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

WEST LINN
CITY COUNCIL MEETING
NOTES
September 11, 2023

Pre-Meeting

Call to Order and Pledge of Allegiance [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Council Absent:
Councilor Scott Erwin.

Staff Present:
City Manager John Williams, City Recorder Kathy Mollusky, Finance Director Lauren Breithaupt, and City Attorney Ed Trompke.

Approval of Agenda [6:05 pm/5 min]
Council President Mary Baumgardner moved to approve the agenda for the September 11, 2023, West Linn City Council Meeting. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Public Comments [6:10 pm/10 min]

There were none.

Announcements, Proclamations, and Recognitions [6:20 pm/5 min]

September 11 Remembrance Day Proclamation

Proclamation

Councilor Groner read the proclamation declaring September 11 Remembrance Day.

Consent Agenda [6:25 pm/5 min]

Agenda Bill 2023-09-11-01: Meeting Notes for July 10 and 17, 2023

Draft Notes Information

Agenda Bill 2023-09-11-02: Amendment to the Intergovernmental Agreement (IGA) with Clackamas County regarding Community Development Block Grants (CDBG)

CDBG IGA Information

Council President Mary Baumgardner moved to approve the Consent Agenda for the September 11, 2023, West Linn City Council Meeting which includes the July 10 and 17, 2023 meeting notes and the Amendment to the Intergovernmental Agreement with Clackamas County regarding Community Development Block Grants. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Business Meeting [6:30 pm/15 min]

Agenda Bill 2023-09-11-03: ORDINANCE 1750, RELATING TO THE AMENDMENT OF WEST LINN MUNICIPAL CODE CHAPTERS 7.450 TO 7.492 TRANSIENT LODGING TAX

ORD 1750 Information

Finance Director Breithaupt stated this ordinance update is to be more in line with state regulations. The ordinance was updated in 2021 to be able to collect transient lodging tax revenue on Airbnb, Vrbos and short-term rentals; there aren't any hotels in the City. The state administers the program and they require the updates in order to be able to have the state collect those revenues for the City.

In response to Council questions, Finance Director Breithaupt responded:
- Staff has not heard any concerns from the community about this.
- The City has received some revenue from individuals and companies self-reporting. It is a minimal amount.
- Staff assumes the state takes a portion, this will be in the contract. Other cities use the state to collect since cities do not have the resources to collect. Staff will negotiate the contract if this is approved.

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1750 relating to the amendment of West Linn Municipal Code Chapters 7.450 to 7.492 Transient Lodging Tax and set the matter for Second Reading. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1750 relating to the amendment of West Linn Municipal Code Chapters 7.450 to 7.492 Transient Lodging Tax and adopt the ordinance. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Mayor and Council Reports [6:45 pm/20 min]

Appoint Committee for Community Involvement Member

Mayor Bialostosky placed before Council appointing Christina Fadenrecht to the Committee for Community Involvement.

Council President Mary Baumgardner moved to approve the Mayor's appointment. Interim Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Council asked staff to reach out to the other applicant to see if they are interested in serving on the Transportation Advisory Board or Budget Committee.

League of Oregon Cities Voting Delegate

Mayor Bialostosky explained at the League of Oregon Cities meeting, every city is entitled to a vote. It is the last item on the conference agenda so the delegate would have to stay through the end. Traditionally it is the Mayor or Council President.

Council President Baumgardner is happy to do it; however, she has been to several of these conferences and since Council has new members, she would be happy to differ the role if someone else is interested.

Councilor Groner expressed his interest.

Mayor Bialostosky placed before Council appointing Councilor Lou Groner as the primary voting delegate and Council President Baumgardner as the alternate voting delegate at the League of Oregon Cities conference.

Council President Mary Baumgardner moved to approve the Mayor's appointments. Interim Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Leo Groner, and Interim Councilor Carol Bryck.

Nays: None.

The motion carried 4 - 0

Reports from Community Advisory Groups

Councilor Groner reported there was on meeting on camping. The Task Force is focusing on the location on Willamette Falls Drive. They are working on the document formalizing the recommendation. When he says camping, it relates to homeless. The City can determine the manner and time of people camping and Council has forbidden them from camping in certain areas such as near schools and in parks. It makes sense to determine an area where they can go, and we now have a recommendation.

Council President Baumgardner visited the Willamette River twice in the last week. Last

Thursday there was a kayak outing sponsored by Willamette Falls Trust along with the National Land Trust staff who were at a convention in Portland. Fifty kayaks toured the falls and they talked about some of the work and visioning that is occurring near the West Linn Waterfront and the Willamette Falls Trust, near the West Linn Paper and Portland General Electric (PGE) sights. Today she toured the locks with members of the governor appointed locks authority and the new director. It was interesting and she is excited about what might be coming with the waterfront and public access to the river in that area.

Mayor Bialostosky asked staff to schedule a discussion about the long-term financial picture of the City. The budget was completed; however, they did not talk about the long-term forecast and if there are potential revenue opportunities we are missing out on. He is looking toward the future. The financial picture can sometimes be dire, and we need to make sure to address it look by looking at the long-term financial picture.

He read the proposed revisions of the Clackamas County Coordinating Committee (C4) expectations going forward and asked Council if they consented to add the City logo. The values are not an endorsement to implement tolling, it is more about the expectations if the Oregon Department of Transportation (ODOT) choose to toll.

The only concern expressed was Councilor Groner would like to tighten it up a bit, for instance, have frequent tollers only have to pay the toll once a day.

Mayor Bialostosky explained any edits must be taken back to the County counsel.

Council consensus on adding the City logo.
C4 Tolling Values Subcommittee Revisions

City Manager Report [7:05 pm/5 min]

City Manager Williams went through the agenda for next week's special meeting and work session. He has put together a cheat sheet for the land use and transportation advisory committees (i.e., MPAC, TPAC, JPACT, RTAC) and will send that out.

September 25 and 26 are the dates sent out for the budget revenue discussion and he is looking forward to this conversation. Following the adoption of the budget is an excellent time to discuss long-term finances and the fiscal condition of the City; it gives you time should you wish to do something before the next two-year budget comes along.

Today, he joined a couple of councilors at the 9-11 event on the Arch Bridge. It was a nice event; it is great that it is being honored on the west coast.

The Historic City Hall permits are getting closer to being ready to issue. He hopes to be at Council in October with a bid award. The Coalition has been great to work with and all the partners have approved the parking agreement.

The City is returning the print newsletter and the final draft is very close. He listed the items that will be included in it and expects it to go out to the community in early October.

The public and staff comments were received today for the City Manage Evaluation. He expects to complete his self-evaluation in the next few days.

Regarding the resolution of tree cutting on Willamette Falls Drive, on August 28 he issued findings and order regarding the removal of trees on the south side of Willamette Falls Drive near the school. The City authorized the removal of 24 trees prematurely in that area. The trees should not have been removed at that time. They were located mostly in the right-of-way of Willamette Falls Drive. They were cut down as part of the general tree clearing that happened on the school property, but they should not have been and it's the City's fault for approving that. The trees were authorized for removal under the correct process, but at the time the trees were removed, they should not have been. This was mostly Alders and Maples about 12 to 16 inches and a couple of large Doug Firs that came down too. These should not have been approved before the approval of the resource permits were done and the habitat conversation area changed on the south side and in the right-of-way on Willamette Falls Drive. They were approved by mistake. The plan sheets were very complicated and not reviewed carefully enough by enough departments. The Finding was that the City will enter into the voluntary mitigation compliance process that is specified under our Code when trees are removed inappropriately. He requested staff do the following things: Conduct mitigation in keeping with the Code. It is challenging because the area does not have the ability to accomplish that much replanting so will have to look at a broader radius to plant enough trees. Staff are putting together a proposal and he will look at it before it is approved. He has asked Planning, Engineering, Public Works, and the Parks & Recreation Departments to put together a new safeguard that ensures it does not happen again. We are setting up a process that will involve notice to all the departments for any City related tree cutting happens and they will present that process to the City Manager. The City must follow the same rules everyone else does. When we screw up, we must admit it and try to fix it. He asked staff to look at the entire tree removal code to make sure we are doing everything correctly. That was put together in a memo that went out to folks interested in this. He is attending the Willamette Neighborhood Association this week and will be talking about that. Even though the trees were cut inappropriately, they would be allowed to be cut now. There were several permits that needed to be obtained after the middle school permit was authorized. What we are dealing with is a question of timing. That is a mitigating factor, but it is not relevant to the conclusion he made that the Code was violated.

In response to Council President Baumgardner's questions, City Manager Williams responded:

- The reason for the roundabout is to smooth traffic flow without a three-way stop. Roundabouts work well when you must keep traffic moving and have to have a safe intersection, eliminating T-bone type accidents. The stop sign still causes backups at school dismissal time. There have been some unsafe maneuvers going around the stopped traffic. Police are trying to patrol the area but cannot just sit there the whole time. The stop sign is

receiving negative comments on social media and the backup that is generated. It is not a great long-term solution. The school district needs to look at increased storage on-site. With the plan change giving no access to Dollar Street from Brandon Place, it created a different dynamic on where the cars go and the district underestimated the number of parents who want to pick up and how early they would arrive and wait. The problem is here to stay and needs to be addressed. He will talk about this with the Willamette Neighborhood Association on Wednesday to hear their thoughts on how things are going.

- The land use process prevented the road improvements from being constructed sooner. On the other hand, the timing of the project seemed to be set up that the improvements had to happen without allowing time for the land use process to happen. They knew that had to get permits and it took longer than hoped to get the materials together to get a complete application. By the time the process was complete, it was impossible to build the road improvements and have them completed to have the school open on time. Land use is part of the process. The community has a right to file appeals. In retrospect, the project could have been timed different to allow leeway to have the process happen and build the improvements correctly. At this point, we are trying to move it along following all the requirements and process. He thinks it is going to be months before the intersection is completed and at this point, it will still be a roundabout. A lot of responsibility all over the place for the way this timing worked out.

- He will check to see if the condition asked for in the approval of design evaluation for the street improvements to make the least impact on the park frontage and when Council can see the redesign and status of it. He will ask for simple drawings that are easy to read, not engineering drawings.

City Attorney Report [7:10 pm/5 min]

Legal Project List

Project List

City Attorney Trompke stated the project list is out of date and needs to be updated. The legislature adopted House Bill 2805 and he has a draft memo he will be sending out regarding serial meetings. Basically, a serial meeting includes participation and communication over period of time by any public body or committee. The law defines that deliberation is any discussion or communication that is part of the decision-making process. It is overly broad and could include a person speaking to a spouse or friend and if the friend speaks to someone it could be a serial meeting. It incorporates all of them even if they don't talk with each other and includes all communication (i.e., email, text, verbal). It includes communication made through an intermediary whether intentional or not. It says not all members of the quorum of the group need to participate at any one time, but though a series of messages, or communication, everyone involved in the communication in in violation. It was questionable if an action taken by a member of Council that had been a product of or following a Council meeting, if Council adopted an ordinance, the Council can rectify the violation by ratifying the action taken after the complaint made, he believes within 45 days. The correction by Council afterwards doesn't

eliminate the possible sanctions by the Oregon Government Ethics Commission (OGEC). The League of Oregon Cities (LOC) offers training. This statute requires an approved training session once during the Council member's term. Appointed officials which include committee members, City Attorney, City Manager, City Recorder, and other appointed officials may be found ineligible for continuation in office if the OGEC finds that the conduct was willful or with intentional disregard of the law. It refers to the State Constitution Article 7, Section 6 which requires criminal conviction or other provisions that may apply. This has a lot of long arms and will affect how we communicate in the future. You may not be able to talk to each other as Council members if you want to be cautious about having a serial meeting occur. The new law goes into effect September 29. He is hoping to update Council at the next meeting.

Jeff Conduit represents the City in the decision about asking for an enforcement order against Metro and the City so he will defer to him. Court of appeals remanded back to the Land Conservation and Development Commission (LCDC) for further consideration.

In response to Council's questions, City Attorney Trompke responded it does apply to matters coming before or expecting to come before the decision-making body or committees appointed that may recommend to council. Anything that may affect a decision or recommendation.

He explained the Bialostosky v. City of West Linn parking lawsuit to the audience.

Adjourn [7:15 pm]

Notes approved 9-18-23.

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

CITY COUNCIL AGENDA

Monday, September 11, 2023

5:00 p.m. – Pre-Meeting – Bolton Room & Virtual*

6:00 p.m. – Business Meeting – Council Chambers & Virtual*

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1. Call to Order and Pledge of Allegiance [6:00 pm/5 min]
2. Approval of Agenda [6:05 pm/5 min]
3. Public Comments [6:10 pm/10 min]
4. Announcements, Proclamations, and Recognitions [6:20 pm/5 min]
    a. September 11 Remembrance Day Proclamation
5. Consent Agenda [6:25 pm/5 min]
    a. Agenda Bill 2023-09-11-01: Meeting Notes for July 10 and 17, 2023
    b. Agenda Bill 2023-09-11-02: Amendment to the Intergovernmental Agreement (IGA) with Clackamas County regarding Community Development Block Grants (CDBG)
6. Business Meeting [6:30 pm/15 min]
    a. Agenda Bill 2023-09-11-03: ORDINANCE 1750, RELATING TO THE AMENDMENT OF WEST LINN MUNICIPAL CODE CHAPTERS 7.450 TO 7.492 TRANSIENT LODGING TAX
7. Mayor and Council Reports [6:45 pm/20 min]
    a. Appoint Committee for Community Involvement Member
    b. League of Oregon Cities Voting Delegate
    c. Reports from Community Advisory Groups
8. City Manager Report [7:05 pm/5 min]
9. City Attorney Report [7:10 pm/5 min]
    a. Legal Project List
10. Adjourn [7:15 pm]

**City Council meetings will be conducted in a hybrid format with some Councilors, staff, presenters, and members of the public attending virtually and others attending in person. The public can watch all meetings online via https://westlinnoregon.gov/meetings or on Cable Channel 30.*

Submit written comments by email to City Council at citycouncil@westlinnoregon.gov. We ask that written comments be provided before noon on the day of the meeting to allow City Council members time to review your comments.

If you cannot attend the meeting in person and would like to speak live at a public meeting by videoconferencing software or by phone, please complete the form located at: https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup by 4:00 pm the day of the meeting to be input into our system. Instructions on how to access the virtual meeting will then be provided to you by email prior to the meeting. If you miss the deadline and would like to speak at the meeting, please fill out the form and staff will send you a link as time allows.

If you require special assistance under the Americans with Disabilities Act, please call City Hall 48 hours before the meeting date, 503-657-0331.

When needed, the Council will meet in Executive Session pursuant to ORS 192.660(2).

PROCLAMATION

West Linn, Oregon

WHEREAS, nearly 3,000 citizens of the United States of America were killed on September 11, 2001, in New York City, Pennsylvania, and Washington D.C., due to an unprovoked and cowardly terrorist attacks; and

WHEREAS, we pay tribute to the men and women who perished and reflect on the bravery and courage of our civilian and miliary first responders and emergency personnel for their quick and selfless actions; and

WHEREAS, it is important to remember the families who were forever changed by the loss of a loved one because of these horrendous attacks; and

WHEREAS, this September marks the 22nd anniversary of that fateful day, which renewed patriotism throughout the nation and spurred American citizens to civic action; and

WHEREAS, throughout the State of Oregon, individuals, organizations, and communities will gather and honor our nation and the memory of those who lost their lives on September 11, 2001.

NOW, THEREFORE, BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF WEST LINN, that September 11, 2023, is:

SEPTEMBER 11 REMEMBRANCE DAY

In West Linn and we invite all residents to remember those whose lives were suddenly, and without cause, taken from them.

DATED THIS 11TH DAY OF SEPTEMBER 2023

_____

RORY BIALOSTOSKY, MAYOR

ATTEST:

_____

KATHY MOLLUSKY, CITY RECORDER

City of West Linn

Agenda Bill 2023-09-11-01

Date: August 9, 2023

To: Rory Bialostosky, Mayor
Members, West Linn City Council

From: Kathy Mollusky, City Recorder *KM*

Through: John Williams, City Manager *JRW*

Subject: Draft Meeting Notes

Purpose: Approval of City Council Meeting Notes.

Question(s) for Council:
Does Council wish to approve the attached City Council Meeting Notes?

Public Hearing Required: None required.

Background & Discussion:
The attached City Council Meeting Notes are ready for Council approval.

Budget Impact: N/A

Sustainability Impact:
Council continues to present its meeting notes online, reducing paper waste.

Council Goal/Priority:
Guiding Principle #0: Core Services of West Linn City Government. Continue to record and document the proceedings of the West Linn City Council. Guiding Principle #3: Sustainability. Incorporate environmentally sustainable practices in City activities and decision making, including reducing waste generation and energy consumption.

Council Options:
1. Approve the Council Meeting Notes.
2. Revise and approve the Council Meeting Notes.

Staff Recommendation:
Approve Council Meeting Notes.

Potential Motions:
Approving the Consent Agenda will approve these notes.

Attachments:
1. July 10, 2023 Council Meeting Notes
2. July 17, 2023 Council Meeting Notes

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

WEST LINN
CITY COUNCIL MEETING
NOTES
July 10, 2023

Pre-Meeting

Call to Order and Pledge of Allegiance [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.

Staff Present:
Deputy City Manager Elissa Preston, City Attorney Bill Monahan, City Recorder Kathy Mollusky, Planning Manager Darren Wyss, and Associate Planner John Floyd and City Attorney Ed Trompke.

Approval of Agenda [6:05 pm/5 min]
Council President Mary Baumgardner moved to approve the agenda for the July 10, 2023, West Linn City Council Meeting removing the May 2, 2023 draft minutes from the Consent Agenda and placing them as Item 6a on the Business Meeting, moving Item 6d, Public Hearing Appeal of Planning Commission Denial and placing it as Item 6b, and renumbering the remaining agenda items in the Business Meeting. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.

Nays: None.

The motion carried 4 - 0

Public Comments [6:10 pm/10 min]

Public Comment - Teri Cummings

Public Comment 2 - Roberta Schwarz

Public Comment - Mark Tabor

Public Comment 3 - Roberta Schwarz

Alice Richmond spoke about her disappointment with the City Parks and Recreation Department, believing the parks needed to be promoted more in the Metro publication.

Dina Stults spoke about the importance of Funtime Daycare to her family, the impact of the Willamette Falls Drive roundabout on her home and the daycare, and unkept promises from Staff regarding the roundabout and alley.

Roberta Schwarz read her letter in support of Maria Luisa Blanc-Gonnet and concerns about the roundabout project to City Council into the record.

Maria Luisa Blanc-Gonnet spoke about the impact of the Willamette Falls Drive roundabout on her business, Funtime Preschool and Daycare, and issues with the new road in the back of the homes on the street.

