



**Regular Session**

**RS**

**Milwaukie City Council**

**COUNCIL REGULAR SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

2325<sup>th</sup> Meeting**AGENDA****NOVEMBER 17, 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-288> 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**

- A. Milwaukie High School (MHS) Outstanding Student - Award (6:05 p.m.)  
Presenters: Carmen Gelman, MHS Principal

**4. SPECIAL REPORTS**

- A. Library Services - Update (6:15 p.m.)  
Staff: Katie Newell, Library Director

**4**

**5. COMMUNITY COMMENTS (6:25 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 (6:30 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:**

**7**

- 1. October 6, 2020, Work Session;
- 2. October 6, 2020, Regular Session; and
- 3. October 13, 2020, Study Session.

**B. Appointment of Youth Committee Members - Resolution**

**19**

**C. Appointment to the Public Safety Advisory Committee - Resolution**

**22**

<b>6. CONSENT AGENDA (continued)</b>	
D. Authorization of in Intergovernmental Agreement for Funding for Milwaukie Bay Park - Resolution	25
E. Authorization of a Contract for the Linwood Avenue Safe Access for Everyone (SAFE) / Safe Routes to School (SRTS) Project - Resolution	32
F. Approval of an Oregon Liquor Control Commission Application for Pint Sized Pub, 11301 SE 21 <sup>st</sup> Avenue - Off-Premises Sales	36
<b>7. BUSINESS ITEMS</b>	
A. Executive Session News Media Policy - Discussion (6:35 p.m.) Staff: Scott Stauffer, City Recorder	38
B. Accessory Dwelling Unit (ADU) Waivers - Update (6:55 p.m.) Staff: Leila Aman, Community Development Director	44
<b>8. PUBLIC HEARINGS</b>	
A. Public Tree Code Adoption - Ordinance & Resolution (7:25 p.m.) Staff: Peter Passarelli, Public Works Director	49
<b>9. COUNCIL REPORTS (8:10 p.m.)</b>	
<b>10. ADJOURNMENT (8:15 p.m.)</b>	

#### **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

2325<sup>th</sup> Meeting

## MINUTES

NOVEMBER 17, 2020

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

<b>Staff Present:</b>	Assistant City Manager Kelly Brooks	Climate Action & Sustainability Coordinator
	City Attorney Justin Gericke	Natalie Rogers
	City Manager Ann Ober	Housing & Economic Development Assistant
	City Recorder Scott Stauffer	Christina Fadenrecht
	Civil Engineer Wendy Marshall	Library Director Katie Newell
	Community Development Director Leila Aman	Public Works Director Peter Passarelli

**Mayor Gamba** called the meeting to order at 6:03 p.m.

**Mayor Gamba** reviewed the video meeting procedures. He and **Ms. Ober** noted that Spanish translation services for Council meetings were available upon request.

### 1. CALL TO ORDER

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

### 2. ANNOUNCEMENTS

**Mayor Gamba** announced upcoming activities, including online open houses, leaf drop sessions, the annual Thanksgiving farmers market, the city's mini umbrella decorating contest, and the virtual tree lighting ceremony. **Councilor Hyzy** noted that Elk Rock Island and parts of Spring Park would be closed until March 2021 due to restoration work following a fire on the island in September. She noted it was recently Veterans Day and thanked veterans for their service.

### 3. PROCLAMATIONS AND AWARDS

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

**Carmen Gelman**, MHS Principal, introduced Noah Sargent and Council congratulated him on his academic achievements and extra-curricular activities

**Ms. Gelman** remarked on the challenges of teaching in a distanced learning environment due to the coronavirus (COVID-19) pandemic.

### 4. SPECIAL REPORTS

**A. Library Services – Update**

**Ms. Newell** reported on the number of items checked out and the online and grab-and-go-bag lunch programs provided during the pandemic. She noted that recently expanded indoor pick-up options would be cut back due to heightened COVID-19 restrictions, but curbside book pick-up would still be available. **Ms. Ober** thanked library staff for their work to serve the community.



## **5. COMMUNITY COMMENTS**

**Mayor Gamba** reviewed the public comment procedures and **Ms. Ober** reported that there was no follow-up from the October 20 community comments. It was noted that no audience member wished to speak to Council on a topic that was not on the agenda.

## **6. CONSENT AGENDA**

**Mr. Stauffer** noted scrivener error corrections to the proposed youth committee member appointments.

**It was moved by Councilor Batey and seconded by Council President Falconer to approve the Consent Agenda as amended by staff.**

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

1. October 6, 2020, Work Session;
2. October 6, 2020, Regular Session; and
3. October 13, 2020, Study Session.

**B. Resolution 66-2020: A resolution of the City Council of the City of Milwaukie, Oregon, making youth board and committee member appointments.**

**C. Resolution 67-2020: A resolution of the City Council of the City of Milwaukie, Oregon, making an appointment to the Public Safety Advisory Committee.**

**D. Resolution 68-2020: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing an intergovernmental agreement with the North Clackamas Parks and Recreation District (NCPRD) for Milwaukie Bay Park Phase III funding.**

**E. Resolution 69-2020: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, approving the award of a contract for the construction of the Linwood Avenue Safe Access for Everyone (SAFE) / Safe Routes to Schools (SRTS) Project (CIP-2018-T48) to D&D Concrete and Utilities, Inc.**

**F. Approval of an Oregon Liquor Control Commission (OLCC) Application for Pint Sized Pub, 11301 SE 21<sup>st</sup> Avenue – Off-Premises Sales.**

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

**Councilor Batey** expressed appreciation that consent agenda items 6. D. and 6. E. had been approved. She noted concern about how NCPRD and Clackamas County would allocate resources to fund proposed facility improvements at the old Concord School site in Oak Grove and a new library in Gladstone.

**Councilor Hyzy** was happy to have the first group of youth committee members appointed to city boards and committees. **Ms. Ober** noted that staff would be working with the new youth members to provide an orientation and periodic check-ins.

## **7. BUSINESS ITEMS**

### **A. Executive Session News Media Policy – Discussion**

**Mr. Stauffer** provided an overview of previous discussions about developing a policy regarding news media representatives at executive sessions. He explained that staff had evaluated other cities' policies, state law, and news media profession definitions to draft a policy. He reviewed changes to the policy proposed by Councilor Batey.

**Mr. Stauffer** and **Councilor Batey** commented on the possibility of a solo blogger, or someone who doesn't work for an official news media outlet, seeking to attend an

executive session. **Mayor Gamba** and **Councilors Batey and Hyzy** remarked on the intent of letting the news media attend executive sessions and whether the policy should be strict or vague in defining news media representatives. They noted the importance of holding journalists accountable.

It was noted that Council was comfortable with the proposed policy.

**Mr. Gericke** suggested the policy would provide guidance for staff who would rely on state law in making determinations about who can attend executive sessions.

It was noted that the policy would be placed on the December 1 regular session agenda for Council to consider adopting it.

## **B. Accessory Dwelling Unit (ADU) Waivers – Update**

**Ms. Aman** explained that staff was providing an early update on the ADU waiver pilot program because the program's 10 spots had been taken and there was a wait list of interested applicants. She provided an overview of the program, noting how the waived ADU system development charges (SDCs) had been funded, and how staff had implemented the program. She reported that of the initial 10 applications, three were to bring existing ADUs into compliance with the city code; three were for converting attached structures into ADUs; and seven were for building new ADUs. She and **Councilor Batey** noted that the staff report had incorrectly reported the number of new ADUs to be built in the first 10 applications.

**Ms. Aman** continued to provide an overview of the applications received to-date, reporting that nine were intended for future use as short-term rentals. She observed that other development costs continued to be a barrier for building ADUs, that there was interest in the program, and that code enforcement needs should be considered as more ADUs are built. She asked for Council feedback on extending the program and changing the program criteria.

**Mayor Gamba** and **Ms. Ober** discussed how the city currently monitors short-term rental units and noted code enforcement staff's limited ability to track short-term rentals. The group remarked on whether short-term rentals could be tracked through the city's business registration process.

**Councilor Batey** and **Ms. Aman** commented on the ADU permitting process. The group noted reasons why an applicant could need several months to secure funding and seek other permits and land use approvals before building an ADU. They remarked on whether the program should allow 60 days, 90 days, or six months to pull a building permit after receiving initial approval.

**Ms. Aman** summarized that Council agreed that a six-month window was too long and perhaps 90 days was a better timeframe to require an ADU applicant to pull building permits. She noted how staff could reach out to an applicant throughout the timeframe to check in on the applicant's intentions to build. **Council President Falconer** and **Councilor Parks** expressed support for a 90- or 120-day timeframe. **Mayor Gamba** was fine with a six-month timeframe but not opposed to a shorter timeframe. The group noted the importance of not changing the time period for those who had already applied, and **Ms. Fadenrecht** commented on the anticipated construction timelines of the initial 10 applicants.

**Councilor Batey** and **Ms. Aman** noted that once a building permit was issued there was an additional time period for the construction to occur.

**Ms. Aman** suggested Council was comfortable changing the timeframe to 90 days for an application to be approved and for a building permit to be pulled for any application received after November 17, 2020. She noted that the first 10 applications would still have a six-month window. **Ms. Ober** asked for clarification that the timeframe was for permits to be applied for and construction had to be scheduled by June 30, 2021. Council concurred with Ms. Aman and Ms. Ober's statements.

**Councilor Batey** asked if the pilot program allowed short-term rentals and **Ms. Ober** reported that Council had not set that as a program condition. **Ms. Aman** commented on the intention of some applicants to use the ADUs to house family members.

**Councilor Hyzy** noted there was no way the city could ensure the ADUs being built were affordable housing. She asked the city to not refer to the new ADUs as affordable unless it was certain that is what they would be. **Ms. Ober** suggested the city would know more about the outcomes once the pilot program ended. Then Council and staff could discuss how to change it to better incentivize affordable housing.

**Council President Falconer** asked that a future Council agenda include a discussion about how the city's equivalent dwelling units (EDUs) were calculated. She commented on the importance of increasing the range of housing types available in the city. She suggested the city take an approach like what Clackamas County had recently done with its EDU calculations. She and **Councilor Batey** agreed that the city's wastewater master plan could be a process to review the EDU calculations. **Mayor Gamba** seconded Council President Falconer's agenda discussion request.

**Mr. Passarelli** reported that the upcoming wastewater master plan study did include an evaluation of SDCs. He noted that the previous water and stormwater master plan reviews had not looked at SDCs. The group discussed whether the EDU calculations would require a professional consultant study. **Mayor Gamba** suggested the city just needed to revise the fee structure to collect more from bigger houses and less from smaller houses.

**Mayor Gamba** and **Councilor Batey** remarked on whether the SDC waivers resulted in more people applying to build ADUs.

**Ms. Ober** confirmed that the EDU calculation discussion would be placed on a March 2021 Council agenda.

**Councilor Hyzy** suggested there was a need to think critically about the program and whether it was successfully promoting affordable housing.

**Mayor Gamba** recessed the meeting at 7:58 p.m. and reconvened at 8:05 p.m.

## **8. PUBLIC HEARING**

### **A. Public Tree Code Adoption – Ordinance**

Call to Order: **Mayor Gamba** called the public hearing on the proposed public tree code to order at 8:05 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to consider adopting the proposed public tree code.

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

Staff Presentation: **Mr. Passarelli** provided an overview of changes to the draft public tree code language that had been proposed since Council's last discussion on the topic.

Changes were meant to provide clarification about tree removal permit fees and process. He reviewed the proposed tree removal fee schedule, noting that fees were aimed to keep healthy trees from being removed. He and **Councilor Batey** noted a proposed language change to the draft code regarding certain types of certified professionals that may need to be involved when deciding if a tree was to be removed.

Correspondence: Staff reported that no correspondence had been received on the topic.

Conduct of Hearing: **Mayor Gamba** reviewed the hearing conduct procedures.

Audience Testimony: **Neil Schulman**, North Clackamas Watersheds Council (NCWC) Executive Director, expressed NCWC's support for the proposed public tree code. He thanked Council and staff for working with NCWC to increase the city's urban tree canopy and looked forward to working with the city on the development of a private tree code.

Staff Response to Testimony: **Mr. Passarelli** thanked NCWC for their support.

Close Public Hearing: **It was moved by Council President Falconer and seconded by Councilor Batey to close the public hearing on the proposed public tree code. 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 8:18 p.m.

Council Discussion: The group noted Council had discussed the code at great length and thanked staff and the Tree Board for developing the proposed code language.

Council Decision: **It was moved by Councilor Hyzy and seconded by Council President Falconer for the first and second readings by title only and adoption of the ordinance amending Municipal Code Chapter 16.32 Tree Cutting as amended. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting "aye." [5:0]**

**Ms. Ober** read the ordinance two times by title only.

**Mr. Stauffer** polled the Council with **Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting "aye." [5:0]**

**Ordinance 2197:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE CHAPTER 16. 32 TREE CUTTING.**

**It was moved by Councilor Batey and seconded by Councilor Parks to approve the resolution revising fees and charges and updated Section 5 of the Master Fee Schedule for Fiscal Years 2021 and 2022. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting "aye." [5:0]**

**Resolution 70-2020:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING FEES AND CHARGES AND UPDATING SECTION 5 OF THE MASTER FEE SCHEDULE FOR FISCAL YEARS 2021 AND 2022.**

## **9. COUNCIL REPORTS**

**Councilor Hyzy** reported that she had shared a draft letter with Council that addressed how the Oregon Department of Transportation (ODOT) should allocate the next round of Statewide Transportation Improvement Program (STIP) funding. The group noted that

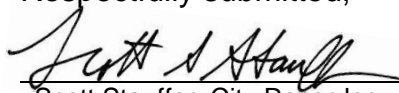
Councilor Batey had proposed changes to the letter. It was Council consensus to send ODOT the letter proposed by Councilor Hyzy and revised by Councilor Batey.

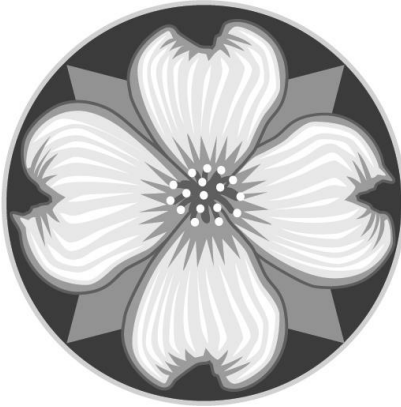
**10. ADJOURNMENT**

**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 8:27 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Scott Stauffer, City Recorder



**RS Agenda Item**

**2**

## **Announcements**

## Engage Milwaukie

Welcome to Engage Milwaukie, the City of Milwaukie's online engagement platform. We know better decisions are made when our community participates, and we want to make that easy. Contribute your ideas and ask questions about projects, at times that work best for you. We're excited to hear from you!

Register to join the conversation!

## Active Projects

### Comprehensive Plan Implementation - Open House

Provide input about Phase 1: Housing, Residential Parking and Urban Forestry

Participate



### Plan de Implementación Comprensivo de Milwaukie: la casa abierta vi...

¡La ciudad quiere su opinión!

