletin Series, <http://WoodlandfishandWildlife.org>).

## HIGHLY-URBANIZED AREAS

- Don't underestimate the value of retaining even single mature big-leaf maple trees or oaks for birds! Big-leaf maples are among the earliest to leaf-out in the Spring, and therefore one of the first trees to support herbivorous insects—an important food for early spring forest migratory birds, such as yellow-rumped, hermit and Townsend's warblers.
- Plant native shrubs, including fruit, seed and nectar-producers.
- Connect small habitat patches to other small habitat patches by planting vegetated "corridors".
- Some species that will benefit: warblers, spotted towhee, house finch, Bewick's wren, song sparrow.





# Tree Code Discussion

October 20, 2020





# Updates - Chapter 16.32

- Focus on updates to Public and Street Trees
- Meant to improve alignment with vision and goals
- Establish new definitions
- Establish Tree Board roles and responsibilities
- Establish language for a Tree Fund
- Determine administrative responsibilities
  - Urban Forester
- Provide updates to permitting process
  - Review Criteria and Approval Standards
  - Urban Forester
  - Fees
- Programmatic Permits
- Low Income Assistance
- Style changes

# Trees and Birds – Existing Protections

- Improper tree care can impact bird species
- Existing regulatory protections for birds penalize take/damage to birds, nests, and eggs
  - Migratory Bird Treaty Act
    - Strict liability law
    - Covers many species
  - Endangered Species Act (federal)
    - State threatened and endangered species list
  - Bald and Golden Eagle Protection Act





# Bird Management in Tree Care



- Late winter - early summer: priority nesting seasons to avoid vegetation disturbance
  - February 1 – April (early nesting season)
  - April 15 – July 31 (primary nesting season)
- Late summer – early winter: Ideal tree care window
  - August 1 – January 31 is the best time to plan for tree removal, invasive plant species management, and grubbing and clearing.
- Best management practices from ISA and ANSI guide practitioners to avoid nests and nesting seasons
- Education and outreach can be created for arborists and project managers performing tree care
- Benefits likely greater from habitat preservation efforts than stricter habitat removal practices

# Street and Public Tree Fees



Fee Type	Amount
Permit Application	\$50
Programmatic Permit	\$2500
<b>Healthy Tree Removal Fee</b>	
2" or less diameter at breast height (DBH)	\$40
2" to 4" DBH	\$60 per inch DBH
4" to 8" DBH	\$80 per inch DBH
8" to 14" DBH	\$100 per inch DBH
14" to 20" DBH	\$150 per inch DBH
20" or greater DBH	\$200 per inch DBH
Planting and Establishment Fee	\$675 per Tree
<b>Enforcement/Restoration Fee</b>	
Damaged Tree	\$225 per inch DBH
Removed Tree	\$450 per inch DBH

# Valuing Trees

Tree Size	DBH	8	14	20	26	32
Condition	Health	Fair	Fair	Fair	Fair	Fair
	Structure	Fair	Fair	Fair	Fair	Fair
	Form	Fair	Fair	Fair	Fair	Fair
Limitations	Functional	Moderate	Moderate	Moderate	Moderate	Moderate
	External	Moderate	Moderate	Moderate	Moderate	Moderate
Calculated Costs	DBH	8"	14"	20"	26"	32"
	Appraisal Value	\$ 700.00	\$ 2,000.00	\$ 4,200.00	\$ 7,100.00	\$ 10,700.00
	Master fee	\$ 320.00	\$ 1,260.00	\$ 3,000.00	\$ 3,900.00	\$ 4,800.00
Variance	Fee as % of Appraisal	46%	63%	71%	55%	45%

Calculated Costs	DBH	8"	14"	20"	26"	32"
	Appraisal Value	\$ 700.00	\$ 2,000.00	\$ 4,200.00	\$ 7,100.00	\$ 10,700.00
	Master fee	\$640	\$ 1,400.00	\$ 3,000.00	\$ 5,200.00	\$ 6,400.00
Variance	Fee as % of Appraisal	91%	70%	71%	73%	59%

## MyTree Benefits at 50 Years Old

Serving size: 1 tree

Magyar Ginkgo (18" Diameter)



TOTAL BENEFITS FOR THIS YEAR \$ 8.01

Carbon Dioxide (CO<sub>2</sub>) Sequestered \$ 1.92

CO<sub>2</sub> absorbed each year 82.66 lbs

Storm Water \$ 6.06

Rainfall intercepted each year 3489.60 gal.