Nathan Lambert noted his wife works at one of the public schools in West Linn, and his two children attend Funtime Daycare. He believed Council should appoint someone as a point person to be in contact with Luisa who had the ability and authority to fix the issues, including creating a schedule of the work needed.

John Rodenburg requested an amendment City Ordinance 6.105 Section 2, proposing an extension to the maximum allowable parking duration from the existing limit of four hours to 24 hours.

Dale Fortuna believed the City did a good job on the food carts, noting he enjoys the bar and sidewalk venue on Wednesdays.

Dede Montgomery spoke about the safety of e-bikes and e-scooters in the City, noting she had sent an email to Council earlier today.

Kathie Halicki thanked Council for raising the Neighborhood Association (NA) stipend and specifically thanked President Baumgardner for enlightening the rest of the Council about what the good NAs do to support the City and residents with their stipends. But she was

disappointed that at least one of the Councilors have not and do not actively participate in their NAs, as she did not know NAs do not have total discretionary control over their spending of stipends, as expenditures have been vetted by the City and are audited annually. She also asked for an update on the approximately 40 trees removed without approval in Fields Bridge Park and the $5,000 City Manager Williams promised the Drink Station Topper Committee.

Mayor Bialostosky replied that Council would investigate those questions and have Staff get in touch with the NA president.

Acting City Manager Elissa Preston provided a more extensive update on the project. When the right-of-way was purchased by the City, there were negotiations on helping with the asphalt area. She confirmed it was discovered the asphalt was laid incorrectly. Staff and the Engineering Department have agreed to fix that. Several other items asked for have also been agreed to, but the actual agreement is still up in the air. She made the following points in response to the request for communication on the plan.

- In June, Staff received an email from the homeowner telling them they were not allowed on the property without the owner's attorney present, so no further work has been continued since that time except for three items: infiltration testing performed on June 27 to reassess the drainage issue; cleaning, grading, and installation of bark chips and temporary chain link fencing, both around the property to the south side of the house, scheduled for this week.
- Staff emailed a list to the homeowner on June 22 asking for authorization to access the property to address concerns, including but not limited to asphalt fixing, electrical servicing, adding the gravel parking area, and the broken concrete panels.
- Staff notified Tualatin Valley Fire &Rescue (TVF&R) that access to the properties affected by the roundabout had changed, and West Linn Refuse & Recycling had been notified for trash pickup. She was uncertain why only part of the trash had been picked up.
- Ms. Blanc-Gonnet had also requested mail be delivered to the alley. Staff had not discussed this with the United States Postal Service (USPS) but were looking into it. Mail could still be delivered and received off Willamette Falls Drive.
- Staff want to mitigate the unforeseen circumstances that have arisen from the project, but they need express permission to work on the long list because the last word in writing was that Staff and construction workers were not allowed on the property.

Mayor Bialostosky commented that, regarding the remaining items, he hoped they could hold a community meeting at the property with Ms. Blanc-Gonnet, daycare families, the City, and Public Works team to look at the list of remaining items and come to an agreement.

Ms. Blanc-Gonnet commented that no one wanted the property fixed more than she did. The problem was the first time she authorized the City to work on a project on her property, they messed up. The second time, they made promises but went back on them. The third time they

met on her property, she had neighbors and parents as witness to what was being promised, but the City still went back on its promises. She did not trust the people who did that in the first place would have good intentions now.

- She had asked for the City to hang her sunshade when they installed the temporary fencing, but the City Engineer refused, saying it was not part of the project. She believed this showed her how unwilling Staff was to work with her.
- They would not fix the shade, which was just tying knots, so how would they fix a driveway that was installed the wrong way on their watch.
- The City wanted her to sign off and give them authority to do things when they had no idea how they would do it.
- Everything that has happened in her yard was caused by the project.

Mayor Bialostosky proposed Staff have a meeting at Ms. Blanc-Gonnet's property, including the contractor, with the specific purpose of going over what exactly would happen, what the steps would be, and having a plan so they could ensure everybody was on the same page before it was authorized.

President Baumgardner thanked Ms. Blanc-Gonnet for her patience, noting she understood safety was very important. She agreed this was a process that hadn't worked well for Ms. Blanc-Gonnet.

- She had several conversations with the Interim Public Works Director and believed the City had good intentions and wanted to make this right.
- She agreed there should be a schedule and written plans. The schedule could need to change as it went along, as that happened in construction. A schedule would give Ms. Blanc-Gonnet an idea of what to expect, and she understood the trust issue.

Mayor Bialostosky and President Baumgardner stated they would attend any meeting set up to address the issues.

Dina Stults noted that people from the construction team and Staff had shown up to Ms. Blanc-Gonnet's residence unannounced and she has been asked to sign documents via email rather than more formal means, which is unacceptable.

Nathan Lambert commented that President Baumgardner had skipped an important detail, namely that there should be one person who was responsible for communicating with Ms. Blanc-Gonnet because it would be too easy if several people were trying to pass the ball around for the ball to get dropped.

Mayor Bialostosky responded that Council would take that into consideration, and he would discuss that with the City Manager.

Announcements, Proclamations, and Recognitions 6:20 pm/10 min]

Vietnamese American Heritage and Freedom Flag Recognition

Proclamation

Thao Tu, President, Vietnamese Community of Oregon, stated he was present to receive the proclamation of the Vietnamese Heritage and Freedom Flag that he sent to the City in June 2023.

President Baumgardner read the proclamation recognizing the Vietnamese American Heritage and Freedom Flag as the official flag of Vietnamese Americans in the city of West Linn.

Certificate of Appreciation

Parks & Recreation Month

Proclamation

Councilor Groner read the proclamation declaring July as Parks and Recreation Month.

Consent Agenda [6:30 pm/5 min]

Agenda Bill 2023-07-10-01: Meeting Notes for March 20, May 2 and 8, 2023

Draft Notes Information

Agenda Bill 2023-07-10-02: Contract Approval for Willamette Park Water Access and Volpp Street Parking Improvements

Willamette Park Information

Public Comment - Russell Radcliffe

Agenda Bill 2023-07-10-03: Clackamas County Emergency Stranded Worker Intergovernmental Agreement

Stranded Worker Information

Agenda Bill 2023-07-10-04: Adopting Community Grants for Fiscal Year 2024

Community Grant Information

Agenda Bill 2023-07-10-05: Endorsement of West Linn Project List for Inclusion in Metro Regional Transportation Plan

Metro RTP Information

Council President Mary Baumgardner moved to approve the Consent Agenda as amended. Councilor Leo Groner seconded the motion.

President Baumgardner noted several community members had concerns about the Volpp Street parking improvements and she wanted Council to discuss that with them as the project goes forward.

Mayor Bialostosky confirmed the May 2, 2023 minutes were removed from the Consent Agenda at the beginning of the meeting. He suggested a work session or community briefing on the Volpp Street improvements soon.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.

Nays: None.

The motion carried 4 - 0

Business Meeting [6:35 pm/2 hours]

Meeting notes for May 2, 2023

Mayor Rory Bialostosky moved to approve the minutes for May 2 with the following amendment to Karie Oakes' public comment to read as follows: Karie Oakes thanked the City Council for calling a special meeting and noted she sent in an email to the Council on the topic. Ms. Oakes commented on the potential timeline for conducting a hearing on the land use item if the Council were to call it up and described potential dates and factors based on her review of the CDC. She noted that a continuance should be planned for in the timeline of the hearing. Ms. Oakes continued to describe the process and timeline she felt should be followed by the Council if a review were ordered. Ms. Oakes concluded by urging the Council to vote to order a review of the Planning Manager Decision. Council President Mary Baumgardner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.

Nays: None.

The motion carried 4 - 0

Agenda Bill 2023-07-10-08: Public Hearing: Appeal AP-23-03 of the Planning Commission Denial of VAR-23-01

Appeal Information

Additional Testimony

Mayor Bialostosky explained this was a quasi-judicial hearing that required decisions be grounded in relevant code. If the application met the code, Council shall approve it. He then read the hearing procedures, noting the Applicant and Appellant were the same in this case and that a de novo hearing allowed new facts or evidence to be submitted to Council.

Mayor Bialostosky opened the Public Hearing and asked City Attorney Trompke to cover the legal matters.

City Attorney Ed Trompke explained the criteria to be addressed in the hearing were CDC code Chapter 11, Residential R-10 Zone; Chapter 48, Access, Egress, and Circulation; Chapter 75, Variances; and Chapter 99, Procedures for Decision Making. Because the City Council was sitting quasi-judicially, any testimony, argument, or evidence that speakers gave Council must be directed to these criteria or some other criteria in the Code or Comprehensive Plan which the speaker believed should apply to the decision.

- If a speaker's testimony would be repetitious, but they would like the opportunity to appeal the decision, they must have completed the speaker signup form.
- Only those people who have appeared before Council in person or in writing would have standing to appeal this item to the Land Use Board of Appeals (LUBA).
- Prior to the conclusion of the Public Hearing on any application, the Applicant or any person who took part in this hearing could request a continuance or ask that the record be left open to present additional information. If there were such a request, Council would either continue the Public Hearing to a date certain or leave the record open for at least seven days for additional, written evidence, argument, or testimony.
- Failure to raise an issue accompanied by statements or evidence sufficient to allow Council and the other parties the opportunity to respond to the issue would preclude appeal to LUBA based on that issue.
- Failure of the Applicant to raise Constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City or its designee to respond to the issue also would preclude an action for damages in Circuit Court.

City Attorney Trompke confirmed no members of Council had potential or actual conflicts of interest, bias, or ex parte contacts. He then confirmed no audience members wished to challenge Council's jurisdiction to hear the matter or impartiality and concluded legal matters.

Associate Planner John Floyd provided the Staff report noting the 120-day clock would end on August 16. He shared context and background information on the site, which had a unique history and topographical characteristics, giving the Application a level of discretion.

- The lots were created in 1926 before the current lot creation process and were nonconforming in terms of current standards, being narrower than current requirements of widths of 50 feet and size of 10,000 square feet. These lots varied in width from 38 to 47 feet and were about 5,000 square feet. Some homes were built over two lots, but not all; some homes have been built on these single lots in the past and the owner had the right to develop them under Oregon Statutes.

- A survey of existing conditions showed an existing house on the property that was scheduled to be demolished as part of the application. There was also a circular driveway on the property, giving it two driveway entrances on a narrow block.
- Applicants were proposing to consolidate these into one. Part of Marylhurst Drive had a curb that was quite steep, giving safety concerns that the Applicant was trying to address by reducing the number of potential accident points as people enter and exit the site.
- Applicants could not build driveways to each lot, as would typically be done, because the parts of the lot bordering Midhill Circle were the steepest part of the lots, up to 29 percent, making it difficult to meet City standards for driveways.
- If the driveway access was pivoted from Midhill Circle to Marylhurst, Applicants would be challenged in meeting spacing standards. The City required new driveways on Marylhurst Drive to be at least 35 feet from the corner of the intersections and 75 feet apart.
- Applicants proposed to consolidate access into a single driveway so all six lots could be accessed from a single driveway, with minimal grading needed to develop the lots. The single access point would reduce the number of potential collisions on Marylhurst Drive.
- Working with Engineering Staff, there was potential for enhanced pedestrian safety, as they could provide a pedestrian connection all the way down to Highway 43 through a concurrent City project linking the frontage of this project with an existing sidewalk stub down by Highway 43.
- He then addressed standards, explaining why the Applicant was choosing to not build standard driveways to each lot. The maximum driveway grade standard was 15 percent, with the last 18 feet required to be 12 percent. When starting with a 29 percent grade, it's hard to meet that standard.
- The proposed common driveway started at 20 feet wide at Marylhurst Drive, and about the point where it transitioned from the first two lots, it narrowed down to 14 feet wide all the way to the end.
- He explained the red lines on the map being displayed represented topographic lines with a 1-foot change in elevation. The greatest grades were concentrated right along the Midhill Circle frontage, making it difficult for Applicant to comply with the maximum grade standards.
- It narrowed up to a retaining wall along the eastern side, providing a little bit of a buffer and keeping it away from the edge of adjoining properties.
- Across the top, rather than building a sidewalk along the frontage of Midhill Circle, they proposed to build sidewalk along Marylhurst Drive, which had a lot more traffic.
- There was not enough room to build multiple driveways on the frontage on Marylhurst. The driveways had to be 35 feet from the corners and then 75 feet apart, and the lots were not big enough to do that.
- To meet Code, Applicants would have to build three driveways on Marylhurst, one for each of the lots on the north side, and then four for the back four lots. There was not enough room, so Applicants had proposed a single driveway.

- Code typically allowed up to four homes on a private accessway, with the accessway being allowed between 14 and 20 feet. The Applicant stated they met the standard by providing 20 feet for the first two homes and then narrowing to 14 feet for the remainder.
- The Code granted the reviewer some discretion in applying the standards, as width depends on line-of-sight of the homes. Staff supported the proposal as-is because it did meet the range. TVF&R issued a service provider permit, approving the design as proposed, providing no parking signs were erected. The proposal did not meet the maximum number of homes, which was why the variance was requested.

Responses by Associate Planner Floyd to Council's questions and concerns were as follows:

- Standards allowed from two to four homes on one accessway, but the proposal was for up to six homes to use the accessway, requiring the variance. No matter how the Applicant wanted to develop the site, they would need a variance for something, which would probably be for maximum driveway slope on Midhill or to reduce spacing on Marylhurst. Staff felt the safest and simplest way was for a single variance for a single access point onto Marylhurst Drive.
- The City could not require off-street parking, but typically homes were constructed with parking. Any vehicles would access their homes through this private accessway. This could include private, delivery, or emergency vehicles. Sewer and stormwater would also be provided in the alleyway and carried out to Marylhurst.
- Sidewalks on Marylhurst Drive extended about a half block uphill from Highway 43 and then stopped. This project was two to three blocks uphill. The Applicant proposed building sidewalks along Marylhurst Drive, which got more traffic than Midhill Circle. The City had identified potential funds to construct sidewalk to fill in the gap, allowing people to walk on the sidewalk from Highway 43 to upper Midhill. This would also allow people in existing neighborhoods to access Highway 43 in a safer manner.

Associate Planner Floyd explained Class II approval criteria, discussing two of the three applicable standards.

- The first was the variance shall meet the minimum necessary to make reasonable use of the property. Council could consider a broad variety of criteria, evidence, or issues in making its decision. It went on to list factors that could be considered together with any other relative facts or circumstances, and the one that seemed most relevant was Number 2, the physical characteristics of the property, such as lot size, shape, and topography.
- The lots were steepest at the point in which they need to access the street on Midhill Circle and were substandard in size, making it hard to meet spacing requirements.
- Because of this, Staff felt the Applicant had met this criterion.
- The second criteria was the variance would not result in violations of any other Code standard and the variance would meet the purposes of the regulation being modified.

- Staff had not identified any other Code standard that would be violated, and any future development of the property would be subject to Staff review and approval, or Planning Commission review as needed.
- Staff felt this standard had been met and that the need for the variance was not created by the Applicant.
- This went back to earlier statements regarding how old the lots were and their unique geography.
- With the lots created today, they would not allow frontages with such deep access points. The City would look at that more carefully, ensuring that the lot distances were longer if access were to be created along a collector such as Marylhurst.
- Therefore, Staff initially approved the Application, but the Planning Commission felt differently. The Planning Commission wanted to see 20 feet width the entire length. They did not feel 14 feet was sufficient and that 20 feet was the minimum required. They also felt the information was not sufficient to demonstrate Applicant met the standard of the minimum necessary to justify six homes on one driveway.
- The Planning Commission decided these two criteria were not met and chose to deny the Application at the first hearing rather than provide a continuance to allow the Applicant to provide more information.
- After the denial and during the appeal period, Applicant filed an appeal application, providing responses to the Planning Commission findings and additional technical information demonstrating the slopes of the site and other information as to why this really was the best approach in their mind going forward.
- To summarize Applicant's response:
- The proposal minimized necessary grading on the site. It did meet the 20-foot width for the first two lots before narrowing to 14 feet for the last four. The narrowing to 14 feet reduced impacts to the neighbors, providing a little bit of buffer between the driveway and the back property line of the existing neighbors to the northeast.
- TVF&R had approved the designs, and felt emergency egress was not being compromised by this.
- The nonconforming lots prevent compliance with spacing standards on Marylhurst, and they could not dimensionally meet standards.

Staff Presentation

Applicants Tracey & Derek Peterson were represented by Civil Engineer Alex Simpson, Planner Hillary Harrison, and Planner Brad Kilby.

Ms. Harrison stated the project site was located at the intersection of Marylhurst Drive and Midhill Circle. All six properties were existing lots legally established in 1926. As shown on exhibits in the presentation, the topography of the site sloped downhill from west to east with substantial slopes along Midhill Circle. Due to existing site conditions, property owners proposed a single, consolidated access for all six lots through a midblock private drive.

- Because the consolidated driveway would serve six properties instead of four, a Class II variance was required, which was requested for four primary reasons, namely that the design:
- Consolidates all six driveways to a single access point and only creates one new curb cut.
- Required the least number of variances, only requiring one. Other considered designs would require at least two variances.
- Works with the natural topography of the site, avoiding the need for four variances to driveway steepness on Midhill Circle and mass site grading.
- Avoids the need for a variance to driveway spacing standards along Marylhurst Drive.

Mr. Simpson stated the site is very steeply sloped. He compared it to Salamo Road, which was an average of about nine to ten percent, maxing out at 11 percent. Based on existing topography of the site, the driveways would be around 29 percent, approximately three times steeper than Salamo Road, and would not meet City driveway standards.

- As a result, they zoomed out on the project and asked what the best way would be to develop these lots as allowed.
- As Staff showed, they first asked what if put all five driveways along Midhill Circle? The issue would be 30 percent slopes, so now they would have to request five variances for each one of these driveways to access the lots. That did not seem like the minimum request.
- Another option was a shared driveway down the middle, as currently proposed, but only to access four lots, meeting Code outright. They would then need to take access for the northern two lots off Marylhurst Drive. If they did that, they would not meet access spacing standards on Marylhurst, which was a collector, because of the requirement to be 35 feet from the intersection and then spaced 75 feet apart. There was insufficient room to meet those requirements. If they proposed that, they would then have to ask for other variances to the access spacing standards to have three driveways along Marylhurst. As a collector roadway, the more driveways you have, the more conflict points with pedestrians and other vehicles.
- The minimum, least intrusive and safest way for pedestrians and homeowners was the current proposal with a single variance request for one consolidated driveway down the middle on the back of the homes to meet slope, access, and the various constraints.
- Fire & Rescue had approved the plan.
- Applicant believed this was the safest and most minimally invasive request.

Ms. Harrison stated the Planning Commission denied the variance request on two issues.

- The first was that widths of private driveways were required to be between 14 and 20 feet wide. The design started at 20 feet and reduced to 14 feet for the remainder of the driveway. This was thoughtfully designed and approved by TVF&R, the other service provider letter.

