

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
December 18, 2007**

**CALL TO ORDER**

**Mayor Bernard** called the 2020<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor James Bernard and Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone

Staff present: Operations Supervisor Mike Clark, Engineering Director Gary Parkin, Associate Engineer Brenda Schleining, Resource and Economic Development Specialist Alex Campbell, Planning Director Katie Mangle

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****A. Recognize Carlotta Collette for Her Service to the Community as a City Councilor**

**Mayor Bernard** and Council recognized Carlotta Collette for her service to the community as a City Councilor from January 4, 2005 to November 6, 2007.

**B. Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study**

**Mr. Asher** introduced Ms. Wieghart, Metro Project Manager. They were about to enter a new phase of the project.

**Ms. Wieghart** said they were in the middle of a technical analysis on impacts and benefits for traffic, land use, property, economic development, ridership, air quality and all of those kinds of issues. They will work with jurisdictions and the Federal Transit Authority and publish a draft in April. From the public involvement standpoint they had a safety and security task force, which began in September, and they were wrapping up the recommendations. The Citizen Advisory Committee was meeting monthly and the stationary planning focused initially on the City of Portland with open houses looking at stations from Clinton to Tacoma. In October they went to the public to ask for their vision for the station area. There were two open houses held in November to cover what was heard and to get additional input. Recommendations will go into another phase and could lead to recommendations for additional project elements. It was difficult because of cost constraints and they looked for ways to implement key ideas such as pedestrian and bike access, connections to potential developments and ideas for activity centers around the stations. They will do a similar process with Milwaukie in February. It would be more substantive in that they would be looking at station location options, Harrison, Monroe, Washington, Lake Road, and Bluebird. They will have some information related to ridership and cost to help make the decisions with recommendation for the Milwaukie City Council in March or April.

**Councilor Barnes** asked for a summary of the previous night's meeting.

**Mr. Asher** replied about 20 people not including staff made up task force members with representatives from Portland Waldorf School (PWS) and St. Johns. They had similar

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concerns station by station. Possible locations that felt more remote raised concerns and that were not near traffic raised concerns about the level of activity. There were concerns about interaction with traffic and pedestrians. There was safety concerns about recent reports, paying fares, and ability to protect people and property from unruly element. Did not hear a lot of new safety and security concerns. It was interesting that the next decision for the Council prior to Locally Preferred Alternative (LPA) adoption was station location, which would need a community conversation. They heard at least one person recommend none because all were near schools. They intentionally were pushing it back on the calendar until safety and security had a chance to do its thing and do in context of all those things including ridership.

### **C. First Annual Update on the Street Surface Maintenance Program**

**Mr. Asher** personally thanked the City and Council who used roads and streets, which had been so poorly maintained over the years. They were pleased that one year ago the City Council voted to enact the SSMP and raise local funds to preserve and maintain paving on Milwaukie's major streets. It was a huge step on the part of the City Council. On behalf of the staff working on the program felt like a strong vote of confidence in future, for the City, and the staff. He heard accountability would be key with reporting back to the City Council. He clarified that the program began on July 1, 2007. It was bittersweet in that Milwaukie had stepped up but couldn't mask the statewide infrastructure crisis. He shared remarks from the governor and the Oregon business plan. Transportation this year was high on the agenda. It provided some context so they were not operating in a vacuum. Staff claimed there was not help so they needed to come up with a solution and if the state or federal came up with a solution they would adjust the program. There was good reason not to be hopeful. He heard the governor remark on sustainability but was worried leaders would ask if they get there on old bridges or aging rail system. He went on to throw out some numbers. The Governor was working on a 2009 legislature package and talked with all major stakeholders to form 3 subcommittees to determine how the package would be structured. He did not believe gas tax increase was the only way to go but everything ought to be on the table. The Business coalition transportation put together a package to increase annual registration fees plus a 2-cent gas tax increase and index gas tax to CPI. There was no political will in Salem to raise those taxes and fees.

He will come back to a work session to talk about how this was impacting City and what we were no longer able to do with our share of the gas tax. There had been a 40% increase since 1995 adjusted for inflation with flat revenues. They had managed over the past several years to find matching funds but were no longer able to do that. TI was having a real impact at home. He frankly would feel remise if he did not tell the whole story. Fund 315 healthy, but fund 320 which took care of everything else was in bad shape. He was obligated to tell the City Council and public not just about transportation infrastructure, but also a Metro report that talked about needs in the region. The bus fleet was older than 15 years. Within 20 years bridges will be 100 years old. Columbia bridges will be \$6 billion, which was more than available over the next 20 years. Major collectors and arterials in Milwaukie will be taken care of. The Milwaukie City Council adopted three tools that went into a lockbox fund to take care of major collectors and arterials in Milwaukie that included gas tax, utility tax, and PGE privilege tax.

**Mr. Clark** reported on the 2 projects completed this summer: 37<sup>th</sup> Avenue from Lake Road to Hwy 224 and 42<sup>nd</sup> Avenue improvements from Johnson Creek Boulevard to Howe that included improved drainage and drivability.

**Mr. Parkin** said there were lessons learned about notification. They did good job with door hangers on main routes, but many on side streets were not aware. They learned they needed to expand the notification area. The length of the project stretched the

inspection resources on 42<sup>nd</sup> Avenue. Another issue had to do with traffic control and they would be more involved in setting a traffic control plan. Two projects yet to do this year were Washington from 99E past high school and up Oak Street to Monroe. Current condition of Oak Street would be ground and overlay. They were coming up with strategies to maintain business operations.