Participate



MILWAUKIE'S

# VIRTUAL TREE Lighting

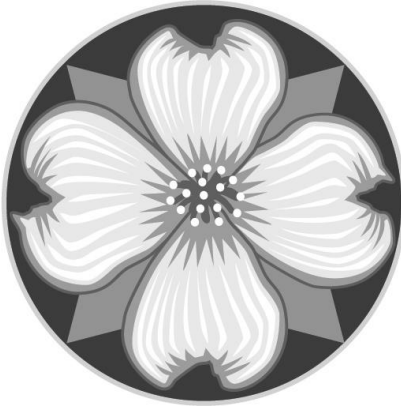


# Mayor's Announcements – Nov. 17, 2020

- **Engage Milwaukie – A New Way to Engage Online Launches**
  - Contribute your ideas and ask questions about projects at times that work best for you.
  - Register to join the conversation at **[engage.milwaukieoregon.gov](https://engage.milwaukieoregon.gov)**.
- **Comprehensive Plan Implementation Online Open House (Phase I) – Participate through Nov. 29**
  - Provide input about housing, tree preservation, and parking
  - Open house is available in English and Spanish
  - Visit the new **Engage Milwaukie** website to participate at **[engage.milwaukieoregon.gov](https://engage.milwaukieoregon.gov)**.
- **Leaf Drop Sessions – Sat. Nov. 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.
- **Thanksgiving Farmers Market – Sun., Nov. 22 (9:30 AM – 2 PM)**
  - Main St. and Harrison St.
  - Stock up on the freshest produce and ingredients for your holiday dinner
- **Holiday Mini-Umbrella Decorating Contest – Entries Due Fri., Dec. 11 (5 PM)**
  - Event replaces the annual Umbrella Parade, which is canceled due to public health guidelines
  - Get creative and submit an umbrella no larger than 6-inches in height.
  - Adult and youth entries accepted for four categories (Most Creative, Most Festive, Most Milwaukie, and Group or Family)
  - Complete an application and drop off your umbrella at City Hall by Fri., Dec. 11 at 5 PM. Visit the link below to find the application.
- **Virtual Tree Lighting – An Online Experience – Sat. Dec. 5 (4 PM)**
  - Annual tree lighting is going virtual this year due to public health guidelines
  - Event features musical performances, a holiday message from Mayor Gamba and a special appearance from Santa
  - Stream the event on the city's Facebook and YouTube sites

RS2

- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](https://www.milwaukieoregon.gov) OR CALL 503-786-7555**



**RS Agenda Item**

**4**

## **Special Reports**



**COUNCIL STAFF REPORT**

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

**Reviewed:** Jana Hoffman, Supervising Librarian, and  
Kim Olson, Circulation Supervisor

**From:** Katie Newell, Library Director

**Subject:** **Ledding Library Update**

**Date Written:** Oct. 28, 2020

**ACTION REQUESTED**

Council is asked to receive an update on the services provided by the Ledding Library during the ongoing COVID-19 pandemic.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

- March 15, 2020: The library closed to the public due to COVID-19; staff continued to report to library for work.
- March 18: Library staff began working from home.
- April 6: a Partial return of library staff.
- May 26: Curbside/no contact pick-up of holds became available.
- July 2: Weekly “grab + go” activity bags became available with free sack lunches.
- October 26: All library staff returned to work in the library, and no appointment holds pick-up service became available in the lobby.

**ANALYSIS**

This is a brief update about services for the community and council regarding operations during the pandemic. Overall, the staff of the Ledding Library worked diligently throughout the pandemic to provide safe library service to its patrons.

**BUDGET IMPACT**

None.

**WORKLOAD IMPACT**

Staff will continue to offer safe service to library patrons throughout the pandemic.

**CLIMATE IMPACT**

The library offers a selection of materials that are available to patrons throughout Clackamas County and beyond, all of which are used multiple times during their lifespan.

**COORDINATION, CONCURRENCE, OR DISSENT**

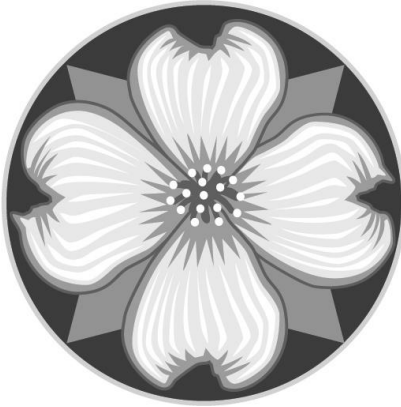
Library staff receive support from the facilities, information technology (IT), and human resources (HR) departments, and from city hall and city manager’s office staff.

**STAFF RECOMMENDATION**

The library director recommends Council recognize the dedication and hard work of the library staff during the pandemic.

**ATTACHMENTS**

None.



**RS Agenda Item**

**5**

**Community Comments**

## Scott Stauffer

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**From:** Scott Stauffer  
**Sent:** Tuesday, November 17, 2020 8:28 PM  
**To:** Scott Stauffer  
**Subject:** 11/17 RS Zoom Chat Log

 Zoom Webinar Chat — □ ×

From Wendy Marshall to [All panelists:](#) 06:33 PM  
Congratulations, Noah!

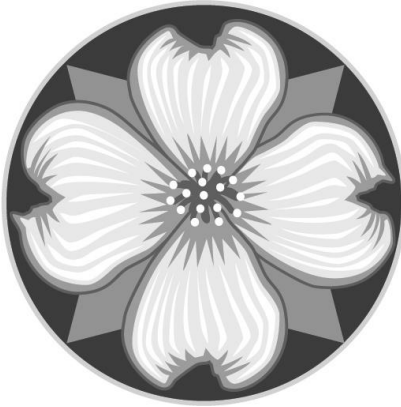
From [Douglas Edwards](#) to [All panelists:](#) 06:52 PM  
Good evening and I am glad to see you all working tonight. Happy Thanksgiving. No public comment

From Natalie Rogers (she/her)... to [All panelists and attendees:](#)  
Thank you Neil and NCWC!

From Councilor Kathy Hyzy (she... to [All panelists:](#) 08:25 PM  
For decades, Milwaukie has advocated for the removal of Kellogg Dam, which would reopen 9.5 miles of passage in Kellogg and Mt. Scott Creeks for historic fish and lamprey populations. Unlike most dam removal projects, there's literally no opposition and all agree that a free flowing creek would be one of single best things we could do to restore riparian habitat or endangered salmon and native wildlife. Indeed, Oregon Fish and Wildlife ranks the Kellogg Dam as #1 for removal on its list of ODOT-owned barriers. So, why hasn't it happened?

### 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



**RS Agenda Item**

**6**

## **Consent Agenda**

**COUNCIL WORK SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

**MINUTES**

OCTOBER 6, 2020

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

**Staff Present:** City Attorney Justin Gericke City Recorder Scott Stauffer  
City Engineer Steve Adams Public Works Director Peter Passarelli  
City Manager Ann Ober

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

**1. Citizens Utility Advisory Board (CUAB) – Annual Review**

**Mr. Passarelli** introduced CUAB chair Joel Bergman, and member Jake Stetson. He provided an overview of CUAB's purpose. He provided highlights of CUAB's recent work reviewing the Capital Improvement Plan (CIP), the 2021-2022 biennium budget, and providing utility rate recommendations as part of the master fee schedule.

**Mr. Bergman** noted CUAB's past difficulties with having enough members to make meeting quorums and hoped the city could assist in recruitment efforts.

**Mr. Passarelli** reviewed CUAB's workplan for the next year. He explained the review process for the water and wastewater masterplans.

**Councilor Batey** asked about the status on the Well #2 replacement work and **Mr. Passarelli** reported on the project's progress. They also discussed the old Well #1 and **Mr. Passarelli** confirmed the city had abandoned it. He also reported the city had consolidated water rights for the old Well #1, and Wells #2 and #3, which resulted in the city having more flexibility to pump water out of the wells.

**Mr. Passarelli** explained that the CUAB's workplan included tracking water and transportation revenue forecasts. He noted the revenue from water and transportation had been forecasted to decline. He reported that the city's temporary coronavirus (COVID-19) pandemic utility assistance program had not seen any usage yet. He observed this was a program that started in September and was in addition to the city's permanent utility assistance program. **Ms. Ober** noted that staff had done additional outreach to local schools and non-profit community groups to promote the utility and renter assistance programs. **Councilor Parks** suggested that the city also reach out to the American Association of Retired Persons (AARP) and **Councilor Batey** noted Meals on Wheels would also be good to contact about the program.

**Mr. Passarelli** reported an increase in demand on the water system during the months of July and August. The group commented on what could have caused the increase and noted that the increased water usage could correspond to more people being home due to the pandemic. **Councilor Hyzy** believed it was important to keep an eye on the water usage situation.

**Mr. Passarelli** believed working on the water masterplan would result in a recommendation to develop a robust water conservation program. **Councilor Batey** noted that the Regional Water Providers Consortium had great educational. **Mr.**

**Passarelli** said CUAB was working with consultants on the wastewater masterplan and future CIP projects.

**Mr. Passarelli** reported on changes the CUAB had proposed to their bylaws, including changing the board name from the Citizens Utility Advisory Board to the Community Utility Advisory Board. He explained that the board felt the term “citizen” was exclusionary and was not a good representation of the city’s customers. He reported that the CUAB also proposed changing the meeting frequency from every month to every other month, with added meetings as need. He commented on the CUAB’s workload and said he would bring the proposed changes to a regular session Council meeting soon for formal consideration.

**Councilor Batey** thought the name change was a good idea. She commented on the meeting frequency change and wanted to see more standardization across all the city’s boards and committees related to what the bylaws looked like. **Councilor Hyzy** believed CUAB’s proposal did allow for maximum flexibility with adding meetings as needed. She noted Mr. Bergman’s comments about the challenge it had been to have enough members on the committee and believed having a smaller time commitment may be helpful in recruiting people. **Mr. Adams** noted that when the CUAB was not in budget planning, it was difficult to create agenda topics. **Mayor Gamba** agreed that meetings were not needed just for meetings sake and believed if the board could do their work in less meetings, that was fine.

**Councilor Hyzy** wondered what types of discussions the CUAB has had around the requirement that board members serve as informed ambassadors to the public for how utility rates work. She observed that the city had been working hard on public engagement and wondered how CUAB related to that and if it needed help in sharing its knowledge with the community.

**Mr. Stetson** noted past conversations about how to better educate residents about what services the utility provides and how public funds are spent. He noted how important utility projects are and how important it was to help educate the public. He suggested ways the board could do outreach and said the CUAB was happy to focus more on public outreach if that was Council’s preference. **Mayor Gamba** thought it could be possible to have the city’s outreach coordinator to meet with CUAB. **Councilor Hyzy** noted how difficult public outreach was right now and appreciated CUAB having those conversations.

## **2. Tree Board – Annual Review**

**Mr. Passarelli** noted that Tree Board member Jon Brown was present. He provided an overview of the board membership and noted that interviews had been recently held to fill two vacancies.

**Mr. Passarelli** reviewed the Tree Board’s 2019 events and accomplishments including tree planting events and the adoption of the Urban Forest Management Plan (UFMP). He provided details on the city’s spending on tree-related items over the past few years and noted the total volunteer time and trees planted. He reported that the city had received the Tree City USA Growth Award, which recognized higher levels of tree care by participating Tree City USA communities.

**Mr. Passarelli** reviewed the Tree Board’s ongoing projects, including work on a public tree code, past and upcoming tree plantings, free public leaf drop sessions, and more. He provided details on the upcoming Arbor Day event on October 24 and a future Friends

of Trees event. **Council President Falconer** explained her experience with trying to plant a tree which had proven unsuccessful because she lived on an unimproved road. She observed that people would still turn out for volunteer tree plantings and work parties. **Mr. Passarelli** provided details of the Arbor Day event at the city's Johnson Creek Boulevard (JCB) campus, which included tree giveaways, a ceremonial planting, and donuts.

**Mr. Passarelli** reviewed the Tree Board's 2021 planned events and projects. He said the board would work with the Comprehensive Plan Implementation Committee (CPIC) to develop a private tree code. He explained the upcoming tree inventory and he and **Councilor Batey** discussed tree mapping tools. **Mr. Passarelli** noted the city also planned to update its public works standards and hold additional tree planning events.

### **3. Johnson Creek Watershed Council (JCWC) Cleanup Event – Discussion**

**Daniel Newberry**, JCWC Executive Director, discussed events from the past year and noted changes made to ensure volunteer safety during COVID-19. He reported that JCWC had planted 970 trees in the city this last year. He discussed JCWC's project on Oregon Department of Transportation (ODOT) property to add wooded areas along Johnson Creek to enhance fish habitat. He noted there would be upcoming volunteer events.

**Mr. Newberry** discussed upcoming JCWC projects. He noted successful past projects and how JCWC has worked with Americold Logistics to restore riparian habitat. He asked for Council assistance in connecting with two public agencies on the creek, the Oregon Liquor Control Commission (OLCC) and the Clackamas County Community Corrections Women's Center, to do a project in the creek near their properties. **Councilor Batey** noted potential city contacts who could help make public agency contacts to OLCC and the county. She pointed out Milwaukie Bay Park was set to be under construction in 2022.

### **4. Adjourn**

**Mayor Gamba** adjourned the meeting at 5:24 p.m.

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II



**COUNCIL REGULAR SESSION**

Zoom Video Conference  
www.milwaukieoregon.gov

2323<sup>rd</sup> Meeting

**MINUTES**

OCTOBER 6, 2020

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

**Staff Present:** Accounting & Contracts Specialist Kelli Tucker  
Assistant City Manager Kelly Brooks  
Assistant Planners Janine Gates, Mary Heberling  
City Attorney Justin Gericke  
City Manager Ann Ober  
City Recorder Scott Stauffer  
Climate Action & Sustainability Coordinator Natalie Rogers  
Community Development Director Leila Aman  
Event Coordinator Brenna Cruz  
Finance Director Bonnie Dennis  
Public Works Director Peter Passarelli

**Mayor Gamba** called the meeting to order at 6:01 p.m.

**1. CALL TO ORDER**

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

**2. ANNOUNCEMENTS**

**Mayor Gamba** announced upcoming events and activities, including an online Ledding Cultural Forum event, drive-thru haunted houses at the Clackamas County Fairgrounds and the North Clackamas Aquatic Park, and a prescription drug turn-in event.

**3. PROCLAMATIONS AND AWARDS****A. Indigenous Peoples Day – Proclamation**

**Council President Falconer, Mayor Gamba, and Councilor Hyzy** remarked on the history of Indigenous people and the importance of recognizing the day. **Mayor Gamba** proclaimed October 12 to be Indigenous Peoples Day in Milwaukie.

**B. National Archives Month – Proclamation**

**Mr. Stauffer** commented on the importance of including all voices in a community's recorded story. **Greg Hemer**, Milwaukie Historical Society, remarked on the historical society's work. **Mayor Gamba** proclaimed October to be Archives Month in Milwaukie.

**C. Community Planning Month – Proclamation**

**Ms. Heberling and Ms. Gates** discussed the role of planners in building community and noted the services and projects Milwaukie's planners have supported. **Councilor Batey** hoped the planning department's Comprehensive Plan work would be submitted for an American Planning Association (APA) award. The group noted that the recent Planning 101 course was available for viewing on the [city's YouTube channel](#). **Mayor Gamba** proclaimed October to be Community Planning Month in Milwaukie.

#### **D. Arbor Day – Proclamation**

**Ms. Rogers** remarked on the city's Urban Forest Management Plan (UFMP) and the benefits of trees. She noted the city's plans to celebrate Arbor Day and **Mayor Gamba** proclaimed October 24 to be Arbor Day in Milwaukie.

#### **Bring Play to Milwaukie Bay Park Campaign**

**Councilor Batey** provided an update on the campaign and explained how the public could support the park by dining at participating restaurants on specific days.

### **4. SPECIAL REPORTS**

#### **A. Extension of COVID-19 Emergency - Declaration**

**Ms. Ober** reported that there were no changes to the ongoing coronavirus (COVID-19) pandemic and the city's response. She explained that per Council request the proposed declaration extension would last for two months.

**It was moved by Council President Falconer and seconded by Councilor Hyzy to extend the emergency declaration elated to COVID-19 through December 7, 2020. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

### **5. COMMUNITY COMMENTS**

**Mayor Gamba** reviewed the public comment procedures and **Ms. Ober** reported that there was no follow-up report from the September 15 community comments.

**Elvis Clark**, Ardenwald Neighborhood District Association (NDA) Representative to the Public Safety Advisory Committee (PSAC), remarked on Clackamas County's plans to redevelop the Hillside Manor and Park sites. He expressed concern that the 29<sup>th</sup> Avenue bicycle and pedestrian access point to the site would be changed to allow vehicle traffic.

### **6. CONSENT AGENDA**

**Councilor Batey** asked that the August 18 work session minutes be removed from the consent agenda for further review and consideration at a future meeting.

**It was moved by Councilor Batey and seconded by Councilor Parks to approve the Consent Agenda except for item 6. A. 1.**

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

- 1. ~~August 18, 2020 Work Session;~~** (removed from the agenda)
- 2. August 18, 2020, Regular Session;**
- 3. September 1, 2020, Work Session; and**
- 4. September 1, 2020 Regular Session.**

**B. Resolution 62-2020: A resolution of the City Council of the City of Milwaukie, Oregon, making an appointment to the Public Safety Advisory Committee.**

**C. Resolution 63-2020: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, authorizing execution of a sole source contract with OpenEdge for merchant card payment services.**

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

## **7. BUSINESS ITEMS**

### **A. Fall and Winter Events – Update**

**Ms. Brooks** and **Ms. Ober** thanked Ms. Cruz for her work on event planning in the time of COVID-19, for stepping in as the city's emergency coordinator, and for supporting the city's equity and inclusion work.

**Ms. Cruz** provided updates on the statewide COVID-19 related reopening guidelines and the city's annual fall and winter events. She and **Councilor Batey** noted that the federal Drug Enforcement Administration (DEA) ran the prescription drug drop-off event and had moved it to the fall.