- The second issue was Applicant did not demonstrate that variance was necessary. As Mr. Simpson and Associate Planner Floyd have described, it was necessary, or at least ideal, for the site for four main reasons:
- It consolidates the six driveways and reduced impacts to the right-of-way and pedestrian safety by only requiring one curb cut on Marylhurst Drive.
- It was the least number of variances required for the site, with only one variance.
- The design worked with the natural topography of the site and avoided the need for additional variances to driveway steepness and mass grading on site.
- It avoided the need for a variance for spacing standards.

Mr. Kilby noted that the decision came from the Planning Commission, who were also volunteers, so their opinions obviously counted towards Council's decision tonight. He liked to think of these systemically, looking at it from a 30,000-foot level. Right now, in Oregon a lot of communities feel like they were being attacked with the passage of House Bill (HB) 2001, which a lot of communities were not on board with.

- A lot of communities were also not in favor of rules regarding climate change as found in Climate-Friendly and Equitable Communities Rulemaking (CFEC).
- Recently a bill failed by only one vote, HB 3414, would have eliminated cities' ability to deny any residential development based on variance requests. It could have been a variance based on anything, and the city could not have denied it.
- The public was comfortable where they live, and they do not want more people there, but the fact of the matter is these six lots were legally created, and they do have sewer and water access, which is what every single-family lot or lot being created today would be required to provide.
- The design was prepared and reviewed by a group of licensed, professional folks.
- Council would hear testimony from neighbors that they did not want this here, it was not safe, it would be crazy because there would be too many trash cans out here. Aesthetics aside, that was an issue the owner would have to deal with service provider for waste management, but that did not mean Council should just deny the variance simply because there would be too many trash cans. The cans could be placed in the 20-foot right-of-way.
- If you could service that with a fire truck, a trash truck could also get down there. Emergency access was built not only for emergency service providers but also for other types of service providers, primarily for trash, recycling, and yard debris.

Responses by the Applicant Team to Council's questions and concerns were as follows:

- Details for specifics of trash pickup would be determined with the service provider letter with the caller, so as part of the variance request at this moment, there was not a specific detail for trash pickup, whether it occurred here in this combined access or along Midhill Circle with the dozens of other properties being serviced on Midhill today.
- In terms of loading and unloading, those move-in/move-out type things, as with any person moving into a new home would be coordinated at that time.

- TVF&R feels confident that they can access and reverse their very large vehicles.
- Move-in and move-outs could be handled in a similar fashion from this. They could also be handled up on Midhill Circle as well.
- With regard to logistical and safety concerns of a 24-foot U-Haul or 28-foot RV being driven by someone who was not a professional driver, which was different than a fire truck designed to be driven from both the front and rear, as soon as safety concerns with drivers who take liberty with the speed limit on Marylhurst Drive, it would likely be advisable for moving trucks to access off of Midhill Circle, which is similar to dozens of other residences. When a neighbor moved in or out of their residence on Midhill Circle, their moving truck would park on Midhill Circle, so this would be a similar situation.
- A typical road lane was 11 to 12 feet, so the driveway had an additional 8 feet. A good parking space would be 9 feet wide or 8 feet for a compact space in some locations. A lot of people misconstrue the width or distance of something, but there would be room left in the same sense that people move on Midhill Circle. Other streets in West Linn were narrow. All over the metro area, there were narrow streets where moving trucks, Amazon Prime trucks, and service vehicles maneuver safely, securely, and must plan better, and that is what would have to be done in a place like this. But somebody's property rights cannot be taken away simply because the plat was built in 1926. These are still their individual lots that were created, and lots were developed under that same 1926 plat within this neighborhood that have the same dimensions associated with them.
- This proposal was a better solution than trying to develop five driveways off Midhill Circle with no access down the rear. Keeping access off Midhill and adding a secondary auxiliary access off the back would improve access and circulation. The proposal would take additional trips and vehicles off Midhill Circle and routing them down this driveway behind the homes.

Councilor Erwin believed the Applicant team had misunderstood his position. He was not saying each of the lots should have driveways on Midhill Circle. His statement was regarding the lack of addressing the logistical issues of traffic movement between these properties because they had created a dead-end street without a cul-de-sac for a turnaround. He was concerned about access and asked if there would be parking spots on the individual lots so when people have guests, those guests would not block the driveway for other people. He also asked if they would make it so these large vehicles would not be creating issues for the lots that are further in.

The Applicant team responded that the driveway would be signed no parking along the entire length. It would be driveway access only.

The Applicant Team continued to respond to Council's questions and concerns as follows:

- The front door of the units would face Midhill Circle, allowing access to the properties for pedestrians, visitors, as well as moving and service vehicles through the front and not the driveway.

- Service vehicles would have a mix of access choices. They did not know what types of units would be proposed, but access could easily come off Midhill Circle for visitor parking, pedestrians, like other residences along Midhill Circle.
- Planners considered making the driveway 20 feet wide for the entire way down. On the very south end on the east side, there was a darker gray in a backwards L shape, indicating a retaining wall. There was a grade difference of approximately 4 or 5 feet vertically between the adjacent neighboring properties to the east. The intent was to build a retaining wall there to keep the driveway elevated up on the subject properties. It was possible to keep the driveway 20 feet wide, but it would be essentially constructing the retaining wall and then paving over it. However, they did not feel that was the least intrusive to those neighboring properties to the east, as driveway pavement would essentially go up to the property line. By narrowing it, they could have the wall and leave room for a buffer or fencing to screen it away from those properties.
- Applicant Team believed they had provided more information from the Planning Commission stage to this point to address to demonstrate this would be the minimum variance necessary to justify six homes on one driveway. They failed to provide the additional topographic information in that cross-section that showed the 29 percent slope coming down. They were trying to do a better job of articulating that this one, single consolidated point was the minimum variance versus asking for five variances for driveways on Midhill or two more variances to have three driveways on Marylhurst. They believed those alternatives were more intrusive and asked more than this proposal.
- Front doors of homes would be on Marylhurst with walkup access and the garage areas would be off the private driveway.

Applicant Presentation

Public Comment

Richard Burke lived next to the subject property and spoke in support of the Planning Commission's decision based on safety issues, the existing fast-moving traffic, and heavy pedestrian usage.

Tom Tomaszek lived across the subject property and supported the Planning Commission's decision, citing environmental concerns as 50 trees would be destroyed to develop the property, and safety concerns.

Arnold Sackett lived on the upper part of Midhill Circle, which was a narrow road. He believed the road was not wide enough for two cars to go by, let alone allowing parking. He also cited concerns about erosion problems due to tree removal.

Elizabeth Apen lived on Marylhurst Drive and was against the variance. She believed waiving the traffic study requirement in the original Staff report was a mistake and that decision should

be revisited. She also believed the issue was about more than one driveway, as it would affect the look and feel of the neighborhood and go against the intended design of the neighborhood indicated in the R-10 Code.

Mike Sandmann lived on Marylhurst Drive and supported the variance if the development would not adversely affect existing neighborhood and future tenants. He cited safety concerns over a blind backout for a single driver of a box truck, trash and recycling service, and questionable benefits to the neighborhood and City as reasons to deny the variance.

Alice Richmond stated that if she had protested cutting trees and obstructed views near four lots she previously owned, they would not have a city. She supported the variance, believing emotions were sentiments that did not require anyone to really judge the situation and agenda for what was at stake.

Mr. Kilby acknowledged the high emotion and confirmed their belief that the things that needed to be considered were the project would consolidate what could be five or six variances to one variance to address the access issue. The owners could only build what was allowed in the zone. As an R-10 zone, only buildings for residential use could be developed.

- They would have to meet the same dimensional standards as the rest of the neighbors would have to meet if they were building a home.
- For the safety concerns, police do not have an opportunity to review and respond to development applications, but the Fire Service did review the project and believed they could service this from a safety perspective.
- As to safety concerns on Marylhurst Drive, ideally, when establishing a new access, you want to establish it across from another access. Adding the sidewalk would better the safety for neighborhood residents.
- Nobody liked change, as it was never easy to swallow or accept, but these lots were created for the purposes of developing single-family residences or residential uses, and the owner would be allowed to do that with this application without burdening everyone on Midhill Circle by putting all the residential parking into an alley on the back of the property.

Mr. Simpson also acknowledged the emotional testimony and concerns.

- He briefly reiterated that consolidating all of these to a single access point was the safest option. There were only so many options to develop these lots. They had considered three different options, and the one presented tonight was the safest, with one consolidated access point. Making a left or right hand turn out of a driveway was a hazard every single driver faces. They were meeting CDC requirements, which required 75 feet of spacing between driveways and 35 feet from a street. They did not request to locate a driveway in a location that was against City Code. It would be located per the CDC.

- Erosion control would be addressed during lot development when homes were constructed, with things like sediment fence.
- Lot number 2, the single lot to the northeast could be developed with a residence and extra-deep driveway, allowing two vehicles. It would be striped and signed as no parking in the western side of that lot to be a turnaround for delivery and service vehicles and other visitors. Drivers would have to reverse into this reserved space and make a three-point turn to avoid backing onto Marylhurst Drive, allowing them to exit in a frontward motion.
- Those specific criteria and what types of homes were being built were not part of this variance but absolutely were important to consider, and they could be accommodated if it were to be conditioned.

Responses by the Applicant Team to Council's questions and concerns were as follows:

- There were currently six legal lots of record that would be developed. They were trying to provide the least invasive and best outcome when these six lots develop.
- Some homes in the area were on double lots, so they have what appeared to be a much larger lot. In this case, the developer would typically like to develop to the highest and best used allowed outright on the lots. The plan now was to develop the six lots as legally platted.
- In cities like West Linn and Sherwood, if they want their use to continue coming back, you must provide opportunities, and the way to do that is to vary lot sizes and product types that can go onto lots. Don't make it a homogenous community of all single-family homes. The City also had to provide various price points. When developers find an opportunity like this, they would try to develop all six lots, which would provide variety within housing stock, such as an affordable starter home or for someone downsizing to a smaller home.
- Doubling lots was considered, but it had determined to develop all the lots as laid out.
- The vertical elevation drop from east to west on Lot 15 connecting with Midhill Circle was about 13 feet from Midhill Circle down to proposed shared driveway.

Councilor Erwin expressed concern over balancing the developer's property rights with those of existing and future neighbors. He was concerned about conflicts arising between future property owners from packing six units onto this land and believed he had to think about their rights and how they feel about any discomfort they might have at the density. A lot of people had interest in this, and he could not just look at there were six lots, four would have been legal, just give us the extra two and be done here.

Mayor Bialostosky disclosed he had intended to ask Council if it wanted to take this under advisement and decide later, but before the 120-day clock expired. He wanted more information about the turnaround concept before deciding, not because he was leaning any way but because he wanted that as evidence to consider.

Associate Planner Floyd commented that Staff had spent a lot of time looking at the request from a lot of different angles. He believed they were here tonight because of decisions made 100 years ago. Variances existed for oddball situations that were not anticipated when a code was written. The code was not written for modern and current development, and they were having to retrofit the code on top of something that would not happen today. He believed the real crux was that the Code allowed up to four lots onto a private access way with all the benefits and potential problems that would create. He asked Council to consider if the downsides were increased enough by the other two lots that it would not be worth granting the variance.

- The Police Department would not typically review applications, but the Engineering Department did, and they supported the application.
- Pedestrian safety could be referred to the Traffic Safety Committee for review and perhaps woven into the City's parallel project to construct a sidewalk extension.
- Staff did not require a turnaround because Code deferred to the Fire Marshall in that situation. In a conversation with Jason Arn at TVF&R, they said a turnaround was not required to meet their standards. Council could feel it was necessary for other reasons, but Staff did not put that on the table because Code specifically deferred to TVF&R, and additional information could be provided.
- Staff had several people question whether Midhill Circle was wide enough. While people did park on the street there and it was narrow in spots, Mr. Arn reported TVF&R had responded to two fires and medical events in that area and access was not cited as a concern.
- Associate Planner Floyd reported researching various land use decisions in the subdivision, and he could not find evidence that the intent was for the original subdivision to contain one lot for development and one for septic.
- As the Applicant mentioned, any new development would need to meet the R-10 standard in terms of types of housing, height, and floor area ratio and was the reason the Staff report included the illustration in terms of some homes were developed on a single lot and some on double lots. Developing the lots with single-family homes was going to be approximately the same scale as other homes within the larger subdivision. From a proportionality standpoint in the size and scale, future development would likely be like what was already there.
- Any cars associated with this development would access Marylhurst Drive one way or another, as there was no way out onto Midhill Circle. As far as safety is concerned, a new central driveway midblock would have a sidewalk to ensure vision clearance so the driver entering and exiting could see in both directions.
- If Council chose to issue a continuance tonight, they could reach out to Staff or the Applicants for additional information.

Responses by Staff to Council's questions and concerns were as follows:

- Code did not require a traffic study for this Application. That would typically happen with a subdivision or large design review. This was not a subdivision because the lots

already existed. It was a matter of access and not number of trips or cars, but it would something that could be followed up on.

Mayor Bialostosky stated he would like to see the traffic study addressed because adding that many more cars could impact the neighborhood. He also questioned whether the process of variance first and homes later in a land use situation was appropriate.

Associate Planner Floyd believed it was appropriate and acknowledged there were different ways to go about it. He stated there were significant design costs to coming up with site plans for this, so he believed it was reasonable for the Applicant to get the parameters of access determined first before design.

In response to Councilor Groner's question, Associate Planner Floyd confirmed Staff was recommending Council approval the variance. This was Staff's original recommendation, and they felt the Applicant had responded to the Planning Commission's concerns.

City Attorney Trompke advised that Council could, of its own motion, keep the Public Hearing open for any period, as long as the 120-day clock, or August 16th deadline. If Council made any changes to what Staff recommended, they would probably need two meetings. The first would be to direct Staff as to what to do, and then Staff would come back with the findings at the second meeting. A continuance to next week or to the next regular meeting in two weeks, Council could do that without bumping up against the 120-day rule.

Associate Planner Floyd added that if the Applicant was willing, they could provide an extension to the time limit.

Mayor Bialostosky asked Council if they were ready to vote or wanted to grant a continuance until next week. Council concurred with granting a continuance for more information.

City Attorney Trompke noted it would be helpful for Council to specify what information it wanted and to verify the Applicant could provide it in that timeline.

City Attorney Monahan agreed that Council should propose the question and then move this to a date certain at the next meeting, leaving the record open until the next hearing. The Applicant would be allowed to respond, and then Council could discuss and determine what process they wanted to use to go forward.

The Applicant Team understood Council wished to have an additional exhibit showing the ability to accommodate a turnaround for service vehicles and visitors.

Mayor Bialostosky clarified he also wanted to know what it could accommodate and to make sure there was enough space to accommodate. He wanted to ensure it would work logistically from an engineer's perspective.

The Applicant Team confirmed they could prepare an exhibit that essentially showed what types of vehicles would be able to turn around.

Mayor Rory Bialostosky moved to Continue the hearing to July 17 at 6:00 pm and leave the record open for written testimony until that time. Council President Mary Baumgardner seconded the motion.

The Applicant Team could not confirm the project engineer would be available on July 17.

Staff indicated they could be available for the next scheduled meeting on July 24 to present exhibits.

Mayor Bialostosky reminded Council meets the first three Mondays of the month and would not meet on July 24, so they could continue this until August 1.

After being advised August 1 was too close to the deadline, Staff confirmed they could make July 17th work.

City Attorney Trompke confirmed an extension to the 120-day rule was acceptable to the Applicant and asked them to send an email confirmation to Staff.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: None.
The motion carried 4 - 0

Agenda Bill 2023-07-10-06: Public Hearing: ORD 1742, ADOPTING TEXT AMENDMENTS TO THE WEST LINN COMMUNITY DEVELOPMENT CODE CHAPTER 34: ACCESSORY STRUCTURES, ACCESSORY DWELLING UNITS, AND ACCESSORY USES

ORD 1742 Information

Mayor Bialostosky called to order the legislative Public Hearing on CDC-23-01 a proposal to amend Chapter 34 of the CDC. He explained the proposal would amend existing Accessory Dwelling Unit (ADU) rules to remove existing barriers found to be prohibitive and inequitable. He then outlined hearing procedures and asked City Attorney Trompke to cover legal matters.

City Attorney Trompke explained the applicable legal matters were as follows: 1) applicable standards and appeal rights, meaning Council's decision must be based on consideration of State-wide planning goals and administrative rules adopted under ORS Chapter 197; 2) Applicable federal or state statutes or rules; and 3) Applicable plans and rules adopted by Metro; and 4) On the City's Comprehensive Plan and Development Code. Council could consider any relevant testimony it received, unlike a quasi-judicial hearing. Failure to raise an issue during the City's hearing on this matter precludes an appeal to LUBA based on that issue.

Any party with standing may appeal Council's decision to LUBA according to the rules adopted by that board. Persons with standing include those who submit written comments or present oral arguments.

City Attorney Trompke confirmed no Councilors had a potential or actual conflict of interest and no member of the audience challenged Council members' ability to participate.

Planning Manager Darren Wyss presented the Staff report, provided in the packet, noting attached materials included the proposed ADU Code Amendment, the Planning Commission's recommendation memo, written public testimony, email from Metro Regional Council supporting the amendments, the Planning Commission Staff Report and Findings, and the Affidavit and Notice Packet showing the hearing was noticed in accordance with CDC Chapter 98. He then reviewed the background and purpose of the project, including 11 policy questions the Planning Commission discussed during numerous work sessions. The Planning Commission held its Public Hearing on the Ordinance on May 17, 2023, and voted unanimously to recommend amendments to CDC Chapter 34.

Responses from Planning Manager Wyss to Council's questions and concerns were as follows:

- ADUs would continue to meet the same setbacks as a single-family home. In most cases, this would be seven-and-a-half feet from side property line and 20 feet from the front and rear.
- By eliminating the 10-feet gap between the ADU and primary structure, the ADU could be attached to the primary unit.

Mayor Bialostosky confirmed Council had no further questions and opened Public Testimony, confirmed no one wished to make a Public Comment, and closed the Public Hearing.

Staff Presentation

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1742 adopting text amendments to the West Linn Community Development Code Chapter 34: accessory structures, accessory dwelling units, and accessory uses, and set the matter for Second Reading. Councilor Leo Groner seconded the motion.

Councilor Erwin believed this Ordinance was needed to make sure they were meeting the need for improving access to housing, as it would allow people to age in place, provide diversification of price points for affordability of housing, and ultimately meet State statutory requirements for HB 2003.

President Baumgardner and Councilor Groner thanked Staff for the work put into the information and presentation.

