CITY OF MILWAUKIE
CITY COUNCIL MEETING
JUNE 20, 2006

CALL TO ORDER

Mayor Bernard called the 1982nd meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes
Joe Loomis
Carlotta Collette
Susan Stone

Staff present:

Mike Swanson, City Manager
Stewart Taylor, Finance Director
Gary Firestone, City Attorney
Paul Shirey, Engineering Director
Larry Kanzler, Police Chief
Katie Mangle, Planning Director
Kenny Asher, Community Development/Public Works Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. **Karen Martin** was recognized by Public Safety Advisory Committee (PSAC) Chair Susanna Pai for her service as the Hector Campbell Neighborhood District Association (NDA) representative and by Hector Campbell NDA Chair David Aschenbrenner for her service as the Association Secretary.

B. **Sgt. Terry Marthaller** (retired) was recognized for volunteer service to the police department in his organization of the property room that reduced the City's liability and restored its credibility.

C. **Sgt. Dave Rash** was given the Meritorious Service Medal for his efforts in coordinating law enforcement training that served as a statewide model. Sgt. Rash was also recognized by Crime Stoppers, Inc. for his dedication to the program

D. Nature in the Neighborhoods Grants

Metro Councilor Brian Newman discussed recent Nature in the Neighborhoods grants awarded to several projects in and around Milwaukie. The Metro Council created this grant program last year as part of its Goal 5 efforts by transferring about $1 million from solid waste. Watershed councils, schools, cities, and other similar groups from all over the region submitted applications. On May 27 Metro awarded $560,000 in grants many of which had their own matches totaling about $3 million in restoration projects. In Milwaukie, the Hector Campbell Neighborhood was awarded $1,000 for Homewood Park trail enhancements. The Johnson Creek Watershed received $16,000 for a community outreach brochure and signage projects, and Clackamas County Water Environment Services (WES) received $25,000 for its 3 Creeks Community Restoration

Project. The Clackamas River Basin Council received $72,000 to remove invasive species throughout the lower Clackamas.

The City of Milwaukie was a co-applicant with the Johnson Creek Watershed Council on the Klein Point restoration. Although it was a great application, it did not receive funding because the intent of the grants was to fund implementation and not the soft costs of engineering and design work that Milwaukie asked for. He hoped the City and Watershed Council would be able to find partners to cover those soft expenses so an application for implementation could be submitted in a future round of funding.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded Councilor Collette by to approve the Consent Agenda:

A. **City Council Minutes of May 2, 2006 work session and regular session minutes;**
B. **Right-of-way Agreement Extension with the Oregon Department of Transportation for the McLoughlin Boulevard Project;**
C. **OLCC Application for ABC Kitchen located at 10880 SE McLoughlin Boulevard for a change in ownership;**
D. **OLCC Application for the Sunny Corner Market located at 5020 SE Monroe Street for a change of ownership;**
E. **Resolution No. 24-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Setting Fees for Services; Classifying the Fees Imposed by This Resolution as Not Subject to Article XI, Section 11B of the Oregon Constitution;**
F. **Resolution No. 25-2006: A Resolution of the City Council of the City of Milwaukie, Acting as the Local Contract Review Board, Authorizing the City Manager to Execute Certain Contracts for Fiscal Year 2006 – 2007;**
G. **Resolution No. 26-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving a Transfer of Appropriations;**
H. **1. Resolution No. 27-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting a Request for Funds to Metro under the Metro Transportation Improvement Program for Regional Flexible Funds to Design a Replacement McLoughlin Boulevard Bridge over Kellogg Creek to Allow Removal of the Dam and Restoration of the Creek.**
2. Resolution No. 28-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting a Request for Funds to Metro under the Metro Transportation Improvement Program for Regional Flexible Funds to Build Sidewalk and bike Lane Improvements along 17th Avenue between Lava Drive and Ochoco Street.

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- **Mike Guidoni, 4024 SE Jackson Street.**

Mr. Guidoni said the first time he was in this room was about a month ago during municipal court. The person he came to watch was his neighbor who had several code enforcement violations. Of all the people who were in court, the judge said fines were, for example, $200 plus the amounts on the board. Except for this person. The judge saw this person had no violations other than this, but that was not quite true. He had a violation in 2004 but not a citation. The cost was $500 per day for the citation that amounted up to $26,500, but the judge fined him $100. He did not know how the City

could be fiscally responsible under these circumstances. He thought the Council might look at getting a different judge. He thought the judge should have some latitude, but it probably costs $100 each time the car or truck was started to go look at the code violation. How could the City get by with a $100 fine on a $26,000 bill? The same person did not have a business license to rent out the house in the first place, and he did not intend to get one. There was no incentive unless violators were fined to the point they would take it seriously. The City was not getting cleaned up, and it was costing too much money. His water bill was going up, and his taxes were going up. This guy paid $100 out of a $26,000 fine.

Mayor Bernard suggested the Council discuss an ordinance for code violation fine reductions similar to the one it adopted for traffic violations. A lot of time and money goes into code enforcement, and he felt the City should ensure taxpayers' money was well spent.

Mr. Guidoni understood the judge's contract was up for renewal.

Mayor Bernard said under any circumstance he felt the Council needed an ordinance that restricted the reduction whether or not the judge's contract was expiring.

Mr. Guidoni thought the City should cover its expenses for trying to take care of these problems. People tend to shrug off compliance if they only have to pay $100.

Councilor Collette had spoken with Mr. Guidoni about the issue and encouraged him to come forward and comment. The City was spending more money trying to get people to comply than could be recovered in a $100 fine. She thought the Council should look at adopting an ordinance that established minimum fine amounts and consider the issue of renewing the judge's contract. Taxpayers were paying a lot of money, and this was an area where the City could help. It was being responsible.