**Ms. Cruz** continued to review fall and winter events, noting that the downtown Milwaukie trick-or-treating and Arts Committee's scarecrow contest had been canceled. She explained that the city's Umbrella Parade and Tree Lighting would be modified to be an umbrella decoration contest and pre-recorded lighting ceremony. She reported that the Winter Solstice and Christmas Ships Viewing event would be canceled but the city would promote the times that the ships passed by Milwaukie Bay Park and encourage the public to patronize local businesses.

**Ms. Brooks** added that the city would soon hold a ribbon cutting ceremony for the new mural on the city facility at 40<sup>th</sup> Avenue and Harvey Street. **Councilor Batey** noted that other groups were organizing drive-thru haunted houses at the county fairgrounds in Canby and the North Clackamas Aquatic Park. **Ms. Cruz** reported that the city was working with Gracepointe Church who was looking at holding a modified trunk-or-treat event and **Mr. Passarelli** clarified when the city would be holding modified leaf drop events.

**Councilor Batey** was sad so many events had to be canceled but understood why. She was glad staff was working to modify events and promote activities that could happen.

**Councilor Hyzy** was excited to see the community's umbrella decorations and thanked staff for their work to create safe community events around the holidays.

**Councilor Parks, Ms. Cruz,** and **Ms. Brooks** discussed the size of the umbrellas to be decorated, whether they could be displayed in downtown businesses, and whether arts and craft stores may be willing to offer discounts for umbrella decorations.

**Councilor Batey** asked why the scarecrow contest had been canceled. **Ms. Brooks** reported that the Arts Committee had decided to shift its focus away from the contest for non-COVID-19 related issues.

**Councilor Parks** noted that the Wichita Park grand opening event had featured supplies from a Portland business called Scrap. The group commented on whether Scrap was open and could be an option for umbrella decorating décor.

**Ms. Ober** thanked staff for working on the events and was glad there were some community activities still happening. **Ms. Brooks** thanked Council for appreciating the decisions staff had to make due to the pandemic. **Councilor Parks** and **Mayor Gamba** thanked staff for working to provide some public events this year.

## **8. PUBLIC HEARING**

### **A. None Scheduled.**

## **9. COUNCIL REPORTS**

### **Electric Vehicles (EV) Roadmap Initiative**

**Councilor Hyzy** commented on an EV roadmap initiative undertaken by governors of western states which included Oregon Governor Kate Brown. She proposed Council send a letter to Governor Brown encouraging her to implement the EV roadmap initiative and set similar EV usage goals as the governor of California had recently done.

The group noted that California's EV usage goals related to industrial vehicles.

**Mayor Gamba** expressed support for the initiative and letter. He and **Councilor Hyzy** noted the progress being made by manufacturers toward clean and electric trucks.

**Councilor Parks** remarked that the more available EVs were, the less expensive they would become, and the more people could purchase them. She and **Councilor Hyzy** noted that the development of EVs was moving quickly.

The group noted that it had been proposed that all members of Council sign the letter to Governor Brown. They discussed what it meant for the entire Council to vote on and sign a letter versus just the mayor signing a letter. **Councilor Batey** proposed a minor text change to the last paragraph of the draft letter. The group reviewed the letter and agreed to Councilor Batey's proposed text change.

**It was moved by Councilor Hyzy and seconded by Councilor Batey to send a letter to Oregon Governor Kate Brown in support of the Electric Vehicle Roadmap Initiative and a future Oregon zero-emissions vehicle requirement. Motion passed with the following vote: Councilors Falconer, Batey, Parks, and Hyzy and Mayor Gamba voting "aye." [5:0]**

## **10. ADJOURNMENT**

**Mayor Gamba** announced that after the regular session Council would meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2)(i) to review and evaluate the job performance of a chief executive officer, other officers, employees, and staff, if the person whose performance is being reviewed and evaluated does not request an "open hearing."

**It was moved by Councilor Parks and seconded by Councilor Hyzy 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 7:40 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder

## COUNCIL STUDY SESSION

Zoom Video Conference  
www.milwaukieoregon.gov

## MINUTES

OCTOBER 13, 2020

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

**Staff Present:** Assistant City Manager Kelly Brooks  
City Manager Ann Ober  
City Recorder Scott Stauffer  
Climate Action and Sustainability  
Coordinator Natalie Rogers

Community Development Director Leila Aman  
Community Engagement Coordinator Jason Wachs  
Housing and Economic Development Assistant  
Christina Fadenrecht

**Mayor Gamba** called the meeting to order at 5:17 p.m.

### National Coming Out Day Remarks

**Councilor Hyzy** noted a recent Basic Rights Oregon event she attended virtually where Black, Indigenous, People of Color (BIPOC) community members told their coming out stories. This inspired her to tell her coming out story. She commented on how powerful it was to understand that she could fall in love with women as well as men. She explained she was part of the queer community and wanted to wish a happy coming out day to everyone for whom it was easy and especially for those whom it was difficult.

### 1. Council Goal: Housing – Update

**Ms. Aman** provided an update on the Milwaukie Housing Affordability Strategy (MHAS). She noted that the MHAS was adopted in 2018 and was intended to have a five-year action plan through 2023. She thanked Ms. Fadenrecht for her work on the strategy.

**Ms. Aman** reported on the number of MHAS actions that were completed, ongoing, and in progress. She noted MHAS Goal 1 was to develop new affordable units and explained staff's progress on Action 1.1, to explore affordable housing programs through the construction excise tax (CET). The group discussed the CET Affordable Housing Grant Program and the CET exemption program, noted where funding came from, and confirmed which households were served by the programs based on the area median income (AMI) percentage.

**Ms. Fadenrecht, Council President Falconer, and Ms. Aman** discussed the CET Affordable Housing Grant Program. **Ms. Aman** clarified that residential money from the CET program was based on state statute and served residents up to 80% AMI, while the other half of the funding Council approved came from the city's commercial CET program, where 50% of funds were for up to 120% AMI. She confirmed the exemption program was up to 80% AMI.

**Ms. Aman** reviewed MHAS Action 1.3 and discussed development incentives like the Vertical Housing Tax Zone. She discussed staff's work to streamline permitting for affordable housing and create a development-friendly culture. She reviewed additional MHAS actions and work done by staff and Council to assist in creating affordable housing. **Ms. Aman** noted that Council's accessory dwelling unit (ADU) waiver pilot program aided in the MHAS goal to incentivize ADU and cottage cluster development. She provided ADU

construction numbers from the past few years and said she would provide a full update on the pilot program soon.

**Ms. Aman** noted MHAS Goal 2 was to prevent displacement and keep units affordable. She reviewed actions that staff had been working on and noted the city's partnership with the county and other nonprofit organizations. She provided an update on the county's Hillside Manor and Hillside Park redevelopment project. She noted actions the city had taken to support renters in Milwaukie and discussed the Coronavirus Aid, Relief, and Economic Security (CARES) funding.

**Ms. Aman** noted MHAS Goal 3 was to connect people to existing affordable housing. She reviewed actions that staff had been working on related to community outreach and education.

**Ms. Aman** summarized and reviewed the city's next steps for the MHAS, including finalizing the CET program, clarifying code language, and engaging with the public.

**Council President Falconer** noted a comment had been posted in the Zoom meeting chat from Daryl Winand asking if the group was speaking of housing that is affordable or subsidized housing and asked if the efforts were for both rental and ownership. She understood that the city had strategies for both affordable and subsidized housing and the efforts were for both rental and ownership. **Ms. Aman** confirmed that was correct.

**Councilor Batey** had a hard time understanding how smaller housing forms would lend themselves to ownership versus just being rentals. She thought it would be helpful for Council and the Planning Commission to learn more about the topic. She noted complaints she heard about how the city only had apartments coming in the larger developments and no condos or ownership opportunities. She thought it was a conversation the city should be having about how to foster ownership potential and not just rental potential. **Council President Falconer** agreed and noted portions of the code would have to be changed. **Ms. Aman** agreed that the code work the city was planning to do could help with this. She and **Mayor Gamba** commented on the slow market for condominiums and noted that cottage clusters and other forms of ownership were still in demand.

**Councilor Hyzy** asked about the city's progress related to housing co-ops and land trusts. **Ms. Aman** explained the city's engagement with land trusts to encourage them to come to Milwaukie. She noted the Sparrow Street site was a great opportunity for a land trust. She commented on making Milwaukie a place that people want to build different types of housing.

**Ms. Aman** explained that the federal Department of Housing and Urban Development (HUD) used the terms AMI and area median family income (MFI) interchangeably. She explained the AMI/MFI that Milwaukie used was based on the Portland-Vancouver-Hillsboro, Clackamas County metropolitan statistical area (MSA). She noted that the AMI/MFI was the basis for most federal housing programs and Milwaukie used it for the Low-Income Utility Assistance, CET, and Home Energy Score programs. She explained that Milwaukie was different from the MSA, so staff also used data from the American Community Survey (ACS) five-year estimates for the Milwaukie median household income (MHI) statistic. She thought it was important to see where Milwaukie tracked even though the city needed to use the regional numbers.

**Mayor Gamba** asked if the city had to use the regional numbers and could not just use the Milwaukie-based numbers, which would result in lower rents. **Ms. Aman** noted the



MFI was required based on city ordinance and was consistent with other city and federal housing programs. **Councilor Batey** and **Mayor Gamba** discussed the impact on the cost of rent if the AMI/MFI was used versus the MHI.

**Ms. Aman** confirmed the standard was to use the AMI/MFI. She also thought it was important to look at Milwaukie's household incomes in relation to the regional statistic. She showed a chart tracking the MHI in relation to the AMI/MFI and noted how Milwaukie's median income related to the region. **Mayor Gamba** noted an example where the region's AMI/MFI increases so then the rent for a Milwaukie apartment would also increase, even though a Milwaukie resident may not be able to afford it. **Ms. Aman** confirmed the AMI/MFI was how the system worked.

**Councilor Batey** observed the city should advocate for lower percentages of the AMI/MFI. **Mayor Gamba** agreed because the rents were not affordable for people who were struggling.

**Ms. Ober** explained that the city used the AMI/MFI to set which benefits individuals can qualify for, like utility assistance programs. She understood that using the AMI/MFI was to the benefit of the homeowner. She observed that this was confusing and believed it was better for consistency in code work and programming to use one source, like the AMI/MFI.

**Mayor Gamba** agreed it was beneficial for Milwaukie residents to reduce their utility bills. He said it was not beneficial when the city cuts a deal with a developer because those rents will be higher than the median income Milwaukie residents could afford.

**Councilor Batey** said if HUD uses the regional AMI/MFI number, that was the number Milwaukie should use, and believed the city should reexamine what percentage is set. **Council President Falconer** agreed with the idea of being consistent with the metrics and revisiting to adjust the percentage.

The group discussed how the regional AMI/MFI compared to Milwaukie's MHI, and how the regional incomes were used for the city's housing programs. **Ms. Aman** shared housing cost data including home values and the number of new single-family residences. **Councilor Batey** noted that many of the new homes were higher end. She was curious to see if older homes were also showing that level of value increase. **Ms. Aman** said staff could try to research that data. **Councilor Hyzy** and **Council President Falconer** noted from personal experience that older homes have also had their values skyrocket.

**Ms. Aman** explained that HUD defines "cost-burdened" as families who pay more than 30% of their income for housing and "severe rent burden" as paying more than 50% of one's income on rent. She reported that 21% of Milwaukie households are severely rent burdened. She confirmed that the rent burden statistic just included rental units and **Councilor Parks** believed there may be just as many if not more owner-occupied households that were income burdened. She noted elderly residents and large families were struggling and being priced out of Milwaukie. **Council President Falconer** noted that Council had seen the affordability analysis for home ownership and rentals before. **Ms. Aman** explained that once the city's housing code work was completed, the Housing Needs Analysis (HNA) would be updated.

**Ms. Aman** provided an overview of the city's housing emergency and renter protections. She provided vacancy rate data from the census and Multifamily NW sources and summarized that the market was currently very constrained. The group discussed the

definition of “multifamily” and if it would change, given the increasing types of housing definitions.

**Councilor Batey** noted the state had changed its rules for no-cause evictions and the city was in a nine-month and counting moratorium on evictions due to the coronavirus (COVID-19) pandemic. She believed the city should make the renter protections ordinance (which requires 90 days for tenants to find and secure housing after a tenancy termination without cause) permanent instead of being renewed due to a state of emergency. She believed the landscape had changed and it should be a regular ordinance. **Mayor Gamba** could not remember why the city did not make it a regular ordinance to begin with. He was in support of Councilor Batey’s suggestion.

**Ms. Aman** said staff would return to Council in December with an ordinance prepared to make the renter protections permanent. She and **Mayor Gamba** discussed the logistics of the housing emergency and a permanent renter protection ordinance. **Ms. Aman** summarized that Council wanted to make the renter protections permanent and if the housing emergency does not do anything but enable the city to have the renter protection ordinance, there was no need to renew the emergency declaration in December. She would confirm that with the city attorney and inform Council of the next steps.

## **2. Council Goal: Community Engagement – Update**

**Ms. Brooks** noted this would be the final update on the community engagement goal as Council had adopted a new goal focused on equity, inclusion, and justice. **Mr. Wachs** clarified that while the Council-specific goal was ending, the city would still do community engagement work.

**Mr. Wachs** provided an overview of the three Council-supported engagement strategies. He also noted that the Milwaukie Leadership Academy was another goal-related strategy that would be ongoing. He reviewed staff’s actions on each of the three strategies, including staff training in International Association for Public Participation (IAP2) principles, the creation of a community engagement guide for staff, the hiring of a new events coordinator, work to create an online engagement tool called Engage Milwaukie, and more. **Ms. Ober** noted the strategies would also be helpful for Council’s equity goal.

**Councilor Batey** asked about the next leadership academy and **Ms. Ober** provided details of the next class starting soon. **Ms. Brooks** noted it was a diverse new group of people who want to learn more about the city and be involved. She and **Ms. Ober** discussed Mr. Wachs’ work on creating the staff community engagement guide and how helpful it will be.

**Masami Nishishiba**, Portland State University (PSU) Center for Public Service (CPS) Associate Director, reviewed what she and her team were tasked with to help the city review and improve its community engagement practices. She explained how her team reviewed and collected data in the Milwaukie community. She summarized that city officials had a clear commitment to innovative civic engagement practices and the city was experiencing demographic shifts that require new methods of outreach and tracking.

**Diane Odeh**, PSU CPS Research Assistant/Doctoral Student, provided data from the ACS on the Milwaukie community demographics. She provided data showing the demographic shifts on who responded to the 2017 and 2020 Milwaukie community surveys based on racial/ethnic identity, age, home ownership, and duration of residence.



**Paul Leistner**, PSU CPS Project Manager/Senior Fellow, provided an overview of the three major areas of recommendation: data collection and sharing, engagement and outreach, and strategies for equitable engagement. He noted that the PSU team had given the city many recommendations in the hopes that city staff would use their best judgement to prioritize resources for how to support the work overtime.

**Ms. Nishishiba** reiterated PSU's excitement to work with Milwaukie on engagement and noted her team would continue to be available as a resource.

**Mayor Gamba** asked if the PSU team suggested training for city boards and commissions because that was standard or because it was specifically needed for Milwaukie. **Mr. Leistner** commented that it was common for boards and commissions to have confusion over their roles and getting up to speed on issues. He noted that city staff provided training as new members joined throughout the year and was doing a good job. He noted the value of more robust program with generalized introductory training.

**Ms. Ober** reiterated this was the conclusion for updates on the community engagement goal. She noted that updates on the city's new engagement software and the equity goal. She thanked Mr. Wachs and Ms. Brooks for their work to help Council achieve this goal.

**Ms. Brooks** thanked the PSU team for their work, expertise, and enthusiasm. **Mr. Wachs** and **Mayor Gamba** noted the city valued this work and would use it for years to come.

## **2. Adjourn**

**Mayor Gamba** adjourned the meeting at 7:14 p.m.

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist

**COUNCIL STAFF REPORT**

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

**Reviewed:** Amy Aschenbrenner, Administrative Specialist

**From:** Scott Stauffer, City Recorder

**Subject:** **Youth Committee Member Appointments**

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**Date Written:** Nov. 9, 2020

**ACTION REQUESTED**

Council is asked to consider approving a resolution making appointments of youth members to various city boards and committees (BCs).

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

[Sept. 3, 2019](#): Council directed staff to establish a youth BC member program and reach out to North Clackamas area high schools and youth populations.

[Nov. 5, 2019](#): Council adopted [Resolution 69-2019](#) that initiated a youth BC member program.

Feb. 8, 2020: An interview panel consisting of two Council members and BC staff liaisons interviewed youth BC member applicants.