Mayor Bialostosky echoed his thanks to Staff but also included the Planning Commission for

their time, believing this Ordinance would lead to more affordable housing in West Linn and spaces for people to age in place or support multi-generational families.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: None.
The motion carried 4 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1742 adopting text amendments to the West Linn Community Development Code Chapter 34: accessory structures, accessory dwelling units, and accessory uses, and adopt the ordinance. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: None.
The motion carried 4 - 0

Agenda Bill 2023-07-10-07: Public Hearing: ORD 1746, VACATING A PORTION OF THE DOLLAR STREET AND BRANDON PLACE RIGHT-OF-WAY WITHIN THE CITY OF WEST LINN, OREGON
ORD 1746 Information
Public Comment Memo
Mayor Bialostosky explained this was a quasi-judicial hearing for Application Number VAC-23-01, a City-initiated request to vacate a portion of Dollar Street and Brandon Plan right-of-way with the City of West Linn, Oregon. He outlined hearing procedures and called the Public Hearing to order.

City Attorney Monahan explained the Applicant had the burden of proving the Application was consistent with provisions of Oregon Revised Statute (ORS) 271.080 to 271.130. Criteria that must be addressed were ORS 271.130. Any testimony, argument, or evidence speakers give to Council must be directed at these criteria or at some other criteria in the Code or Comprehensive Plan which the speaker believed should apply to this decision. If someone's testimony would be repetitive but they would like the opportunity to appeal the decision, they must have completed the speaker signup form.

- Only those who have appeared before Council in person or in writing would have standing to appeal this item to LUBA. Failure to raise an issue accompanied by statements or evidence sufficient to allow Council and the parties an opportunity to respond to the issue would preclude an appeal to LUBA based on that issue.
- Prior to the conclusion of the first public hearing on Application, the Applicant or anyone who participated in the hearing could request a continuance or ask for the record to be left open to present additional information. If there was such a request,

Council shall either continue the Public Hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony.

City Attorney Monahan confirmed no Councilors had a potential or actual conflict of interest or bias. Regarding ex parte contacts, the following were reported:

- Mayor Bialostosky reported he frequently walked on or near the site because it was close to his house.
- President Baumgardner reported she received a request from the adjacent homeowner to get information about the meeting, and they called her for direction on how to participate. She had never spoken to the person before and referred them to the City for help.
- Mayor Bialostosky reported having the same conversation with Ms. VanDemarr.
- Both Mayor Bialostosky and President Baumgardner confirmed they did not discuss the merits of the application.

City Attorney Monahan confirmed no member of the audience challenged Council's jurisdiction to hear the matter, nor did anyone challenge the impartiality or ex parte disclosures of any Councilor.

Planning Manager Wyss presented the Staff report, included in the packet, noting the packet materials included the agenda bill with background information and Staff's recommendation to approve the vacation request. Attachments included Ordinance 1746, identifying legal descriptions of the properties; Staff report and findings addressing ORS regarding City-initiated right-of-way vacations. One written public comment was received this afternoon which was forwarded to the Council as a Memo.

- Although the public right-of-way was normally used by pedestrians to access an existing pathway going underneath bridge, pedestrians would still be able to access the trail from a different point without crossing over Willamette Falls Drive.
- Just over 20,000 square feet would be vacated, most of it on Dollar Street. The Brandon Place right-of-way had no opportunity for street connectivity because it dead-ended into Portland General (PGE) property and the river creates a barrier to extension. The bridge to the south would create an opportunity to cross the river. The new Brandon Place Extension would also create connectivity between Dollar Street and Willamette Falls Drive, including the pedestrian connection.
- The Ordinance would require a 20-feet public utility easement for future needs to run a public utility down the Dollar Street right-of-way as well as a 20-foot access easement for the PGE property. There is not currently a need for this anticipated, but it is standard practice.

Responses by Planning Manager Wyss to Council's questions and concerns were as follows:

- He apologized if the photo including the pedestrian path was not included in the packet. He explained the existing trail going under the bridge at the end of the Dollar Street right-of-way proposed to be vacated did not have a legally recorded public access easement across the PGE property. With the School District building the new trail, they were negotiating an access easement that would be legally recorded so pedestrians would have access in perpetuity. The district would also issue a public access easement across their property to provide access in perpetuity from the Brandon Street right-of-way underneath the bridge to Fields Bridge Park, creating legal access that currently did not exist because there was no easement with PGE.
- There were no written objections from most of the property owners in the area, and Staff did not believe it would substantially affect property values of adjacent properties. All properties would have continued access to the public right-of-way. The two easements benefiting PGE were included as part of the proposal.
- He did not know when the trail through School District property would be completed, but Mr. Douglas from the School District would speak tonight and might be able to provide that information. Council could condition Staff not to record the vacation until that trail was completed and access easements were in place to ensure continued access to the trail.
- The only concern he had heard regarding the vacation was the letter sent to Council this afternoon, and it did mention continued access to the trail.

Public Comment

Remo Douglas, West Linn School Board, supported this initiative. The Board had been coordinating with Staff and neighbors for several years during the school design process. They went to great lengths to assure neighbors of continued privacy for their property, agreeing to install additional fencing and a gate for their new driveway and fencing along the new path to deter pedestrians from following the deer path they were used to following, but doing it all in a nice, open friendly way. The new hardscape path would be very comparable to what was there so that the exact same functionality was there for community members. He also supported the proposed condition, and the goal was to have the pathway completed before school started this fall.

Isaac Leitz supported the vacation, citing boat traffic backing up onto Dollar Street as well as community members parking on PGE property and in front of residential mailboxes and garbage cans and leaving trash behind.

John McCabe pointed out the polygon area on the map, noting it was property owned by Clackamas County and part of the easement would go through that area. The County could decide to restrict access, and he believed the best thing to do was to transfer it to the City. The path going under Fields Bridge was also owned by the County. Contractors for the Dollar Street property had recently destroyed part of it with no intention of making repairs. Since the path already existed and was ADA accessible, they knew the slopes were not steep. He could not tell how steep or wide the new path would be or how much greenway material would be damaged by what was being built. Along the whole road there, the School District had a blue water pipe

that drained into Clackamas County's storm drain. If the School District brought back the blue pipe, pedestrians would not be able to cross that road and it would be ADA inaccessible. He believed Council could not move forward without guarantees in place. He agreed with having Ms. VanDermarr's portion of the property vacated but not with Dollar Street because there were no guarantees of what that easement would be and when it could be accessed.

Shannen Knight provided her understanding of the background behind the vacation and stated she favored it but wished the City communicated better with property owners on issues involving their property. She also had concerns about access for the path and appreciated the proposed condition that the vacation would not start until the path was completed. She also asked for signage at Ms. VanDemarr's property directing people to the trail to access the river to avoid trespassing on the property.

The Applicant had no response to Public Comments.

Responses by Planning Manager Wyss to Council's questions and concerns were as follows:

- The easement would be a public access easement, making it accessible during school hours and it would be ADA accessible, as it was a flat area and matches the existing pathway's width.
- He was not familiar with the water pipe and suggested asking that of Mr. Douglass, who had more information about the construction than he did.
- He did not believe there would be a need to transfer the easement from Clackamas County to the City, as the purpose of an easement was a legal agreement between the property owner and the City to allow continued public access in perpetuity.
- He confirmed the VanDemarr property would be fenced and gated as part of this development to prevent trespassing.

Mayor Bialostosky stated he wrote down a new condition requiring temporary signage guiding pedestrian traffic to the new access trail to be erected and asked Mr. McCabe to submit his picture to the record by emailing it to the City.

Planning Manager Wyss agreed the wayfinding signage would be appropriate.

Mr. Douglass stated that the pipe in question was a temporary stormwater management system. It was removed because it was the dry season and was not necessary. The permanent system was largely in place and pending tonight's permit approval to allow the remainder of certain aspects to come together. The asphalt path was designed specifically with accessibility in mind. He did not know the exact grade, but to the extent that it went from the same point where it connected to the existing path to the same point at the top of what will become the VanDemarr driveway, it would not create any hardship for access.

Mayor Bialostosky closed the Public Hearing.

Mayor Rory Bialostosky moved to approve VAC-23-01 subject to the following conditions of approval: 1) The City shall not record the right-of-way vacation with Clackamas County until the access trail on the adjacent School District site is complete; and 2) Signage guiding pedestrian traffic to the new access trail shall be erected. Council President Mary Baumgardner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: None.
The motion carried 4 - 0

Mayor Rory Bialostosky moved to approve VAC-23-01 subject to the following conditions of approval: 1) The City shall not record the right-of-way vacation with Clackamas County until the access trail on the adjacent School District site is complete; and 2) Signage guiding pedestrian traffic to the new access trail shall be erected and amend Ordinance 1746 with these conditions as read. Council President Mary Baumgardner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: None.
The motion carried 4 - 0

Agenda Bill 2023-07-10-09: Adopt Final Decision in Appeal of Planning Manager Decision in WAP-23-01/WRG-23-01/FMA-23-01
Final Decision
Final Decision - Revised 7-10-23
Public Comment - Ed & Roberta Schwarz
Public Comment - Richard Sakelik
Public Comment - Julia Simpson
Public Comment 2 - Julia Simpson
Public Comment - Karie Oakes
Public Comment - John McCabe
Public Comment 2 - John McCabe

Public Comment
Betty Reynolds spoke about major unresolved issues with this project, citing major impacts on community, safety and livability, as well as irreversible environmental harms. She urged Council to rescind their June 20 vote, conduct an independent investigation of tree removal, and conduct an unbiased review and revision of the project with widespread community involvement consistent with the spirit and intent of public meeting laws, Oregon's Land Use Goal 1, and federal, state and local laws to protect the environment. The harm to the

environment was real, with the DEQ finding multiple violations and levying penalties and against the City and District for polluting the Tualatin River. The clear-cutting of Dollar Woods before permits were issued and the removal of more trees during the project have permanently damaged this environmentally fragile area. This area was in the FEMA flood zone, and the construction of multiple retaining walls up to 20 feet high and extensive excavation would destroy wetlands and riparian habitat and could cause erosion affecting downstream homes. She believed public safety issues needed to be addressed. The overall lack of standards for roundabouts, the certainty of increased traffic on Willamette Falls Drive from I-205 tolling, and the district's refusal to address the failure of Willamette Falls Drive – Ostman Road intersection could cause gridlock at the roundabout. The safety and livability for nearby residents have been ignored. As policy makers, she urged Council to look at the bigger picture and restore good faith with voters. She believed if voters had been given accurate information, that Dollar Street was the school site and Dollar Woods would be clear-cut, that Field Bridge would become a huge roundabout including 20-foot-high retaining walls and permanent harm to the environment, that tax rates would increase, that enrollments were declining and the District would recruit out-of-district families who do not pay property taxes, those measures would not have passed. She believed it was time to re-think the entire project, and at least open it up for good-faith community engagement and protection of the Tualatin waterfront.

Karie Oakes Appellant in this hearing, noted she and Ms. Terri Cummings had spent a lot of their own time and money for this Appeal and had set up a GoFundMe account to hire an attorney for help with filing a LUBA appeal. She was disappointed the draft decision for adoption tonight was not available to the public until just four days ago, even though it was a long-standing Council rule for Staff to make agenda bills and accompanying information available 10 days prior to the meeting. In addition, she learned in the pre-meeting that the draft was revised earlier today and not made available to the public again. She understood the record was closed and the approval of the draft decision would confirm Council's tentative decision to deny the appeal and uphold the Planning Manager's decision with three additional conditions. Council would be adopting the findings of City Staff and the Applicant along with supplemental findings of its own. She asked Council to carefully review two of their supplemental findings to confirm that they agree with them. She did not hear Council deliberate on these supplemental findings, although she did recall deliberation on removal of on-street parking and the size, safety, and impacts of retaining walls to the environmentally sensitive land. Supplemental Finding 1, The Roundabout, was found to be a permitted intersection improvement that was not subject to approval or design review as part of the Applicant's application for the Water Resource Area (WRA), Tualatin River Greenway, and flood management area permits. Supplemental Finding 2, Tree Removal Prior to Filing Application, found earlier tree removal was inadvertently authorized by City Staff and appropriate mitigation would be undertaken through West Linn Municipal Code requirements. She also asked for clarification on a finding of fact of a procedural issue in the draft decision, Letter C, in which the Applicant claimed the community's substantial rights to participate were prejudiced by Staff's interpretation of Council's June 6, 2023, continuance motion to allow only the Applicant and Appellant the right to final written rebuttal by noon on June 20, 2023. She did not understand why the Staff interpretation was within a note on process added to the Land

Use Development Project file for the Application, and asked Council to explain it. However, that statement made at the close of the initial hearing did not place any limits on who had the right to rebut. She noted Council could reconsider its tentative decision by a majority vote tonight. The 120-day decision deadline was July 14th, but she doubted the City Manager, the Applicant, would proceed with a writ of mandamus against the City were it not to meet the deadline. She questioned why the City Engineer, his attorney, or a representative was not available tonight to extend the deadline.

John McCabe stated he had handed out sheets to the City Recorder because Staff kept saying was that when the project went out for a vote, people were in favor of it. The second paragraph said there would be no cost, but it was costing over $2 million. He believed Staff should apologize and that if they had known the cost up front, it would not have succeeded. To make it worse, when they did hear from Staff, the road was being shifted to the south for the benefit of the School District. Since it was for their benefit and not the community, the City should not pay them. Instead, the District should go back into their land with the proper setback, which was another 10 feet, and if the City did not need to do anything on their side, then don't. The other development project in the area, Arbor Cove, begin their sidewalks at 8 feet deeper into their area, and the School District should do the same. Oregon Department of Transportation (ODOT) was unaware the road was being shifted to the south, and this was a critical auxiliary road for the County being shifted to the south for the benefit of a person that did not want the road to move to the north, allowing the proper easement allowed. He was also concerned that the roundabout would not work because it would not have a 20-mile-per-hour speed limit, making it a free-for-all. The intersection was currently a four-way stop, but the County would not allow a four-way stop because they are one portion of it along Fields Bridge. At what point would the roundabout be removed because of accidents when there were other multiple choices that could have been used, and those City employees who wanted the roundabout were no longer with the City.

President Baumgardner appreciated the attention members of the public had maintained on this matter and acknowledged she had a lot of concerns about it as well. She was struck by a slide that she had not seen since an earlier presentation showing the street curving to the south in the right-of-way from Epperly Way to Fields Bridge. She wondered why it was doing that and if the Park was losing frontage for the wall and had concerns about the roundabout.

Mayor Bialostosky appreciated the public comments, especially issues with the school and the approval process. He stated he did vote against the new Athey Creek Middle School at the time and felt it had been litigated at this point. He believed they were at a point in the process where the issues had been litigated about the Appeal, went through a substantial process to do that over several meetings. He would vote to adopt the findings based on that.

- He appreciated what Ms. Oakes had said about some of the language in the findings and community members who raised concerns about the tree code issues. He did not know that "Council finds that earlier tree removal was inadvertently authorized by City Staff" until the hearing a couple of weeks ago. He was disappointed the trees were cut

down without appropriate process, but he was confident mitigation would occur based on the findings and the fact that the Municipal Code authorizes that with a section on penalties.

- He noted they were not here to consider the Municipal Code issues, as they were in the CDC situation where they were interpreting the Code in relation to these permits, and the Municipal Code was a separate process. He believed it would be handled through appropriate enforcement steps as outlined in Section 8.740.

Mayor Bialostosky asked for clarification on the language Ms. Oakes referred to in the findings regarding Staff's interpretation of process.

City Attorney Monahan explained that at the end of the initial hearing, there was a question raised as to what the three-stage process would be. Mayor Bialostosky had asked City Attorney Monahan to state the process, and he replied that the rebuttal was to give the opportunity for the Appellant, Applicant, and other parties to rebut, as that was the direction given by Council. At some point, Staff decided to put a statement onto the project file that talked about what the stages were going to be and left out the words "and other people." So, what this language was saying was that the Applicant said the community's substantial rights were prejudiced by the Staff's interpretation of the continuance. The specific statement on the fourth line says, "The Staff interpretation was within a note on process that was added to the Land Use Development Project file for the application." However, that statement that was made at the close of the initial hearing did not place that limit. What it really went on to say was that all persons were provided a full opportunity to submit evidence at that first stage and throughout the hearing and argument to Council at the de novo hearing, and no community member, to their knowledge, attempted to submit rebuttal information at that second stage and was rejected or denied. As far as City Attorney Monahan was aware, that did not happen. No one made a claim that they were denied the opportunity to submit rebuttal information. No one had asserted that their substantial rights were prejudiced within the context of the hearing.

President Baumgardner stated she also voted against the middle school project and still felt that was following her concern about the good of the community of placing the school in a constrained area and the geological implications and impacts to a riparian area. However, the school was now there, and they had to make it safe and accessible and do the best they could going forward, which she planned to do. She did not enjoy being in a position of basically having to approve further infrastructure in an area that she did not believe should have embarked on this level of development, but it needed to be safe for children and families to access it. She was not certain the roundabout was the best answer because of its placement going into two parking lots instead of a true intersection, but all they could do was follow the process as closely as they could and include the public and communicate better and as best as they could.

City Attorney Monahan commented that there were revised findings that were proposed earlier today in response to other communications Council received later in the week last week. For example, one communication shared with the Council, last Thursday, raised the

issue of whether the disclosures were done properly. So, detail was drawn out of the meeting video to add to the findings to ensure accuracy. The findings would not have been revised after last week if they had not received those communications.

Mayor Rory Bialostosky moved to approve deny appeal AP-23-02, affirm the Planning Manager decision, and approve the Final Decision and Order for AP-23-02, a Water Resource Area, Tualatin River Greenway, and Flood Management Area permits for street improvements to Willamette Falls Drive along Fields Bridge Park. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Councilor Scott Erwin, and Councilor Leo Groner.
Nays: Council President Mary Baumgardner.
The motion carried 3 - 1

City Attorney Monahan noted any appeal to this decision had to be filed to LUBA in accordance with LUBA's rules and any applicable provisions in the CDC.

Mayor and Council Reports [8:35 pm/30 min]

~~a. Reports from Community Advisory Groups~~

City Council agreed to postpone this agenda item to next week.

Filling Council Vacancy Discussion

Mayor Bialostosky reminded that this topic had been tabled when Council declared his Council seat vacant when he was sworn in as mayor. The last time this happened, Council took applications to fill the seat. Staff could pull up that application as a starting point.

President Baumgardner agreed that would be a good path forward.

Councilor Groner asked if this would be a temporary appointment until the November election.

City Attorney Monahan clarified the City's requirements were that if there was more than one year left in a term, there had to be an election, which would happen in November. The interim position would be filled from the time of appointment through the election and the certified votes came back from the County Clerk and were accepted by Council. The person selected by the public would be sworn in in January or earlier.

Mayor Bialostosky stated they could give Staff direction to announce the vacancy and post the application form.

Councilor Erwin supported going ahead and asking the community for an interim appointment, as Council had been without a fifth member for long enough.

Mayor Bialostosky proposed to post the application form for the last vacancy situation and announce the vacancy as soon as possible, with the application period closing July 31 at noon for consideration on August 7.