**Mayor Bernard** commented last time they paved over drains. Will that be ground?

**Mr. Parkin** said a big part of the project was grinding down existing asphalt to allow a fresh coat.

**Mayor Bernard** asked if current projects were well done and preserved trees and helped slow traffic.

**Mr. Asher** discussed upcoming projects and what had changed from when project was designed. They realized they were over-budgeted year 1, but under-budgeted for Oak and Washington. They moved Logus Road to year 2, as it was a full-street improvement project with green street treatment sidewalk for FY 2008-2009. Also, they would do King Road in year 2, which was almost \$1 million. Storm crews were out this fall and winter raising the tops of drywells so they would not be paved over. Found many storm mains not connected to catch basins. Part of the reason was the drainage system was broken and they were preparing for new surface. They were also doing deflection testing to understand the condition of the sub-base. They needed to understand how bad it was underneath. He referred to the back of staff report, which was the original model upon which the SSMP was passed. The overall condition of the network in 2004 rated 67 out of 100 which was at the high range of satisfactory but declining. The network was still in a state of decline but they think they can stabilize that free fall in a couple of years and at 10-year life of program raise to 75. There were funds in the program to do an assessment every few years.

The workload impacts of project inspection will continue to be an issue but some funds were built into the program. In terms of project costs and amount of money being collected this year there was approximately a 3% increase. It was still early in the life of the program he did not recommend any modifications.

**Mr. Campbell** said he felt confident with a full year of revenue in next fiscal year it should be \$1 to \$1.1 million. For the current year they used conservative assumptions based on startup. Reasons for difference were they only had ½ year of the privilege tax that was approximately \$150,000 lower. Gas tax at high end of what hoped for in range of \$180,000 to \$190,000. Maintenance fee lower because they lost a month of revenue to equalize the start. They also lost a month of revenue based on accrual. They had a billing error on the commercial side that had to be corrected. They were appropriately conservative for the first year and revenue was close to what was estimated.

**Councilor Barnes** had a lot of concern about hurting local gas station owners. Seemed some prices were still lower than stations outside the City limits. Have you talked with owners to determine if the tax impacted Milwaukie stations?

**Mr. Campbell** said if the prices did not change then that meant they were paying the tax. Question about who ultimately paid the tax. If they kept the same customer base then users were paying the tax.

**Mr. Asher** other kudos to staff - there was some hand wringing over what would do to businesses, so they had an appeal process. The City only received 11 requests for reassessment and all 11 were reassessed. Two properties were determined to have smaller building areas, so staff did follow through. The index goal was to get to 75 and getting to deferred maintenance for all of those streets and falling to point. They were still doing emergency pothole patching. Based on what had been done so far progress

on each goal was satisfactory. They are looking forward to spring projects and the disruption would be well worth it.

**Mayor Bernard** thought it was a great program and other cities were looking at how it was done as a model.

## CONSENT AGENDA

- A. City Council Minutes of the October 16, 2007 Work Session.
- B. City Council Minutes of the October 16, 2007 Regular Session.
- C. Resolution No. 71-2007; A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract and sign a Purchase Order(s) with Hewlett Packard Not to Exceed \$145,000 for the Purchase of Replacement Desktop Computers for the City.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the consent agenda. Motion passed unanimously. [5:0]

## AUDIENCE PARTICIPATION

- John Otsyula, Milwaukie

**Mr. Otsyula** had intended to send some comments but was able to attend the meeting. He had the same concerns on the SDEIS after talking with Metro and his attorneys talking with Metro. He wanted the City Council to know some of the things Ms. Wiegart said at the last meeting when he was not present that were not clear regarding the City's responsibility in making recommendations to Metro regarding alternatives. Metro had the final authority. The City made representations for the City and not limited alternatives. While the SDEIS process was still youthful they still had opportunity to present alternatives. There were still alternatives the City could present to Metro on behalf of the people, and he was requesting on behalf of that. If it happens it would save all of us money and especially so we did not have to go to litigation. Voters rejected the final EIS 2 times. In this SDEIS eliminating misrepresented in the sense that Metro jurisdictions will tax Milwaukie to maintain light rail. That was the main reason for the Tillamook Branch. There were high electrical impacts, which might cause such things as leukemia. One more reason to do the right thing and present alternatives so we did not have to go through litigation.

**Councilor Stone** had these minutes in the packet on October 16 when Ms. Wiegart was present. She asked if the City had authority. She responded that was not correct but went on to say local jurisdictions.

**Mr. Otsyula** said it was one thing to misrepresent but worse to cover it up in the process of misrepresentation.

**Mayor Bernard** said he took it to the Metro Council for clarification the South Corridor saw all of the recommendations and the Steering Committee saw all of the alternatives and made the decision.

## PUBLIC HEARING

- A. Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements

**Mayor Bernard** called the public hearing on the appeal of the Planning Commission's denial of AP-07-01 for the property located at 10883 SE Main Street to order at 8:05 p.m.

The hearing was limited to the issues raised in the appellant's notice of appeal. The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's denial of AP-07-01 of the Planning Director's interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2) for a proposed project located at 10883 SE Main Street and compliance with certain public area improvement requirements.

**Mr. Monahan** outlined the code authority and the decision-making process. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant had to demonstrate the Planning Commission erred in its decision in the alleged particulars.

**Mayor Bernard** reviewed the conduct of the hearing.

**Mr. Monahan** asked if there were any site visits, ex-parte contacts, or actual or potential conflicts of interest. Councilor Barnes had not visited, others had walked by the site. Councilor Chaimov attended the Historic Milwaukie Neighborhood Meeting and Mr. Zumwalt shared his views of the proper outcome of the appeal. He walked with Mr. Parecki about the condition of the sidewalks in front of his building. Contacts did influence his decision.

There were no challenges to any Council member's ability to participate in the decision.