Mayor Bernard was also greatly concerned about this. Years ago there was a citation on an overweight truck for $15,000, and the judge lowered it to $100. Not only were the Milwaukie police involved but also the state police. Shortly after that the state legislature established a maximum fine reduction.

- **David Aschenbrenner, 11505 SE Home Avenue.**

Mr. Aschenbrenner was concerned about the rebuild of Hwy 224 and Oak Street that would be six lanes wide. There was going to be a dedicated right turn lane from Oak to Hwy 224, two through lanes, and one dedicated left turn lane. There was no signal for the dedicated left-turn lane, which he thought was unacceptable. It was difficult to make a left-turn against two lanes of traffic and pedestrians crossing the intersection. He talked to a lot of people about this, and they thought it was a problem now and would be more of a problem with the new Oak Street project. The Hector Campbell Neighborhood voted to send a letter to the City to be forwarded to ODOT requesting that the left turn lane lights be installed. He believed the Ardenwald and Island Station Neighborhoods would make similar requests. He had not had a chance to go to the other Neighborhoods since many were taking the summer off. He intended to ask the Public Safety Advisory Committee for its support. He understood engineers had manuals they had to go by, but the common person looked at those guidelines and found them unacceptable. That many lanes of traffic at that kind of intersection with that many businesses with pedestrians just did not work. He asked the Council to be aware of the situation and take action in some way if it could. A letter would be nice because it was a cause Mr. Aschenbrenner felt needed to be addressed. The intersection was going to be re-built, and construction would start in the next few months. If studies had to be done to determine if the left-turn light was necessary he recommended at least putting in the facility. He could not believe a left-turn lane light would not be needed.

He was taking the cause around to the neighborhoods seeking their support, and people at the market just shook their heads and did not understand why there was no left turn lane light there now.

Mayor Bernard commented when he went to the Hwy 224 improvement open house. ODOT indicated it had forgotten to do the public outreach process. ODOT said it was going to put in a left turn light, and about a week later Mayor Bernard was told the ODOT representative had misspoken. He had asked for a meeting, but it had been delayed. He could lie down in front of the tractor to stall the project until it got straightened out. He thought the Council should send a letter to ODOT to deal with this matter because it was wrong.

Mr. Aschenbrenner blamed ODOT but not the project. He would be reluctant to lie down in front of the tractor, though.

Mayor Bernard remarked there was a proposal for 150 condos near that intersection.

Councilor Collette asked if the matter came up in the meeting with ODOT and if so what was the response.

Mr. Shirey attended a meeting with ODOT but had not realized Mayor Bernard had wanted to attend. He briefly reviewed the conversation. The good news in respect to this poorly operating intersection was the two additional lanes on Oak Street being built by Gramor would improve the situation even though there would not be a dedicated left-turn phase as part of the improvements because it was not warranted. Warrants were a threshold established by engineers to make it okay to do something like adding more green time one way and taking away green time the other way. In order to understand the problem a progression analysis needed to be done. The City talked to ODOT about its interest in participating in doing that. He also talked to ODOT about its willingness to come out and talk to people in a meeting labeled 'Why ODOT would not allow a left-turn signal on Oak & Hwy 224' meeting. He told them the house would be packed. They all laughed and agreed to do it. They needed to take the warrant matrix and turn it into language that a common person could easily grok. There was a reason for doing this, and it might make sense. In any event, the improvements would be done by the end of September and things would need to be looked at after the improvements were made. The meeting with ODOT should be some time this summer. The Transportation System Plan (TSP) was underway, and the analysis needed to be incorporated. ODOT was a willing player but just because people thought there was a problem did not mean there was a problem. It was a matter of quantifying the problem, and that was the progression analysis.

Mayor Bernard observed that was a horrible intersection. The McLoughlin Boulevard project was great, but in this case ODOT admitted it had overlooked the public input part of the Hwy 224 improvements. He sat at the table with the Joint Policy Advisory Committee on Transportation (JPACT) with the new head of ODOT where he said he wanted to attend any meetings. He felt there should be a way to apply some pressure. He was concerned Milwaukie would have to pay for it.

Mr. Shirey said a signal cannot be built if it was not warranted. If it did not meet the threshold test, ODOT could not fund it. The City could work with ODOT to get a better idea of how to get to the point of getting the left-turn signal installed, but it would not be part of the Hwy 224 preservation project.

Mayor Bernard asked if the condos were built up the street, could the developer be made to pay for a left-turn light.

Mr. Shirey replied the developer could be required to pay part of it, and the City would probably have to pay part of it as well. Given the land use issues around the area

Harrison, Monroe, and Oak Streets would have to be looked at together making it a complicated matter. The City wanted to be ahead of the development curve and have some answers. He noted there was a pre-application conference for that development later in the week, so the information was public.

Councilor Stone understood ODOT said the left-turn light was not warranted.

Mr. Shirey advised that ODOT did not think it was warranted, but they did not have the data.

Councilor Stone asked based on what.

Mr. Shirey said ODOT had the data from the Gramor traffic study. They have a formula for determining if it met the warrants.

Councilor Stone asked if that was an inclusive study or was it just the bare basics.

Mr. Shirey replied it was a very inclusive study.

Councilor Stone understood the progression analysis had not been done.

Mr. Shirey said Gramor was told if they were interested in a left-turn phase then they would have to do a progression analysis. It was not pursued.

Councilor Stone asked if Gramor could have been held accountable to do that.

Mr. Shirey said they could not. He speculated it was not something the state said Gramor had to do. He believed Gramor was looking at the option of doing the signal, but ODOT told them they would have to do the analysis.