**ANALYSIS**

Authority to fill city board and committee (BC) vacancies is granted to the Mayor and Council by Section 26 of the City Charter. To fill positions, members of Council along with appropriate staff liaisons and BC chairs conduct interviews from applications received by the city. The interview panel makes appointment recommendations to Council, which considers and approves recommendations typically through the regular session consent agenda. Appointed individuals serve for a term length determined by the MMC or as set by resolution. Upon the completion of a term, if the individual is eligible, they may be reappointed by Council to serve another term.

Following the initiation of the youth BC member program in November 2019, staff worked with Milwaukie/North Clackamas area high school administrators to recruit youth to apply for the 14 available BC positions. By January 2020, enough applications had been received to schedule interviews, with the first round being held on February 8. Seven candidates participated in the first round and second rounds was scheduled for March but were canceled due to the outbreak of the COVID-19 pandemic. Because of the pandemic, the program and recruitment process were put on hold through the summer.

With the start of the new school year in September, and as the city's BCs have resumed conducting business via video conference meetings, staff resumed the youth BC member recruitment process. Local high school administrators were contacted and assisted in publicizing that youth BC member applications were again being accepted. Although no new applications were received by October 1, staff felt the city had enough applications to resume the interview and appointment process.

In November, Council President Angel Falconer and Councilor Kathy Hyzy, who had participated in the interviews in February, reviewed the list of youth BC applicants and provided a slate of nominees to staff.

The individuals nominated to serve as youth members on the noted BCs were informed of their nomination and have confirmed that they are interested and able to serve.

### **BUDGET & WORKLOAD IMPACTS**

Staff does not anticipate any financial impacts related to these appointments. However, additional staff time will be required to provide orientation for the new youth committee members. It is expected that the city recorder's office and the BC staff liaisons will handle the additional support needs created by these appointments.

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

The city recorder's office worked with Council, the city manager, and the BC staff liaisons to develop this program. In addition, staff received support from administrators at the high schools in the greater Milwaukie/North Clackamas area.

### **STAFF RECOMMENDATION**

Based on the interview nominations, and with the consent of the nominated individuals, staff recommend that Council make the following appointments:

#### **Arts Committee:**

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
Y1	JoAnna Albright	11/17/2020	6/30/2022
Y2	Lucy Rose	11/17/2020	6/30/2022

#### **Design and Landmarks Committee (DLC):**

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
Y1	Dylan Geske	11/17/2020	6/30/2022

#### **Library Board:**

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
Y1	Reece Healy	11/17/2020	6/30/2022
Y2	Jackson Calhoun	11/17/2020	6/30/2022

#### **Park and Recreation Board (PARB):**

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
Y1	Jenna Stein	11/17/2020	6/30/2022
Y2	Ever Garcia	11/17/2020	6/30/2022

### **ALTERNATIVES**

Council could decline to make the recommended appointments, which would result in no youth committee members serving on the city's BCs.

### **ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAKING YOUTH BOARD AND COMMITTEE MEMBER APPOINTMENTS.**

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

**WHEREAS**, in November 2019, the City Council initiated a youth BCs member pilot program; and

**WHEREAS**, an interview panel consisting of two City Council members and BC staff liaisons was convened to interview youth BC member applicants; and

**WHEREAS**, the interview panel has recommended the following individuals for appointment to the noted committees as youth members:

**Arts Committee:**

Position	Name	Term Start Date	Term End Date
Y1	JoAnna Albright	11/17/2020	6/30/2022
Y2	Lucy Rose	11/17/2020	6/30/2022

**Design and Landmarks Committee (DLC):**

Position	Name	Term Start Date	Term End Date
Y1	Dylan Geske	11/17/2020	6/30/2022

**Library Board:**

Position	Name	Term Start Date	Term End Date
Y1	Reece Healy	11/17/2020	6/30/2022
Y2	Jackson Calhoun	11/17/2020	6/30/2022

**Park and Recreation Board (PARB):**

Position	Name	Term Start Date	Term End Date
Y1	Jenna Stein	11/17/2020	6/30/2022
Y2	Ever Garcia	11/17/2020	6/30/2022

**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 committees of the City of Milwaukie for the term dates noted.

Introduced and adopted by the City Council on **November 17, 2020.**

This resolution is effective immediately.

ATTEST:

\_\_\_\_\_  
Scott S. Stauffer, City Recorder

\_\_\_\_\_  
Mark F. Gamba, Mayor

APPROVED AS TO FORM:

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

## COUNCIL STAFF REPORT

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

**Reviewed:** Jason Wachs, Community Engagement Coordinator, and  
Amy Aschenbrenner, Administrative Specialist

**From:** Scott Stauffer, City Recorder

**Subject:** **Appointment to the Public Safety Advisory Committee (PSAC)**

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

### ACTION REQUESTED

As outlined in the Milwaukie Municipal Code (MMC), Council is asked to consider approving a resolution making an appointment to the city's Public Safety Advisory Committee (PSAC).

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

In 2018, Tony Lewis was nominated by the Lake Road Neighborhood District Association (NDA) and appointed by Council to serve as that neighborhood's representative to PSAC. Mr. Lewis' term ended on June 30, 2020, but because of the COVID-19 pandemic, the Lake Road NDA was unable to meet and consider re-nominating Mr. Lewis before his term expired.

[June 16, 2020](#): Council adopted [Resolution 39-2020](#), making appointments to city boards and committees, including the short-term reappointment of Mr. Lewis as the Lake Road NDA representative to PSAC. At the time of his short-term reappointment, staff understood that the NDA intended to meet before October to consider Mr. Lewis' re-nomination to PSAC.

On October 23, staff received confirmation from the Lake Road NDA that Mr. Lewis had been nominated for reappointment to PSAC.. Mr. Lewis' nomination had been considered by the NDA at its October meeting.

As of November 1, the Lake Road NDA position on PSAC has been vacant due to the expiration of Mr. Lewis' short-term reappointment.

### ANALYSIS

Authority to fill city board and committee (BC) 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 BC chairs conduct interviews from applications received by the city. The interview panel makes appointment recommendations to Council, which considers and approves recommendations typically through the regular session consent agenda. 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.

BC 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 BCs have positions nominated by NDAs instead of by an interview panel. NDA-nominated appointments are noted if applicable.

Mr. Lewis has been nominated to fill PSAC position 3, the Lake Road NDA representative position, with a term ending June 30, 2022.

#### **BUDGET AND WORKLOAD IMPACTS**

There are no fiscal or workload impacts associated with the recommended action.

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

Staff received confirmation from the Lake Road NDA that the individual listed below has been nominated to serve on the PSAC as the Lake Road NDA representative.

#### **STAFF RECOMMENDATION**

Based on the NDA nomination, staff recommends that Council make the following appointment:

**Public Safety Advisory Committee (PSAC):** 2-year terms, limit of 3 consecutive terms.

<b>Position</b>	<b>Name</b>	<b>Term Start Date</b>	<b>Term End Date</b>
3	Tony Lewis (Lake Road NDA Representative)	11/17/2020	6/30/2022

#### **ALTERNATIVES**

Council could decline to make the recommended appointment which would result in a continued vacancy on PSAC.

#### **ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
MAKING AN APPOINTMENT TO THE PUBLIC SAFETY ADVISORY COMMITTEE (PSAC).**

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

**WHEREAS**, a vacancy exists on the PSAC; and

**WHEREAS**, the vacancy is for position 3, which is the designated representative of the Lake Road Neighborhood District Association (NDA); and

**WHEREAS**, the Lake Road NDA has nominated the following individual for appointment to the PSAC:

Position	Name	Term Start Date	Term End Date
3	Tony Lewis (Lake Road NDA Representative)	11/17/2020	6/30/2022

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

Introduced and adopted by the City Council on **November 17, 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:** Nov. 5, 2020

**From:** Kelly Brooks, Assistant City Manager

**Subject:** **Milwaukee Bay Park Funding Intergovernmental Agreement**

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**ACTION REQUESTED**

Council is asked to approve a resolution authorizing the city to enter into an intergovernmental agreement (IGA) with the North Clackamas Parks and Recreation District (NCPRD) to provide funding for the construction of Milwaukee Bay Park Phase III.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

The full history of Milwaukee's actions with relation to Milwaukee Bay Park, formerly Riverfront Park, extends back nearly 20 years. The limited history below covers Council discussions about Phase III only.

**June 30, 2017:** Council discussed options associated with construction of Phase III.

**October 2, 2017:** NCPRD presented the scope of the project and announced it intended to release a request for qualifications.

**January 16, 2018:** Council provided direction to NCPRD regarding the scope of work for design refinement.

**May 5, 2018:** NCPRD announced that Zink Design was selected as the consultant for the project and provided an overview of the public engagement structure.

**September 18, 2018:** NCPRD provided an overview of public outreach to date, technical updates, and discussed next steps for the project.

**December 18, 2018:** NCPRD provided an update on comments received through outreach, revised cost estimates for the project, and an overview of the process for arriving at a final design in January 2019.

**January 29, 2019:** NCPRD presented a final update on Phase III design.

**March 10, 2020:** NCPRD Project Manager Heather Koch presented a project update to Council.

**ANALYSIS**

If approved, the IGA will authorize the transfer of \$250,000 in city general fund dollars and up to \$750,000 in the city's local share of Metro's 2019 parks and nature bond measure (via reimbursement) for a combined total of \$1,000,000. The funds will be used to construct Phase III of Milwaukee Bay Park which has an estimated project cost of \$9,600,000. The project is expected to begin construction in 2022 and be completed by the end of 2023.

Milwaukee's funds will only be used when the project is fully funded and a contract manager / general contractor (CMCG) contract is executed. Other project funds will include parks system



development charges (SDCs), grants, private donations, and 2019 Metro Bond Measure local share funds provided to NCPRD. See chart below for more detail.

The fund issue does not address several issues related to maintenance, which will be resolved in a separate agreement or via an update to the IGA.

#### **Fund Sources**

Funding Source	Amount	Approval Documents	Estimated Date
City of Milwaukie	250,000 General Fund	IGA	Nov. 2020
Metro City Local Share	750,000 City-Metro	IGA	January 2021
Metro NCPRD Local Share	3,000,000	NCPRD-Metro IGA	March 2021
State grant (LWCF)	1,046,125	Grant Agreement	April 2021
NCPRD SDC Zone 1	2,600,000	21/22 & 22/23 NCPRD Budget	June 2021
State grant (LGGP)	750,000	Grant Agreement	TBD Summer 2021
Metro CIP Grant	750,000	Grant Agreement	TBD Fall 2021
ODOT Grant	405,000	Grant Agreement	TBD Fall 2021
Milwaukie Parks Foundation	50,000	Resolution / Other	TD Fall 2021

#### **BUDGET IMPACTS**

This action will reduce the city's general fund by \$250,000. This transfer will exhaust all general fund dollars budgeted for parks construction this biennium.

#### **WORKLOAD IMPACTS**

None.

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

Ongoing coordination with Metro will be required to utilize the city's local share allocation for this project.

#### **CLIMATE IMPACT**

Materials used in construction of the park, along with any emissions from construction vehicles, will contribute to greenhouse gas emissions. Improvements to the trolley trail, which will incentivize non-auto trips, and tree planting will provide climate benefits.

#### **STAFF RECOMMENDATION**

Staff recommends that Council authorize the city to sign the IGA to demonstrate Milwaukie's strong support for the project.

#### **ALTERNATIVES**

Council could vote no on the authorization and the IGA will not proceed.

#### **ATTACHMENTS**

1. Resolution
2. IGA

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT FOR MILWAUKIE BAY PARK PHASE III FUNDING.**

**WHEREAS**, the city wishes to fulfill the community's vision for Milwaukie Bay Park through the construction of a new play area, amphitheater, interactive water feature, picnic space, and plaza; and

**WHEREAS**, the city has worked diligently since the 1990's to plan and construct multiple phases of improvements to the riverfront so that everyone can enjoy the beauty of the Willamette River; and

**WHEREAS**, the City Council allocated \$250,000 for the continued development of Milwaukie Bay Park and pledges to spend up to \$750,000 in funds provided by the Metro 2019 parks bond measure; and

**WHEREAS**, the city wishes to finalize its financial commitment to the Milwaukie Bay Park project so that the North Clackamas Parks and Recreation District (NCPRD) can move forward and identify the final resources needed to construct Milwaukie Bay Park.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to sign an intergovernmental agreement between the City of Milwaukie and NCPRD to fund construction of Milwaukie Bay Park Phase III.

Introduced and adopted by the City Council on **November 17, 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

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF MILWAUKIE AND NORTH CLACKAMAS PARKS AND RECREATION  
DISTRICT FOR FUNDING CONSTRUCTION OF PHASE III OF MILWAUKIE BAY PARK**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the City of Milwaukie ("City"), a municipal corporation, and the North Clackamas Parks and Recreation District ("District"), a county service district formed under ORS Chapter 451, effective as of the last date of signature indicated below ("Effective Date").

**RECITALS**

- A.** Milwaukie Bay Park ("Park") is a city park in downtown Milwaukie owned by the City and operated and maintained by the District; and
- B.** City and District are in the process of finalizing the design of major improvements to the Park to be constructed as Phase III; and
- C.** The District Board has approved (May 2020) solicitation of a Construction Manager/General Contractor ("CMGC" ) for preconstruction and construction of Phase III; and
- D.** Construction of Phase III in accordance with the final design is a substantial endeavor and when completed, will transform the Park into a regional asset; and
- E.** In order to facilitate such an endeavor, funds from several sources are required. If any portion of the funding is not received, Phase III of the Park will not be completed as currently envisioned.

NOW THEREFORE, it is agreed by and between City and District as follows:

**TERMS OF AGREEMENT**

- 1. Description of Agreement for transfer of existing City funds.** Upon the execution of a CMGC contract, the City shall transfer within 30 days \$250,000 approved by City Council for the Park to the District for its use in constructing Phase III of the Park. Upon the City's execution of an intergovernmental agreement with Metro for City Local Share (funding from Metro 2019 bond measure), the City shall reimburse NCPRD within 60 days of each NCPRD reimbursement request for expenses incurred in the construction of Phase III of the Park, up to the total amount designated for the Park in the City's Local Share IGA. The funds shall only be used as a portion of the funding to construct Phase III of the Milwaukie Bay Park. Should the additional funding described below not be received by the District in the amounts necessary to construct the full plan by December 31, 2023, the funds shall be returned to the City and construction of Phase III of Milwaukie Bay Park will not begin.
- 2. The City and District agree funding for construction of Phase III of Milwaukie Bay Park shall consist of the following:**

Milwaukie Bay Park IGA for transfer of funds

- a. City funds of \$250,000 as described above;
  - b. \$750,000 of the City's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
  - c. the District's Local Share allocation approved for the Park (funding from Metro 2019 bond measure);
  - d. System Development Charges from the District; and,
  - e. Grants and other sources to reach full project funding based on the estimated project cost refined during design development. The estimated total project cost is \$9.6 million; this will be updated as the design is refined and funding agreements are executed, with a Guaranteed Maximum Price (GMP) to be set before the final set of Construction Documents is approved.
- 3. Effective Date, Duration, and Termination.** This Agreement shall become effective on the date all required signatures are obtained ("Effective Date") and shall continue until all funding is secured and the District is able to begin the Construction of Phase III of Milwaukie Bay Park or this Agreement is terminated. This Agreement may be terminated prior to the construction of the Park by written notice provided, with or without cause, by either party no less than 90 days prior to the date of termination. This Agreement can also be terminated by mutual written agreement by the City and District. The indemnity obligations set forth in Paragraph 7 shall survive termination.
- 4. Amendment Provisions.** The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties.
- 5. Compliance with Applicable Law.** City and District will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services provided under this Agreement. Without limiting the generality of the foregoing, City and District expressly agree to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V or the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) the Fair Labor Standards Act; (v) the Occupational Safety and Health Act of 1970; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 6. Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each party agrees to indemnify, defend and hold harmless the other party and its officers, agents, employees and elected officials from any and all liability, loss, and cost, except for attorney's fees as described in paragraph 8 below, arising out of or resulting from the acts of their officers, agents, employees, and elected officials, including intentional or willful misconduct, in the performance of this Agreement.

- 7. Notice.** Any notice required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by email, hand delivery, or by mail delivery addressed to the parties as follows:

*Milwaukie:*

City Liaison

Kelly Brooks

10722 SE Main Street

Milwaukie, Oregon 97222

Email: [brooksk@milwaukieoregon.gov](mailto:brooksk@milwaukieoregon.gov)

*District:*

District Liaison

Heather Koch

150 Beavercreek Road

Oregon City, OR 97045

Email: [HKoch@ncprd.com](mailto:HKoch@ncprd.com)

These addresses may be changed by written notice to the other parties.