Air Pollution removed each year \$ 0.10

Ozone 8.33 oz

Nitrogen dioxide 1.42 oz

Sulfur dioxide 0.52 oz

Large particulate matter\*\* 0.43 oz

**Energy Savings:** This tree will also reduce energy costs of home heating and cooling systems by providing shading during the summer, and wind breaks during the winter.

**Health Savings:** This tree will improve the overall air quality and greenery of a community, providing respiratory benefits and mental health benefits for residents.

**Total Carbon Saved at 50 Years: 1836.66 lbs**  
Equivalent to 2,037 miles driven by an average passenger vehicle!

Benefits are estimated based on USDA Forest Service research and meant for guidance only; [www.itreetools.org](http://www.itreetools.org)





## Fee Exemptions

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- Hazardous Tree – Permit Fees / Removal Fee
- Minor Maintenance
- Public Improvement- Removal Fee



# Programmatic Permits

- Routine public facility or utility operation, repair and replacement, and on-going maintenance programs.
- 2 year permit
- Public Notice Requirements
- \$2500 Proposed Fee
- Does not cover emergency work





# Low Income Assistance

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- To the extent that city funds are available, the City Manager may exempt a property owner from the permit fee, removal fees and replanting fees when the owner demonstrates household income that is at or below 80 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area.
- Consistent with CET and HES

# Next Steps

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- Finalize based on council input
- Return to Council – Nov 17<sup>th</sup>
  - Adopt new Tree Code
  - Amend Master Fee Schedule

Tree Code Update

# Thank you!

Questions?

**Peter Passarelli**

Public Works Director

503-786-7614

[passarellip@milwaukieoregon.gov](mailto:passarellip@milwaukieoregon.gov)

Have tree questions or want to  
learn more about Milwaukie's  
urban forest?

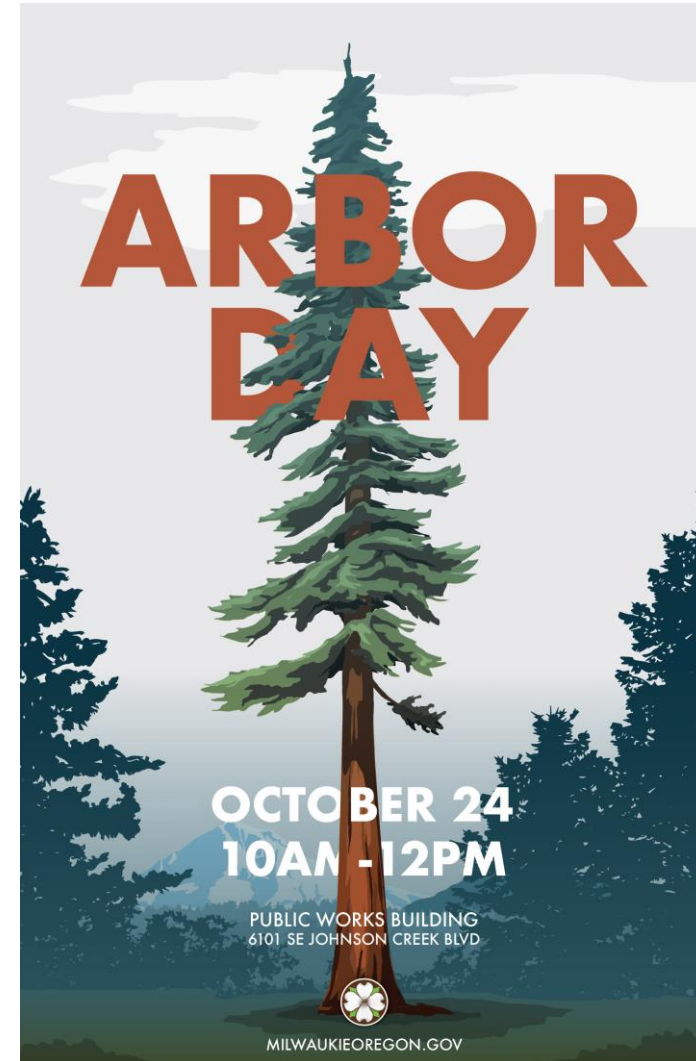
[urbanforest@milwaukieoregon.gov](mailto:urbanforest@milwaukieoregon.gov)  
[milwaukieoregon.gov/urbanforest](http://milwaukieoregon.gov/urbanforest)