Staff agreed the proposal was feasible.

Council reached consensus to proceed with the proposal.

City Manager Report [9:05 pm/5 min]

Deputy City Manager Preston provided updates from the task force committees that Council had recently appointed.

- The Camping Task Force would meet for the first time Thursday, July 13 in the Community Room at the library. Since the new Camping Ordinance went into effect on July 1, when and if they encountered someone camping on public property that had not been designated at this time for camping, officers would give them a copy of the map and Ordinance to help them navigate where they could camp according to Time, Place, and Manner.
- The Recreation Center Steering Committee had been developed, with leadership interviewing MIG Consulting, LLC, the consultants. An FAQ worksheet was being developed, and MIG would brief the Parks and Recreation Board on the process on July 13. The 10-member Steering Committee had been established and their first meeting would be July 19. A mailing list had been set up for anyone interested in receiving updates.
- The introductory meeting for the Police Review and Recommend group would be one of the last two weeks of July. The meeting would be an introduction, get to know each other, review Council's directive for the group, collect fingerprints for the Criminal Justice Information System to be able to review reports, sign nondisclosure agreements, and scheduling ride-alongs and future meetings. Future meetings would include training from the District Attorney's Office, the City's employment attorney, and review of 2020-22 complaint resolutions and eventually current complaints.
- The search committee for the City Attorney position would review materials for three candidates on July 19.
- She referred to the discussion which confirmed the Council would meet on August 7.

City Attorney Report [9:10 pm/5 min]

On the Council position, the position that is filled in November needed to be processed through the County Clerk. City Recorder Mollusky had already gone through that process to advertise it, so that stage was already completed. It did not require Council action because they had given authorization to fill the position at the last meeting.

Community Development Director Doug Erickson had asked him to participate in the

Committee on Camping, so he would be at those meetings to provide background to expedite the process and bring back suggested locations as soon as possible.

Adjourn [9:15 pm]

Draft Notes.

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

WEST LINN
CITY COUNCIL MEETING
NOTES
July 17, 2023

Call to Order Special Meeting [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Lou Groner.

Staff Present:
City Manager John Williams, City Attorney Ed Trompke, Assistant Planner John Floyd, and City Recorder Kathy Mollusky.

Approval of Agenda [6:05 pm/5 min]
Council President Mary Baumgardner moved to approve the agenda for the July 17, 2023, West Linn City Council Meeting. Councilor Lou Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Lou Groner.
Nays: None.
The motion carried 4 - 0

Public Comments [6:10 pm/10 min]

Public Comment - John McCabe

Public Comment - John McCabe2

John McCabe discussed the Dollar Street and Brandon Place right-of-way decision, stating that an environmental assessment had not been completed, nor had the work been authorized, but the work from Brandon Place Extension to Dollar Street was now underway. He did not believe it is ADA-compliant, as required. He also questioned why work started the day after he received notice with information about appealing to Land Use Board of Appeals (LUBA) without waiting to see if an appeal was going to be filed. The use of Brandon Place extension to Dollar Street was never authorized, yet it was being done. It was supposed to be for emergency use, but it is used every day.

Announcements, Proclamations, and Recognitions [6:20 pm/10 min]

National Farmers' Market Week & Wednesdays In Willamette

Proclamation

Mayor Bialostosky read the proclamation declaring August 6 to 12, 2023 as National Farmers Market Week in conjunction with Wednesdays in Willamette Summer Street Market Week.

Rebecca Hollenbeck, Historic Main Street, and Jody Carson discussed a program in which each child aged 5 to 12 received $2 in tokens each week to purchase produce-related items at the market.

Scheduled Presentations to the Council [6:30 pm/60 min]

TriMet Forward Together Presentation

Presentation

City Manager John Williams acknowledged the Community's high-interest in alternatives to single-occupied vehicles, especially as roadwork and possible tolling begins on I-205, and stated both intercity and intra-city transit services were on Council's priority list this year.

TriMet Senior Planner Grant O'Connell updated on Forward Together, included in the packet. Although it was unknown how much the pandemic changed commuting patterns permanently, they had changed enough to warrant revisiting existing services. At the outset of the pandemic, TriMet reduced all services by about 22 percent due to economic concerns and to reserve capacity for people who had no other transportation options. For many reasons, TriMet was now able to grow services back to pre-pandemic levels and even beyond that. To keep costs low, they did not perform a ridership model, but instead chose to measure the gain in access. The study suggested the following would benefit West Linn, specifically:

- There are two lines that run through West Linn. In the context of tolling, TriMet was looking at upgrading Line 35 to operate frequently, every 15 minutes.

- They are looking at extensions of the line along the Highway 43 corridor, and Line 76, which would mirror Highway 217.
- Significant areas of Tigard and Tualatin would be newly reachable within 60 minutes for 20,000 people and 34,000 jobs.
- There would also be a new gain in accessible Lift services by the extension of Line 154 between Tualatin and the west. There may be a decrease in Lift accessibility in the Line 76 proposed route, but the Lift provider indicated there were no known or established customers in that area.

Forward Together was a short-range plan within existing forecast resources to reconfigure services within the Portland Metro area.

Senior Planner O'Connell responded to Council questions and concerns as follows:

- The study was low budget, so a ridership model to predict ridership was not completed. Instead, they chose to measure the gain in access as a proxy for ridership. If the network could get people to more places within the region in one hour, ridership should grow because more of the region would be accessible from West Linn.
- Shuttles provided through House Bill (HB) 2017 were intended for daily fixed routes. Public transits were generally barred from providing services during one-time special events.
- Surveys would be done to determine routes, but the main gating factor in rolling them out was the labor shortage. When gearing up for a new fiscal year, TriMet would conduct outreach to engage and figure out the best routing for that service. Revisions could be done through public feedback through the winter with another round of public outreach if revisions were done. It would then go to Board for consideration in March or April for implementation the following fiscal year.

Senior Planner O'Connell emphasized this was a near-term fiscally constrained plan, but they were building a new baseline of what TriMet service looked like throughout the region. They were planning a follow-up project to redevelop the longer-ranger plan, assuming additional growth or revenue opportunities were available, and TriMet would engage with Staff and Council on it.

President Baumgardner expressed appreciation for Forward Together, as she has had concerns about tolling without proper, adequate access to multi-transit options. She believed that while West Linn had often suffered from ridership issues with TriMet, the intra-city shuttle would provide potential to serve an unmet need the City had while at the same time having difficulty getting enough ridership to justify TriMet lines. With people aging in place who needed to get around West Linn, implementation of tolling, and passage of climate-friendly and equitable cities legislation, she could see the importance of the 15-minute city with a shuttle allowing people to get around inside the city. It would incentivize businesses and economic development to stay within the City if services were available because then they would not

need to get on congested freeways and pay a toll, but they would need a transit system to serve those needs.

Mayor Bialostosky agreed with President Baumgardner and noted he had expressed concern about Line 154 being canceled and Line 76 going on I-205 without stopping in West Linn. Although he knew 154 had ridership issues, he hoped that by opening it up to Tualatin and Tigard and providing that level of service, ridership would increase. That line also served the VA, so there could be veterans who would use it to get to appointments at the VA. He hoped 76 would go through West Linn if Line 154 were canceled.

Senior Planner O'Connell stated TriMet would not eliminate the 154 Line without the Line 76 replacement and agreement on a plan. They would struggle, especially within the context of tolling, if that were to ever happen. There was a tradeoff because if they ran on the freeway, they were fast, making it competitive and attractive, but then the route it would miss destinations. The lynchpin could be a shuttle service through Clackamas County to bridge the gap between quick service to get to destinations and feeding the 76 Line.

City Manager Williams believed this was an excellent concept and was excited about the opportunity to talk about shuttles. The concept made a lot of sense and could be the bridging option making the system work. He asked for clarification on the timeline if the City wanted to have that conversation with TriMet.

Senior Planner O'Connell explained that Forward Together was mostly concluded, but the opportunity for engagement and comments would come when it was put forward as part of the annual service plan. He would let Staff know in advance when it could be part of an upcoming fiscal year plan, which would likely not be until Fiscal Year '26. He would reach out next summer to start the conversation, with Public Comment occurring in the fall of 2024.

Water Environmental Services State of the District

Presentation

WES Annual Report

City Manager Williams introduced WES, a key service partner with West Linn handling wastewater, stormwater, and education district-wide, noting this kind of presentation would help residents understand who provides what services.

Greg Geist, WES Director, presented the annual report, included in the packet, providing some background and statistical information. WES served about 190,000 residents in Clackamas County's urbanized area, using wastewater to make clean water that went to rivers, electricity to power their facilities, and a natural fertilizer called biosolids. WES treated over 7 billion gallons of water annually, owning and operating over 360 miles of pipes. They also had stormwater and surface water duties in Happy Valley and unincorporated Clackamas County and were co-permitees with West Linn on the State-issued stormwater permit.

- Referring to the map on Slide 2, he explained the skinny area between Johnson City and Gladstone delineated two different rate zones, with the north being Rate Zone II and the south being Rate Zone I.
- They had a strong advisory committee with twenty members, which includes Council President Baumgardner and Greg Diloretto, a West Linn resident with a broad background in public works.
- 66% of every rate dollar went to operations and maintenance, 25% went to infrastructure financing, and 9% went to debt payments.
- The average annual rate increase since 2018 across all service areas is 3.2%.
- West Linn is a wholesale customer, which means the City owned and operated the collection system and receives wholesale rates.
- They were replacing and upsizing the Willamette Pump station and installing a new force main and pipes that will run by gravity across the new Abernethy Bridge. This will help service West Linn drinking water while the City drinking water pipe is being constructed.

Mr. Geist responded to Council questions and concerns as follows:

- Rate increases would cover cost increases adequately. Their goal is moderate and predictable increases over time, and they have been able to be able to do that.
- In 1996, there was about a foot of water in the lab and administration building. Any new project was now built above the 100-year flood plain, as well as any new electrical equipment installations.
- WES monitored sewage for diseases during the pandemic but were not currently collecting samples. He believed the pandemic samples were sent to Oregon State University (OSU).
- There were two pipes running under the Willamette River and one that went over it on Arch Bridge.
- Homeowners could help the system be more efficient by not flushing anything but "toilet paper, pee, and poop."

Mayor Bialostosky and President Baumgardner expressed their appreciation to WES for working with West Linn and Oregon Department of Transportation (ODOT) to provide drinking water services when the mainline goes offline during the I-205 construction-related shutoff.

Consent Agenda [7:30 pm/5 min]

Agenda Bill 2023-07-17-01: Meeting Notes for April 3, May 15, and June 6, 2023

Draft Notes Information

Council President Mary Baumgardner moved to approve the Consent Agenda for the July 17, 2023, West Linn City Council Meeting which includes the April 3, May 15, and June 6, 2023, meeting notes. Councilor Lou Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Lou Groner.

Nays: None.

The motion carried 4 - 0

Business Meeting [7:35 pm/30 min]

Agenda Bill 2023-07-17-02: Continuation of Public Hearing: Appeal AP-23-03 of the Planning Commission Denial of VAR-23-01

July 10 Council Meeting

Project Page

Additional Testimony Transmittal Memo 7-17-23

Applicant Supplemental Materials

Mayor Bialostosky called the Public Hearing to order, explaining the Public Record had closed, but there would be an opportunity for rebuttal of any new information presented. He invited members of the public who wished to discuss any new information to sign up on the form. The Applicant would have the final word, as required in land use cases.

- This was a de novo hearing for the appeal of the Planning Commission's denial of VAR-23-01, a Class II variance. The decision would be quasi-judicial, requiring it to be grounded in relevant City Code. He explained that the Public Hearing portion was continued until 6:00 pm today to allow Applicant time to prepare an exhibit confirming the viability of the vehicle turnaround. The record had been held open to allow for additional written testimonies. All written testimony had been added to the record, and no further public testimony could be accepted regarding the matter except to rebut specifics of newly submitted testimony.

Mayor Bialostosky read the appeal continuation procedures and called to order the Appeal Continuation Meeting.

City Attorney Trompke explained the criteria to be addressed at the continuation hearing were Community Development Code (CDC) Chapters as they pertained to the newly submitted written testimony and reminded speakers to address new materials rather than repeat earlier testimony. The following Chapters of the CDC were applicable: Chapter 11, The Residential R-10 Zone; Chapter 48, Access Egress and Circulation; Chapter 75, Variances; and Chapter 99, Procedures for Decision Making.

- Only those persons who had previously appeared to City Council in person or in writing, including those who submitted comments during the continuation process by the timed deadlines outlined in the notice given on the motion passed on July 10, 2023, by City Council would have standing to appeal this item to LUBA.

- Failure to have previously raised an issue accompanied by statements or evidence sufficient to allow Council and the parties an opportunity to respond precluded appeal to LUBA based on that issue. Failure of the Applicant to have previously raised Constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the City or its designee to respond to those issues would preclude an action for damages in Circuit Court.

City Attorney Trompke confirmed no Council members had potential or actual conflicts of interest or bias. Regarding ex parte contacts, the following were reported:

- Mayor Bialostosky reported visiting the site on two occasions, once with Assistant Planner Floyd and today with President Baumgardner when they drove by the site to see it.
- President Baumgardner reported she drove by the site today.

City Attorney Trompke confirmed there were no challenges to Council's jurisdiction to hear the matter nor to any Councilor's impartiality.

Assistant Planner Floyd presented the Staff report, explaining five letters from four individuals had been received this week, were placed into the record, and forwarded to Council.

- At last week's meeting, Council had expressed interest in the turnaround design option. The Applicant had prepared an exhibit of what that would like, and Staff had received it this afternoon. The exhibit was displayed for Council and audience members to view and was also posted on the project website. A memorandum from the Applicant was also included in tonight's packet.
- The exhibit showed three changes. The first was the turnaround in the corner, approximately 12 feet wide by 28 deep, to be signed and striped as no parking. It was essentially an off-street turnaround and loading area to allow vehicles to enter the site and turn around without backing into Marylhurst Drive.
- The second change was an area adjacent to the turnaround to place waste bins for collection, addressing concerns about garbage cans on Marylhurst Drive or on the sidewalk.
- The third change was the Applicant had proposed to widen the driveway. The previous design was 20 feet wide for the first two lots and then narrowed to 14 feet all the way to the back. The new design started at 20 feet but then narrowed by only 2 feet to 18 feet. This would allow for greater vehicle movement and easier passage of two vehicles.
- Applicant had demonstrated the ability of three different vehicles to use the turnaround, including an extended van, a mid-sized delivery truck such as FedEx or UPS, and a garbage truck. The Applicant had communicated with the waste hauler over the last week.
- The rest of the Application remained the same with the same general design feature.
- Staff believed the exhibit responded to Council's inquiries.

In response to Mayor Bialostosky's inquiry about whether this could be a condition of approval, Assistant Planner Floyd replied if Council requested it, Staff would come back with a condition mandating the use of this design. It could be enforced through easements, conditions of approval, or through a homeowners' association (HOA).

Hillary Harris, Land Use Planner and Consultant, representing the Applicant, provided additional information, reviewing project site factors that made development difficult. The property owner and consultant team had spent significant time working with the City of West Linn and service providers to provide a design allowing practical development of the site with the minimum relief necessary. Providing the shared driveway would allow the property owner to provide off-street parking for each lot, which was not required by Code but was a preference of the property owner. They realized parking was an issue in suburban communities and believed this would address neighbors' concerns while providing benefit for future residents who may live on the site.

- If the variance was not approved, it would be expensive and physically difficult to provide individual driveways suitable for off-street parking of multiple cars in addition to the future houses on site.
- After hearing concerns at the last meeting, the engineer and property owner had designed the private access to provide a turnaround that would prevent cars and trucks from having to back onto Marylhurst Drive. Adjacent to the turnaround area was an area for garbage cans and a space large enough for the waste provider to pull in, pick up any garbage, and turn around. The waste provider confirmed with the property owner that they had no issues with the turnaround design.
- Regarding concern about the width of the shared private driveway, engineers redesigned the driveway to be a minimum of 18 feet wide, allowing two cars to easily pass side-by-side without having to back up.

Bobby Jacobson, Civil Engineer, further explained the wider road would make it easier for two cars to pass each other at the other same time and make it easier for cars to maneuver in the driveway areas. Eighteen feet was the maximum width they could design the road with the block wall on the north side of the road to fit within the 20-foot easement.

Consultant Harris and Civil Engineer Jacobson responded to Council questions and concerns as follows:

- Some erosion control measures had been included on the original plans. With the steep slopes, they would use measures such as slope fabrics when excavating to stabilize the slope until the buildings were constructed. Sediment protection such as sediment fences or jute matting would also be used. Specific measures would be included in construction documentation to make sure slopes were stabilized.
- They could not answer which design would preserve more trees, as that would partially depend on the ultimate build-out of the actual structures. Trees bordered the Midhill property line, so constructing a driveway from there would impact trees, but the extent

of the impact was unknown. The biggest concern on driveways from Midhill was the slope of the driveway, and they would not be able to meet the City's standard with those driveways, either.

Public Comment

Mayor Bialostosky opened Public Testimony for rebuttal of any of the new material.

Elizabeth Apen noted the Applicant did not meet the criteria of providing evidence that the four lots fronting Midhill Circle could not reasonably take access from the street, eliminating the need for the variance. No one had talked about bringing in fill dirt to control the slope of the driveway. While the Applicant had mentioned the expense, they did not know it was impossible. She respectfully requested Council continue to deny the variance.

Tom Tomaszek stated his property directly faced the proposed driveway. He urged Council to sustain the Planning Commission's decision, which upheld City Code. The City Code was more than just about the driveway and picking up the garbage, as it included previously raised issues such as traffic speed on Marylhurst Drive, the deforestation of the parcel, and erosion control. He urged Council to uphold the denial of the variance request and stated doing so would not prevent the petitioners from fully developing their parcels, as they could still put up two to four homes with greater respect for the environment, the neighborhood, and their neighbors.

Tim Manes stated he lived across the street from the parcel, and he sits on his deck looking at the property. The six lots were substandard lots, meaning there would have to be some creative problem-solving to build on them, including some possible variances in the future. He questioned the three-to-four-feet tall retaining wall at the end of the property to level the driveway.

Mayor Bialostosky explained that keeping public testimony to only new evidence was part of the land use law and process and closed the hearing.

Consultant Harris provided Applicant's final argument, reiterating professionally licensed engineers, fire officials, and the property owners believed this was the best option to exercise development of the property with minimum relief and disturbance. West Linn City Planning Staff also recommended approval. The driveway placement was similar to dozens of other driveways on Midhill Circle. Applicant believed that with the original Application materials and information shown at both City Council hearings, they had demonstrated the need for the variance. Granting the variance would prevent future variances to either driveway steepness and slope on Midhill Circle or of spacing standards on Marylhurst Drive. Any future development of the site would be permitted residential use and would have to demonstrate it met all CDC requirements applicable to development on that site.