**Ms. Mangle** provided the staff report. Started as interpretation as part of code 19.3125.b.2. This was not a hearing to amend the code, which would be a separate hearing. The City did have adopted code and the question was staff application by Main/Monroe Partners. Staff had no problems with the project that was proposed. It met design standards and would be a nice addition to the downtown. There were requirements for all development. She went over what she would speak about. She would start with what the public downtown plan was and the public area requirements that went with that. What was the Director's interpretation. What was the interpretation that was made. How the code interpretation applied to the appellant's project.

The City adopted the plan and public area requirements in 2000 and that included the land use framework, streetscape and code, which tied those together. Those two documents were visioning documents and it was the code that was the law. It was important for the community not to think just about activities but making a comfortable streetscape achieved through development. They had been implementing that part of the code since 2000. She and her predecessors had been implementing this section of the code. She provided a list of downtown public area improvements and showed slides of certain projects. Development requirements should be the same whether public or private funds were involved. Many business owners and developers had been contributing over the years and that had been the practice.

She as planning director interpreted the code according to MMC 19.2002.4. She could either interpret when asked by a developer or initiate it. Her interpretation was subject to appeal. She was not able to change the code. She followed legal guidance and drew upon history to understand the intent. She references other adopted documents including the Comprehensive Plan and fundamentally makes the minimum changes necessary to implement the code as written.

She showed an aerial view of the site at 10883 SE Main Street. She reviewed the project timelines. On April 26, 2007 there was a pre-application conference with the applicant who primarily asked about sub-dividing the property and doing a minor land partition. They gave him information about the design review process that he would

have to go through and the public area requirements likely to be required. August 29 he came in with a building permit. They did design review at the staff level and determined the site was not in compliance with the public area requirements. They also looked at the cost of the building permit, which triggered full compliance with the public area requirements. They informed him of both of those decisions on October 5. On October 8 Mr. Parecki submitted an appeal to the Planning Commission, and on October 23 the Planning Commission denied the appeal. Shortly thereafter he filed an appeal with the City Council.

The code section that applied was MMC 19.312.5, Public Area Requirements. She said that thinking about the bigger picture it was important to think about the whole environment created by development downtown. There were three different types of Public Area Requirements; New buildings, large renovations in which the applicant's property and small projects, either interior or renovation projects. She read the code that applied, "Any renovation, expansion or alteration of an existing building that has a permit value that exceeds 50% of the value of the land and existing improvements as determined by the County Assessor Shall comply with Public Area Requirements. The Building Official shall determine development permit value." When thinking about the Director's interpretation "Shall comply" were the 2 words, which were not clear. Those were the two words they focused on. She interpreted it to mean, in consultation with the City Attorney was that the list of improvements must be proportional to the impacts and the existing elements were not required to be replaced. Those were the two interpretations of the code, which she made and applied in this case. She understood the appellant agreed with the interpretation of the code, but the complaint was how it was applied to the project. The appellant's complaint as written on the appeal application was that the City's proportionality analysis was defective and the City hadn't carried its burden under Dolan. They were arguing that the list of improvements were not proportional to the impacts. The key issue for Council to decide was did staff apply the code properly to the application, and specifically are the required improvements roughly proportional to the projects impacts. When reviewing the application in September there was a series of 4 questions that they had to answer. Was the permit value greater than 50% of RMV, yes. The project did have impacts, yes. Did the project impacts warrant full compliance with the Public Area Requirements, yes. Were public area requirements already met, yes.

She discussed the methodology that was based on 2 resources one was the McClure methodology having to do with public extractions and the ITE manual that set out the different uses and assumptions. The assumptions for this sight were that it was one building on one tax lot with 2 distinct sections 1-story and a 2-story. The ITE manual said that assumptions did include basement and gross floor area and specialty retails he chose for the ground floor. They also used information provided by the applicant on the site plan. She showed a cross section of the site.

The first step in doing the analysis was to look at what was the existing use and the general assumption now is that it was general office building. According to the ITE manual that generated 109-week day vehicle trips and the proposed use would change to use to specialty retail on the basement and first floor. That proposed use change would generate 277 weekday vehicle trips or an increase of 168 trips. The conclusion was that there was increase in trips. Part of what the proportionality analysis did was translate the increase in trips to linear feet or area of improvements. It translated trips into a physical improvement area. In the process of doing that calculation the impacts justified an improvement area of 7075 square feet, but in fact the City was requiring approximately 1800 square feet of improvements therefore the required improvement are roughly proportional to the impacts of the project.

**Councilor Stone** asked if the impact of the project directly related to the increase of vehicle trips.

**Ms. Mangle** replied that it was. The proportionality analysis was guided by Dolan and Nolan was about the nexus analysis. They also did a qualitative analysis that outlined each improvement. She explained what the plan envisioned for the site and showed concepts that included benches and bike racks. The sidewalk was in good shape, but there was a tree missing and curb did not meet ADA requirements and needed to be replaced. She showed a full list of all the improvements called for in the plan. Once they took out the things that did not need to be replaced the list was reduced, which she showed to Council. When she spoke with Council a few weeks ago at the work session she was asked how much the improvements would cost. The rough order of magnitude cost estimate of the full frontage improvements would have been \$128,000 and the smaller list was \$60,000 and that included conservative design, staging, and contingency. It assumed public contracting requirements.

She said that this code section had an impact on all downtown development and development would contribute to the improvements in the public realm. Along the way they had tried to ease the pain starting at the beginning she had the option of putting this through a Type 2 process, which would have entailed public review, but she opted for the Type 1 process, which has at staff level review. The pre-application meeting was expanded to make sure the discussion included design review and public area requirements. When asked to they considered an alternate valuation methodology. They reduced the public area requirements by considering the existing materials. More recently staff was facilitating a potential Urban Living Infrastructure Grant from Metro to help with future costs.