# Arbor Day 2020

**October 24<sup>th</sup> from 10am to 12pm at the  
Public Works Campus**

- Ceremonial tree planting
- Tree giveaway
  - 120 Trees
- Voodoo donuts!
- Tree Board and Urban Forester to answer community questions





## Scott Stauffer

---

**From:** Scott Stauffer  
**Sent:** Tuesday, October 20, 2020 10:13 PM  
**To:** Scott Stauffer  
**Subject:** 10/20 RS 7 C Public Tree Code Zoom Chat Log

From [jacobsberman](#) to All panelists: 09:32 PM

New to this conversation, is "master fee" a maximum fee? Put another way, would a tree with DBH of 42 inches cost \$6,400 or would it be \$8,400?

OK. Thank you

If the City provides itself a 100% exemption from any of these fees for CIP projects, has there been any discussion about the City making a commitment to plant new trees (or some \$ value of new trees) on other public property or right-of-way?

From [jacobsberman](#) to All panelists:

Is the proposed low income assistance a 100% exemption at 80% AMI, or tiered or scaled as a % in some way based on AMI?

### SCOTT STAUFFER, CMC

City Recorder

he • him • his

p: 503.786.7502 f: 503.786.7540

City of Milwaukie

10722 SE Main St • Milwaukie, OR 97222

## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
Ann Ober, City Manager

**Reviewed:** Leila Aman, Community Development Director, and  
Laura Weigel, Planning Manager

**From:** Brett Kelter, Associate Planner

**Subject:** **Central Milwaukie Bikeway Connection Project**

**Date Written:** Oct. 9, 2020

### ACTION REQUESTED

None. Staff is providing an update to Council on this project.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

**May 5, 2020:** Council received an update on this project in preparation for future consideration of a request for authorization of an intergovernmental agreement (IGA) for this project.

**June 16, 2020:** Council adopted a resolution authorizing an IGA with the Oregon Department of Land Conservation and Development (DLCD) for the project.

### ANALYSIS

This project will develop a concept plan for a safe bikeway and multimodal connection in the central Milwaukie area, to link the 29<sup>th</sup> Avenue Neighborhood Greenway with the Monroe Street Neighborhood Greenway at Oak Street. At either end of the project area, the Hillside Manor and McFarland opportunity sites are currently in the process of active redevelopment. It is important to plan the necessary connection before the Murphy opportunity site in the middle of the project area begins to redevelop. The effort is supported with funding from the DLCD's Transportation and Growth Management (TGM) Quick Response program.

**Figure 1.** Project area in central Milwaukie



City staff are working with a consultant team from Alta Planning + Design to analyze multimodal connectivity issues within the project area and identify alternatives with planning-level cost estimates. The approach involves engagement and discussion with key stakeholders as well as open community meetings to review and discuss the concept alternatives. The final product will be a concept report that presents the revised design, to be reviewed by the

Planning Commission and adopted by Council as an ancillary document to the city's Transportation System Plan (TSP).

To date, the project team has developed a Public Involvement Plan (see Attachment 1), conducted a socially distanced site visit, and made initial contact with key stakeholders along the route. The consultant team is analyzing traffic data and other background information to produce a memorandum on existing conditions. More in-depth conversations with key stakeholders are scheduled during the weeks of October 5-9 and 12-16, with a virtual open house or community meeting to follow a couple of weeks later. The feedback from these conversations will inform the development of alternatives for the concept design plan. A report on the concept design will be reviewed and discussed by key stakeholders and community members, and staff anticipates returning to Council before the end of the year with another update. See Attachment 2 for the most recent project timeline.

### **BUDGET IMPACT**

This project's cost, which primarily consists of the consultant contract, will be funded entirely by the TGM Quick Response program. City staff will contribute time, but no direct city funding for the consultant work is anticipated. Following adoption, the plan will be implemented in the future as a Capital Improvement Plan (CIP) project under the direction of the engineering department. The estimated cost of the CIP will be determined as part of this current work.

### **WORKLOAD IMPACT**

Staff in the planning and engineering departments will manage and participate in the project as part of their regular duties. Both departments have factored this project into their workplans.