Councilor Stone asked if it was possible that the progression analysis needed to be done in order to determine if the signal was warranted. Was that something that could be shared by the City, ODOT and the developer?

Mr. Shirey replied it was too late to capture the developer's interest or financial participation. It was something the City talked about with ODOT, and most of the cost would be on the City.

Councilor Stone asked the accident history at that intersection.

Mr. Shirey did not know.

Mr. Aschenbrenner said it was in the top five.

Councilor Stone recommended putting that with any letter because it gave credibility to the need for the turn signal. In her opinion, ODOT could not say it was not warranted without the data.

Mr. Asher explained the warrant test and progression analysis were two different things. The City might be able to get the dedicated signal if the warrant were met, but he understood that rarely happened at this kind of intersection. Information on volume and turning movements was collected as recently as last year. It was close but not warranted. The progression analysis looked at whether green time could be taken away from either Hwy 224 or Oak Street and be dedicated to a turn while still getting pedestrians and cars through the intersection. It was a different kind of study that was more qualitative. That might not even lead to a signal. There were also issues about getting poles that could support the lights. That was something the City could talk to ODOT about once the intersection was improved to determine how it operated.

Councilor Stone asked if ODOT was aware this was in the top five intersections that were problematic for accidents.

Mr. Asher did not believe that issue had been brought up, and staff would keep Council informed of any upcoming meetings with ODOT.

PUBLIC HEARING

2006 – 2007 Budget Hearing

Mayor Bernard called the public hearing on the 2006 – 2007 Budget and 2007 – 2011 Capital Improvement Plan to order at 7:55 p.m.

The purpose of the hearing was to consider resolutions required to effect the adoption of the FY 2006 – 2007 Budget and to hear public comment.

Staff Report: **Mr. Swanson** said in order to fully adopt the budget Council had to adopt three resolutions. The first was to declare the City's election to receive state revenue sharing that included alcohol, cigarette, and gas taxes. The second certified those services the City provided for state revenue sharing. The final resolution adopted the budget and the capital improvement plan (CIP), made appropriations, and categorized taxes for fiscal year 2006 – 2007. This was a public hearing as required by ORS 294.430(1). This was a hearing to accept comments on the appropriate use of state revenue sharing pursuant to ORS 221.770(1)(b) and (c). It was the time to comment on the budget as a general proposal and to comment on the use of state revenue sharing monies.

The Budget Committee took action on May 17, 2006 approving an annual budget of $41,150,370. He provided a comparison with other years. The 2005 – 2006 budget was $44,117,195 that included photo radar that was not authorized by the legislature. The actual budget for 2004 – 2005 was $43,002,835, and 2003 – 2004 was $41, 064,232. There has been very little growth. The City did have a number of new programs including Code Red, which was an emergency notification system to contact residents of impending disasters or issues. The City was also looking at instituting a security system for library materials. This was a hold-the-line budget, but the City seemed to be able to squeeze more out of each year. Staff was one of the reasons why the City was able to get things like McLoughlin Boulevard, North Main, and the Riverfront Park moving even when funds were static. In terms of the amount of the levy, there were two areas where property taxes were directed. One was the general fund, and that levy was proposed to be $3.9898 per thousand assessed value. The authorized permanent was $6.5379 per thousand assessed value. However, the City did commit upon annexation to the Fire District that it would lower the levy of its permanent rate and reduce it by the amount of the District's permanent rate of $2.4012. There was an additional decrease in the levy of the permanent rate in order to meet the commitment the City made to the taxpayers that there would be no net tax increase from the annexation, so the City made a further reduction of $.1469 per thousand assessed value.

The process started at the beginning of the year to prepare budgets, and a number of months were spent with the Budget Committee that was made up of five citizen members plus the Council members. He noted that Budget Committee Chair David Aschenbrenner and member Mike Miller were present. The citizen members met with staff during the year to both monitor what was going on with the budget and also to discuss issues than came up. He expressed his appreciation to Finance Director Stewart Taylor who did most of the work on the budget preparation.

Correspondence: None.

Audience Testimony: None.

Additional Staff Comments: **Mr. Swanson** added that he would have an amendment before the Council related to Transportation System Plan (TSP) update.

Questions of Clarification: None.

Mayor Bernard closed the public testimony portion of the hearing at 8:04 p.m.

It was moved by Councilor Loomis and seconded by Councilor Barnes to adopt the resolution declaring the City's election to receive state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO. 29-2006:

A RESOLUTION DECLARING THE CITY OF MILWAUKIE'S ELECTION TO RECEIVE STATE REVENUE SHARING.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution certifying services for state revenue sharing. Motion passed unanimously. [5:0]

RESOLUTION NO.30-2006:

A RESOLUTION CERTIFYING SERVICES FOR STATE REVENUE SHARING.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the resolution adopting the 2006 – 2007 Budget and 2007 – 2011 Capital Improvement Plan, making appropriations, and declaring the ad valorem tax. Motion passed unanimously. [5:0]

RESOLUTION NO. 31-2006:

A RESOLUTION ADOPTING THE BUDGET AND CIP, MAKING APPROPRIATIONS, AND DECLARING AND CATEGORIZING TAXES FOR FISCAL YEAR 2006 - 2007

B. Amendments to the Milwaukie Municipal code and Comprehensive Plan that address Community Service Uses and the Kellogg Creek Wastewater Treatment Plant – files ZA-06-01 & CPA-06-01

Mayor Bernard called the public hearing on ZA-06-01 and CPA-06-012, legislative amendments to the Comprehensive Plan and Zoning Ordinance initiated by the City to order at 8:07 p.m.