- 8. Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
- 9. No Waiver.** The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
- 10. Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
- 11. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 12. Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**13. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14. Binding Effect.** This Agreement constitutes the entire agreement between City and District on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of the terms of this Agreement will bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instances and for the specific purpose given. This Agreement is personal to City and District and is not intended to confer upon any other person or entity any rights or remedies whatsoever.

The parties by execution of this Agreement, hereby acknowledge that each has the authority to sign and bind City and District respectfully and that each party shall be bound by its terms and conditions.

**City of Milwaukie:**

\_\_\_\_\_  
Mayor Mark Gamba    Date

**North Clackamas Parks and Recreation District:**

\_\_\_\_\_  
Chair Jim Bernard

\_\_\_\_\_  
Date

**COUNCIL STAFF REPORT**

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

**Date Written:** Nov 9, 2020

**Reviewed:** Jennifer Garbely, Assistant City Engineer  
**From:** Wendy Marshall, Project Manager

**Subject:** **Linwood Avenue SAFE/SRTS Project Construction Contract (CIP-2018-T48)**

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**ACTION REQUESTED**

Council is asked to adopt a resolution authorizing the city manager to sign a contract with D & D Concrete and Utilities Inc. for the Linwood Avenue Safe Access for Everyone (SAFE)/Safe Routes to School (SRTS) project.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

The Linwood Avenue SAFE/SRTS project was identified in the 2019-2024 Capital Improvement Plan (CIP) and included in the 2021-2026 CIP. The project is budgeted in the adopted fiscal year (FY) 2021-2022 Biennium Budget from the SAFE, stormwater, and transportation funds.

November 2018: The city's CIP steering team approved the project charter.

January 2019: the Oregon Department of Transportation (ODOT) awarded the city \$1,152,330 towards the design and construction of the project through its SRTS program.

September 2020: The city's design consultant, Harper Houf Peterson Righellis, completed bid documents and the project was posted on the city's bid site.

**ANALYSIS**

The Linwood Avenue SAFE/SRTS project contains the following elements:

- Construction of a shared bicycle/pedestrian path on both sides of Linwood Avenue from Harmony Road to Monroe Street.
- Construction of a permanent traffic diverter at Monroe Street that will replace the temporary structure and enhance safety at the intersection.
- Safety and Americans with Disabilities Act (ADA) enhancements at crossings and upgraded street lighting.
- Installation of storm piping and vegetated water quality treatment planters.
- Mindful preservation of existing trees and planting of new street trees.

Staff completed a competitive bidding process under Chapter 40 of the city's Public Contracting Rules (PCRs). Nine bids were received by the solicitation deadline and are summarized below:

	CONTRACTOR	TOTAL BID AMOUNT
1	Lee Contractors	\$ 3,412,739
2	D&D Concrete & Utilities	\$ 4,132,806
3	Tapani	\$ 4,173,000
4	Moore Excavation	\$ 4,246,826
5	Nutter Corp.	\$ 4,551,017
6	Interlaken	\$ 4,750,155
7	Pacific Excavation	\$ 4,822,000
8	Emery & Sons	\$ 4,866,110
9	Kodiak Pacific	\$ 5,420,551
	Engineer's Estimate	\$ 3,501,889

Lee Contractors submitted the low bid. However, the low bid was withdrawn due to an error, leaving D & D Concrete and Utilities Inc. as the new low bidder. Because the bid exceeds the allotted project budget, city staff and the design consultant made value-engineering revisions to the plan to reduce project costs. D & D Utilities and Concrete revised their bid to \$3,875,822 based on the updated plan. A total project authorization of \$4,075,822 is requested, which includes \$200,000 contingency based on project risks, potential deviations in quantities, anticipated work, and to cover unforeseen circumstances.

#### **BUDGET IMPACT**

This project is funded by the city's SAFE program, stormwater fund, and transportation fund, with supplemental funding of \$1,152,330 from the Oregon SRTS program. Because the stormwater work is over budget, staff proposes to transfer stormwater funding from the North Meek project to make up the shortfall. The 2021-22 budget assumed that a \$2,500,000 bond would be issued. Because stormwater costs have increased across multiple projects, staff plans to increase the bond so that North Meek, and other projects, can proceed on schedule.

Funding Source	FY	Fund	Budget Total	Notes
Linwood SAFE	21/22	SAFE	\$ 1,052,000	
Linwood SRTS	21/22	Grant	\$ 843,998	Approx. funds remaining
Linwood Transportation	21/22	Transportation	\$ 532,000	
Linwood Storm	21/22	Storm	\$ 820,000	
Meek North	22	Storm	\$ 827,824	Includes contingency
			\$ 4,075,822	



**WORKLOAD IMPACT**

The engineering team will oversee the construction process. Staffing levels have been budgeted for FY 2021 and FY 2022 and no additional staff impacts are anticipated. Consultant-provided construction management services are available if needed.

**CLIMATE IMPACT**

Construction activity has a significant impact on the environment due to emissions from heavy equipment and land clearing that may affect natural resource systems. This project intends to limit the climate and natural system impacts by installing porous asphalt for the multi-use path and generally decreasing the vehicular travel width. Trees will be preserved to the extent practicable and new street trees will be planted. Vegetated stormwater quality facilities will be utilized to treat runoff from the pavement. Increased accessibility of alternative transportation infrastructure is intended to reduce community emissions by promoting use of non-carbon intensive transportation options such as walking and bike use. Recycled asphalt and warm mix asphalt construction products are dictated in the city's specifications.

**COORDINATION, CONCURRENCE, OR DISSENT**

Managers from engineering, public works, planning, and finance reviewed and approved the project scope and budget.

**STAFF RECOMMENDATION**

Staff recommend that Council award the Linwood Avenue SAFE/SRTS project contract to D & D Concrete & Utilities Inc. with a project budget authorization of \$4,075,022.

**ALTERNATIVES**

Council could choose to:

1. Award the project as presented,
2. Reject all bids in the public interest and direct staff to revise and rebid the project during a more favorable period, or
3. Reject all bids in the public interest.

**ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, APPROVING THE AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE LINWOOD AVENUE SAFE/SRTS PROJECT (CIP-2018-T48) TO D & D CONCRETE AND UTILITIES INC.**

**WHEREAS**, the city's fiscal year 2021-2026 Capital Improvement Plan identified the Linwood Avenue Safe Access for Everyone/Safe Routes to School (SAFE/SRTS) project as a priority to improve street and stormwater infrastructure; and

**WHEREAS**, resources to construct these improvements were identified within the city's 2021-2022 biennium budget; and

**WHEREAS**, a formal competitive bid process following Public Contracting Rule 40 was completed; and

**WHEREAS**, D & D Concrete and Utilities Inc. was the lowest responsive and responsible bidder.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the city manager is authorized to execute a contract with D & D Concrete and Utilities Inc. for construction of the Linwood Avenue SAFE/SRTS project, to waive any irregularities, and the city engineer or designee is authorized to administer the project in accordance with the project specifications with a project authorization of \$4,075,822.

Introduced and adopted by the City Council on **November 17, 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



**To:** Mayor Gamba and Milwaukie City Council

**Through:** Ann Ober, City Manager

**From:** Luke Strait, Chief of Police *LS*

**Date:** October 7, 2020

**Subject: OLCC Application – Pint Sized Pub – 11301 SE 21<sup>st</sup> Ave., Milwaukie, OR 97222**

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**Action Requested:**

It is respectfully requested the Council approve the OLCC Application from Pint Sized Pub located at 11301 SE 21<sup>st</sup> Ave., Milwaukie, OR 97222.

We have conducted a background investigation and find no reason to deny the request for liquor license.



**RS Agenda Item**

**7**

## **Business Items**

## COUNCIL STAFF REPORT

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

**Reviewed:** Justin Gericke, City Attorney, and  
Kelly Brooks, Assistant City Manager

**From:** Scott Stauffer, City Recorder

**Subject:** **Executive Sessions News Media Policy**

**Date Written:** Oct. 20, 2020

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### ACTION REQUESTED

Council is asked to review and provide feedback on a draft executive session news media policy.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 15, 1996: Council adopted [Ordinance 1812](#), which amended the Milwaukie Municipal Code (MMC) related to public meetings. This was the last time MMC 2.04.090 Executive Sessions was revised.

December 2012: The most recent revisions to [City Policy 100.3](#) were made. This policy includes the city's only official definition of media.

[January 7, 2020](#): Council discussed existing code and policies related to executive sessions and the media. Council directed staff to prepare a draft executive session news media policy and look at possible revisions to related code and policies.

### ANALYSIS

Certain matters of city business require Council to meet in a closed-door type of meeting called an executive session, which the public is not allowed to attend. Public bodies, such as Council and city boards and committees, can meet in executive session for specific reasons as outlined in state law (see Oregon Revised Statute (ORS) 192.660(2)). Unique to Oregon's public meetings law, is that news media representatives are permitted to attend executive sessions but are not allowed to report on what they hear (ORS 192.660(4)). Because news media representatives may attend executive sessions, and because news reporting in the 21<sup>st</sup> century has evolved with the rise of electronic and online news distribution platforms, it is necessary for the city to adopt a policy that clearly, but broadly, defines what news media is and who represents news media.

Currently, the city has two formal references to executive sessions and the media:

- MMC 2.04.090 adopts state law in terms of Council's ability to meet in executive session and allows "media representatives" to attend executive sessions. However, no section of the MMC, including 2.04.090, includes a definition of media.
- City Policy 100.3 addresses how city officials and staff interact with the media and does include a definition of media. However, the policy was last revised in 2012 and the definition of media does not reference online or digital news organizations. The policy defines media as "Radio, Television and Print organizations that provide information for public consumption."

As MMC 2.04.090 and City Policy 100.3 do not provide a clear and complete definition of what media is in 2020, staff looked at other authorities for guidance on such a definition.

In 2019, the [Oregon Attorney General's Public Records and Meeting Manual](#) was updated and now takes into account the ways that news is collected and reported digitally. The manual includes the following commentary on executive sessions and the definition of news media.

a. Who is a representative of the news media?

A representative of the news media is a news gatherer who has a formal affiliation with an institutional news medium, that is, with an entity formally organized for the purpose of gathering and disseminating news. The news media includes specialty publications, which cover specific subject areas for a special audience, regardless of whether the publication's specific area relates to the subject matter of a particular executive session.

The news media is not limited to traditional print and broadcast media, but can include internet media. For example, while a blogger keeping an online personal journal with reflections and comments would likely not qualify as a representative of the news media, an individual who regularly posts for a website maintained by a traditional media company (e.g., cnn.com) likely would qualify. Relevant factors typically include whether the entity has staff and a formal business structure and regularly disseminates news to the public. Because no bright-line definition exists, we encourage governing bodies to consult with their legal counsel when receiving a request from a blogger or other non-traditional journalist to attend an executive session.

After the Attorney General's manual was updated, cities in Oregon began to revisit their executive session and news media policies. At the January retreat, staff shared a copy of the City of Oregon City's revised executive session media policy, which staff referenced in preparing a policy for Milwaukie.

As directed by Council, staff drafted an executive session media policy which broadly aims to simply assist the city in determining who the news media is and who may attend executive sessions as the representative of news media. Most of the proposed policy outlines the process by which a news media representative would request to attend an executive session meeting. The draft policy is Attachment 1 to this report.

As noted in the Attorney General's manual, there does not appear to be a single definition of what is news media and who represents it. In preparation for this report, staff worked with the city attorney and the city's strategic engagement team to draft an executive session news media policy, which includes the following proposed definitions:

**News Media.** Online, digital, radio, television or print entities that provide information for public consumption.

**News Media Organization.** Any entity formally organized for the purpose of gathering and disseminating news through radio, television, print, online, or digital formats.

**News Media Representative.** An employee, agent, or contractor of a news media organization who is engaged in the act of gathering news for that news media organization.

**Questions for Council.**

- Is Council comfortable with the proposed news media definitions?
- Does Council have any feedback on the proposed policy?

**BUDGET, CLIMATE, & WORKLOAD IMPACTS**

There are no financial, climate, or workload impacts associated with this item.

**COORDINATION, CONCURRENCE, OR DISSENT**

The city recorder worked with the city attorney, the assistant city manager, and communications program manager on the proposed executive session media policy.

**STAFF RECOMMENDATION**

Staff recommends that Council provide feedback on the proposed policy. Should Council agree with the proposed policy, staff would make any requested revisions to the policy and present it for adoption at a future Council meeting.

**ALTERNATIVES**

Council may direct staff to stop developing a policy.

**ATTACHMENTS**

1. Draft Policy



<b>SUBJECT:</b> Executive Session News Media	<b>EFFECTIVE:</b> Jan. 1, 2021 <b>REVIEWED:</b> December 2020 <b>REVISED:</b>
<b>CATEGORY:</b> 100 <b>POLICY NUMBER:</b> 100.4	<b>CROSS REFERENCE:</b> Milwaukie Municipal Code Chapter 2.04.090 – Executive Sessions (Ordinance 1812) Resolution XX-2021 – adopting this policy

**Purpose**

The purpose of this policy is to provide guidelines for determining what is a news media organization and who is a representative of the news media according to Oregon Revised Statute (ORS) 192.610(2) and ORS 192.660(4) as it relates to attendance at executive session meetings.

**Objective**

ORS 192.610(2) provides that any meeting or part of a meeting of a governing body may deliberate in closed meetings on certain matters; and ORS 192.660(4) provides that representatives of the news media will be allowed to attend executive sessions, but that the governing body may require that specified information be undisclosed. This policy defines news media organizations and who is a representative of the news media for access into executive sessions.

**Scope**

This policy applies to all executive session meetings held by any governing or advisory body of the city as outlined by ORS 174.109. This includes, but is not limited to, City Council and city boards, committees and commissions.

**Definitions**

**News Media:** Online, digital, radio, television or print entities that provide information for public consumption.

**News Media Organization:** Any entity formally organized for the purpose of gathering and disseminating news through radio, television, print, online or digital formats.

**News Media Representative:** An employee, agent or contractor of a news media organization who is engaged in the act of gathering news for that news media organization.

**Policy**

**Attendance at Executive Session Meetings:** As permitted by state law, it is the policy of the City of Milwaukie that news media representatives may attend executive sessions.



## Attendance Request Process

To determine whether someone requesting permission to attend an executive session is a representative of the news media, the following procedure will be followed:

1. Any person who wishes to attend an executive session must:
  - a. Submit a written request to attend an executive session to the city recorder; and
  - b. Provide evidence that the person is an employee, agent, or contractor of a news media organization who is engaged in the act of gathering news for that news media organization; see Section 2 below for acceptable forms of evidence.
  - c. The request to attend an executive session should include the following:
    - i. Requestor's Name;
    - ii. Requestor's News Media Organization Name;
    - iii. The date of the executive session they wish to attend; and
    - iv. A statement that they agree to abide by state law and to not disclose anything said during the executive session.
  - d. Requests should be submitted within a reasonable amount of time before the executive session to allow staff time to verify and respond to the request. In most instances, a request should be submitted at least 48 hours before the meeting; when meetings are called with 24 hour notice, a request should be submitted in a reasonable amount of time which would be defined by staff's ability to receive and consider a request during normal business hours.
2. Upon receiving a request, the city recorder will consult with the city manager and other staff as appropriate to review the request. The following guidelines will be used to determine if the requestor will be permitted to attend the executive session.
  - a. Whether the required pieces of information have been submitted (see Section 1. C. above).
  - b. Whether proof has been submitted to confirm that the person is associated with a recognized news media organization. Such proof can come in the form of the following:
    - i. **Press identification:** press badge or identification issued by a recognized news media organization, plus proof of identity (such as a driver's license);
    - ii. Proof of a **recently published news article** by a news media organization with the person's byline, or a masthead showing the person's name as a member of the editorial staff of a recognized news media organization, plus proof of identity; or
    - iii. **A letter from an editor** on letterhead of a recognized news media organization in which the editor states that the reporter is covering the meeting for the news media organization, plus proof of identity (freelancers must have clippings or proof of work with a recognized news media organization within the last six months); and
  - c. In addition, the city will consider whether there is satisfactory information to confirm that the person is gathering news, even though the information discussed or considered in executive session may not be disclosed in any form, and/or to any other person.

3. If the requestor fails to provide any of the necessary information outlined above, or if the news media organization is not recognized as outlined in this policy, the person will not be allowed to attend an executive session. If the city has reason to believe that the person has submitted false information or has previously failed to comply with this policy regarding disclosure of information properly within the scope of previous executive sessions, the city may refuse permission for the person to attend the executive session.