### **CLIMATE IMPACT**

This project will identify a workable design for the bikeway and multimodal connection that will link two neighborhood greenways and three opportunity sites in the central part of the city. This will greatly enhance the multimodal options for Milwaukie residents in this area, which could help reduce transportation greenhouse gas emissions.

### **COORDINATION, CONCURRENCE, OR DISSENT**

Planning staff has coordinated with engineering and community development staff on this project. All departments concur with the proposed action.

### **ATTACHMENTS**

1. Public Involvement Plan
2. Project Timeline



## **Attachment 1**

### **Public Involvement Plan – Central Milwaukie Bikeway Connections Project**

Fall 2020

The purpose of the Public Involvement Plan for the Central Milwaukie Bikeway Connections project is to establish community engagement objectives, clarify key messages for communicating with community members, identify stakeholder interests, describe the array of tools and activities best suited to inform and engage Milwaukie residents and business owners, establish a schedule for implementation, and set out evaluation metrics.

#### **Communications and Public Involvement Objectives**

1. Involve the community in the concept design, alternatives, and refinements of the bikeway connections for the Central Milwaukie area.
2. Conduct an inclusive and transparent planning process.
3. Engage a broad cross-section of people who live, work, and/or use active transportation in Milwaukie, but especially the Central Milwaukie area.
4. Ensure traditionally overlooked voices are represented throughout the process.
5. Keep City Council and the Planning Commission informed.

#### **Key messages**

Key messages will be refined and augmented throughout the project.

**The Central Milwaukie Bikeway Connections Plan (the Plan) sets out to create a safe, low-stress, family friendly multimodal connection between two neighborhood greenways and linking three key development sites.**

- Three key development sites: Clackamas County Housing Authority Hillside Manor site, Murphy Opportunity site, and McFarland Opportunity site.
- The Hillside and McFarland sites are currently in the process of active redevelopment and are at either end of the project area. One important goal of this project is to get the necessary connection planned before the redevelopment of the Murphy site gets underway, as it is in the middle of the project area.
- Need to provide a safe connection between the 29<sup>th</sup> Avenue greenway to the north and the Monroe Street greenway to the south.
- Provide a safe way for residents of the Hillside development (primarily low-income residents) to walk or ride bikes to the commercial services just south of Oak Street adjacent to the Monroe Greenway.

**The Plan will focus on implementing the Central Milwaukie Land Use and Transportation Plan, building on that concept planning effort, and refining the design of an important bikeway and pedestrian connection between two neighborhood greenway routes.**

- The initial concept of the Plan involved crossing Harrison Street (an arterial) at a location adjacent to a Union Pacific railroad crossing. Further study of this concept provided that the proposed connection would require approval from the Union Pacific

Railroad and the Rail Division of the Oregon Department of Transportation (ODOT) and would require a complex new signal system at Harrison Street.

- The City urgently needs an alternative design that would route bike trips from Hillside Manor to 32<sup>nd</sup> Avenue and then down 32<sup>nd</sup> Avenue to connect with the rest of the system at Oak Street.

**The City is committed to an inclusive and transparent planning process. Public involvement is crucial to guide the development of a representative, sustainable plan.**

- There will be opportunities for community involvement at multiple points throughout the planning process, with a focus on accessible opportunities to provide feedback.
- Virtual options will be available for all community meetings and will be the primary medium if state/county limitations on community gatherings are not lifted.
- Materials will be available in English and Spanish and through different formats and venues.
- Members of the community can provide comments or ask questions at any time by emailing [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

## Demographics

The Central Milwaukie area covers an area of 75 acres and is located at the junction of several neighborhoods and is a location where numerous commercial, housing, medical, and civic activities coincide. Approximately 20,990 people lived in the City of Milwaukie in 2019.<sup>1</sup> Estimates suggest around 12,000 people come into the city each day for work and 7,000 commute out of Milwaukie for employment. Between 2013-2017, 19 percent of the city's population was under 19 years old, while 16 percent were older than 65.<sup>2</sup>

### *Race and ethnicity*

According to the latest US Census data, around 82.5 percent of Milwaukie residents identify as white, while 3.9 percent identify as Asian. Roughly 2 percent identify as African American or two or more races and 1 percent or fewer identify as American Indian or Alaskan Native, Native Hawaiian, other Pacific Islander or as "other." Census figures show Hispanic or Latino residents make up 8.6 percent of Milwaukie's population. A total of 17.5 percent of people in Milwaukie self-identified as a person of color.<sup>2</sup>