The purpose of this hearing was to consider an ordinance to adopt proposed amendments to the Comprehensive Plan and Zoning Ordinance that include revisions to Comprehensive Plan provisions related to water resources, land use and public facilities and Zoning Ordinance revisions relating to community service uses.

This was a legislative decision by the Council and would be based on the following standards: The statewide planning goals; applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan policies; and applicable provisions of implementing ordinances.

The City Council decision would be the final decision of the City. Failure to address a criterion or raise any issue with sufficient detail precludes an appeal based on that criterion or issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board.

Persons with standing are those who submit written comments or testify and sign the City Council Attendance sign-up sheet on the information table in the hall.

Conflicts of Interest: No member of Council declared potential or actual conflicts of interest as defined in ORS 244.

No member of the audience challenged any Council member's ability to participate in this decision.

Conduct of Hearing

Mayor Bernard reviewed the conduct of the hearing. Because the staff report and applicant presentation is combined, the applicant may have 30 minutes. Representatives of groups may have 10 minutes, and individuals will be limited to 5 minutes.

Staff Report/Applicant Presentation: **Ms. Mangle** said there were two requests before the Council. The first was approval to amend the Milwaukie Municipal Code (MMC) 19.321 – Community Service Overlay. These amendments would change the name of the section, clarify the procedures and standards used to approve such uses, and modernize the language. The second action was (a) to amend the Comprehensive Plan in parts of Chapters 3, 4, and 5, and (b) to amend MMC 19.321.7 and 19.321.3, the community service overlay section. The amendments in section 2 would clearly state the City's policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek Wastewater Treatment Plant, make the Plant a nonconforming use, and set a deadline for the removal of such nonconforming community services (CSO) uses.

The community service overlay seemed unique to Milwaukie and worked well. It was an overlay zone for types of uses such as schools, religious institutions, parks and transit facilities. These were all permitted in Milwaukie under the community service overlay. Anything falling into this category was allowed in any zone including residential zones throughout the City. They did, however, have to meet more stringent requirements by meeting the design requirements for the underlying zone such and height and setbacks. One key criterion was that it must meet the public benefits test meaning that any impacts associated with the use must be counterbalanced by the public benefit of having the facility at that location.

Mayor Bernard commented on cell tower height.

Ms. Mangle said many categories in the CSO including schools, churches, and cell towers had specific design standards that applied to those categories. There was an entire section that addressed cell towers and height because if it were over 35-feet it would not be allowed in a residential zone. Any kinds of design aspects that were specific to those types of uses were addressed in the specific subsection in the CSO. That allowed a little more flexibility.

Mayor Bernard would like to look at the one for cell towers.

Ms. Mangle said Action 1 was the proposed housekeeping measures that modernized the language and cleaned up some of the CSO in the way it was communicated and practiced. Some of the key proposed changes included changing the title, which would be the Community Service Use (CSU). This and several other things would focus on this being a conditional use and less of a zone change. This has confused applicants, and the amendment would clarify the fundamental meaning of the zone. The amendments also neutralized gender and religious references. Right now there was a term regarding fraternal institutions that would be substituted with the term civic institutions. Churches would be more generalized by using the term religious institutions. The applicants, staff, and Planning Commission would be helped by the clarification of the standards and procedures for reviewing a CSU and make the criteria

approval more clear. One of the changes she wanted to point out was that in the effort to neutralize religious references and apply the same standards to religious, private, and public institutions one of the changes would be that right now churches were allowed to be 35-feet high plus a spire. Public and private institutions were allowed to be 50-feet high. If the same standards were applied then religious institutions would also be allowed to be 50-feet high. Years ago churches were considered to be conditional uses and could be 50-feet high. It was not a huge policy change but rather a correction. They also more tightly defined the term 'spire' which was not currently defined in the code at this time. It would be 50-feet high with a more tight definition of the term 'spire' and that was what would apply to religious institutions.

Action 2 was the amendments that addressed the Kellogg Creek Wastewater Treatment Plant. The intent of the amendments was to strengthen existing City policy, to direct the City to actively seek alternatives to the continued use of the Kellogg Treatment Plant, limit expansion of the Plant, and eliminate the Plant's social, environmental, and economic impacts. It directed the City to plan for relocation of the sewage treatment to a more modern plant as part of a regional system to benefit the North Clackamas County community.

In 2005 the City and Clackamas County Service District #1 (CCSD) agreed to a regionalized wastewater treatment plan known as the Clearwater Plan that provided improved quality and service at ultimately lower rates. In June 2005 representatives from CCSD1 enthusiastically presented the draft plan at a Council work session. She had the minutes of that meeting for reference. The Plan included closing the Kellogg Treatment Plant as a viable option and a better solution for sewage treatment service for the County. That Plan remained a viable and better option for wastewater treatment than the continued use of the Kellogg Plant.

The proposed amendment made it clear that the City was to work with Clackamas County and CCSD1 and other parties including Metro to develop an alternate site for sewage treatment in a regionalized system. Ms. Mangle provided a map of the current site of the Plant and the current zoning which was Downtown Office (DO) and Downtown Open Space (DO). Those zones would not be affected by the proposed amendments.

Mayor Bernard understood Action 1 made a sewage treatment plant anywhere else under the CSU nonconforming.