In summary staff applied the adopted code in a way that was fair to the applicant and true to the community's vision of downtown. The staff finding was the project would have impacts and the City was justified in requiring the improvements and the list of improvements was the right list. She commented that staff did research on what other cities did. The cities researched had different triggers and they do limit it in different ways, but it was very common for cities to require developers to do pedestrian infrastructure improvements as part of a redevelopment project. It was likely that if this project were done in other cities these same improvements would likely be required.

Staff recommended denial of the appeal, support of the planning director's interpretation, and support of the Planning Commission's denial, and that would require the project to construct the improvements that are listed on page 4 of the staff report.

**Councilor Stone** had a question about applying the real market value versus the assessed value to the project. She wrote down that the process to determine that was determined by the County Assessor. Where did it say in the code that we had to use the assessed value versus the real market value?

**Councilor Barnes** noted the reference to Section 19.312.5(B)(2) on page 1 of the staff report, "as determined by the County Assessor."

**Ms. Mangle** said the County generated 2 assessments.

**Councilor Stone** understood the "determined by the County Assessor" section, but why would the County Assessor not use real market value versus assessed value. That was her question. Would that not change the outcome?

**Ms. Mangle** replied there was a real market assessed value which staff was using along with taxable assessed value. Two types of assessments came up from the County, the taxable assessed value which was lower and the real market assessed

value, which was slightly higher. The applicant requested that staff use the appraised value, which was higher.

**Mr. Monahan** explained the City was using the higher County Assessor value.

**Councilor Stone** said in going through the report it looked like the code was revised in 2000.

**Ms. Mangle** said it was written in 2000.

**Councilor Stone** understood that 7 years later this was the first project to trigger this according to a letter she saw here dated September 27. It triggered one section of the municipal code for the first time.

**Ms. Mangle** had written that. It was possible Mr. Parecki's previous project may have triggered it which was the McLoughlin Building, but it was not applied. Staff did not know for sure because they did not have all the facts.

#### Correspondence

None.

**Mayor Bernard** called for a 5-minute recess.

#### Appellant Testimony

**Mr. Parecki** had sat before Council many times usually to shed light on some very important issues. Tonight he sat before Council yet again this time once again on a very important matter. As the Council was aware, he had been trying to renovate the building on the corner of Main and Monroe since April this year. He had been able to re-roof, replace windows, and gut the inside. He had contractors on standby since August waiting to complete the renovation. Upon submitting the plans for a building permit he was essentially told he would not receive a building permit unless he agreed to all the public area improvements as demanded by the planning department. We were here tonight to appeal the decision made by the Planning Commission to uphold the interpretation of the Planning Director in demanding all of the public area improvements be made as part of the project. The determination that all of the public area improvements be made was predicated on proportionality analysis performed by City staff. The staff report that Council received 2 weeks ago clearly stated it was to consider whether or not staff appropriately considered proportionality in reviewing the project's impacts and public area improvements.

Before delving into the proportionality analysis, Mr. Parecki provided a brief history of the building. It was built in 1909 and included on the left side the State Bank of Oregon, and Perry's Drug was housed in the right portion of the building. Ms. Mangle referred to that as the 2-story building. In about 1930 The State Bank expanded the building and took over the entire first floor, built a 1-story building adjacent to it on the west side and housed the State Bank in the first building and Perry's Drug on the west side as well as a post office on the west side. All of these were retail uses. Later on in the 1960's, the State Bank building was sold and bought by the Gay Blade, some of you might remember the Gay Blade, which housed the entire first floor of not only the 2-story building but also the 1-story building on the west side. They did a major remodel, added structural supports and created the Gay Blade. It lasted as the Gay Blade until some time in the mid-1980's when Grant Lindquist purchased the property. When Grant Lindquist purchased the property he created a computer sales store as well as a document storage facility and document services for the public. Again it was a retail use. In April 2007 Main / Monroe Investors held a pre-application conference with planning staff. As a result of this conference Main / Monroe Investors were told that they would have to make public area improvements. There was no mention of a

proportionality analysis being conducted to determine whether or not the project would actually trigger the public area requirements. Staff merely quoted the code and expected Main / Monroe Investors to abide by their findings.

Some of the public area improvements seen in the City and referred to by Ms. Mangle in her presentation included the St. Johns Church, which put about \$35,000 of its own money into public area improvements. St. Johns Church was not offered a proportionality analysis to determine whether or not they were required to make those improvements. The real trigger on proportionality was whether or not there was a change in use. Clearly a church to a church was not a change in use. If the City had performed a proportionality analysis for the Church, it would not have been required to make public area improvements. The North Main Project was one of the few projects that did trigger public area improvements. The North Main project was a new construction; there was nothing on the site before. There was a huge change in use; therefore, public area requirements were imposed on the project. The interesting thing about that project was that approximately \$1 million in public area improvements was provided for by the taxpayers, the people of Milwaukie. A loan was taken out to make these public area improvements on behalf of the North Main Village project. He showed another view of the North Main Project. He showed a slide of the old Graham's Bookstore. It did not trigger public area requirements, but he did not know exactly why. The interesting thing about that project was the fact that Graham's Bookstore was a retail use and was converted to an office use, which was against the City code. There was no office use allowed on the first floor in the Downtown Zone. He showed a slide of Wunderland Theater. They made their public area improvements in the amount of \$5,850. Again it went from a theater to a theater. There was no change in use. There should have been no public area requirements made as an imposition on Wunderland Theater. Key Bank made \$45,000 worth of improvements. It went from a bank to a bank. There should not have been public area requirements imposed on this project as well. The Archery place – there were no public area improvements required or made. Springcreek Coffeehouse, the McLoughlin Building, JL Hair Design, as well as Light Chasers. The Council heard and it was insinuated by the City staff that they should maybe have had some imposed on it. It was clear that property was always retail on the first floor and always office on the second floor. There was no change of use on any of those projects. Yet they kept insinuating that some public area improvements should have been made. JL Hair Design was the only one that actually made some public area improvements, but they probably should not have had to. Advantis Credit Union was a brand new project and should have done and did do all the public area improvements. The \$2.25 million project should have incurred a \$225,000 fee on public area improvements. The only thing one can see is 2 lights and 2 or 3 trees. That did not amount to \$225,000. Casa de Tamales was a unique situation where he was being asked for \$4,000 worth of improvements. It went from retail to retail. The interesting thing about his project was that not only were they asking him to put in \$4,000 worth but to put some of the project funds into other people's properties. The next door neighbor and 2 neighbors beyond because he cannot put \$4,000 worth of improvements in front of his property. Hartwell's was part of the North Main project. They had \$300,000 in improvements. They did not have to do any because they were already done by public funds. He pointed out the Main / Monroe Building as it set today. Some of the improvements had been made to the building. He referenced the 1-story building. The interesting thing about that project was that he never said anything would be done to the 1-story building. The plans he submitted only addressed the fact that he would do something to the 2-story building. His application was for the partition of the lot with the intention of tearing down the 1-story building for later development. In their analysis they included his 1-story building in all of their calculations. As he pointed out in the brief history, the property had always been retail use on the first floor, storage in the