### *Languages spoken at home*

Census data indicates that most Milwaukie residents speak only English at home (90 percent), while 10 percent speak a language other than English. The most commonly spoken languages other than English in the city include Spanish (5 percent), Russian (1 percent), Chinese (1 percent) and Vietnamese (1 percent).<sup>3</sup> School district data, however, suggests much higher proportions of non-native English speakers. Around 73 percent of Milwaukie students speak

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<sup>1</sup> 2019 United States Census QuickFacts

<sup>2</sup> American Community Survey (ACS) 2013-2017 5-Year Estimates

<sup>3</sup> ACS 2011-2015 5-Year Estimates. 2018 data not yet available at individual language level.

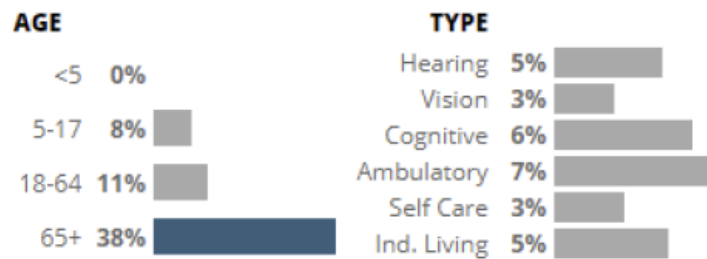
English as a first language, while 21 percent speak Spanish at home, 2 percent speak Russian or Ukrainian and 1 percent speak Chuukese.<sup>4</sup> The other most commonly spoken languages among students include (in this order) Vietnamese, Amharic, Chinese, and Tagalog/Filipino.

Coordinating outreach with organizations that serve these communities will be important for engaging non-Native English speakers.

#### *Community members with disabilities*

According to American Community Survey data, 14 percent of Milwaukie residents have a disability. Around a third (38 percent) of seniors (65 years +) have a disability. Ambulatory, cognitive, hearing and independent living disabilities are the most common types in the city. Project staff will consider accessibility needs of community members with disabilities when planning public events.

**Figure 2: Disability Demographics (2011-2015 American Community Survey)<sup>5</sup>**



#### *Income and employment*

In 2018, the median household income in Milwaukie was \$63,421, which is lower than the County average (\$76,597).<sup>6</sup> Almost half of Milwaukie households (40 percent) earn less than \$50,000.<sup>7</sup> Figure 2 shows the distribution of median incomes in the community. School district data indicate 56 percent of Milwaukie students experience poverty.<sup>5</sup>

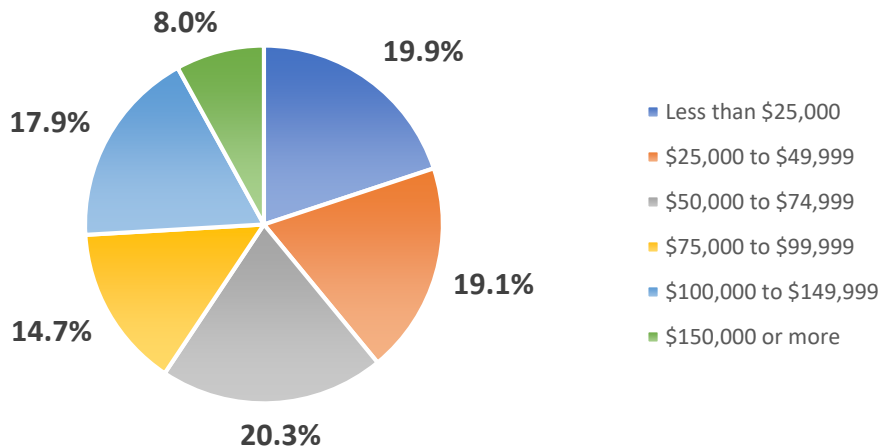
<sup>4</sup> Data provided by North Clackamas School District #12 (2018)

<sup>5</sup> Chart created by Community/Attributes at <https://caimaps.info/CAILIVE>