In response to Councilor Erwin's question about what the property owner would do if the variance was denied, Consultant Harris replied that would have to be explored in the future.

She was not the property owner, so she did not know of any future plans should the variance be denied.

Upon advisement from City Attorney Trompke that it was now time for Council deliberation, Mayor Bialostosky opened the floor for Council comments.

President Baumgardner summarized that concerns she had heard were about the environment, traffic safety, and density. She understood going forward this type of development was important to consider and acknowledged development impacted people closest to it the most. She hoped the City would put conditions about or monitor traffic safety and tree preservation to the greatest degree possible while still allowing development of these sites. She had not made her final decision yet. From driving by, it appeared the concentration of mature trees was on the high side of the lots closest to Midhill Circle, and she could see most of them having to be removed if every single lot had a driveway, giving an advantage to the alley.

Councilor Groner echoed his thanks to the Applicant for their professional presentations and the neighbor's comments, who clearly had a concern about new development, possible removal of trees, and drainage issues. He believed a single driveway was more respectful of the trees than a series of closely spaced driveways along Midhill Circle would be.

Councilor Erwin stated his broader concern was that the standing rule was four residences feeding into a driveway. The increase to six could be looked at as "that's only an addition of two" or "that's a 50 percent increase." He was concerned they would issue other variances, making the Code meaningless. He did not believe this was a good site for development, which was why it had not been developed for a very long time. Granting the variance could create serious issues, especially when considering its position in relation to the big hill. There were various developments that had happened down from the big hill, and some of them had been done in a respectful manner trying to be ecologically sound in those developments, but there were still erosion issues, with a slow-moving landslide coming at some of his neighbors' houses. While it might not look that way right now, 30 years from now, someone considering buying the house would be very concerned, as he was right now.

Mayor Bialostosky stated he had considered all received testimony and comments from neighbors. He believed State housing laws required them to accommodate development, and Council could not outright deny development. His opinion was that if Council refused to grant any variance, they risked getting into a regulatory taking under the Constitution, in which City regulations limited property usage to the point where it was unusable, requiring the City to buy it. After looking everything over, he was convinced some form of variance to the driveway situation would be required to allow development, whether the variance was for the number of homes on the private drive, the slope of the driveway, or spacing issues. He concurred with Staff in that this variance would minimize adverse impacts to Midhill Circle as much as possible.

- Addressing concerns Council had heard, he had a condition regarding trees and was hopeful the private driveway would minimize tree cutting because the more developed trees seemed to be on the street side.
- He believed there had been an evolution of evidence in this process. He recognized the Planning Commission found the Applicant did not provide evidence that the four lots fronting Midhill Circle could not take access from that street, which would eliminate the need for a variance, but he believed it would still require a variance to the slope standard. Site topography would require a variance, which was one of the criteria for granting one.
- He explained Council could not require Applicant to do things off site as a condition of approval, but he did want to direct Staff to do an engineering analysis to determine whether there were traffic calming measures that could be put into place around the property such as speed bumps or stop signs because of the safety concerns about getting out from the private driveway and drivers come down Marylhurst Drive fast.
- He proposed a condition that trees be maintained to the greatest extent possible according to the Tree Ordinance.

Councilor Erwin brought up the concern of headlights being aimed at one of the resident's houses across Marylhurst Drive and asked for a condition that the driveway have a downward angle a few degrees at the end so headlights would not be aimed at window height.

City Attorney Trompke replied that sloping the driveway could be not feasible but Council could direct Staff to return with conditions of approval that avoid headlights in neighbors' windows, protect trees, and include the turnaround as presented with other traffic-calming solutions as appropriate.

Assistant Planner Floyd asked for clarification on whether the headlights were facing Marylhurst Drive or were interior to the site.

Councilor Erwin replied that if someone was driving down the driveway towards Marylhurst Drive and came to a stop, the headlights would shine right into the house across the street. If the driveway had a downward angle of a couple degrees, that would avoid that particular concern.

Assistant Planner Floyd believed it was best practice to place driveways across from driveways or streets across from streets and that that was something they could return with an answer to as a potential condition.

City Attorney Trompke stated he interpreted that as to direct Staff to return with a condition of approval to avoid headlights shining into neighbors' windows to the extent possible. Upon request from Mayor Bialostosky, he reiterated the conditions of approval were to direct Staff to require the driveway to be sited to avoid headlights shining into the neighbors' windows, protect trees as much as reasonably possible, include the turnaround as presented, and to

consider traffic-calming solutions as appropriate. It would be up to Planning Staff to talk to Public Works and any other Staff to ensure that what was brought back as a finding was workable.

Mayor Bialostosky confirmed the directive for traffic calming devices and safety options would be for Engineering Staff because the City could do it on its own but could not require it of the Applicant.

Council President Mary Baumgardner moved to tentatively approve the Appeal of AP-23-03, thereby overturning the Planning Commission's denial of Variance-23-01 at 2622 Marylhurst Drive and 18600-18680-18690 Midhill Circle and direct Staff to bring back the following conditions requiring: the driveway to avoid headlights toward the neighbor's residences, protect trees to the greatest extent possible according to the Tree Code, include the turnaround as presented as well as traffic-calming measures, and direct Staff to bring back findings for adoption. Councilor Lou Groner seconded the motion.

Mayor Bialostosky clarified the traffic-calming devices would be directed towards Staff to have Engineering study the area with the issues presented and determine if traffic-calming measures could be implemented with the topography and traffic flow of the area.

President Baumgardner stated if there were currently dangerous driving conditions on Marylhurst Drive, Council should consider that already.

Councilor Erwin stated Tualatin Valley Fire and Rescue (TVF&R) did not like speed bumps, and he was unsure they would be the best thing in that area. He would prefer curb extensions and crosswalks. To slow people down, the road needed to be pinched.

Mayor Bialostosky stated for the record that any future housing or developments would be reviewed in accordance with City Codes. This was not the end, and this was not approving the building of housing. This was one issue connected to the lots.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Scott Erwin, and Councilor Lou Groner.
Nays: None.
The motion carried 4 - 0

Mayor Bialostosky thanked the public for its participation and noted that appeals must go through LUBA in accordance with its rules and applicable provisions in the CDC. He confirmed the final order would be considered at the next City Council meeting on August 7, which was still within the required time frame.

Adjourn to Work Session [8:05 pm/5 min]

Mayor and Council Reports [8:10 pm/30 min]

Reports from Community Advisory Groups

Mayor Bialostosky reported he was working on a Council update for inclusion in the City newsletter, discussing Ordinances passed and other items. It was great to see the community at The Old Time Fair and he was already looking forward to next year's event. The Regional Toll Advisory Committee (RTAC) would meet on July 24, and communication about traffic closures due to ODOT construction had been released. They were also working with ODOT about traffic mitigation during the closures.

President Baumgardner reported she and Mayor Bialostosky attended the Yakima Nation Lamprey Festival last week and were treated to a river boat tour up to the falls and to watch lamprey being harvested. She was very honored to spend time with the Yakima Tribal Council members to learn more about their stories and history in this area.

Councilor Groner attended the Economic Development Committee (EDC) meeting on July 13, where they discussed business licenses services and what people get for their business license dollars. Right now, all licenses and inspections were based on revenue, but as some inspections were more intense than others, such as gas stations, EDC was discussing higher fees because of potential risks and pollution risks. On Wednesday, he attended the camping discussion at the library. About 20 people attended, and they identified several City-owned sites as potential camping areas.

Councilor Erwin reported the Planning Commission would meet July 19 and discuss House Bill (HB) 2003 and its implementation, including the City's housing capacity, overall proposed comprehensive plan amendments and zoning map amendments. He believed this would be good so the community could understand the base level of what they were dealing with now and in the future. The comment period for Metro's Regional Transportation Plan, which was different from the TriMet plan, would be open for about another month. Metro would have a meeting on July 27.

Guidelines for Civil Discourse

RES 2018-22 Guidelines for Civil Discourse

Mayor Bialostosky explained the Guidelines for Civil Discourse were produced several years ago but had not been revisited lately.

City Manager Williams added this topic stemmed from recent discussions about behavior and decorum at Council meetings. The issues that led to the creation of this guidelines document in 2018 still existed in the world and even locally sometimes, so this was an opportunity for Council to reflect on the guidelines that were put out at public meeting to make sure they fit Council's needs. Staff did not have any suggested changes.

Council discussed the difficulty in conducting meetings and concentrating on information being presented when people speak out of turn instead of waiting to be called on.

City Attorney Trompke advised that he had previously researched this matter for another city seven to eight years ago. The 9th Circuit Court of Appeals had upheld the right of citizens when they come to meetings to be uncivil and to be ugly, if they were not disruptive. While being civil was an expectation they could require of each other on Council and in boards, Council could not mandate it from the public.

Councilor Erwin thought it would be good to break the guidelines into sections which would advise on Council member behavior and the requested behavior of the public participating. He felt there was a way to acknowledge First Amendment rights and have ground rules to conduct a respectful meeting.

President Baumgardner spoke in support for updating the guidelines and a hope that all attendees would have an environment where they could concentrate on the subjects at hand. She noted authentic discourse can be messy and is important, but not everyone has the same tolerance for conflict or interruptions. She asked about a previous suggestion to allow the public to watch the meeting in the lobby or nearby.

City Manager Williams replied that equipment for that was being ordered and quoted but there are delays due to some shortages.

Councilor Groner wanted to emphasize that the guidelines should be focused on disruptive behavior.

City Manager Williams reminded the next item is connected and Section C, Item 7 notes what is an actual disruption, warnings, process for removal, and preventing people from seeing, hearing, or participating in the meeting.

Council Rules

Council Rules - Redlined 5-15-23

City Manager Williams stated that Council rules were amended from time to time at the Council's direction to suit its needs. These redline proposals came from the retreat discussion in April. Changes could be considered at a regular business meeting and include public testimony if needed.

The Council discussed it was important for the public to know that the first Monday work session would be held at 1:00 p.m., as an experiment. City Manager Williams added that since work sessions were intended as time for Council to discuss with Staff, it would allow more staff to be present and save the City money.

Council discussed how detailed meeting minutes should be, with City Attorney Trompke advising that by law, only the substance of Council discussions were required to be included in the minutes. Public comments were not Council discussion, so there was no legal obligation to include details of the comments in the minutes, as video and audio recordings were acceptable documentation under State law.

Council reached consensus to direct Staff to come back with different options with regard to minutes and to report on how much the City was currently spending on Staff hours and transcription services to produce the written minutes.

Council discussed standardizing all meeting notices, regardless of the type of meeting, to simplify the timeline and process. This would also apply to advisory boards and neighborhood associations.

Council discussed allowing amendments to the agenda by modifying the 10-day rule.

Council reached consensus to limit public comment to three minutes each and move both public comment and advisory group reports to the first section of the meeting. It also recommended standardizing the advisory group report, letting the group drive what was reported rather than the Council liaison trying to determine what was important. City Manager Williams reported Staff had previously developed and proposed a form, and he would send it out for Council to review.

Councilor Erwin asked for an agenda item to discuss West Linn adopting its own Tree Ordinance, modeled after Milwaukee's Chapter 16 Tree Code. President Baumgardner and Mayor Bialostosky agreed, requiring it to be on the agenda later. Mayor Bialostosky suggested a joint meeting with Sustainability Advisory Board (SAB) to discuss the Ordinance and recognize them for their work.

City Manager Report [8:40 pm/5 min]

City Manager Williams reminded Council that the next meeting was scheduled for August 7. Agenda items would include planning items, discussion of Public Works items, and Council rules. Following that, the next meeting would be a work session on September 5.

Adjourn [8:45 pm]

Draft Notes.

Agenda Bill 2023-09-11-02

Date Prepared: August 21, 2023

For Meeting Date: September 11, 2023

To: Rory Bialostosky, Mayor
West Linn City Council

From: John Williams, City Manager *JRW*

Subject: Amendment to the Intergovernmental Agreement (IGA) with Clackamas County regarding Community Development Block Grants (CDBG)

Purpose:
The City has received a request from Clackamas County to update the existing IGA with the County regarding administration of the CDBE program due to new language requirements for the CDBG Program Agreement.

Question(s) for Council:
Does the Council wish to continue West Linn's eligibility for CDBG funding from the Federal government, administered by Clackamas County? If so, approval of the update is required.

Public Hearing Required:
None Required.

Background & Discussion:
As documented in the attachments, West Linn has an IGA with Clackamas County dating to 1993 regarding local administration of Federal CDBG funds. This agreement, like those in place for all but the largest cities, allows the County to administer funds and relieves the City of carrying out this onerous duty itself. The City is still eligible to apply for funds, which come from the Federal Department of Housing and Urban Development and must be used for eligible activities as defined by Congress. Currently, projects must benefit low- and moderate-income persons, prevent or eliminate blight or meet other strictly defined urgent community needs. West Linn does not have any area eligible for these funds based on resident income, but over the years has received funding for a few projects including construction and expansion of the Adult Community Center. Projects relating to senior services are one of the few areas West Linn is currently eligible for.

Budget Impact:
None.

Council Options:
1. Approve the proposed IGA Amendment.
2. Reject the proposed amendment and opt out of the agreement with Clackamas County.

Staff Recommendation:
Staff recommends approval of the proposed IGA amendment. Considering West Linn's size and demographics and the complexity of administering Federal funds, opting out of the County agreement would create a significant burden for the City with no demonstrated benefit.

Potential Motion:
Approval of the consent agenda approves this IGA.

Attachments:

1. August 16, 2023 letter to City Manager John Williams.
2. Proposed Amendment with added Sections 15 and 16.
3. 1993 Agreement and Amendment 1.

Health, Housing & Human Services
CLACKAMAS COUNTY

Housing and Community Development Division

August 16, 2023

John Williams, City Manager
City of West Linn
22500 Salamo Road,
West Linn, Oregon 97068

John:

This is a second letter on this CDBG Program Intergovernmental Agreement (IGA) this year. After I sent you the April 24th letter, the Department of Housing and Urban Development (HUD) contacted me regarding these new language requirements for our CDBG Program agreement.

In 1993, the City of West Linn entered into a three year IGA with Clackamas County. This agreement as amended in 2017, has allowed the County, in partnership with its cities, to apply for and receive federal CDBG funds using county wide population data. The agreement contains an automatic renewal clause, however, HUD requires the County to offer cities the opportunity to "opt out" of the program every three years.

New this year is the requirement that we amend our agreements to include new language regarding compliance with Affirmatively Furthering Fair Housing and any other HUD requirements that may be required of the County and City to receive these grant funds. The attached Amendment # 2 contains the required language. **We request that you sign and return the included Amendment #2**. By signing Amendment #2, you are acknowledging that the agreement will automatically renew unless your city chooses to terminate the agreement in writing.

If the city chooses to terminate the agreement, it must notify the County and HUD in writing by September 30, 2023, that it elects not to continue participating with the County during the FY 2024-2026 qualification period which begins July 1, 2024. An election for exclusion will be effective for the entire three-year period. Thank you for your continued participation in this important program.

If you have any questions about the agreement or the CDBG Program, please do not hesitate to contact me at (503) 351-7240 or marksir@clackamas.us.

Sincerely,

Mark Sirois, Manager
Housing and Community Development Division

AMENDMENT TO

INTERGOVERNMENTAL AGREEMENT BETWEEN

CLACKAMAS COUNTY

DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES HOUSING AND COMMUNITY DEVELOPMENT DIVISION

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

AND

THE CITY OF WEST LINN

Amendment Requested by: Clackamas County

Changes: ( ) Scope of Work ( ) Contract Budget
( ) Contract Time (X) Other

Justification for Amendment No.2:

An agreement was signed in 1993 between Clackamas County (COUNTY) and the City of West Linn (CITY) for the cooperation of units of local government under the authority of ORS 190.010 for the purpose of establishing an urban county to qualify for federal Community Development Block Grant (CDBG) and HOME low-income housing grant funds (Agreement).

The Department of Housing and Urban Development has added to the minimum provisions which must be included within any intergovernmental agreement into which local governments enter to qualify for urban county eligibility.

The 1993 Agreement is automatically renewed every 3 years and has a provision for amendments. The underlined text listed below is added to the Agreement.

No County General funds are involved in this Agreement.

The 1993 Agreement is amended to add new Sections 15 and 16 which read:

15. The parties agree to take all actions necessary to assure compliance with the urban county's certification required by Section 104 (b) of Title I of the Housing and Community Development Act of 1974, conducted and administered in accordance with Title VI of the Civil Rights Act of 1964 and the implementing regulations at 24 CFR part 1, the Fair Housing Act and the implementing regulations at 24 CFR part 100, and will affirmatively further fair housing. See 24 CFR 91.225(a) and Affirmatively Furthering Fair Housing Definitions and Certifications (86 FR 30779, June 10, 2021), to be codified at 24 CFR 5.151 and 5.152, available at https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications.

The parties further agree to take all actions necessary to comply with section 109 of Title I of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 6, which incorporates Section 504 of the Rehabilitation Act of 1973, and the implementing regulations at 24 CFR part 8, Title II of the Americans with Disabilities Act, and the implementing regulations at 28 CFR part 35, the Age Discrimination Act of 1975, and the implementing regulation at 24 CFR part 146, and Section 3 of the Housing and Urban Development Act of 1968; and other applicable laws. The parties further agree that no urban funding shall be provided to City under this agreement for any activities in or in support of City if City does not affirmatively further fair housing within its own jurisdiction or if City's activities impede the County's actions to comply with the County's fair housing certification.

16. City shall further comply with any and all terms, conditions, and other obligations as may be required by the U.S. Department of Housing and Urban Development ("HUD"), which is providing funding for performance under this Agreement. City agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary for County to comply with applicable HUD funding requirements. This Agreement is subject to the additional terms and conditions required by federal law for participation in the CDBG Program. All terms and conditions required under applicable federal law for the CDGB Program are hereby incorporated by this reference herein.

CERTIFICATION

The parties by the signatures below certify that the governing body of each party has authorized entry into this Amendment.

CITY OF WEST LINN

CLACKAMAS COUNTY

Commissioner Tootie Smith, Chair
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Mark Shull
Commissioner Ben West

Signing on Behalf of the Board.

City Manager/Administrator

Tootie Smith, Chair

Date

Date

In our opinion, the terms and provisions of this Intergovernmental Agreement are fully authorized under State and local law, and the agreement provides full legal authority for the COUNTY.

Reviewed as to Form:

County Counsel

Date

AMENDMENT TO

INTERGOVERNMENTAL AGREEMENT BETWEEN

CLACKAMAS COUNTY

DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES COMMUNITY DEVELOPMENT DIVISION

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

AND

THE CITY OF WEST LINN

Amendment Requested by: Clackamas County

Changes:	( ) Scope of Work	( ) Contract Budget
	( ) Contract Time	(X) Other

Justification for Amendment No.1:

An agreement was signed in 1993 between Clackamas County (COUNTY) and the City of West Linn (CITY) for the cooperation of units of local government under the authority of ORS 190.010 for the purpose of establishing an urban county to qualify for federal Community Development Block Grant (CDBG) and HOME low-income housing grant funds (Agreement).