Ms. Mangle replied Action 1 was just housekeeping amendments. Pump stations were already legal and would be processed through the community service overlay process. Pump stations were not the same as the Kellogg Treatment Plant, which was what was being termed as a major utility facility. That was not now addressed in any way in the code. Action 2 was two parts: (a) being the Comprehensive Plan amendments related to the Kellogg Creek Treatment plant. These amendments were focused on three parts of the Comprehensive Plan Chapters 3, 4, and 5. The City's policy was already to investigate options for closing the Kellogg Treatment Plant. These amendments directed City policy more clearly to actively pursue closing the Kellogg Treatment Plant. Key changes were in Chapter 4 instead of partnering with the County to investigate alternatives the language would be, "the City would use the best efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assured property sewage treatment for Milwaukie citizens while effectuating a transition of treatment at another location. The changes to Chapter 5 talked about cooperation with other agencies. It also required future planning efforts undertaken by the City to consider a regionalized sewer system in a facility other than the Kellogg Creek Plant.

Action 2(b) was the zoning code amendments related to the Kellogg Creek Treatment Plant. These were the changes to the zoning code that implemented the policy changes she described. The Comprehensive Plan was the policy direction, and the zoning code implemented the Comprehensive Plan with regards to land use. More specifically, they would specify that major utility facilities such as the Kellogg Treatment Plant were generally not permitted community service uses. She said generally because they may allow for the possibility there may be a major utility facility that had no impacts. It may be underground or something like that which if possible would be allowed. It was based on impacts. The code amendments included language that prohibited expansion, upgrades, or remodeling of the use except as required to abate nuisances or comply with federal or state statutes including the Clean Water Act. Further it established a fee for nonconforming major utilities that remained in use after January 1, 2016 with a fee set by the City Council at that time.

Amending the Comprehensive Plan and zoning code was a legislative process that required approval by both the Planning Commission and the City Council. At its May 23 meeting, the Planning Commission unanimously found that the amendments met the approval criteria including complying with local, state, and regional plans and policies. The Planning Commission recommended that the Council approve all the amendments with revisions that addressed CCSD1's concerns. The Planning Commission asked staff to consider some of the comments that were made at the hearing and make revisions in an attempt to address those. At the Planning Commission meeting Tom Sponsler and others testified against the amendments on behalf of the County and the Cities of Gladstone and Happy Valley. While the City did not agree with all the comments, some were reasonable, and in the spirit of continued cooperation staff tried to make adjustments to the amendments in order to address some of their concerns. She pointed out the revisions. One of the main complaints Mr. Sponsler included in his comments was that the amendments did not support or promote cooperation among the agencies and therefore did not meet statewide planning goals. Staff argued against that and included a revision to further clarify that it was a City policy to continue coordinating with Clackamas and CCSD1 in planning for the closing of the plant. Another revision stated the City would allow CCSD1 to make adjustments to the plan as needed to comply with federal or state statutes, regulations, or permits. The understandable concern was to keep the plant operating in the near term in a safe and environmentally sound way.

Ms. Mangle requested that the Council approve Actions 1 and 2 to amend the zoning code section and Comprehensive Plan Chapters 3, 4 and 5. Council had alternatives. It could chose not to approve the amendments; approve Action 1, the housekeeping amendments to section 19.321 that did not address the Kellogg Treatment Plan; or approve Action 2(a) the Comprehensive Plan amendments which were the policy changes related to the Kellogg Treatment Plant and action 2(b) the zoning code amendments related to the Kellogg Wastewater Treatment Plant.

Mr. Firestone added the Council may approve almost any combination of 1, 2(a), and 2(b). The only thing the Council could not really do was to approve 2(b) without approving 2(a).

Mr. Swanson made a recommendation that was not wholly consistent with Planning Commission's recommendation. One might ask if Ms. Mangle and Mr. Swanson talk and why did the recommendations differ. What he was going to suggest was not before the Planning Commission on the night it made its recommendation. Therefore, the Planning Commission as a separate body to literally protect its integrity it was important that what they did be presented as it happened. This was being done to protect the integrity of the Planning Commission. This was a fluid issue – he was talking specifically about wastewater treatment and CCDS1. He provided a brief history.

Clearwater was adopted September 2005, and in January 2006 the Board of County Commissioners (BOC) cancelled the Clearwater Project and appointed a Citizens Advisory Council (CAC). The CAC was to develop a wastewater strategic plan for CCSD1. He introduced Eugene Schoenheit an original member of the CAC and Mike Kinsey who was the new director at Water Environment Services (WES). In January the CAC as part of its organizational efforts set out a process to arrive at a recommendation due by September 30, 2006. That was a quick turnaround considering work began in February. The CAC had gone through a number of steps that it set out to accomplish in February and March culminating last night in a lively discussion leading to the identification of four specific alternatives that would be the alternatives the engineering consultant will actually now go into an in-depth study. They created criteria and principles by which they would be measured. The CAC also adopted service projections, capacity assessment, and the four alternatives. He and Mr. Shirey had attended most of the CAC meetings, and WES staff has provided volumes of information that has been developed. The service projection and capacity assessment identified the future need as being 16.6, so as he gave the Council numbers those would somehow add up to 16.6 for each of the alternatives.

The four alternatives that were adopted were to retain Kellogg upgrading nitrification and route surplus to Tri-City meaning that Kellogg would handle 4.8 million gallons per day (mgd), and Tri-City would handle 11.8. The second alternative was again retaining Kellogg and would actually result in the construction of a new plant operated by CCSD1. The numbers for Kellogg would be 4.8 and 11.8 in the new plant. There was also an alternative that would be studied that would basically look at a 12.5 mgd at Kellogg, and 4.1 diverted to Tri-City. The fourth alternative was broken down into two sub-options which were to abandon Kellogg and diverting the 16.6 mgd flow to Tri-City, and the other was to divert the 16.6 mgd to a new plant to be constructed and operated by CCSD1. Those were the four options that would go forward and be studied in-depth.