basement, and office on the second floor. They want to use the analysis and show that the property's last use was an office use. It made a big difference in the analysis when one changed the number for the trips generated. Thai Cuisine had no public area improvements required. They did a minor remodel. At Classic Memories he did not remember if there was any remodeling done, but there was no building permit taken out if there was any, so no public area improvements were required. He showed the basement area of the 2-story building and noted the condition of the basement. The City would have one believe there could be specialty retail in that basement and used trip generation as if it was specialty retail. The doorway was less than 6-feet high into a closet. The previous use of the 1-story building was a post office and Perry's Drugstores. He showed a slide of the State Bank as it was in his heyday.

**Mayor Bernard** informed Mr. Parecki he was down to less than 10-minutes.

**Mr. Parecki** translated the proportionality analysis that was handwritten into a spreadsheet. He had the 11.01 trips for the basement, first floor, and second floor. The entire project was used for a general office building as an existing use. He showed for over 76 years it was always retail on the first floor. All he had to do was show the difference between just changing either including the first floor that was 2500 square feet. The proportionality changed dramatically and showed no public area improvements would have been required. When he submitted the application in pre-application stage, there was no proportionality analysis conducted. That was part of his argument. It should have been. He could have seen what would happen if they had used the proper figures. Part of his argument was that there was no analysis conducted so he wouldn't have an idea of the costs.

**Steve Morasch** noted there was a statement signed by the prior property owner submitted as part of the record. This was a beautiful facelift that would not increase trips. Staff analysis indicated a change from office to retail, but it seemed clear the prior use was retail. In comparing retail to retail there were no increases in trips, and it was not a change in use. This project was about making the building look more beautiful. He noted problems in the City's clearinghouse process. He discussed public right-of-way improvements and comparisons to the total impact area. This involved a case in which there was an apples and oranges comparison with McClure. This was a facelift project with no change in use and no increase in trips.

**Mr. Parecki** discussed landscaping requirements. To quote Councilor Loomis from the last session, "just because it was in the code did not make it right. Just because it was in the code did not make it legal." He pointed out the survey completed by the former business owner before this became an issue.

**Councilor Barnes** read Mr. Swanson's e-mail concerning North Main Village regarding the OHCS loan which was applied for by the City and assumed by Main Street Partners. It picked up the loan balance of \$651,000. She asked Mr. Parecki to define renovation.

**Mr. Parecki** said it was taking what looked ugly and making it pretty. He considered this a renovation project.

#### Testimony in Support

- **Brad Carbaugh, Canby**

**Mr. Carbaugh** moved into Mr. Parecki's McLoughlin Building and offered his perceptions of the debate and equity of how different businesses were treated. He was inclined to believe Milwaukie was not necessarily a place where he, as a small business owner, wanted to do business.

- **Nancy Adair, Milwaukie**

**Mayor Bernard** indicated he responded to a question from Ms. Adair

Mr. Parecki's project would help would help bring the Downtown area back to a real downtown instead of a ghost town.

- **Charles Maes, business owner**

**Mr. Maes** said the City required him to make public area improvements without the required proportionality analysis. In addition to the requirements of the construction in front of the Tamale place he was required once again to make public improvements which he did not mind doing. He did not know where it said in the code that he had to make improvements past his property line. He was putting in bike racks and all of the above for something he did not even get to use. If he knew that \$4,000 was going to improve the outside of the building he was at, he was all for it. He would pay it; do not get him wrong he had no problem with that. He wanted the Council to know that he was just there to back Mr. Parecki up because they needed him downtown to make that building and bring more people into the City. He said he had only been open for a month and they have had approximately 3,500 people if not more visit the restaurant in 1 month. The customers come from Gresham, Beaverton, Lake Oswego, Scappoose, and Eugene. The only next little project he would do down the road was to ask people their zip codes. He found nothing better than a nice "Hi" to people that were coming into Milwaukie to be part of the community. There were no stores to keep them here. Once they ate at Hartwell's or Casa de Tamales, they were gone. He urged helping this man out with the improvements he had to make so we can bring more retail downtown. He added he was providing the preacher next door with a nice bench and offered him a gallon of paint to paint the front of his store but he declined.

**Mayor Bernard** suggested talking about some improvements to the code, which might be considered at another time.

Testimony in Opposition

None.

Neutral Testimony

None.