The Department of Housing and Urban Development has added to the minimum provisions which must be included within any intergovernmental agreement into which local governments enter to qualify for urban county eligibility.

The 1993 Agreement is automatically renewed every 3 years and has a provision for amendments. The underlined text listed below is added to the Agreement.

No County General funds are involved in this Agreement.

The 1993 Agreement is amended to add a new Section 14 which reads:

14. The City may not sell, trade, or otherwise transfer all or any portion of such funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.

CITY OF WEST LINN

City Manager/~~Administrator~~

6-19-17
Date

CLACKAMAS COUNTY

Chair Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

Signing on Behalf of the Board.

Richard Swift, Director
Health, Housing & Human Services Department

7.20.17
Date

In our opinion, the terms and provisions of this Intergovernmental Agreement are fully authorized under State and local law, and the agreement provides full legal authority for the COUNTY.

Reviewed as to Form:

Scott Ciecko
~~Chris Storey~~, County Counsel

7/24/17
Date

INTERGOVERNMENTAL AGREEMENT

CLACKAMAS COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

PROGRAM YEARS 1994 - 1996

This Agreement is entered into between Clackamas County (COUNTY), a political subdivision of the State of Oregon, and the City of West Linn (CITY), a municipal corporation of the State of Oregon within Clackamas County, for the cooperation of units of local government under the authority of ORS 190.010.

The circumstances surrounding the making of this Agreement are as follows:

A. The Congress of the United States has enacted the Housing and Community Development Act of 1974, as amended, and the Department of Housing and Urban Development has adopted regulations pursuant thereto (hereinafter jointly referred to as the "Act"); and

B. The Congress has found and declared that the Nation's cities, towns, and small urban communities face critical social, economic, and environmental problems; and

C. The Congress has further found and declared that the future welfare of the nation and the well being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities;

D. The primary objective of the Act is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income.

E. The CITY and the COUNTY desire to provide decent housing and a suitable living environment and to expand economic opportunities principally for persons of low and moderate income through Community Development Block Grant (CDBG) funding and the HOME Investment Partnership program pursuant to the Act.

F. Title I of said Act provides that urban counties may, under some circumstances, receive Community Development Block Grant funds in the same manner as larger cities; and

G. One of the criteria for urban county eligibility is a county population of at least 200,000, not including entitlement cities; and

H. The COUNTY desires to count the population of the CITY in order to receive CDBG funds; and

I. The Department of Housing and Urban Development has specified the minimum provisions which must be included within any intergovernmental agreement into which local governments enter to qualify for urban county eligibility;

NOW, THEREFORE, in consideration of the mutual promises made herein and the mutual benefits received hereunder, the parties agree as follows:

1. The CITY and the COUNTY agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities, specifically urban renewal and publicly assisted housing.

2. The CITY authorizes the inclusion of its population for purposes of the Act; and joins together with other units of general local government to qualify the COUNTY as an urban county for Community Development Block Grant and HOME Investment Partnership funds.

3. The COUNTY has final responsibility for selecting projects and annually filing Final Statements with HUD and assumes all other obligations of an applicant as specified in the Act and the regulations thereunder for Community Development Block Grant activities which will be funded from Federal Fiscal Years' 1994, 1995, and 1996 appropriations and from any program income generated from the expenditure of such funds.

4. The COUNTY is prohibited from funding activities in or in support of the CITY if the CITY does not affirmatively further fair housing within its own jurisdiction or if it impedes the COUNTY's actions to comply with its fair housing certification.

5. Pursuant to 24 CFR 570.501(b) the CITY is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in 24 CFR 570.503.

6. For the purposes of developing the Three-Year Community Development Plan and Annual Final Statement as required by the Act, the CITY and the COUNTY agree to cooperate in the continuation of the presently established Policy Advisory Board which shall advise the COUNTY on program policies, priorities, and project selection.

7. The COUNTY and CITY agree to take all actions necessary to assure compliance with the urban county's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.

8. This agreement shall remain in full force and effect from September 4, 1993 through July 1, 1997, inclusive, provided that the COUNTY qualifies as an urban county under, and block grant funding is allocated to the COUNTY pursuant to, the Act.

9. This agreement will automatically be renewed at the end of the three-year qualification period, unless one of the following events occur: (1) changes to the agreement are required by HUD that would require the execution of a new agreement; (2) failure by either party to adopt an amendment to the agreement incorporating all changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable for a subsequent three-year qualification period, and to submit the amendment to HUD as required; (3) the COUNTY or CITY provides written notice it elects not to participate in a new qualification period by the date specified in HUD's urban county qualification period. The COUNTY will notify the CITY in writing of its right to make an election not to participate in a new qualification period by the dates specified in HUD's urban county qualification notice for the next qualification period. This agreement also remains in effect with respect to all CDBG and HOME funds and income allocated during the three-year qualification period until such funds are expended and the funded activities completed.

10. The CITY may not apply for grants under the small Cities or State CDBG Programs from appropriations for fiscal years during the period in which it is participating in the urban county's CDBG program;

11. The CITY may not participate in a HOME consortium except through the urban county, regardless of whether the urban county receives a HOME formula allocation.

12. The COUNTY and CITY may not terminate or withdraw from the agreement while it remains in effect.

13. The CITY has adopted and is enforcing:

    A. a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

    B. a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within the CITY.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this 12th day of May, 1993

CLACKAMAS COUNTY, OREGON

Michael F. Swanson
Chief Executive Officer

City of West Linn

By: Robert P. Liddell

ROBERT P. LIDDELL

MAYOR
Title

In our opinion, the terms and provisions of this Intergovernmental Agreement are fully authorized under State and local law, and the agreement provides full legal authority for the COUNTY to undertake or assist in undertaking essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing.

Niles a. Ward, for
Scott Parker, Counsel for Clackamas County, Oregon

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PROGRAM YEARS 1994 - 1996

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CLACKAMAS COUNTY, OREGON

Michael F. Swanson
Chief Executive Officer

City of West Linn

By: Robert P. Liddell

ROBERT P. LIDDELL

MAYOR
Title

In our opinion, the terms and provisions of this Intergovernmental Agreement are fully authorized under State and local law, and the agreement provides full legal authority for the COUNTY to undertake or assist in undertaking essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing.

Niles a. Ward, for
Scott Parker, Counsel for Clackamas County, Oregon

Agenda Bill 2023-09-11-03

Date: July 24, 2023

To: Rory Bialostosky, Mayor
Members, West Linn City Council

From: Lauren Breithaupt, Finance Director LB

Through: John Williams, City Manager JRW

Subject: Municipal Code Revisions for Chapters 7.450 – 7.492 on Transient Lodging Tax (TLT)

Purpose
The purpose of this report is to consider updating the City of West Linn's Municipal Code in regards to Transient Lodging Tax. The current municipal code was updated in January 2021, to include short-term vacation rentals. This update is to include State of Oregon ("State") required language in order for the State to be able to administer the program.

Question(s) for Council:
Should the City Council approve the changes to the Municipal Code Chapters 7.450 – 7.492?

Public Hearing Required:
None

Background & Discussion:
The City made changes to the Municipal Code sections in regard to Transient Lodging Tax in March 2021. The City does not have any hotels or motels within City limits, however, there are a few Air B&Bs and other vacation rental properties. The changes made allow the City to collect Transient Lodging Tax revenues on vacation rental properties.

The State can administer the program for the City, provided the City has certain language in the Municipal Code. The City Attorney reviewed the State's requirements and has made the applicable updates.

Budget Impact:
The exact budget impact depends on total vacation rentals within West Linn and the percentage tax the City decides to tax. Assuming the City continues with a four percent tax and there are 20 vacation rentals, charging $100/night for 50 days of the year, the City would collect $4,000 in revenue. A portion of the funds may be required to be dedicated to tourism.

Sustainability Impact:
Not applicable.

Council Options:
1. Approve the proposed changes to the municipal code.
2. Reject the changes to the municipal code.
3. Request additional information or revisions.

Staff Recommendation:
Staff recommends the approval of the proposed changes.

Potential Motion:
Move to approve the changes to the Municipal Code Chapters 7.450 – 7.492 on Transient Lodging Tax (TLT)

Attachments:

1. Ordinance 1750

ORDINANCE 1750

AN ORDINANCE RELATING TO THE AMENDMENT OF WEST LINN MUNICIPAL CODE CHAPTERS 7.450 TO 7.492 TRANSIENT LODGING TAX

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~**bold lined through**~~ and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

> Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City Attorney drafted changes to the Transient Lodging Tax code to include language required by the State of Oregon in order to administer the program on behalf of the City of West Linn.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendments. West Linn Municipal Code Sections 7.450 [Definitions] through 7.492 [Transient Lodging Tax Account] are amended to read as follows:

7.450 Definitions.

(1) "Accrual accounting" means the operator enters the rent due from a transient on the operator's records when the rent is earned, whether or not it is paid.

~~**(2) "Bed and breakfast home" means overnight accommodations in a dwelling unit provided to transient guests for compensation.**~~

(3) "Cash accounting" means the operator does not enter the rent due from a transient on the operator's records until rent is paid.

"City" means the City of West Linn, Oregon.

(4) "City Manager" means the City Manager of West Linn or **their** ~~**the Manager's**~~ designee.

~~**(5) "Hotel" means any establishment primarily engaged in the provision of lodging services on a temporary basis with incidental food, drink, and other sales and services intended for the convenience of guests.**~~

(6) "Occupancy" means the use or possession, or the right to the use or possession, **of any space in transient lodging for dwelling,** lodging or sleeping purposes for less than 30 days. ~~**of any room or rooms in a hotel.**~~

(7) "Operator" means the Transient Lodging Provider or Transient Lodging Intermediary~~. the person who is the proprietor of the hotel in any capacity. Where the operator performs operational functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this code, and shall have the same duties and liabilities as the principal. Compliance with the provisions of this code by either the principal or managing agent shall be considered to be compliance by both.~~

(8) "Person" means any individual, firm, partnership, joint venture, **limited liability company, limited liability partnership,** association, social club, social organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(9) "Rent" means the consideration **paid or payable by a transient ~~charged, whether or not received by the operator,~~** for the occupancy of space in **transient lodging ~~a hotel~~**, valued in money, goods, labor, credits, property or other consideration **~~valued in money, without any deduction~~**, including any consideration allocated or assigned for meals or other incidental services. Extra person, cleaning fees, charges for pets, charges for additional items of room furnishings, and other occupancy-related charges that are deemed "unavoidable" shall be considered rent.

~~(10) "Rent package plan" means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this code shall be the same charge made for rent when consideration is not a part of a package plan. This concept is intended to follow State law regarding services included in the fee for purposes of determining the total retail price.~~

(11) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.

(12) "Transient" means any **person ~~individual~~** who exercises occupancy or is entitled to occupancy in **transient lodging ~~a hotel~~** for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of **transient lodging ~~a hotel~~** shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such **person ~~individual~~** so occupying space in **transient lodging ~~a hotel~~** shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the **person ~~occupant~~** providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days.

"Tax Administrator" means the Finance Director of the City of West Linn, or its designee, which may include the Oregon Department of Revenue.

"Tourism Promotion" means any of the following activities:

(a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;

(b) Conducting strategic planning and research necessary to stimulate future tourism development;

(c) Operating tourism promotion agencies; and

(d) Marketing special events and festivals designed to attract tourists.

"Tourism-related Facility" means:

(a) A conference center, convention center, or visitor information center; and

(b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

"Transient Lodging" or "Transient Lodging Facilities" means:

a) **Hotel, motel, and inn dwellings that are used for temporary overnight human occupancy;**
b) **Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or**
c) **Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.**

"Transient Lodging Provider" means a person that furnishes transient lodging.

"Transient Lodging Intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

a) **Charges for occupancy of the transient lodging;**
b) **Collects the consideration charged for occupancy of the transient lodging; or**
c) **Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration for occupancy of the transient lodging.**

"Transient Lodging Tax" means the tax imposed on a transient for the privilege of occupancy of transient lodging in the City.

7.452 Tax Imposed.

~~**For the privilege of occupancy of any transient lodging in the City,**~~ **(1) Each** ~~**each**~~ transient shall pay a **transient lodging** tax in the amount of six percent of the rent charged by the operator. **The transient lodging tax amount shall be rounded down to the nearest cent.** The **transient lodging** tax constitutes a debt owed by the transient to the City, which is extinguished only by payment by the operator to the City. The transient shall pay the **transient lodging** tax to the operator of the **transient** lodging at the time the rent is paid. The operator shall enter the **transient lodging** tax on the operator's records when rent is collected if the operator keeps

records on the cash accounting basis. If rent is paid in installments, a proportionate share of the **transient lodging** tax shall be paid by the transient to the operator with each installment. ~~**The tax imposed by this chapter shall apply to all lodging located within the corporate limits of the City.**~~

(2) Bills, receipts, or invoices provided to transients shall list the transient lodging tax separately and must accurately state the amount of tax.

7.455 Collection of Tax by Operator, Rules for Collection.

(1) Every operator ~~**renting rooms in this City, the occupancy of which is not exempted under the terms of this chapter,**~~ shall collect ~~**a**~~ **the transient lodging** tax from the ~~**occupant**~~ **transient at the time rent is paid, unless an exception applies**. ~~**The tax collected or accrued by the operator constitutes a debt owed by the operator to the City.**~~

(2) In all cases of credit or deferred payment of rent, the payment of the **transient lodging** tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the **transient lodging** tax until credits are paid or deferred payment is made. **The operator is liable for any transient lodging tax that should have been collected from the transient, except in cases of nonpayment of rent by transient.**

(3) ~~**For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.**~~

(4) The City Manager shall enforce Sections 7.450 through 7.492 and shall have the power to adopt rules and regulations not inconsistent with Sections 7.450 through 7.492 as may be necessary to aid in the enforcement. Prior to adoption of rules and regulations, the City Manager shall give public notice of intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of Sections 7.450 through 7.492 to violate rules and regulations duly adopted by the City Manager.

(5) The City may elect to enter into an agreement with the State of Oregon Department of Revenue for collection of transient lodging tax. The Department of Revenue shall collect the local transient lodging taxes that the Department collects for the City pursuant to that agreement on a local level rather than a regional level.

7.457 Operator's Duties.

Transient lodging providers and transient lodging intermediaries that collect consideration charged for temporary human occupancy are required to collect the City's transient lodging tax and report and remit the tax to the City.

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax, or any part of the tax, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter.

7.460 Exemptions.

No **transient lodging** tax under this chapter shall be imposed upon:

(1) **Dwelling units occupied by the same** ~~**Any**~~ person for more than 30 ~~**successive**~~ **consecutive** calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient)~~**. Once a person has reached 30 successive days the entire stay shall be considered tax exempt**~~;

(2) Monthly rentals as evidenced by a **bona fide** lease agreement indicating a clear landlord/tenant relationship;

(3) Any person whose rent is of a value of less than $10.00 per day;

(4) Dwelling units used by the general public for less than 30 days in a calendar year. However, this exemption does not apply when the dwelling unit is rented using a transient lodging intermediary platform on or after September 29, 2019;

(5) Employees, officials, or agents of the U.S. government and employees of Federal instrumentalities (i.e., American Red Cross) on official business. Such employees must provide proof of employment and/or pay with a government-issued credit card in order to be granted exemption from ~~**TLT**~~ **the transient lodging tax**~~.~~;

(6) Dwelling units in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;

(7) Dwelling units in a facility providing treatment of drug or alcohol abuse or providing mental health treatment; and

(8) Dwelling units a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility.

7.462 Registration of Operator.

(1) Every person engaging or about to engage in business as a **transient** lodging provider ~~**in the City**~~ **shall provide a completed registration form to the tax administrator** ~~**register with the Finance Director on a form provided by the Finance Director. Operators must register**~~ within 15 calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration.

(2) **The registration form** ~~**Registration**~~ shall require **the operator to provide** ~~**set forth**~~ the name under which **the** ~~**an**~~ operator transacts or intends to transact business, **any separate business addresses, the address of any transient lodging facility owned or operated by operator,** ~~**location of their place or places of business**~~ and such other information to facilitate the collection of the tax as the ~~**Finance Director**~~ **tax administrator** may require. The registration shall be signed by the operator.

(3) The ~~**Finance Director**~~ **tax administrator** shall, within 10 days after registration, issue without charge a certificate of authority to ~~**each registrant**~~ **operator** to collect the **transient lodging** tax ~~**from the occupant**~~, together with a duplicate thereof for each additional place of business of each ~~**registrant**~~ **operator**. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the ~~**Finance Director**~~ **tax administrator** upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the ~~**place of business**~~ **specific transient lodging facility** to which it is applicable and shall be prominently displayed at **that transient lodging facility** ~~**the specified therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy**~~.

(4) ~~**Said certificate**~~ **Certificates** shall, among other things, state the following:

(a) The name of the operator;

(b) The address of the ~~**property**~~ **transient lodging facility**;

(c) The date upon which the certificate was issued

(d) The certificate number as assigned by the tax administrator; and

(e)~~**(d)**~~ The following language:

THIS TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE signifies that the person named on the face hereof has fulfilled the requirements of the TRANSIENT LODGING TAX CODE of West Linn, Oregon, by ~~**registration**~~ **registering** with the ~~**Finance Director**~~ **tax administrator** for the purposes of ~~**collection**~~ **collecting** from transients the lodging~~**s**~~ tax imposed by said City and remitting said tax to the ~~**Finance Director**~~ **tax administrator**. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a lodging establishment without strictly complying with all of the local

applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of West Linn. This certificate does not constitute a permit.

7.465 Due Date, Returns, and Payments.

(1) ~~**The transient shall pay the tax imposed by this chapter to the operator at the time that rent is paid.**~~ All amounts of such taxes collected by any operator are due and payable to the ~~**Finance Director**~~ **tax administrator** on a monthly basis on the fifteenth day of the month for the preceding month and are delinquent on the last day of the month in which they are due. If the last day of the month falls on a holiday or weekend, amounts are delinquent at the close of the first business day that follows.

(2) On or before the fifteenth day of the month following each month of collection, operators must submit a completed tax return form to the tax administrator, reporting the amount of tax due during the preceding month. ~~**a return for the preceding month's tax collections shall be filed with the Finance Director**~~. The return shall be filed in such form as the ~~**Finance Director**~~ **tax administrator** may prescribe by every operator liable for payment of tax.