There was good news and bad news from Milwaukie's standpoint. One of the pieces of good news was that none of the options looked at the full 16.6 being treated at Kellogg. The other good news was that none of the options anticipated an expansion of the footprint. Another piece of good news was the option of abandoning Kellogg was one of the four options. The not so good news was that there were three options that still placed some load on Kellogg and retained Kellogg. He thought it was a fair listing of options that would go forward. It was not an easy process, and there were times he had been frustrated with the CAC. There were probably times the CAC was frustrated with him, so it all balanced out.

Mr. Swanson believed it was still important for Milwaukie to participate in the process and cooperate in the process. One of the actions being proposed tonight put up a roadblock to moving forward in good faith. That was the amendment of MMC 19.321.7 and 19.321. 3 the dealt specifically with the nonconforming use status and the required closure of the Plant on December 31, 2015. He recommended that the Council follow the Planning Commission recommendation with respect to the amendment of MMC 19.321, which was the section Ms. Mangle referred to as housekeeping. That needed to go forward and did not deal with this issue. He further recommended the Council follow the Planning Commission's recommendation with regard to the Comprehensive Plan changes in Chapters 4 and 5? However, he was further recommending delaying any action on the amendments to MMC 19.321.7 and 19.321.3. He suggested the Council do that until its first meeting in August. He would probably come back because September 30 was the date the CAC had to have its report, and he would hopefully be back on that date recommending a delay because he thought it would take four weeks for the engineering firm HDR to develop the cost figures. He suggested the Council adopt the Planning Commission recommendation on the housekeeping and

Comprehensive Plan amendments, but delay and set for a date certain the action on MMC 19.321.7 and 19.321.3 to limit the effect of putting that in the mix as the CAC went forward with its deliberations.

Mayor Bernard understood the current plant was a nonconforming use under the current CSO standards. There was a significant difference between a pump station and a treatment plant.

Ms. Mangle replied the code was silent and it was not listed. The last time the Planning Commission approved a minor modification of the CSO in 1999, the Commission was troubled by that and felt it had to continue making approvals for increasing the capacity of a plant that did not fit with the code and did not fit in the community. The plant was built with a conditional use permit in 1970, and that was how it was originally permitted. It has gone through several land use applications since then. The City had found a way to manage it.

Mr. Firestone added it did have a CSO approval as an amendment. The action was taken. He did not think the issue was directly addressed as whether a utility other than those listed under the general heading of utilities could be permitted as a CSO.

Mayor Bernard would like to see the CSU amended so that it would not allow sewage treatment plants to be built within the community from here on out. One of the comments made by a former director of that group was would Milwaukie rather have it built in its industrial area, and the answer was of course not. His concern was that there was a plant here now and the City needed to deal with it. What are we going to do in the future?

Mr. Swanson was not an engineer, but he understood – he wanted to make it clear he was not advocating that it be located in the City – but the construction of wastewater treatment facilities was a different animal nowadays. The technology was much different. He was not advocating that it be located in Milwaukie, but he also was not advocating limiting the options the CAC had. The City and CAC may find they are at odds on September 30, but he thought it was a better idea to be at odds on September 30 than it was during the process. There were still some options he thought would be well within Milwaukie's interests and satisfy them. There were other issues that could be discussed regarding mitigation. He did not believe the City would lose regulatory capabilities by saying let's give them a chance to do their work.

Mayor Bernard thought everyone would agree on that point. He understood sewage treatment plants were not what they used to be and that some utilities could be built underground. People might not know it even existed, and that might be a possibility next to the river.

Ms. Mangle said right now major utility facility was not listed as an approved community use. There was a category for other similar facilities as determined by the Planning Commission. She thought the Planning Commission and staff would be comfortable for a new facility not to listed as a use applicable for a CSO.

Additional Correspondence: None.

Testimony in Support of the Application

- **Gary Klein, 10795 SE Riverway Lane.**

Mr. Klein was in complete agreement with Mr. Swanson's recommendation and thought it was a great idea to work with the CAC. He understood the Kellogg Creek Sewage Treatment Plant had an advisory board, but Milwaukie did not have a seat on the board. He recommended that until Kellogg was gone that Milwaukie should propose having a member on the board. It seemed unusual that Milwaukie used 30% - 40% of the

capacity but had no one on the board and had now say in the planning. He thought Milwaukie should have someone on the board, so the City can have an inside view of what was going on. The Plant was in Milwaukie's city limits and treated the City's sewage, so he thought that should be corrected.

Mr. Swanson explained during the creation of the CAC that was an issue he talked to the BOC and County Administrator about. The CAC was actually an advisory board to CCSD1. Once the board finished this task, it would continue as an advisory board. The City was not part of CCSD1; it was a wholesale customer. One of the issues that had to be discussed in the CAC process eventually was the City's status. He did not believe that would be changed today. This process was open – sometimes excruciatingly so – and he believed Milwaukie knew what was going on. That was an issue down the road that would have to be considered. He did not see Milwaukie getting a member now because the group was about half way through the process. Milwaukie would continue to weigh in.

Mayor Bernard added people were advised of the meetings and did sit in.

Neutral Presentations – None.