The city may consider any relevant evidence provided or gathered in deciding whether a person is a representative of the news media. The city's decision to recognize or not to recognize a person as a representative of the news media, and/or to grant permission to attend an executive session, is a quasi-judicial decision reviewable as provided by ORS 34.010 to 34.100.

### **Exempt Executive Session Topics**

As allowed by state law, if the executive session is for the purpose of discussing labor negotiations, or current litigation or litigation likely to be filed, and the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation, the person will not be allowed to attend the executive session.

### **Cameras and Other Recording Devices**

Cameras, tape recorders, and other recording devices may not be used in executive sessions, except by city staff for the purposes of preparing the meeting record.

### **Contact**

For more information about this policy, contact the Office of the City Recorder at [ocr@milwaukieorgon.gov](mailto:ocr@milwaukieorgon.gov) or 503.786.7502.

## COUNCIL STAFF REPORT

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

**Date Written:** Oct. 23, 2020

**From:** Leila Aman, Community Development Director

**Subject:** **Accessory Dwelling Unit (ADU) Waiver Pilot – Update**

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### ACTION REQUESTED

Council is asked to receive an update on the Accessory Dwelling Unit (ADU) waiver pilot program, ask questions, and provide feedback on moving forward with the program.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[July 17, 2018](#): The [Milwaukie Housing Affordability Strategy](#): 2018-2023 (MHAS) was adopted by Council via [Resolution 62-2018](#). Goal 1.9 of the MHAS calls for the city to “explore incentivizing/encouraging ADU and cottage cluster development.”

[December 17, 2019](#): Council adopted [Ordinance 2186](#) amending Milwaukie Municipal Code (MMC) Title 19 for the purpose of compliance with Oregon House Bill 2001 (HB2001), removing the owner-occupancy requirement and off-street parking requirements for ADUs.

[April 14, 2020](#): Council directed staff to move forward with a way to waive and backfill system development charges (SDCs) and reduce frontage improvement requirements to support the development of ADUs.

[June 16, 2020](#): Council adopted [Resolution 42-2020](#) waiving SDCs and frontage improvement requirements imposed by the city for up to ten ADUs or by July 1, 2021, whichever comes sooner. To backfill this waiver, \$23,440 was transferred from the general fund to the respective SDC funds for fiscal year 2021 (FY21).

### BACKGROUND

Staff planned to return to Council when the ADU pilot program expired on July 1, 2021, or when ten ADUs were approved, to share an overview of the projects funded and lessons learned. Because the program has received such significant interest to date, staff are returning early to share an overview of projects in the queue. Staff has approved three ADUs under the program, seven additional waiver applications have been submitted.

### Implementation

Staff created a website landing page to announce the minimum program requirements and steps for applying. To begin waiving fees and requirements for ADUs, staff needed to create review and approval processes that worked with the city’s existing permit software. In addition, it was important that the processes be accessible to the community. The program’s public outreach work was accomplished by housing and economic development staff who contacted 20 interested persons by phone and email. The interested persons contacted included those who had previously considered development of an ADU in the city during the last two years but had stopped the process due to financial constraints or code limitations. Staff from community development, planning, building, engineering, and code enforcement discussed the

information received from the interested persons to determine internal workflows and steps for the applicant.

### Waiver Application Process

To apply for the ADU pilot program, a project must be an attached or detached unit of new construction or an adaptation/renovation of an existing structure. To apply, the applicant must:

1. Determine eligibility by contacting:
  - housing and economic development staff for initial program screening;
  - the planner on duty to ensure project meets zoning code standards; and
  - the building department to make sure relevant building standards can be met, such as installing egress windows for a basement unit or moving a door to the correct wall.
2. Complete a short ADU SDC waiver form at the time of land use application submittal to secure an initial place in line for the pilot program.
3. Submit a building permit within 45 days after land use application has been approved to maintain their place in line for the pilot program.
4. Once these steps have been completed and building permit is paid for and issued, a signed waiver form reflecting final approval is sent to the applicant.

### ANALYSIS

Applications for the program are being reviewed on a first come, first serve basis until ten waivers have been fully approved or until July 1, 2021, whichever comes first. To date the city has received 10 completed waiver forms. Of those, nine have received land use approvals and seven of those have applied for building permits, two have picked up their building permits. Staff are maintaining a waitlist for applicants that are not ready to apply. Staff will contact them if space becomes available and to share information about other ADU opportunities.

### Submittals Summary

Order	Program Status	Use	Construction Type	ADU Type	Zone	Neighborhood	Total SDCs waived	Frontage Improvements
1	LU Approved Building Permit Issued	Long-term Residential	New Construction	detached	R7	Lewelling	\$ 2,227.00	Not Required or Subjected to Improvements
2	LU Approved Pending Building Permit Review	Long-term Residential	Adaptation of Existing Structure	detached	R7	Ardenwald		
3	LU Approved Building Permit Approved Not Issued	Long-term Residential	Adaptation of Existing Structure	attached basement conversion	R10	Lewelling	\$2,227.00	Waived

4	LU Approved Building Permit Issued	Long-term Residential	Adaptation of Existing Structure	attached conversion	R5	Hector Campbell	\$2,227.00	Waived
5	LU Approved Pending Building Permit Review	Long-Term Residential	New Construction	detached modular	R7	Ardenwald		
6	LU Approved No Building Permit	Short-Term Rental	Adaptation of Existing Structure	attached conversion	R7	Lewelling		
7	LU Approved Pending Building Permit Review	Long-term residential	Adaptation of Existing Structure	guesthouse conversion	R7	Lewelling		
8	LU Approved No Building Permit	Long-term Residential	Adaptation of Existing Structure	guesthouse conversion	R7	Ardenwald		
9	Land Use Not Yet Approved	Long-term Residential	New Construction	detached	R7	Linwood		
10	LU Approved Pending Building Permit Review	Long-term Residential	New Construction	detached modular	R7	Hector Campbell		

## Key Themes

**Costs.** Because ADUs are cheaper to construct compared to single and multi-family housing, promoting them and making them easier to build aligns with Council's goal to support affordable housing. By waiving SDCs and frontage improvement requirements, the city is supporting those interested in building ADUs that may otherwise not be able to afford the cost.

Staff recognizes that county SDCs remain a potential cost barrier for some applicants. For example, fees that would be assessed for new construction by Milwaukie for an ADU that includes costs for transportation and wastewater SDCs would be \$2,659, while fees for parks and recreation SDCs and wastewater treatment SDCS, would be \$8,396.

**Waitlist and Ongoing Interest.** The ADU program attracted enough interest to fill the ten spots within the first four months of implementation. Staff view the program as a success and believe applicants will be turned away before the end of the fiscal year. Although ten applications have been received, staff will continue to accept new applications and will communicate the program's status to all applicants. Staff will also ensure all applicants are aware of other potential incentives and programs.

**Enforcement.** Nine of the 10 applicants intend to use their ADU as a long-term residential space. Usage information has been collected as part of staff's assessment of the program, but staff does not intend to monitor or enforce how constructed ADUs are used. As part of the application review process, staff also review an applicants' code compliance history.

**Questions for Council:**

1. Does Council want to consider an extension of the ADU waiver program in the event that all 10 waivers are not fully awarded by June 30<sup>th</sup> 2021.
2. Are there conditions or criteria Council would like staff to consider for eligibility, or to record for tracking and reporting purposes?

**BUDGET IMPACT**

The current program allocated general fund resources to backfill SDCs up to \$23,440, and Council waived any fee in lieu of construction for frontage improvements for up to ten ADUs.

**CLIMATE IMPACT**

Encouraging compact housing development reduces the overall impact on the environment by using land more efficiently.

**WORKLOAD IMPACT**

Community development, planning, and engineering staff dedicate time to review and process applications beyond the typical land use review process.

**ATTACHMENTS**

None.

**RS 7. B. 11/17/2020  
Presentation**

# **ADU WAIVER PILOT UPDATE**

**CITY COUNCIL REGULAR SESSION  
NOVEMBER 17, 2020**

**LEILA AMAN, COMMUNITY DEVELOPMENT DIRECTOR**





# **Milwaukie Housing Affordability Strategy (MHAS): 2018–2023 Action Plan**

## **Goal 1: Develop New Affordable Units**

***Action 1.9: Explore incentivizing ADU and cottage cluster development***

## **Goal 2: Prevent Displacement and Keep Affordable Units Affordable**

## **Goal 3: Connect Residents to Existing Affordable Housing**



# ADU WAIVER PILOT - OVERVIEW

Program adopted on June 16, 2020 for waiver of all city system development charges and requirements for frontage improvements. SDC funds are backfilled from the General fund.

Approval Limits:

- 10 ADUS,
- Up to \$23,440 (total), or by
- July 1, 2021



# IMPLEMENTATION

1. Internal workflow and steps to track and report on applications established and waiver form created
2. Direct outreach to all interested persons and web page created
3. First applications accepted in July
4. Ongoing administration from application → approval period to ensure applicants move through process and units are built



## ADU SDC FEE WAIVER FORM

This waiver will take effect July 1, 2020 and will be in place for one year, or until the city has expended the \$23,440 budgeted to backfill the waiver. Once the cap has been reached, or on July 1, 2021, the city will revert to charging SDCs and requiring frontage improvements.

To take advantage of this fee waiver, please complete this form and submit it at the time as your Land Use Application.

Address of Main House:	
Applicant Name:	
Applicant Phone:	
Applicant Email:	
Applicant Address:	
Owner Name:	
Owner Phone Number(s):	Main: Other:
Owner Email:	
Indicate Use Type:	<input type="checkbox"/> Short Term Rental <input type="checkbox"/> Long Term Residential Use
Construction Type:	<input type="checkbox"/> New Construction <input type="checkbox"/> Adaptation of Existing Structure

***** OFFICE USE ONLY BELOW THIS LINE *****	
Address of ADU:	
Frontage Improvements Assessment:	<input type="checkbox"/> Waived <input type="checkbox"/> Not Required <input type="checkbox"/> Subject to Public Facility Improvement Fees
Notes:	

### City-Controlled System Development Charges (SDCs) Eligible for Waiver

Transportation (Reimbursement) Fee	\$68.00
Transportation (Improvement) Fee	\$1,358.00
Sewer (Reimbursement) Fee	\$296.00
Sewer (Improvement) Fee	\$505.00

### Charges Ineligible for Waiver

Water SDC (Reimbursement, Improvement, Administration)	Based on meter size
Parks and Recreation SDC	\$1,992.50
Sewer Connection	NCSD #1 ~ \$6,300 or Portland ~\$5,500
All other fees	Various

Staff Initials: \_\_\_\_\_ Date: \_\_\_\_\_

# APPLICANT STEPS

## 1. Eligibility Check

Contact housing and economic development staff, planner on duty and building for general program and ADU standards information



2. Complete a short ADU SDC Waiver Form at the time of land use application submittal to secure an initial place in line.



3. Once land use application is approved, submit a building permit within 45 days to *maintain* place in line.



## 4. Final Approval Upon Permit Issuance

When building permit is paid for and issued, a signed waiver form reflecting final approval is sent to the applicant.

# ADU DETAILS

- 3 out of the 10 are ADUs that were out of compliance.
- 4 are attached conversions, and 6 are new buildings.
- studio: 2 ADUs
- one-bedroom: 5 ADUs
- two-bedroom: 3 ADUs
- Multi-story: 1 ADU

Applications:

- 10 in line
- 9 have received LU approval
- 3 have approved building permits
- 4 are pending building permit review
- 2 have not applied for building permits yet

Order	Program Status	Use	Construction Type	ADU Type	Zone	Neighborhood	Total City SDCs waived	Frontage Improvements
1	LU Approved; Building Permit Issued	Long-term Residential	New Construction	detached	R7	Lewelling	\$ 2,227.00	Not Required or Subjected to Improvements
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9	Land Use Not Yet Approved	Long-term Residential	New Construction	detached	R7	Linwood		
10	LU Approved Pending Building Permit Review	Long-term Residential	New Construction	detached modular	R7	Hector Campbell		

# KEY THEMES

- Additional costs continue to be a barrier
- Waitlist and ongoing interest
- Code enforcement and compliance



## QUESTIONS FOR COUNCIL

1. Does Council want to consider an extension of the ADU waiver program if all 10 waivers are not fully awarded by June 30<sup>th</sup> 2021?
2. Are there conditions or criteria Council would like staff to consider for eligibility, or to record for tracking and reporting purposes?

**QUESTIONS OR  
COMMENTS?**





**RS Agenda Item**

**8**

## **Public Hearings**

**COUNCIL STAFF REPORT**

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

**Date Written:** Oct. 29, 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 adopt the proposed tree code language for street and public trees and the 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 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.

[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 to Council.

[October 20, 2020:](#) The public works director discussed fee exemptions, low income assistance, and proposed fees as they related to the proposed tree code.

**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 development and implementation process.

Staff revised the draft code based on feedback from Council. These revisions were focused on the items noted below:

### **Tree Planting Permit**

Staff added clarifying language to indicate that a tree planting permit does not require a fee.

### **Private Utility Service Fee Exemption**

Staff added new language to the proposed code providing that if the urban forester determines that a tree, shrub, or other woody vegetation is having an adverse effect on adjacent private utility services that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, it will not be subject to a removal fee.

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

The proposed code provides an exemption to the removal fee for removals related to city public infrastructure improvements when it is demonstrated that the tree planting, establishment, and care-related project costs of a project exceed the tree removal costs and associated fees.

### **Low Income Assistance**

Staff adjusted the proposed code to provide the city manager flexibility in determining fee reductions and exemptions based on the permit applicant's Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area average median income (AMI).

### **Fee Structure**

The Tree Board premised its code development on the philosophy that, in the absence of extraordinary circumstances, the city should not permit the removal of a healthy, functioning street or public tree. In cases where removals are necessary, there is a removal fee based on size of tree to be removed and a replanting requirement. The board recommends the following fees and penalties. These fees would be included in the city's Master Fee Schedule (Attachment 4):

<b>Fee Type</b>	<b>Amount</b>
Permit Application (Planting)	No charge
Permit Application (Removal and Major Pruning)	\$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 (in lieu of planting)	\$675 per Tree
<b>Enforcement/Restoration Fee</b>	
Damaged Tree	\$225 per inch DBH
Removed Tree	\$450 per inch DBH

Comparisons of tree related fees between municipalities is difficult as each community's tree code and fee structure are unique. Many, but not all, local municipalities recognize that trees need to be protected and limit the circumstances in which street and public trees can be removed. Removal fees vary. A staff survey of tree-related fees found various techniques that communities use to charge removal fees for street trees, including fees based on diameter at breast height (DBH), canopy square footage, or actual appraised value. These differences make it difficult to compare actual fees. For simplicity, the following table provides a comparison of permit/application fees and replanting fees.

<b>Community</b>	<b>Tree Removal Permit and Application Fee</b>	<b>Replanting Fee in Lieu</b>
Milwaukie	\$50	\$675
West Linn	\$0	\$250
Oregon City	\$0	\$342
Beaverton	\$0	\$200
Bend	\$184	120% Bond
Tualatin	\$0 (all removal permits currently suspended as of 3/17/2020)	\$225
Salem	\$433	\$602
Eugene	\$80	Not available for single trees
Portland	\$100	\$450 per inch
Lake Oswego	\$188	\$92 per inch
Wilsonville	\$106	None

## Summary of Changes

The Tree 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 in the UFMP and the CAP. The board suggested that the proposed code reflect the importance of trees as critical public infrastructure, providing a wide variety of community benefits like sidewalks, streetlights, and other built infrastructure improvements. The revised public tree code developed by the board offers protections to these community green infrastructure assets while prioritizing existing large trees in acknowledgement of the resources and time required for a tree to reach maturity. Attachment 1 contains the new code language, 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 developing the new code. Please note that these proposed changes 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 in alignment with the Comprehensive Plan implementation process.

Chapter	Section	Disposition	Changes
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.
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
16.323.019	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 the need for significant changes to the tree code to regulate 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 proposed code language calls for the establishment of a dedicated tree fund in which fees (permit fees, mitigation fees, etc.) associated with the tree code would be used to fund 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 code 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 in 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, community resiliency, and public health improvements, will be essential as the community faces higher temperatures, increased flooding, and other natural hazards and impacts related to climate change.

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

The development of the proposed 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**

Staff recommends that Council adopt the proposed tree code language for street and public trees and the proposed fee schedule.

## **ALTERNATIVES**

1. Council may suggest that staff and the Tree Board continue to modify the tree code.
2. Council may decline to move forward with amending the tree code at this time.