(3) ~~**Returns shall show the amount of tax collected or otherwise due for the related period. The Finance Director may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of the operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.**~~ **Returns shall show the gross rents collected, taxable rents, the total amount of transient lodging tax collected and the amount of administrative fee retained by the operator. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.**

(4) The person required to file the return shall deliver the return, together with the remittance of the amount of **transient lodging** tax due, to the ~~**Finance Director**~~ **tax administrator** at ~~**West Linn City Hall**~~ **the appropriate office**, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the ~~**Finance Director**~~ **tax administrator** may extend for up to **30 days** ~~**one month**~~ the time for making any return or payment of **transient lodging** tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of **transient lodging** tax due without proration for a fraction of a month. If a return is not filed and the **transient lodging** tax and interest due are not paid by the end of the extension granted, then the interest shall become a part of the **transient lodging** tax for computation of penalties described in Section 7.467.

(6) The operator shall be permitted to deduct as collection expense **an administrative fee of** five percent of the amount of the **transient lodging** taxes collected, excluding any interest or penalties, as shown on the return mentioned in subsection (~~3~~**5**) of this section.

7.467 Penalties and Interest.

(1) Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this chapter prior to delinquency, shall pay a penalty of 10 percent of the tax due in addition to the amount of the tax.

(2) Continued Delinquency. Any operator who has not been granted an extension of time for the remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15 percent of the amount of the tax due, plus the amount of the tax due plus the 10 percent penalty first imposed.

(3) Fraud. If the ~~**Finance Director**~~ **tax administrator** determines that the nonpayment of any remittance due under this chapter is due to fraud, or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax due shall be added thereto, in addition to the penalties stated in subsections (1) and (2) of this section.

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.

(5) Penalties and Interest Merged with Tax. Every penalty imposed and such interest ~~**as**~~ **that** accrues under the provisions of this chapter shall be merged and become a part of the tax required to be paid.

(6) Petition for Waiver. Any operator who fails to remit the tax levied within the time stated shall pay the penalties stated. The operator may petition the ~~**Finance Director**~~ **tax administrator** for waiver and refund of the penalty or any portion thereof, and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

7.470 Deficiencies.

(1) If the ~~**Finance Director**~~ **tax administrator** determines that the returns are incorrect, the ~~**Finance Director**~~ **tax administrator** may compute and determine the amount required to be paid upon the basis of any information within the ~~**Finance Director**~~ **tax administrator's** possession, or that may come into the ~~**Finance Director**~~ **tax administrator's** possession. One or more deficiency determinations may be made of the amount due for one, or more than one,

period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 7.467.

(2) In making a determination, the ~~Finance Director~~ **tax administrator** may offset any overpayments which may have been previously made for a period or periods against any underpayment for a subsequent period or periods or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 7.467.

(3) **In the event of a deficiency determination, the** ~~The Finance Director~~ **tax administrator** shall give to the operator ~~or occupant a~~ written notice of the ~~Finance Director~~ **tax administrator's** determination. The notice may be ~~served personally or by mail~~ **made by personal delivery or certified or registered mail, return receipt requested**. If by mail, the notice shall be addressed to the operator at the operator's address as it appears on the records of the ~~Finance Director~~ **tax administrator**. ~~In case of service by mail or any notice required by these sections, the service is complete at the time of deposit in the United States Post Office.~~

(4) Except in the case of fraud or intent to evade this code ~~or authorized rules and regulations~~, **notice of** ~~each~~ deficiency determination**s** shall be ~~made and notice mailed~~ **sent** within three years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after return is filed, whichever period expires later.

(5) Any ~~determination~~ **deficiency** shall become due and payable ~~upon receipt of notice and shall become final~~ within 10 days after **the delivery of the deficiency determination notice**. ~~the Finance Director has given notice~~. The operator may petition for ~~redemption~~ **redetermination** ~~and refund~~ if the petition is filed before the determination becomes final as herein provided.

7.472 Fraud, Refusal to Collect, Evasion.

If any operator ~~shall~~ fail**s** or refuse**s** to collect, **report, or remit** the tax**,** ~~or to make any report and remittance of said tax or any portion thereof required by this code~~, ~~or~~ makes a fraudulent return**,** or otherwise **violates or** willfully attempts to ~~evade~~ **violate** this **chapter** ~~code~~, the ~~Finance Director~~ **tax administrator** shall proceed in such manner as the ~~Finance Director~~ **tax administrator** deems best to obtain facts and information upon which to base an estimate of the tax due. As soon as the ~~Finance Director~~ **tax administrator** ~~has determined~~ **determines** the tax due ~~that is imposed by this code from any operator who has failed or refused to collect the same and to report and remit said tax~~, the ~~Finance Director~~ **tax administrator shall calculate the amount owing from the operator for transient lodging tax remittance,** ~~proceed to determine and assess against such operator the tax,~~ interest, and penalties ~~provided by this code. In case such determination is made, the Finance Director~~ **and** shall ~~give~~ provide notice **to operator** pursuant to Section 7.470(3) of the amount so assessed. Such determination and

notice shall be made and ~~mailed~~ **delivered** within three years after discovery by the ~~Finance Director~~ **tax administrator** of **the violation** ~~any fraud, intent to evade, or failure or refusal to collect said tax, or failure to file a return. A~~ **The** determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the ~~Finance Director~~ **delivery of the determination notice** ~~has given notice~~. The operator may, however, petition for ~~redemption and refund~~ **redetermination** if the petition is filed before the determination becomes final as herein provided.

7.475 Operator Delay.

If the ~~Finance Director~~ **tax administrator** believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or any determination will be jeopardized by delay, the ~~Finance Director~~ **tax administrator** shall make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount determined shall be immediately due and payable, and the operator shall immediately pay such determination to the ~~Finance Director~~ **tax administrator** after service of notice. The operator may petition, after payment has been made, for ~~redemption and refund~~ **redetermination** if the petition is filed before the determination becomes final.

7.478 Redeterminations.

(1) Any person against whom a determination is made under Section 7.470, 7.472, or 7.475 ~~or any person directly interested~~ may **file a** petition for a redetermination ~~and redemption and refund~~ **with the tax administrator within 10 days of service of notice of tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.** ~~the time required in these sections. If the petition for redetermination and refund is not filed within the time required by Section 7.470, 7.472, or 7.475, the determination becomes final at the expiration of the allowable time.~~

(2) If the petition for redetermination ~~and refund~~ is filed within the allowable period, the ~~Finance Director~~ **tax administrator** shall reconsider the determination, and if the ~~person~~ **petitioner** has so requested in the petition, shall grant the ~~person~~ **petitioner** an oral hearing and shall give the person 10 days' notice of the time and place of the hearing. The ~~Finance Director~~ **tax administrator** may continue the hearing from time to time as may be necessary.

(3) The ~~Finance Director~~ **tax administrator shall issue a redetermination decision after considering the petition and all available information and mail the decision to the petitioner. The tax administrator** may decrease or increase the amount of the determination as a result of the hearing~~, and if an increase is determined such increase shall be payable immediately after the hearing~~.

(4) The ~~order or~~ decision of the ~~Finance Director~~ **tax administrator** upon a petition for redemption or redetermination and refund becomes final 10 days after service upon the petitioner of ~~notice~~ **decision**, unless **the petitioner files an** appeal of ~~such order or~~ **the** decision ~~is filed~~ with the Hearing Officer pursuant to the administrative appeals process in Section 1.400 et seq.

(5) No petition or appeal shall be effective for any purpose unless the operator has first complied with the payment provisions.

7.480 Refunds.

(1) Refunds by City to Operator. ~~Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Finance Director under this chapter, it may be refunded; provided, that a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the Finance Director within three years from the date of payment.~~ **If the operator remits more transient lodging tax, penalty, or interest than is due, the operator may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance.** The claim shall be made on forms provided by the ~~Finance Director~~ **tax administrator**. If the claim is approved by the ~~Finance Director~~ **tax administrator**, the excess amount ~~collected or paid may~~ **shall** be **either** refunded or ~~may be~~ credited on any amount ~~then~~ due ~~and payable~~ from the operator ~~from whom it was collected or by whom paid and the balance may be refunded to such operator, or the operator's administrators, executors, or assignees~~.

(2) Refunds **by City** to Transient. ~~Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the Finance Director and it is later determined that the tax was erroneously or illegally collected from the transient and received by the Finance Director, it may be refunded by the Finance Director to the transient; provided, a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the Finance Director within three years from the date of payment.~~ **An operator may file a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines the tax was collected and remitted to the city and the transient was not required to pay the tax or overpaid, the city shall issue a refund to the transient.**

(3) Refunds **by Operator to Transient** ~~to Tenant~~. ~~Whenever the tax required by this chapter has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 days without interruption, the operator shall refund to such tenant the tax previously collected by the operator from the tenant as a transient.~~ **If a transient has paid tax to an operator but stays a total of 30 or more consecutive days in the same transient lodging facility, the operator shall refund to the transient any tax collected for any portion of the continuous stay.** The operator shall account for such collection and refund to the ~~Finance Director~~ **tax administrator**. If the operator has remitted the tax prior to refund

or credit to the ~~tenant~~ **transient**, the operator shall be entitled to a corresponding refund **or offset** under this section.

(4) Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

7.482 Security for Collection of Tax.

(1) The ~~Finance Director~~ **tax administrator**, after delinquencies or whenever the ~~Finance Director~~ **tax administrator** deems it necessary to ensure compliance with this chapter, may require any operator to deposit with the ~~Finance Director~~ **tax administrator** such security in the form of cash, bond, or other security as the ~~Finance Director~~ **tax administrator** may determine. The amount of the security shall be fixed by the ~~Finance Director~~ **tax administrator** but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns, determined in such manner as the ~~Finance Director~~ **tax administrator** deems proper, or $5,000, whichever amount is lesser. The amount of the security may be increased or decreased by the ~~Finance Director~~ **tax administrator** subject to the limitations herein provided.

(2) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the ~~Finance Director~~ **tax administrator** may bring an action in the courts of this state, or any other state, or of the United States in the name of the ~~Finance Director~~ **tax administrator** to collect the amount delinquent together with penalties and interest.

7.485 Administration.

(1) Every operator shall keep ~~guest~~ records of **each transaction involving rent and the collection of the transient lodging tax**. ~~room sales and accounting books and records of room sales.~~ All records shall be retained by the operator for a period of **at least** three years and six months ~~after they come into being~~.

(2) The ~~Finance Director~~ **tax administrator** may examine or cause to be examined during normal business hours the books, papers, and accounting records **of any operator** relating to ~~room sales~~ **the receipt of rent and the remittance of the transient lodging tax** ~~of any operator~~, after notification to the operator, and may investigate or cause to be investigated the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(3) It shall be unlawful for the ~~Finance Director~~ **tax administrator** or any person having an administrative or clerical duty under the provisions of this code to make known in any manner ~~whatever~~ **whatsoever** any ~~financial or business~~ information submitted or disclosed to the

~~Finance Director~~ **tax administrator** under the terms of Sections 7.450 through 7.492; provided, that nothing in this subsection shall be construed to prevent:

(a) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the ~~sole~~ purpose~~s~~ of administrating or enforcing any provision of this code, or collecting taxes imposed hereunder.

(b) ~~The disclosure, after a filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to any paid tax, any unpaid tax, or amount of tax required to be collected, or interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Finance Director may refuse to make any disclosure referred to in this subsection when in the Finance Director's opinion the public interest would suffer thereby.~~ **Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.**

(c) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.

(d) Disclosures required by ORS Chapter 192.

(e) Disclosures required by ORS Chapter 297.

(4) Seventy percent of the revenue from the transient lodging tax shall be used for tourism promotion and tourism-related facilities. Thirty percent of the revenue from the transient lodging tax shall be used for City services.

7.488 Appeals.

Any person aggrieved by a final decision of the ~~Finance Director~~ **tax administrator** may appeal to the Hearings Officer pursuant to the administrative appeals process in Section 1.400 et seq.

7.490 Violations.

Any ~~operator or other person who shall fail or refuse to register as required herein, or who shall fail or refuse to furnish a return, supplemental return, or other data required herein or by the City Manager, or, with intent to defeat or evade the determination of any amount due hereunder, shall make, render, sign, or verify any false or fraudulent report, or shall otherwise violate the terms of Sections 7.450 to 7.492, commits~~ **violation of this chapter is** a Class A violation. **Each day that a violation remains uncured is a separate infraction.** The City ~~shall~~ **may** institute any necessary legal proceedings to enforce the provisions of ~~Sections 7.450 through 7.492~~ **this chapter**. These rights shall be in addition to any other remedies allowed by law.

7.492 Transient Lodging Tax Account.

(1) There is hereby created the transient lodging tax account.

(2) The City Manager shall place all monies received pursuant to this code in the transient lodging tax account.

(3) The City shall budget and distribute funds from the transient lodging tax account in a manner consistent with the requirements of ORS 320.300 through 320.~~350~~**365**.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 5. Effective Date. This ordinance shall take effect on the 30th day after its passage. The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 11th day of September 2023, and duly PASSED and ADOPTED this _____ day of _____, 2023.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

West Linn Project Tracking List
9/6/2023

	A	B	C	D	E	F	G	H
1	**Date**	**Project/Department**	**Description of Task**	**Deadline**	**Assigned to**	Status	**Contact**	**Notes**
2	**Immediate Priortiy**							
3	11/17/2021 36845	Maddax Woods Caretaker Agreement Update	Current agreement is from 2002, pandemic may allow City to make changes with tenant, need legal review and/or a more current agreement to update with tenant.		Pete Hicks/Robyn Stein	Ken asking for update. Bill responded Robyn is working on the agreement.	Ken Warner	Last update 5/23/2023
4	4/19/2022 36803	WFD at Tualatin River Stormwater Pond Transfer	Review transfer and prepare resolution to vacate easement on property where city is maintaining stormwater facility.		Pete Hicks	Emails between Bill and Erich.	Erich Lais	Last update 6/8/2022
5	5/23/2022 36808	Old River Road Presbyterian Church	Meeting to discuss ROW acquisition		Ed Trompke	City restarting this process	John Williams	Last update May 2023
6	5/27/2022 36839	Senate Bill 458	Can the city require an expedited land division to go to the PC for approval?		Ed Trompke	Email sent to Darren.	Darren Wyss	Last update 6/6/2022
7	8/10/2022 36808	Marine Board Permanent Sound Limits	Ongoing issue with a citizen complaining to the City and marine board regarding noise generated by jet skis.		Bill Monahan	Bill provided the research information to the Chief. The citizen who raised the issue presented to Council earlier this year. No further action was taken.	Peter Mahuna	Last update 8/30/2022
8	11/2/2022 36845	View Easement Tree Removal	Review to ensure it is still valid. If valid does that mean city has authority to remove tree?		Jeff Kapp	Assigned to Jeff	Ken Warner	Last update 11/4/2022
9	1/19/2023 36839	Camping Code	Work with city regarding houselessness and required municipal code changes and communications strategy.		Bill Monahan, Matthew Kahl	The camping subcommittee is meeting to determine suitable camping sites.	Doug Erickson	Last update 9/1/2023
10	2/4/2023 36841	Transient Lodging Tax Administration	City would like to enter an IGA to have state begin collecting TLT.		Matthew Kahl	Matthew exchanging emails with Lauren and review of city's code.	Lauren Breithaupt	Lat update 2/23/2023
11	2/14/2023 36842	Noise Exception Research	Research noise standards to see if exception to allow noise from play. Details in Bill's email from 2/14/2023		Matthew Kahl	Assigned to Matthew.	City Council	Last update 2/20/2023
12	2/14/2023 36839	Contract Amendment	Review requested contract amendments for waterfront project.		David Bowser	David reviewed and provided comments.	John Floyd	Last update 2/22/2023
13	2/22/2023 36808	Change of Contractor for Previously Approved Work	Issues with developer, city would like to transition contract to contractor so the work can proceed. Developer hasn't signed contract.		David Bowser	Assigned to David.	Morgan Coffie	Last update 2/27/2023
14	2/22/2023 36839	Urban Renewal	Draft set of rules sent to city for review.		Ed Trompke	Officers will need to be appointed at the March 6 meeting per John.	John Williams	Last update 2/23/2023
15	3/1/2023 36842	Contract Templates	Request to update templates and correct odd issues.		Pete Hicks, David Bowser	Assigned to David.	Kathy Mollusky	Request received 3/1/2023
16	3/8/2023 36839	Needed Code Amendment	Propose four code amedment projects Council should place/prioritize on the planning docket.		Bill Monahan	Bill replied to Dylan with ideas and options.	Darren Wyss	Last update 4/12/2023
17	3/8/2023 36808	PGE Traiff	PGE says per tariff the City is responsible to underground service but if this is required, it will delay the project as work was not bid. This requirement is inconsistent with past projects.		Matthew Kahl	Phone call with Matthew and Erich 3/9/2023.	Erich Lais	Last update 3/9/2023
18	4/24/2023 36839	Historic City Hall	Review LOC and lease agreement, and the parking agreement.		Matthew Kahl	John sent Matthew an email requesting an update.	John Williams	Last update 8/9/2023
19	5/15/2023 36839	Contract Amendment Request	McLean House National Register PSC for review.		David Bowser		Lynn Schroder	Request received 5/15/2023
20	5/19/2023 36808	Proposed IGA for Wastewater	Review agreement for Council to make decision.		David Bowser	David reviewing.	Erich Lais	Request received 5/19/2023
21	8/18/2023 36808	Development Performance Bond - Chene Blanc	When does the city have the authority to pull a develpers performance bond or contractor?		Edward Trompke	Ed and Erich exchanging emails.	Erich Lais	Last update 8/18/2023
22	8/22/2023 36808	IGA Extension	Questions from Morgan regarding approved IGA.		David Bowser	David responded with comments.	Morgan Coffie	Last update 8/24/2023
23	8/30/2023 36842	LCRB Rules	Review changes to LCRB rules, draft memo and Res 2020-08.		David Bowser	Assigned to David.	Kathy Mollusky	Lasts update 9/1/2023
24								
25								
26	**Ongoing / Specified Due Date**							
27	9/9/2019 36839	I-205 Regulatory Framework	Develop process for permitting, etc.			Pending? Confirm status with planning.	John Williams, Lance Calvert	Last update, email sent 10/14/2021
28	?36845	Community Center Management Agreement	Revise agreement between City and Friends of Robinwood Station (FORS).		Matthew Kahl	Matthew sent final lease agreement comments.	Ken Warner	Last update 9/30/2022
29	1/21/2022 35841	Transient Lodging Tax Administration	What code needs to be updated and implemented so city can begin collecting taxes?		Matthew Kahl	Matthew advising Lauren	Lauren Breithaupt	Last update 3/14/2022
30								
31	**Longterm**							
32	3/8/2019 36839	Code Changes Chapters 98 & 100, possibly 105	Review code, CDC, plan changes to confirm if on track.		Matthew Kahl	Matthew reviewing, ongoing.	Darren Wyss	Last update 4/26/2021