Presentations from those opposed to the proposal

- **Tom Sponsler, 1750 SW Harbor Way, Portland**

Mr. Sponsler was an attorney representing CCSD1 and Cities of Gladstone and Happy Valley. He appeared in the room on May 23 and presented a long letter raising many legal issues and concerns about an earlier iteration of the zoning and Comprehensive Plan amendments. Staff had done yeoman's work in the intervening time and made some substantial changes almost all of which were substantial improvements. The letter he wrote dated June 19 was much shorter than the one submitted on May 23. Some of the legal issues in his arsenal had been taken away, and that was a good thing. He commended staff and the City Manager who had worked hard to broker and mediate and to try to get people who at times had been unreasonable to be more reasonable in addressing issues of common concern and regional issues. The Planning Director did an outstanding job. His observation was that the staff report the Council received was a much improved version from the Planning Commission's. The issues were sharpened a bit partially due to his participation. Even the City Attorney had been reasonable. The City Manager's comments in large measure made his job more difficult. On the other hand he did not have to raise the legal concerns with quite as much force as he would have if the City Manager had not recommended this compromise position. On the other hand he still needed to raise those issues, and he needed to differ with Mr. Swanson's recommendation again. A lot of issues raised before the Planning Commission had been addressed, and the language changes to the planning amendments were all improvements. The zoning code amendments were also substantially improved from his clients' perspective. The zoning code amendments were also substantially improved from his perspective because it would have been impossible to continue to operate the Plant. As he pointed out the Planning Commission CCSD1 needed to comply with federal and state law. As every city attorney knew city law did not prevail over state and federal law. They were permitted to operate the Plant under DEQ under state and federal law. The city attorney had made changes to the proposed amendments to the zoning code that recognized that. That took care of probably the most significant legal arguments that were raised.

Mr. Sponsler had no objections whatever to what was presented as Action 1 – the housekeeping amendments to 19.321 – that was fine. He had not raised any objections before and had none now. As a drafter he saw a marked improvement to consistency and clarity. He was still concerned about Action 2(a). As welcome as the City

Manager's comments were regarding Action 2(b) he still had concerns. He addressed the Comprehensive Plan amendments. He still believed there were Goal 11 issues. It had not been called to the Council's attention but it might be aware there was a Sewer Master Plan from 1994. That was premised upon treatment continuing at the Kellogg Plant. There was nothing before the Council whether it was postponed or not to amend that Plan. If the Council did approve the Comprehensive Plan amendments, then it would be bringing an inconsistency between the Sewer Master Plan and the Comprehensive Plan, which violated state law. There was a two-part issue about Goal 2. One was the inconsistency violated Goal 2, and as the Planning Director pointed out there was a coordination issue that required that a regional plan would require the City to work with other cities, CCSD1, and the County who were also using the treatment plant and had needs for a replacement plant if Kellogg were to be decommissioned. The heart of the Goal 11 objection to the Comprehensive Plan amendments was that Goal 11 required the City to do more than to say it was working on a replacement. There needed to be a feasible alternative to the existing sewage treatment in the City of Milwaukie. Failure to do that could be a violation of Goal 11.

Mr. Sponsler said in summary he still objected to the adoption of the Comprehensive Plan amendments and urged the Council to add those to 2(b) and postpone the decision to August 1 in order to explore other options. He said he would shorten his comments on the zoning amendments because it was his read of the Council that it was willing to go along with the City Manager's recommendation which Mr. Sponsler endorsed. There were still the same legal objections related to statewide Goals 11 and 2. There were additional legal objections because if the City made the Plant go away, then that would constitute a taking of that Plant and a reverse condemnation, which the City could not do without compensation to CCSD1. He did not think the Council by its own fiat could close that District-owned Plant. Those were not necessarily land use issues but were legal issues if the City tried to require abandonment of the Plant. Those issues were all set forth in his letter.

Mr. Sponsler's final comments had to do with fiscal impacts. The staff report stated there were no fiscal impacts, but he had a different view. There were two parts. There were significant fiscal impacts and there may be argument upon whom that impact fell. First the City of Milwaukie had a series of intergovernmental agreements (IGA) with the District that required the District to take the sewage. As the City Manager pointed out, the City was not within the District unlike the Cities of Happy Valley and Gladstone. Those cities had a different relationship with CCSD1. Milwaukie had a contract in a series of IGAs. One of the salient provisions provided for the pass through of costs. If the Council's action required the District to expend significant sums of money to replace the Plant those costs would under the contract be passed through to the customers in the City of Milwaukie. His rough and quick estimate could amount up to $83 per customer per month. The second part was that if the Council required the termination of the Kellogg Plant, then it would have to figure out another way – if the IGA went away – the City might decide to build its own plant or go elsewhere all of those would have significant costs as well. In conclusion Mr. Sponsler urged the Council to add to the City Manager's recommendation and postpone taking action on 2(a) and 2(b) and to allow more time to work through some of the issues and to continue to allow the CAC to do its work because while some may disagree with what the odds were – and he was not going to pull out a Powerball and predict the results of that – there was at least a chance that the recommendation of the CAC would be to do away with the Kellogg Plant. Legally the District cannot accept the City's requiring that by taking legal action in the Comprehensive Plan.

Staff Rebuttal:

Mr. Firestone addressed some of the comments. The City did not believe there was any Goal violation. There was continued cooperation with the District as called for in the Plan. As to planning for facilities this was planning for facilities. The City was party to an IGA that provided for an improved wastewater treatment system. The City cannot ignore the fact that there was a plant out there that was better than the current plant, and that needed to be recognized in the City's planning. As to the taking issue there was no taking. This would be a regulatory taking if any, and the County can still use the Plant. The County could also use the same property for office and other uses. There were a wide range of uses allowed in the DO zone. Under regulatory taking there was a taking only if the District was deprived of all legitimate use, and the City was not doing that. The fiscal impact issue was primarily one outside of his area, but generally speaking the City had already planned for the ultimate transition from the use of the Kellogg Treatment Plant to a regionalized system. To that extent the fiscal impacts did not come from these plan amendments and code changes. With all that being stated he was not advocating that the Council go along the lines as recommended by the Planning Commission, and he certainly supported the position taken by the City Manager. Was the other legally defensible? Yes.