## **ATTACHMENTS**

1. Proposed Tree Code
2. Current Tree Code with revisions
3. Tree Code Ordinance
4. Section 5 of the Master Fee Schedule with revisions
5. Resolution Amending Section 5 of the Master Fee Schedule



**DRAFT**

## CHAPTER 16.32 TREE CODE

## 16.32.005 PURPOSE

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover on land owned or maintained by the City and within rights-of-way, 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.

“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.

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

“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.

“Diameter at breast height” 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 determined 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.

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

“Invasive species” means 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.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

“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 during 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.

"Public agency" means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

"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.

"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 tree and shrub species approved by the City for planting within the right-of-way.

"Topping" means a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width.

"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, 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 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 make recommendations on any matter or question coming within the scope of its work.

#### E. Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary 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 in 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. Expanding, 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 LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Species

Any tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

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

The spacing, size, and placement of street trees, shrubs, and other woody vegetation must be in accordance with a permit issued by the City under this section. 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. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.

### 16.32.018 STREET AND PUBLIC TREE CARE

The City will have the right to plant, prune, maintain, and remove trees, shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way as may be necessary to ensure public safety or 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 as determined by the Urban Forester. Unless otherwise exempted in this chapter, the City must obtain a permit for any activities performed under this section.

### 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 as determined by the Urban Forester.

### 16.32.020 PRUNING, CORNER CLEARANCE

Subject to enforcement under MMC 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 LAND

The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.

Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. The owner must notify the City in writing when the required removal has been completed. If the owner does

not remove the dead, diseased, or infested vegetation within the time period specified in the notice or any extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner 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 they are engaged in work activities including, but not limited to, planting, cultivating, mulching, pruning, spraying, or removing any street trees, park trees, or dead, diseased, or infested trees on private land, 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 must 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 ON LAND OWNED OR MAINTAINED BY THE CITY

##### A. Applicability

1. No person will perform major true pruning or remove any tree in the right-of-way or on land owned or maintained by the City 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 in writing 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 land owned or maintained by the City, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

## B. Permit Review Process

### 1. Application

A permit application must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee as established in the Master Fee Schedule.

### 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 right-of-way. The applicant must mark each tree, shrub, or other woody vegetation proposed 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 marked with 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 will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.

#### 1. Review Criteria

The City will not permit the major pruning or removal of a healthy, functioning street tree or public tree without a demonstration by the applicant that extraordinary circumstances exist. 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 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 as determined by 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 current ISA Tree Risk Assessment standards.
  - (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 land owned or maintained by the City, 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 replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for 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 permission in writing from the adjacent property owner, 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 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 within the right-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

A permit application must be submitted in writing or electronically on a form 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. Completeness

1. 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.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. If the applicant does not provide 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.

#### D. 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 how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

#### E. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination 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 MMC 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.

#### F. 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, if approved, the permit will be valid for a period of up to two years. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an

evaluation of the application against the applicable review criteria in MMC 16.32.028 F.

#### G. 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 any work scheduled 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 during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with MMC 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 MMC 16.32.028 F.
9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA Best Management Practices.

## H. Revocation

The Urban Forester may revoke a programmatic permit upon a determination that the applicant has not followed 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 Urban Forester, the City may issue an emergency removal permit. The removal will 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 tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. If it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.

#### D. Private Utility Services and Dwelling Units

If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal has an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit 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 grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased tree within in the right of way. Eligibility and extent of assistance will be based on a percentage of the property owner's median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reductions and exemptions will be determined by the City Manager.

#### 16.32.040 PENALTY

A person who removes a street tree or public 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.

DRAFT



**CHAPTER 16.32 TREE ~~CUTTING CODE~~****16.32.005 PURPOSE**

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover on land owned or maintained by the City and within rights-of-way, and to ensure our urban forest is healthy, abundant, and climate resilient. 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.

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**

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.~~

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

"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.~~

"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 area of the tree above the ground, measured in mass or volume and 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.

"DBH" means the diameter at breast height.

~~"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 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. ~~the tree is lifeless.~~

"Diameter at breast height" 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 ~~the~~ a tree ~~that~~ is diseased, infested by insects, deteriorating, or rotting, as determined 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.

~~“Engineering Director” means the Engineering Director of the City of Milwaukie or designee.~~

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

“Invasive species” means 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.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

~~“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 live~~ crown, or removal of or injury ~~of to~~ over ~~10~~15% of the root system, during any 12-month period.

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

“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 ~~removing 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 ANSI A300 and ANSI Z133 standards, within during~~ 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 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 written consent.

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

"Public agency" means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

"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.

~~"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.~~

"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.

~~"Small trees" are those that at maturity are less than 30 feet in height.~~

~~"Street tree" is defined as means a trees, shrubs, bushes and/or 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.~~

"Street Tree List" is the list of tree and shrub species approved by the City for planting within the right-of-way.

"Topping" means a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width. 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 multi-stemmed trunk system with a ~~definitely formed~~defined crown, ~~that will obtain a height of~~ at least 16 feet ~~in height~~ 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.

~~“Utility tree” means a tree that is less than 20 feet in height at maturity and thus suitable for planting under overhead utility lines.~~

#### **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 A CITY TREE BOARD

##### A. Tree Board Composition~~Creation~~

The Tree Board 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.~~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-seven~~ persons ~~to be~~ appointed by the Mayor ~~shall~~will be ~~3-three~~ years except that the term of ~~2-two~~ of the members appointed to the ~~initial Tree~~first B board ~~shall be for~~will serve a term of only one year, and ~~the term of 2two~~ members of the ~~first initial Tree~~ ~~b~~board ~~shall~~will be for ~~2two~~ years. In the event that a vacancy ~~shall~~occurs during the term of any member, ~~his or her~~their successor ~~shall~~will be appointed for the unexpired portion of the term. Tree Board members ~~shall~~will be limited to ~~serving three3~~ consecutive terms.

##### C. Compensation

Members of the Tree Board ~~shall~~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.

~~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 will consider, investigate, make findings, report, and ~~recommend~~ make recommendations upon on 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 will choose its own officers, make its own rules and regulations, and keep ~~a journal minutes~~ of its proceedings. A majority of the members shall will ~~constitute~~ a quorum necessary 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. Expanding, 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 LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Species

Any tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.



~~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, size and placement~~

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

C. ~~Distance from Curb and Sidewalk Permit~~

~~No person may plant a street tree without first obtaining a permit from the City. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.~~

~~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.~~

## 16.32.018 STREET AND PUBLIC TREE CARE

The City ~~shall~~ will have the right to plant, prune, maintain and remove trees, ~~plants and shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way the property lines of all streets, alleys, avenues, lanes, squares~~

~~and public grounds, as may be necessary to ensure public safety or 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 to preserve or enhance the symmetry and beauty of such public grounds as determined by the Urban Forester. Unless otherwise exempted in the chapter, the City must obtain a permit for any activities performed under this section.~~

~~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.~~

#### 16.32.019 TREE TOPPING

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

#### 16.32.020 PRUNING, CORNER CLEARANCE

~~Pursuant to Milwaukie Municipal Code Subject to enforcement under MMC Section 12.12.010, every owner of 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 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).~~

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

~~The City may require the removalOwner of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to 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 or the urban forest as determined by the Urban Forester. 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 in writing.~~

~~Removal under this section shall be done by said owners must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. at their own expense within 60 days after the date of service of notice. After removal is complete, †The property owners shall must notify the City in writing when the required removal has been completed. In the event of failure of owners If the owner~~

~~does not to comply with remove the dead, diseased, or infested vegetation within the time period specified in the notice or extension granted in writing by the Urban Forester, such provisions, the City will shall have the right authority to remove such trees the dead, diseased, or infested 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. Some dead trees which provide wildlife habitat and are not a hazard may be left uncut.~~

#### 16.32.022 REMOVAL OF STUMPS

All stumps of street ~~and park trees shall must~~ be removed ~~by the adjacent property owner~~ below the surface of the ground so that the top of the stump ~~shall does 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.~~

#### 16.32.023 INTERFERENCE WITH CITY ~~TREE BOARD~~

No person ~~shall will~~ prevent, delay, or interfere with the ~~City Tree Board Urban Forester, or any of its agents,~~ while ~~they are~~ engaged ~~in work activities including, but not limited to and about the~~ planting, cultivating, mulching, pruning, spraying, or removing ~~of any~~ street trees, park trees, or ~~dead, diseased, or infested~~ trees on private ~~groundslan~~d, as authorized in this chapter.

#### 16.32.024 ARBORISTS LICENSE ~~AND BOND~~

~~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 must 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.~~

~~All certified arborists operating in the City of Milwaukie shall be ISA certified.~~

#### 16.32.026 PERMIT FOR MAJOR PRUNING OR REMOVAL OF STREET TREES OR TREES ON LAND OWNED OR MAINTAINED BY THE CITY ~~IN PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC LAND~~

##### A. Applicability

1. No person ~~will perform shall conduct~~ major ~~tree~~ pruning or removal ~~of any tree~~ in a public right-of-way or on ~~City-owned public~~ land, without first ~~obtaining receiving a~~ permit issued by the City, ~~except as provided in Section 16.32.030. Minor tree pruning shall not require a permit.~~

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 in writing 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 ~~City-owned~~ land owned or maintained by the City, this chapter shall be applied in conjunction with any applicable standards in Title 19 Zoning.

B. Permit Review Process

1. Application

A permit application ~~for major pruning or tree removal shall~~ must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee to the Engineering Department on a right-of-way permit application as established in the Master Fee Schedule.

2. Public Notice and Permit Meeting

~~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.~~

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 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 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 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.~~

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 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.~~

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.

~~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. Review Criteria and Approval Standards

~~The Engineering Director shall City may issue a the permit, deny the permit, or may issue the permit subject to conditions of approval, 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. The City's decision will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an application from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.~~

~~1. Review Criteria The proposed work will be done according to ISA best management practices, and qualified persons will perform the work.~~

~~The City will not permit the major pruning or removal of a healthy, functioning Street Tree or Public Tree without a demonstration by the applicant that extraordinary circumstances exist. 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 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~~One or more of the following criteria are satisfied:~~

A permit will be issued only if the following criteria are met as determined by the Urban Forester:

~~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.~~

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 current ISA Tree Risk Assessment standards.
  - (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 ~~on street trees~~ pursuant to a permit issued by the ~~Engineering Director~~ ~~Urban Forester~~ under this section ~~shall~~ must be ~~done~~ completed within ~~a 60-day~~ the time period ~~from the issuance of said permit, or within a longer period as specified in the permit unless a different time period is authorized in writing~~ by the ~~Engineering Director~~ ~~Urban Forester~~.

#### E. Replanting

The ~~Engineering Director~~ City will ~~shall, wherever practicable,~~ require ~~tree~~ replanting as a condition of permit approval for ~~a the~~ major pruning or removal of a street tree or public tree. ~~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.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for 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 permission in writing from the adjacent property owner, 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 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. Completeness

1. 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.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. 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.

## D. 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 how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

## E. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination 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 MMC 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.

## F. 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, if approved, the permit will be valid for a period of up to two years. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in MMC 16.32.028 F.

#### G. 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 any work scheduled 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 MMC 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 MMC 16.32.028F.

#### 9. Tree Work

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

#### H. Revocation

1. The Urban Forester may revoke a programmatic permit upon a determination 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. ~~Dangerous-Hazardous~~ Tree

If a tree is determined to be a ~~dangerous~~hazardous tree, ~~the Engineering Director by the Urban Forester, the City~~ may issue an emergency removal permit. The removal shall be in accordance with ~~ANSI standards and~~ 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 ~~which that~~ does not require removal of over 20% of the ~~tree's~~ crown, tree topping, or disturbance of ~~over more than~~ 10% of the root system during any 12-month period.

#### C. ~~Non-City Owned Land~~Public Infrastructure Improvements

~~Tree cutting anywhere except in a public right-of-way or on City-owned land.~~

Any tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. If it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.

#### D. Private Utility Services and Dwelling Units

If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal has an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit that cannot be mitigated by

pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit 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 grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased tree within in the right of way. Eligibility and extent of assistance will be based on a percentage of the property owner's median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reduction and exemption will be determined by the City Manager.

#### 16.32.040 PENALTY

A person who removes a street tree or public 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.

~~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.~~



## COUNCIL ORDINANCE No.

### AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE CHAPTER 16.32 TREE CUTTING.

**WHEREAS**, on October 2, 2018, the City Council adopted the Milwaukie Climate Action Plan, which included two relevant urban forest strategies that will significantly contribute to Milwaukie's ability to adapt to the changing climate; and

**WHEREAS**, on March 19, 2019, the City Council adopted the 2019 Urban Forest Management Plan, which set goals and policies and identified actions that are crucial to maximizing the benefits of Milwaukie's trees and meeting Milwaukie's climate goals; and

**WHEREAS**, trees are considered valuable urban infrastructure that should be nurtured and protected as a community asset because of their ability to mitigate energy usage, reduce urban heat island effects, improve water quality, reduce infiltration and inflow, offer food and shading, improve public health and wellness, and support urban biodiversity.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The Milwaukie Municipal Code Chapter 16.32 Tree Cutting is amended to read as shown on the attached Exhibit A.

Section 2. This ordinance will take effect immediately.

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

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

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott S. Stauffer, City Recorder

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

## EXHIBIT A

### CHAPTER 16.32 TREE CODE

#### 16.32.005 PURPOSE

The purpose of this chapter is to establish processes and standards that ensure the City maximizes the benefits provided by its urban forest. It is the intent of this code to establish, maintain, and increase the quantity and quality of tree cover on land owned or maintained by the City and within rights-of-way, 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.

“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.

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

“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.

“Diameter at breast height” 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 determined 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.

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

“Invasive species” means 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.

“ISA Best Management Practices” means the guidelines established by ISA for arboricultural practices for use by arborists, tree workers, and the people who employ their services.

“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 during 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.



"Public agency" means any public agency or public utility as defined in ORS 757.005, or a drainage district organized under ORS Chapter 547.

"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.

"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 tree and shrub species approved by the City for planting within the right-of-way.

"Topping" means a pruning technique that cuts branches and/or the main stem of a tree to reduce its height or width.

"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, 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 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 make recommendations on any matter or question coming within the scope of its work.

#### E. Operation

The Tree Board will choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members will constitute a quorum necessary 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 in 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. Expanding, 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 LAND OWNED OR MAINTAINED BY THE CITY AND WITHIN THE PUBLIC RIGHT-OF-WAY

#### A. Species

Any tree, shrub, or other woody vegetation to be planted on land owned or maintained by the City or within the public right-of-way must be a species listed on the Street Tree List unless otherwise approved by the Urban Forester.

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

The spacing, size, and placement of street trees, shrubs, and other woody vegetation must be in accordance with a permit issued by the City under this section. 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. A permit application must be submitted in writing or electronically on a form provided by the City. This permit is at no cost.

#### 16.32.018 STREET AND PUBLIC TREE CARE

The City will have the right to plant, prune, maintain, and remove trees, shrubs, and other woody vegetation on land owned or maintained by the City and within the right-of-way as may be necessary to ensure public safety or 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 as determined by the Urban Forester. Unless otherwise exempted in this chapter, the City must obtain a permit for any activities performed under this section.

#### 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 as determined by the Urban Forester.

#### 16.32.020 PRUNING, CORNER CLEARANCE

Subject to enforcement under MMC 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 LAND

The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.

Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. The owner must notify the City in writing when the required removal has been completed. If the owner does not remove the dead, diseased, or infested vegetation within the time period specified in the notice or any extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner 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 they are engaged in work activities including, but not limited to, planting, cultivating, mulching, pruning, spraying, or removing any street trees, park trees, or dead, diseased, or infested trees on private land, 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 must 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 ON LAND OWNED OR MAINTAINED BY THE CITY

##### A. Applicability

1. No person will perform major true pruning or remove any tree in the right-of-way or on land owned or maintained by the City 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 in writing 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 land owned or maintained by the City, this chapter will be applied in conjunction with any applicable standards in Title 19 Zoning.

## B. Permit Review Process

### 1. Application

A permit application must be submitted in writing or electronically on a form provided by the City and be accompanied by the correct fee as established in the Master Fee Schedule.

### 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 right-of-way. The applicant must mark each tree, shrub, or other woody vegetation proposed 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 marked with 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 will be final and valid for a period of one year after issuance unless a different time period is specified in the permit. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed.

### 1. Review Criteria

The City will not permit the major pruning or removal of a healthy, functioning street tree or public tree without a demonstration by the applicant that extraordinary circumstances exist. 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 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 as determined by 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 current ISA Tree Risk Assessment standards.
  - (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 land owned or maintained by the City, 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 replanting as a condition of permit approval for the major pruning or removal of a street tree or public tree.