<sup>6</sup> 2018 United States Census QuickFacts

<sup>7</sup> 2014-2018 ACS 5-Year Estimates

**Figure 3: Median Income (2014-2018 American Community Survey)**



The most common industries Milwaukie residents work in include educational services, health care and social assistance (22 percent); manufacturing (13 percent); retail (12 percent); arts, entertainment, recreation, accommodation and food services (11 percent); and professional, scientific, administrative and waste management services (11 percent).<sup>8</sup>

#### *Neighborhoods Within and Surrounding Central Milwaukie*

The neighborhoods, both within and surrounding the Central Milwaukie area, show more diversity than the city with total percentage of people of color ranging from 11-34 percent. The top percentages of races in these neighborhoods, besides White, are Hispanic, Asian, and African American.<sup>9</sup> See Figure 3 for a map of those census blocks that surround the Central Milwaukie area.

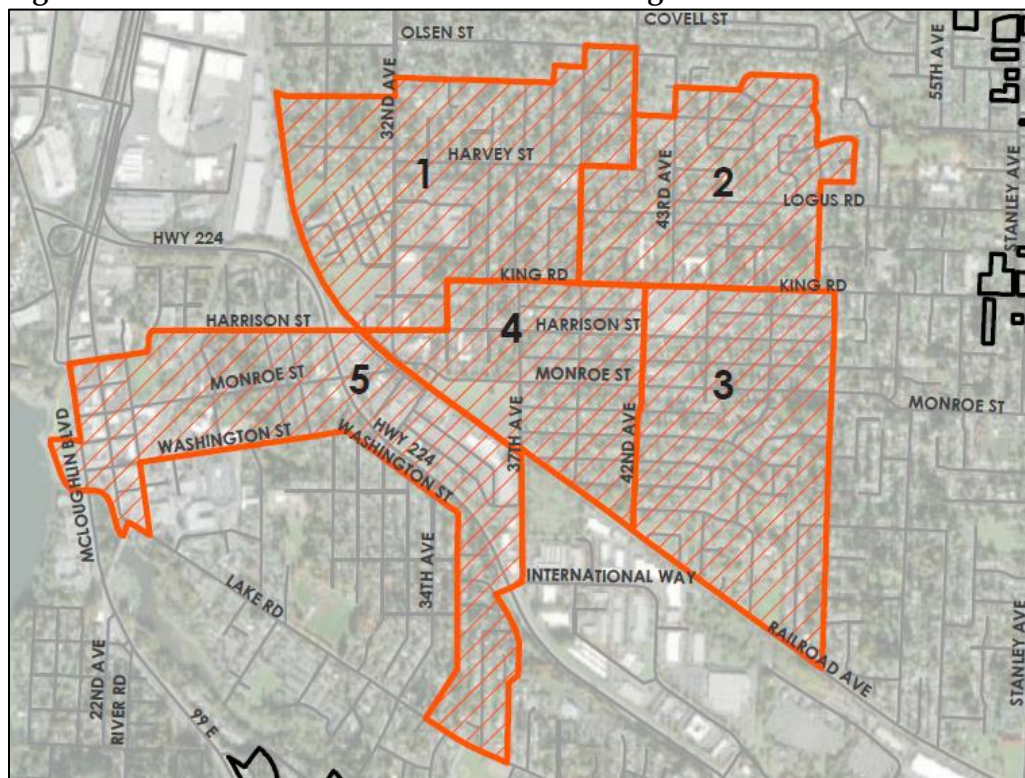
This area also has a wide range of incomes. It is worth noting that the Clackamas County Housing Authority has a subsidized housing community in Census Block 1. Census Block 4 also has more multi-unit housing than in the other blocks (minus Block 5 since it runs down into Downtown Milwaukie), which may indicate why the median household income is lower. See Table 1 for more information.

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<sup>8</sup> IBID

<sup>9</sup> ACS 2012-2016 5-Year Estimates

**Figure 3: Census Blocks Within and Surrounding Central Milwaukie**



**Table 1: Census information on the Neighborhoods Within and Surrounding Central Milwaukie**

Census Block	Median Household Income <sup>10</sup>	Percent Total of People of Color <sup>9</sup>	Top Languages Spoken at Home (other than English) <sup>10</sup>	Means of Transportation to Work <sup>11</sup>
1	\$41,250	11%	1. Indo-European (such as Russian) 2. Spanish	Drive – 77% Public Transit – 11.7% Walk – 1.2% Bicycle – 3.7% Work at Home – 6.4%
2	\$59,034	16%	1. Spanish 2. Indo-European (such as Russian)	Drive – 77.6% Public Transit – 1.3% Walk – 1% Bicycle – 6.7% Work at Home – 13.2%
3	\$66,250	34%	Asian and Pacific Island	Drive – 92% Public Transit – 0% Walk – 1.6% Bicycle – 0% Work at Home – 4.5%