Mayor Bernard addressed Goal 11. There was already an alternative that everyone adopted. An IGA was written and signed, and the County Commissioners accepted it. Failure to meet Goal 11 was not true if one took Clearwater into account. That was why he felt it was important to adopt the Comprehensive Plan amendments. He agreed with Mr. Swanson in terms of delaying the second portion.

Mr. Firestone stated the changes that would meet Council direction if it followed the City Manager's recommendation which was to go with Actions 1 and 2(a) but not 2(b). The changes he would recommend were to change the ordinance itself that had been distributed. The last 'whereas' would need to be amended to read, "Whereas the City Council has held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities and has decided to alter some of the language and add additional language for clarity and consistency." That would be the one change to the body of the ordinance. There would be a couple of changes to Exhibit 1 that was circulated. That was the exhibit that included the Comprehensive Plan amendments. One of the changes would be to change Comprehensive Plan Chapter 4 – Recreational Needs Element, Objective 7, Policy 5 to amend the second to last sentence to read "reasonable efforts may include (rather than shall include) revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use of that site." Another change to the Comprehensive Plan would be to Chapter 5 – Public Facilities and Surfaces Element, Objective 5, Policy 5. Amend the last sentence to read, "future sewage and wastewater facility plans and related planning efforts shall take into account and plan for a regional sewage system and facility other than the current Kellogg Treatment Plant to allow the option of putting a better plant rather than the existing plant." The code amendments that would need to be made would be to change the hearing on section 19.321.2B from specified utilities to just utilities, which would leave the current ambiguity.

Mayor Bernard was concerned no one would remember all of that when it came time to make a motion because the hearing had to been closed.

Mr. Firestone advised the Council could move to adopt the ordinance with the amendments as stated by the City Attorney. He would also have copies of the amended version for the Council to look at during a break. There were three other

small changes. They were all deletions. One was section 19.321.2B10, 19.321.3 that would be kept for future use, and 19.321.7 that would be kept for future use. If the Council decided to follow that recommendation, it might want to reschedule further action on the same matter to some date certain.

Mayor Bernard closed the public testimony portion of the hearing at 9:07 p.m.

Council Discussion

Councilor Loomis supported the City Manager's recommendation.

Council Decision

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and adoption of an ordinance amending provision of the Milwaukie Comprehensive Plan relating to water resources, land uses and public facilities and amending Section 19.321 of the Municipal Code relating to community service uses, with the amendments as read by the City Manager. Councilor Barnes seconded the motion. Motion passed unanimously. [5:0]

Mr. Swanson read the ordinance two times by title only with the changes. The body of the ordinance in the last 'whereas' clause was amended to read, "Whereas the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities, and has decided to alter some of the language and add additional language for clarity and consistency. Exhibit 1 – Comprehensive Plan Chapter 4, Recreational Needs element, Objective 7 Policy 5. The second to last sentence is amended to read, "Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modifications of the sewage treatment use at that site." Exhibit 1 – Comprehensive Plan Chapter 5, Public Facilities and Services Element, Objective 5, Policy 5. The last sentence is amended to read, "Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek Plant." Exhibit 2 – Code amendments. The hearing for Section 19.321.2B is changed from "specified utilities" to "utilities." The proposed 19.321.2B10 is deleted. The proposed 19.321.3 is deleted, but the number is reserved for future use. The proposed 19.321.7 is deleted, but the number is reserved for future use.

The City Recorder polled the Council: Mayor Bernard and Councilors Barnes, Collette, Loomis, and Stone voting 'aye.' [5:0]

ORDINANCE 1962:

AN ORDINANCE AMENDING PROVISIONS OF THE MILWAUKIE COMPREHENSIVE PLAN RELATING TO WATER RESOURCES, LAND USES, AND PUBLIC FACILITIES AND AMENDING SECTION 19.321 OF THE MUNICIPAL CODE RELATING TO COMMUNITY SERVICE USES.

It was moved by Mayor Bernard and seconded by Councilor Collette to continue unresolved portions of the proposed amendments to a date certain of August 15, 2006. Motion passed unanimously. [5:0]

Council Reports

Mr. Swanson said the first meeting in July would be on July 6 because of the July 4th holiday.

Mayor Bernard reported that Metro Councilor Brian Newman, developer Tom Kemper, and he were interviewed by the *Business Journal* regarding the downtown.

Councilor Barnes worked at the Sunday Farmers' Market Community booth, and all visitors with one exception were very positive about the changes occurring in the downtown area. She would attend the Clackamas Cities monthly dinner meeting. The Sabin-Schellenberg Center wrote a grant for the Library Board to produce its television programming, and she would meet with the Board on Monday.

Councilor Loomis attended his son's graduation ceremony from Oregon State University, and his son got his first teaching job.

Councilor Collette attended a luncheon of the Clackamas Community College Blue Ribbon Committee that selected the health care facility site at Harmony Campus. Those involved expressed their appreciation for the cooperative nature of the City of Milwaukie. She also attended Clackamas Community College's GED graduation ceremony, and as a Board member she got to hand out diplomas.

Mayor Bernard announced the City of Milwaukie had been selected as a tour city for the League of Oregon Cities conference in September, and he would send letters to all the downtown businesses to encourage them to beautify the areas in front of their stores. The grand opening of McLoughlin Boulevard would be on June 28, and Chief Norm Whiteley's retirement reception is on June 29.

ADJOURNMENT

It was moved by Councilor Collette and seconded by Councilor Barnes to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 9:28 p.m.

Pat DuVal

Pat DuVal, Recorder