Staff Recommendation

**Mayor Bernard** had a question of staff. Did the code define retail? He did a little history. He knew this building and used to buy all his disco clothes at the Gay Blade. It went away because disco went away. He was the President of the Milwaukie Downtown Development Association (MDDA), and if this person said it was retail then he was very wrong. He actually tried to go in the building, and you had to go in and buzz the door and hope someone came. It was a microfiche company. Unless they were selling microfiche, it was no retail business. It was nothing close to retail although it may have been in the past.

**Ms. Mangle** provided the Milwaukie Municipal Code retail definition. If the Council wanted the ITE definition, she would have to ask Mr. Weigel. Retail trade meant the sale, lease, or rental of new or used products to the general public. Typical uses included but were not limited to grocery stores, specialty stores, drug stores, bookstores, jewelry stores, and video stores.

**Councilor Stone** said she understood that list was "not limited to" those uses. She asked if a restaurant fell under retail.

**Ms. Mangle** replied not under the municipal code. When one used the term specialty retail for the analysis that was not using these definitions. It was using the ITE

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definitions, which Mr. Weigel had. In terms of specialty the analysis did include some types of restaurants.

**Councilor Stone** said she understood as the code was being interpreted restaurant and retail were the same.

**Ms. Mangle** replied it did not have anything to do with the code interpretation. There were trip assumptions in the ITE Manual that specialty retail included some kinds of restaurants.

**Councilor Chaimov** asked Ms. Mangle to address the appellant's point that this was really just a retail-to-retail change and a facelift and therefore not appropriate for the kinds of improvements staff said the code required.

**Ms. Mangle** replied the original assumption was that it was office, and Mr. Weigel said that information came from the applicant who told him it was office before. Staff tried to verify that with the Finance Department, but they did not keep business license records historically. Staff did have the business name, which confirmed that information, so that was what staff went with. In regards to the facelift, the project was not just changing the outside of the building but it was significantly remodeling the interior adding an elevator and making other changes in the building. She had failed to point out which spoke to the point that staff was very clear with the applicant that these improvements did not need to be done with the first phase of the project. They were not required to be done until occupancy. It was not just this building permit but all subsequent tenant improvements covered by the list of improvements. That included not just the aesthetic, ADA, and structural improvements but all subsequent tenant improvements, which would be required to have an occupiable space to create the retail, restaurant, and office uses intended by the application. It was the hope to benefit the applicant and tenant with certainty of what the requirements would be throughout the future of the project and allowing them to forestall the improvements and share them with tenants in the future.

**Councilor Chaimov** said if in fact the previous use of the building was retail and not office would that have changed the staff analysis.

**Mr. Weigel** said he was working with the assumption that it was an office use based on conversations he had with applicant early in the process. The only proportionality analysis staff looked at were ones that involved changes in trips. Staff had not looked at any other proportionality analysis that relied on other types of impacts other than trip generation. Staff had not had time to look at that.

**Councilor Stone** said she was curious. We assumed the building use was office, and now there was a change in use triggering this study. She was curious because this building was an older building. How many years was this building used as retail space?

**Ms. Mangle** was not able to speak to that and she asked Mr. Weigel how far back they went when looking at trip generation.

**Councilor Stone** said it did not have to be exact. Was it retail for 70 years or whatever? So it was used for a retail business for longer than it had been used for office if indeed it was an office.

**Mr. Weigel** responded as Ms. Mangle said the City did not have records that went back that far. In these cases staff looked at the last use.

**Councilor Stone** asked if the City was compelled to look at the last use rather than the typical use.

**Mr. Weigel** replied staff looked at the last use, as that was what it knew.

**Councilor Stone** asked if the City was required to look at and base the proportionality study on its last use or its most typical use.

**Mr. Weigel** replied he was not aware of any specific requirements.

**Councilor Stone** understood that it was subjective.

**Ms. Mangle** thought if one considered the intent, which was to track impacts and if those changed impacts to the public infrastructure. Logically, it would be the most recent years and what had changed. For example, the North Main site had been a Safeway store that had a lot of trips generated. A smaller project might have actually decreased the trips. The point was to think about how it was changing. If one looked back to previous uses prior to the most recent, it was not really achieving that goal. That was the reason it was the practice to look at the most recent uses.

**Councilor Stone** said they heard Mr. Maes from Case De Tamales the new restaurant in town say that he had over 3,000 people in the last month. That was pretty significant. Yet his public area improvements were much less. They were disproportionate to the amount of people who were coming.

**Ms. Mangle** replied that Mr. Maes fell into a different category of the code. His project was in the small improvements category. The code said that any of these small improvements had to spend up to 10% of the value of their building permits toward meeting the public improvements. That was what Mr. Maes did as did Cha Cha Cha and some of the other smaller projects as defined by the code and not by staff. She believed staff had worked with Mr. Maes to get the improvements in front of his business, so she would talk to him more. She thought staff had been able to respond to those concerns.

**Mr. Weigel** added to Ms. Mangle's comments about looking at the last use. Similar to transportation SDC's where one always looked at the last use. If one tried to go back and look at what all the previous uses of that building had been it wouldn't work. As the use changed the transportation system as a whole lost those trips that were there. It was the best practice to look at the last use and the impact on the transportation system as a whole.

**Councilor Stone** had one more question about the proportionality analysis. She heard Mr. Parecki state that the square footage in the basement was used for the proportionality analysis. Looking at the slides it was pretty obvious it would not be used as retail. If that was used then why was it used?

**Ms. Mangle** replied that was something the ITE Manual and it directed staff to use the basement square footage. On its front it was not logical. One probably would not put a store there. That space, even though ancillary to the store, could be a storage space or an extra office for the store manager and it was still supporting infrastructure for the retail that allowed more goods to be stored and more capacity with potentially more trips. Fundamentally, it was the ITE Manual that directed staff to include the basement and to include things like hallways and not just limited to the areas most used for retail.