<sup>10</sup> 2017 ACS 5-Year Estimates

<sup>11</sup> 2018 ACS 5-Year Estimates

4	\$26,875	24%	1. Asian and Pacific Island 2. Spanish	Drive – 77.4% Public Transit – 14.6% Walk – 2.8% Bicycle – 0% Work at Home – 0%
5	\$51,833	25%	Spanish	Drive – 80% Public Transit – 5% Walk – 3.4% Bicycle – 4.7% Work at Home – 4.2%
City of Milwaukie	\$63,421	17.5%	Spanish, Russian, Chinese, Vietnamese	Drive – 80% Public Transit – 6.6% Walk – 2.2% Bicycle – 2.4% Work at Home – 6.6%

### Stakeholder Interests

The following table summarizes a sample of stakeholders the project team will work to engage through the process.

**Table 2: Stakeholders Interest List**

<b>General Stakeholder Groups</b>
Property Owners of Key Sites
Active Transportation Advocacy Groups
Neighborhood District Associations (NDAs) in project area
Neighborhood Advocacy Groups
Central Milwaukie Businesses/Industries
Low-income residents in project area
Non-English-speaking residents in project area
Overall residents in project area (particularly at Hillside Manor)
Commuters traveling through project area

### Strategies and Key Engagement Opportunities

#### *Stakeholder Interviews*

The consultant team will hold key stakeholder interviews with individuals and community groups that have a vested interest and level of expertise of active transportation in this project area. Stakeholder interviews may be in other languages for non-English speaking populations.

#### *Community Meetings (with Virtual Options)*

The City will host up to two community meetings as part of the Central Milwaukie Bikeway Connections project process. The first community meeting will happen around the concept design plan alternatives, the second on the project concept design report. These community

meetings will provide an opportunity for people who live and/or work in Milwaukie, but especially the Central Milwaukie area, to provide comments. Those who use active transportation within this Central Milwaukie area will also be able to provide insight and comments to help inform the design.

Even if community gathering restrictions are lifted, virtual options for both community meetings will be available since there are community members who still may not feel comfortable with in-person gatherings. If community gathering restrictions are in place at the time of the meetings, they will be held virtually.

Materials will be provided in English and at least in Spanish (if not in any other languages) for these community meetings. Simultaneous Spanish translation during the meeting may be provided as well.

The City will publicize community meetings via the city's website and Central Milwaukie Bikeway Connections project page, in the *Milwaukie Pilot*, by email to the Central Milwaukie email subscription listserv and other community groups/neighborhood associations interested in this project, and via the City's social media accounts.

## **Communication Methods**

### ***Central Milwaukie Project email list***

The City has an established Central Milwaukie email subscription listserv. People who express interest in this project will be encouraged to sign up for this subscription listserv, if not already, to receive updates. E-notifications will be delivered prior to public engagement events and when significant new information is available on the web.

Brett Kelter, Associate Planner, will be the primary point of contact at the City for this project. Brett's email ([KelterB@milwaukieoregon.gov](mailto:KelterB@milwaukieoregon.gov)) or the Planning Department email address ([planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)) will be included on public information materials.

### ***City of Milwaukie website – Central Milwaukie Bikeway Connections project website***

Informational materials—including technical background documents, the project fact sheet, stakeholder interview summaries, and community meeting materials and summaries—will be available on the project website.

### ***News releases***

The City will distribute news releases about public engagement opportunities (including community meetings) as needed.

### ***Milwaukie Pilot***

Project status updates and notification of upcoming public engagement opportunities will be published in the monthly Milwaukie newsletter, the *Milwaukie Pilot*. Content is due approximately two weeks before the end of each month.



### ***Social media and digital advertising***

The City will share updates about the project and notify community members of opportunities to engage via social media accounts. If budget allows, paid Facebook and Twitter ads may be used to further promote engagement opportunities.

### **Evaluation**

The following table describes the key metrics and processes for evaluating progress on meeting the objectives set out in this public engagement plan. The project team will evaluate progress made toward meeting these objectives monthly throughout the duration of the project.