1. The replanted tree must be a species included on the Street Tree List unless otherwise approved by the Urban Forester.
2. The City will consider alternative planting locations for 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 permission in writing from the adjacent property owner, 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 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 within the right-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

A permit application must be submitted in writing or electronically on a form 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. Completeness

1. 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.
2. The applicant must submit the additional information within 30 days from the date of the notice unless extended in writing by the Urban Forester.
3. If the applicant does not provide 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.

### D. 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 how to obtain additional information about the application, comment on the application, and request notification of the Urban Forester's decision.

### E. Review Criteria

The Urban Forester may approve a programmatic permit upon a determination 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 MMC 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.

### F. 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, if approved, the permit will be valid for a period of up to two years. Nothing prevents an applicant from requesting an amendment to an unexpired permit if the conditions and circumstances have changed. The Urban Forester's decision will be based on an evaluation of the application against the applicable review criteria in MMC 16.32.028 F.

## G. 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 any work scheduled 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 during the period in which the programmatic permit is in effect, an opportunity for public comment will be provided in accordance with MMC 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 MMC 16.32.028 F.
9. Tree Work

All work performed under a programmatic permit must be performed in accordance with ISA Best Management Practices.

## H. Revocation

The Urban Forester may revoke a programmatic permit upon a determination that the applicant has not followed 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 Urban Forester, the City may issue an emergency removal permit. The removal will 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 tree on land owned or maintained by the City and requires removal or pruning to accommodate a city public infrastructure improvement project will require a permit and must meet replanting requirements imposed by this chapter. If it is demonstrated that tree planting, establishment, and tree care-related project costs exceed the tree removal fee costs, the permit will not be subject to a removal fee.

##### D. Private Utility Services and Dwelling Units

If the Urban Forester determines that a tree, shrub, or other woody vegetation proposed for removal has an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices, the permit 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 grant a property owner an exemption or a reduction in permit fees, removal fees, replanting fees and/or may provide assistance in removing a dead or diseased tree within in the right

of way. Eligibility and extent of assistance will be based on a percentage of the property owner's median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area. A schedule of different fee reductions and exemptions will be determined by the City Manager.

#### 16.32.040 PENALTY

A person who removes a street tree or public 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.

**City of Milwaukie Master Fee Schedule**  
**Department changes for FY 2021/22**

**ENGINEERING**  
 (Section 5)

Engineering fees consist of inspections, permits, printed and electronic maps, as well as erosion control charges.

a. Inspections and Permits	FY 2021 FEE	FY 2022 FEE
<b>Right-of-Way Permit Application<sup>1</sup>:</b>		
Construction Permit Application	\$ 250.00	\$ 250.00
Tree Removal or Major Pruning Permit <sup>2</sup>	\$ 50.00	\$ 50.00
Tree Permit (Planting)	no charge	no charge
Programmatic Permit	\$ 2,500.00	\$ 2,500.00
<b>Healthy Tree Removal Fee</b>		
2" or less diameter at breast height (DBH)	\$ 40.00	\$ 40.00
2" to 4" DBH	\$60 per inch DBH	\$60 per inch DBH
4" to 8" DBH	\$80 per inch DBH	\$80 per inch DBH
8" to 14" DBH	\$100 per inch DBH	\$100 per inch DBH
14" to 20" DBH	\$150 per inch DBH	\$150 per inch DBH
20" or greater DBH	\$200 per inch DBH	\$200 per inch DBH
Planting and Establishment Fee (in lieu of planting)	\$675 per Tree	\$675 per Tree
<b>Enforcement/Restoration Fee</b>		
Damaged Tree	\$225 per inch DBH	\$225 per inch DBH
Removed Tree	\$450 per inch DBH	\$450 per inch DBH
Sidewalk Permit	\$ 50.00	\$ 50.00
Temporary Street Use	\$ 50.00	\$ 50.00
Use Permit Application	\$ 50.00	\$ 50.00
Parking closure downtown (per month, per space)	\$ 50.00	\$ 50.00
Lane closure (per week, per lane/block)	\$ 100.00	\$ 100.00
Road closure (per week, per block)	\$ 250.00	\$ 250.00
Major Encroachment Permit Application	\$ 250.00	\$ 250.00
Minor Encroachment Permit Application	\$ 50.00	\$ 50.00
Recording fee	\$ 103.00	\$ 103.00
Right-of-way Re-inspection (beyond standard of 2)	\$ 95.00	\$ 95.00
Parklet Permit Fee	\$ 150.00	\$ 150.00
Parklet Renewal Fee	\$ 95.00	\$ 95.00
Parklet Plan Review	\$ 150.00	\$ 150.00
Painted Intersection Permit	\$ 50.00	\$ 50.00
Subdivision Construction Inspection	5.5% of Total Construction Cost (\$500 minimum)	
Public Improvement Construction Inspection	\$25 per square foot / \$1,500 minimum	
Street Opening Deposit	\$50 per square foot / \$3,000 minimum	
<b>Street Opening Surcharge (Streets under 5-Year Moratorium)</b>		
<b>5-Year Moratorium Surcharge:</b>		
1st year of moratorium	\$250 per sq. ft.	\$250 per sq. ft.
2nd year of moratorium	\$200 per sq. ft.	\$200 per sq. ft.
3rd year of moratorium	\$150 per sq. ft.	\$150 per sq. ft.
4th year of moratorium	\$100 per sq. ft.	\$100 per sq. ft.
5th year of moratorium	\$50 per sq. ft.	\$50 per sq. ft.
<b>Grading Permit:</b>		
Minor (0 to 100 cy)	\$ 150.00	\$ 150.00
Major (100+ cy)	\$ 250.00	\$ 250.00
Floodplain Review	Actual Costs	
Inspection	Actual Costs	
Building Permit Plan Review - Minor	\$ 75.00	\$ 75.00
Building Permit Plan Review - Major	\$ 150.00	\$ 150.00
Street Vacation/Rename Request	\$2,500 Deposit (Actual cost billed per hourly rate)	\$2,500 Deposit (Actual cost billed per hourly rate)
Request for Stormwater Rate Reduction	\$75 Deposit (Actual cost billed per hourly rate)	\$75 Deposit (Actual cost billed per hourly rate)
Franchise Permit Application	no charge	no charge
Traffic Control Device Request	no charge	no charge
Engineering Request	no charge	no charge
ADA Request for Service	no charge	no charge
Transportation Fee Review Application	\$75 Deposit (Actual cost billed per hourly rate)	\$75 Deposit (Actual cost billed per hourly rate)
Appeal to City Council <sup>3</sup>	\$ 300.00	\$ 300.00
Sewer Dye Test	\$ 100.00	\$ 100.00
Moving Buildings <sup>4</sup>	\$200 + \$75/hr. staff time/ \$1,000 Deposit	\$200 + \$75/hr. staff time/ \$1,000 Deposit



## COUNCIL RESOLUTION No.

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING FEES AND CHARGES AND UPDATING SECTION 5 OF THE MASTER FEE SCHEDULE FOR FISCAL YEARS 2021 AND 2022.

**WHEREAS**, it is the policy and practice of the city to determine and recover certain city costs from fees and charges levied for various services, products, and regulations; and

**WHEREAS**, the city manager must periodically review city fees and charges to ensure the recovery of city costs in providing services, products, and regulations, and recommend adjustments to the City Council; and

**WHEREAS**, Milwaukie advisory boards, commissions, and committees periodically recommend adjustments to the fees and charges levied for various services, products, and regulations; and

**WHEREAS**, the city manager has reviewed city fees and charges, has received guidance from advisory boards, commissions, committees, and city staff, and has finalized the updated master fee schedule.

**Now, Therefore, be it Resolved** that:

SECTION 1. The City of Milwaukie "Fees" document included as Exhibit A to this resolution is hereby adopted.

SECTION 2. This resolution supersedes previously adopted fee resolutions.

Introduced and adopted by the City Council on **November 17, 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



# EXHIBIT A

## City of Milwaukie Master Fee Schedule Department changes for FY 2021/22

### ENGINEERING (Section 5)

Engineering fees consist of inspections, permits, printed and electronic maps, as well as erosion control charges.

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Traffic Control Device Request	no charge	no charge
Engineering Request	no charge	no charge
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Sewer Dye Test	\$ 100.00	\$ 100.00
Moving Buildings <sup>4</sup>	\$200 + \$75/hr. staff time/ \$1,000 Deposit	\$200 + \$75/hr. staff time/ \$1,000 Deposit



# Tree Code Adoption

November 17th, 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

# Updates since Oct 20, 2020



- Clarified in the code that there is no permit fee for tree planting.
- Added language that exempts City CIP project from tree removal fees if the cost of planting, establishment and care exceed the cost of the removal fees.
- Added language that If the urban forester has determined that the tree, shrub, or other woody vegetation is having an adverse effect on adjacent private utility services or threatens the structural integrity of a dwelling unit and that cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices it will not be subject to a removal fee.
- Modified the language in the low income assistance section that provides the city manager additional flexibility in developing the fee reduction and exemption schedule based on income.
- Language consistency and minor edits



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

The City may require the removal of any tree, shrub, or other woody vegetation that is dead, diseased, or infested and that poses a significant risk to the public or the urban forest as determined by the Urban Forester. The City or its agents will notify the owners of such trees in writing.

Removal under this section must be completed within the time period specified in the written notice unless extended in writing by the Urban Forester. The owner must notify the City in writing when the required removal has been completed. If the owner does not remove the dead, diseased, or infested vegetation within the time period specified in the notice or any extension granted in writing by the Urban Forester, the City will have the right to remove the dead, diseased, or infested vegetation and charge the cost of removal to the owner pursuant to MMC Chapter 8.04. In cases where the owner demonstrates extreme financial hardship, the City Council Manager may grant a cost waiver in accordance with MMC 16.32.038.



# 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



Tree Code Update

# Thank you!

Questions?

**Peter Passarelli**

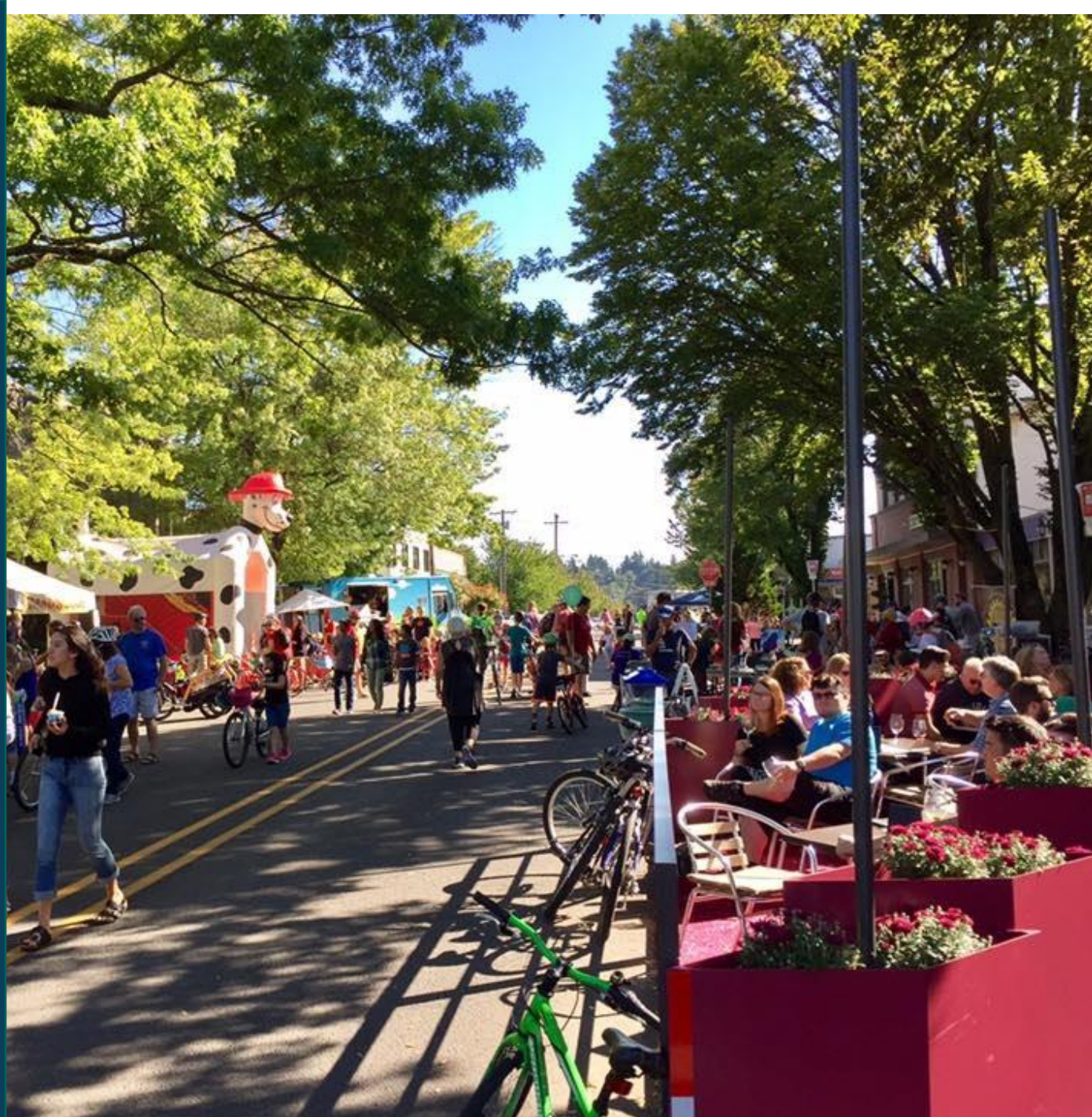
Public Works Director

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)





**RS Agenda Item**

**9**

**Council Reports**



Milwaukie STIP Comment Letter

November 18, 2020

Oregon Transportation Commission  
355 Capitol St. NE  
Salem, OR 97301

Region 1 Area Commission on Transportation  
123 NW Flanders Street  
Portland, OR 97209

Chair Van Brocklin and Chair Rogers:

The City of Milwaukie appreciates the opportunity to comment on the proposed funding allocations for the 2024-2027 State Transportation Improvement Program (STIP). Determining the state's funding allocations is a key step in determining how effective the next STIP will be in meeting the many challenges we face. Transportation plays an essential role in addressing climate change, spurring economic recovery and increasing public safety. Our state and nation must make meaningful progress in order to meet the needs of those we serve and a solid partnership with the Oregon Department of Transportation will be essential.

Milwaukie strongly supports OTC/ODOT strategic action priorities that focus on equity and your acknowledgment that a modern transportation system must address climate change. While none of the funding scenarios fully meet the needs of both adapting the system for climate resiliency and providing greater access to low carbon travel options, the city believes the non-highway option provides the greatest flexibility and tools to do so. With that said, however, how the various highway and non-highway programs work together matters more in some ways than the allocations themselves.

With 99E (McLoughlin Boulevard) to the west, and 224 running through the middle, two rail lines, light rail, multiple regional trail and pathway connections, Milwaukie has often served as a laboratory for how programs and projects can leverage one another to achieve greater regional outcomes in transportation. The Monroe Greenway, for example, which the city, Metro and ODOT will be kicking off soon, combines operations and safety funding from STIP Fix-It programs with MTIP dollars awarded by Metro and city resources to advance a project that will transform how people navigate our city and region. Regardless of the ultimate funding scenario selected by the OTC, we strongly encourage ODOT to continue working across programs and jurisdictional boundaries as part of the 2024-2027 STIP.

While we have direct experience leveraging fix-it programs for active transportation outcomes, we have struggled to leverage ODOT programs for the benefit of fish and wildlife.

For decades, Milwaukie has advocated for the removal of Kellogg Dam. Unlike most dam removal projects, there's literally no opposition and all agree that a free flowing creek would be one of single best things we could do to restore riparian habitat or endangered salmon and native wildlife. So, why hasn't it happened? The dam is part of a culvert that is structurally integral to the 99E Kellogg Bridge. To remove the dam/culvert you must replace the bridge. While this project ranks very high on the metrics for culverts, it scores low with the bridge program. Since the bridge elements are the most expensive components of the project it falls off the list cycle after cycle.

Similar to the strides ODOT has made to leverage preservation, operations, safety and active transportation programs, we ask that you apply the same lens to the bridge and fish passage programs. Both face challenges that cannot be met working in isolation. Through targeted co-investment, we believe the state can tackle some of the long stagnant, but much needed, projects like Kellogg dam removal.

Sincerely,