**Councilor Stone** asked if the ITE Manual was a requirement to be used in this proportionality analysis.

**Mr. Weigel** responded the ITE Manual was the best way to determine what the impacts of the development were without doing full-blown traffic study.

#### Applicant Rebuttal

**Mr. Monahan** said the applicant would be allowed 10 minutes for rebuttal.

**Mr. Morasch** wanted to rebut some of the discussion, and there was a lot of discussion, so he was not going to try to rebut all of it. He was just going to pick one point that was made about the smaller projects that might generate way more trips than even a larger project yet smaller projects did not have nearly the burden of these public area requirements because of the way the code was written. In this case the way to code was written it was not really applying very fairly to this project. The code said "assessor's value". If one looked at the "assessors value" it was about half of what the true real market value of the property was. If one used the real market value and compared the cost of these improvements to the real market value, it would be under 50%. Then the code would cap it at 10% of the permit value or about \$22,000. That would be the maximum the City could charge to this project. That demonstrated a fundamental unfairness. The facelift part was about half of the total project cost of \$220,000. About \$110,000 was the facelift, and the elevator was another \$80,000. No matter what the uses were ADA would require an elevator to the second floor if the second floor were being used. Now a majority of the cost was either tied up in an elevator, which would be required even if they were somehow able to put offices on the first floor, which could only be done through a variance as the code required retail on the first floor. The code requires retail on the first floor. If anything was changing, it was the code that was triggering it and not this application. The ADA required the elevator. The facelift was to make the building look nicer. Neither of those things changed the use or added to the square footage. If one took those out, it would be under \$40,000, and it would be a small project. That demonstrated how unfair the code was when it was applied to this particular situation and why Dolan stepped in and said the proportionality analysis had to be done.

**Mr. Parecki** added the City routinely did not do proportionality analysis unless it was challenged. He guessed he was the first one to challenge the City on the analysis part of the project. Everybody else just believed the City and that they had to do these improvements whether or not the proportionality analysis said so. He thought that was a little bit wrong. He wanted to give some of his time to one of the Main / Monroe Investors to say a few words.

**Charles Aaron**, Portland, Milwaukie business owner and partner in 2 different buildings. He asked when the planning staff's proportionality analysis was actually done. He believed the answer would be it was done after it was challenged. There was a digging in of the heels so to speak of the planning department to prove the case. The intransigence of the building department in its analysis, even when it was pointed out they were wrong in cases, they were not admitting to it. They were still trying to prove their case. He did not understand how when you caught people making errors all the way down the line, and they still would not confess that they were wrong. It was happening all over town. If one misapplied the rules in every single case because the burden of proof was on the City or planning department to show there was a proportional change to the building and there was a change in use that triggered the public area improvements. How can you go to a church that was renovated back into a church and say that they were required to do public area improvements? How can you go to a bank that was a bank that renovated its lobby and say you were now responsible for public area improvements? How can you go to a theater and say to a theater you were responsible for public area improvements because the theater was renovated? Mr. Aaron thought it was a little bit silly and a little bit inconsistently applied.

#### Close Hearing

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to close the public testimony portion of the hearing. Motion passed unanimously [5:0]. Mayor Bernard closed the hearing at 9:39 p.m.**

**Councilor Chaimov** said he did not think it would be so early in his tenure when he would be faced with a vote with which he would be so unhappy. This was a wonderful project that the City ought to encourage. Mr. Parecki was exactly the kind of pioneer that the City ought to be encouraging. He was someone who was willing to put down his own hard-earned money into making our community better. As Councilor Stone pointed out, we have a code that stood in the way of doing what for example Mr. Maes suggested about "trying to help this man out". He thought the City had the wrong code at the wrong time for this City. If the question before Council was should we be changing the code so the public was picking up the cost of public improvements rather than the developers he would be pleased to vote in favor of that. If the question was whether assuming this was an office to retail change has Ms. Mangle interpreted the code correctly, he thought the answer was "yes." She was interpreting and applying the code correctly, and that her office had been helpful and not intransigent. Certainly the code had not been applied as consistently as we might like, but at some point you had to start getting things right and move forward consistently. When you have been operating perhaps incorrectly in the past you begin to look inconsistent until you start applying the rules correctly for a long enough period. Unless someone had a different idea, his intention was to move to remand the matter to the Planning Commission to determine the nature of the occupancy immediately prior to the Main / Monroe acquisition of the property. If the determination was that the occupancy immediately prior was an office and not retail, then he thought Director Mangle's interpretation was correct, and the Council ought to vote to deny the appeal. If in fact, however, this was a retail-to-retail change and he thought the record was cloudy on that point then a different decision might be in order.

**Councilor Stone** thanked Councilor Chaimov for his comments. She agreed with much of what he said. She was not in agreement though with looking to ... She backed up her comments. We all knew this was a valuable project for our City, and we all wanted to see it happen. She thought from what she heard tonight the interpretation was very subjective in some cases on certain points. The last use versus the more typical use over the life of the building she thought was a point that needed to be addressed and taken into account. She thought the more typical use of the building was indeed retail. She was certainly understanding of Mr. Parecki that he wanted to do improvements to the building. She thought he was willing to do some public area improvements that were reasonable. She agreed with Councilor Chaimov that the Council send this back to the Planning Commission to look at those points and also verify if we should interpret the last use versus the more typical or best use, if you will, of this particular building. She thought that was significant to the project.

**Councilor Barnes** agreed it was great that Mr. Parecki found another project in the City to work on. She was sure when all was said and done it would turn out to be a beautiful addition to the downtown. Maybe she missed something, but when she read the code, Council was supposed to make a decision. The code said, "Any renovation, expansion, or alteration of an existing building that had a development permit value that exceeds fifty percent of the value of the land and existing improvements, as determined by the county assessor, shall comply with the public area requirements." Mr. Parecki said he was renovating and the County Assessor came up with a value that exceeded to 64%. The Council was asked to say whether or not Ms. Mangle made a decision interpreting the code that was right or wrong. It was agreed to by the County Assessor and Mr. Parecki, so she may be misunderstanding or missing something that needed clarification.