<b>Objective</b>	<b>Metric</b>	<b>Evaluation Process</b>
1. Involve the community in the concept design, alternatives, and refinements of the bikeway connections for the Central Milwaukie area.	<ul style="list-style-type: none"> <li>• Final concept plan reflects input from a broad cross-section of stakeholders.</li> <li>• Documented participation by a variety of stakeholders and community members (through written comments and participation in public meetings).</li> </ul>	<ul style="list-style-type: none"> <li>○ Comment summaries produced after stakeholder interviews, community meetings, and in response to general input.</li> </ul>
2. Conduct an inclusive and transparent planning process.	<ul style="list-style-type: none"> <li>• Community members from all interests identified in the stakeholder interest matrix are engaged at some point throughout the process.</li> </ul>	<ul style="list-style-type: none"> <li>○ Bi-weekly review to identify which interests are not being reached.</li> </ul>
3. Engage a broad cross-section of people who live, work, and/or use active transportation in Milwaukie, but especially the Central Milwaukie area.	<ul style="list-style-type: none"> <li>• Public comment and media coverage convey a sense of understanding about the concept plan process and purpose, as well as satisfaction with public notification and involvement.</li> <li>• Project contact list grows throughout planning process.</li> </ul>	<ul style="list-style-type: none"> <li>○ Bi-weekly review of media (news and social media) and public commentary around the project.</li> <li>○ Comment summaries produced after community meetings and in response to general input.</li> </ul>
4. Ensure that traditionally overlooked voices are represented throughout the process.	<ul style="list-style-type: none"> <li>• Project team staff engage in conversations with non-native-English-speaking communities and low-income residents during the course of the project.</li> </ul>	<ul style="list-style-type: none"> <li>○ Equitable engagement strategy will be embedded into every meeting plan.</li> <li>○ Bi-weekly review to identify which groups are not being reached.</li> </ul>

	<ul style="list-style-type: none"><li>• Specific outreach methods are utilized to reach these groups in advance of community meetings.</li></ul>	
5. Keep City Council and the Planning Commission informed.	<ul style="list-style-type: none"><li>• Update about the planning process provided to the City Council and Planning Commission either in writing or through a briefing at least once during the project.</li></ul>	<ul style="list-style-type: none"><li>○ Conversations during regular project management team check-ins to discuss progress and briefing opportunities.</li></ul>

## Attachment 2

Central Milwaukie Bikeway Connections Project Schedule																														
	2020																				2021									
	August					September				October				November				December			January				February					
Task 1. Project Kick-off	3	10	17	24	31	7	14	21	28	5	12	19	26	2	9	16	23	30	7	14	21	28	4	11	18	25	1	8	15	22
1.1.Key Documents and Data Request Memo																														
1.2. Public Involvement Plan																														
1.3. Refined Project Schedule																														
1.4. Community Site Visit and Walking Tour																														
1.5. PMT Meeting #1																														
1.6. Key Stakeholder Interviews																														
1.7. Base Map																														
1.8. Project Website																														
Task 2. Existing Conditions Analysis																														
2.1. Existing Conditions Memorandum																														
2.2. PMT Meeting #2																														
Task 3. Concept Design Plan Alternatives																														
3.1. Concept Design Plan Alternatives																														
3.2. PMT Meeting #3																														
3.3 Affected Property Stakeholder Meetings #1																														
3.4. Community Meetings #1																														
3.5 Planning Commission and City Council Staff Briefing																														
3.6. PMT Meeting #4																														
Task 4. Project Concept Design Report																														
4.1. Draft Project Concept Design Report																														
4.2 Joint Stakeholder and Community Meeting #2																														
4.3 PMT Meeting #5																														
4.4. Revised Project Concept Design Report																														
4.5 PMT Meeting #6																														
4.6. Planning Commission and City Council Joint Work Session																														
4.7. Final Concept Report																														
4.8. Department of Land Conservation and Development Notice																														
4.9. City Council Adoption Hearing(s)																														
4.10 Title VI Report																														
Task 5. Contingent Tasks																														
5.1. Contingent Meeting #A																														
5.2. Contingent Workshop #B																														
5.3. Contingent Community Forum #C																														
5.4. Contingent Concept Design Plan Alternative #A																														

Task Work	
Deliverable/Event	