**Councilor Stone** said it was confusing to her also. The point was the Council would not even be discussing this if this project had not been triggered by a supposed change of use of the building. If the building was looked at in terms of its last use or however

they wanted to interpret that as being retail-to-retail, then this would not have triggered, if she understood it correctly, the proportionality analysis. That was the question that she and Councilor Chaimov wanted clarified by the Planning Commission in terms of the use of the building.

**Councilor Loomis** would like staff to clear that up right now because his decision hinged on that also.

**Ms. Mangle** replied there were 2 issues that were being melded. The trigger for the code section was the building permit value, not the proportionality analysis and not the change in use. The trigger was the building permit value for all of these different types of projects. The interpretation was that we needed to consider the impacts, which could be things like changes in use. Then the question was if the proportionality analysis was done correctly. The proportionality analysis was not what triggered the improvements and was not what triggered the code section. Staff did not always do this full-written analysis. It was always a consideration in every case whether it was a full-written analysis or not.

**Councilor Loomis** understood if this Council thought it was retail, the last previous use, or the Planning Commission were to determine that then what staff presented would not have changed or what Mr. Parecki's company would have to pay.

**Ms. Mangle** replied that was the staff recommendation.

**Councilor Chaimov** followed up because he was fine up to that point.

**Ms. Mangle** thought she answered it incorrectly. The question was if the determination were that it was retail would the staff recommendation change. The response was staff had not had the time to consider that because it was new information. It was included in the supplemental information that Mr. Parecki submitted the previous Friday. It did not clarify what argument was being made, so staff did not have that information until this meeting. It was new information that was not presented with the initial staff analysis. She could not tell exactly what the recommendation would be.

**Mr. Monahan** added that was not information that was in front of the Planning Commission, so it was information that was new to the City Council. One option was to consider sending it back to the Planning Commission. With the 120-day time constraints, it might be more prudent if the Council felt there was need for further analysis to keep this matter at the City Council level and have the staff do the analysis and bring it back for the next meeting. That way there would be no notice problems and the like.

**Mayor Bernard** addressed the notion of subjective interpretation. He felt the code was pretty straightforward and he did not think there was any subjective interpretation. He thought it was a good idea to hold the matter over to the next City Council meeting. He assured the Council he had been in that property numerous times as the Mayor, as a businessman, and Chair of the MDDA president, and that facility was not a retail facility. His interpretation of a retail facility was where people went in and out and bought things on a daily basis. He had been in that building numerous times, and it was not retail. Absolutely not retail. It never was except in the past. He recently went through a variance application on a building that had been there since 1935. That building was a garage, a storage facility, and someone wanted to sell cars. People had parked cars in there since 1935, so what was the interpretation of that. Every single project we did in Milwaukie changed its use. At some point you cannot look back at the very beginning. His traffic impacts when he sold gasoline were huge compared to what they were now. There was no comparison. If he developed someday, could he say it was a 2-car garage in 1925, so obviously he had no traffic impacts. The key was the ITE Manual. You had to use some standard in order to support it legally. That was the standard

used. He would be happy to remand this to the next City Council meeting for further study on the last use of the project but certainly not the history of the use. He did not believe it was necessary to send the matter back to the Planning Commission. He thought that could be done at the staff level.

**Councilor Loomis** agreed it did not fit Mayor Bernard's definition of retail, but he was not sure it was not retail. His memory of the last operation was they were buying and selling something out of there whether it was walk up. He was a huge fan of what Mr. Parecki was doing in this town. With the North Main project there was a lot of work and executive meetings with a lot of tough choices and decisions and they invested in that property because they felt that was the piece. If we did not invest in our community, how could we ask others to? The City went out on a limb on that one. The goal of the Downtown Plan was "to restore an environment in which people could shop, live, work, and socialize." It was obvious the code had great intentions, but it was hindering the whole purpose. It was hindering private investment. There needed to be a different way to do public improvements. They just had to. He was not a big fan of urban renewal areas, but maybe we could do our own and commit to a situation when a building was improved that as a Council we would take that increased value in property taxes and directly apply it to public improvements. Once that was done, it was done. It did not go on for 10 to 15 years where it was affecting schools, police, and parks. It was just a temporary thing just to help. He thought the City should make the commitment to help private investors and developers who were doing the right thing. The City was asking a lot of them in the design standards. If that being a retail business previously helped even if it was not to the definition of what we all thought of as retail, but the real definition of retail. If it helped move this project along and gave some certainty to Mr. Parecki of what he would pay. He understood Mr. Parecki's concerns about not being able to go into the building until he gave the City so much money.

**Mayor Bernard** understood the interpretation of the change of use was really the cost of what he had to do and not the fact that he had to contribute. What did the change of use have to do with this?

**Ms. Mangle** said the change of use had to do with the proportionality analysis that looked at the changing auto trips generated by the site.

**Mayor Bernard** asked what the difference would be if it was retail-to-retail. If there were no change in traffic, what would the financial impact be? Key Bank did a portion of its public improvements.

**Councilor Stone** said they were not required to. That was the difference.

**Ms. Mangle** explained Key Bank did the improvements in the amount of \$45,000.

**Councilor Barnes** understood Key Bank had a permit value of \$450,000, and its contribution toward compliance was \$45,000.

**Mayor Bernard** said the church also spent a certain amount on its project because they were required to do so.

**Councilor Stone** said that was Mr. Parecki's point. Maybe Ms. Mangle could clarify that they were not required to do that. They were told they had to but the way the code was written they clearly did not have to because there was no change of use.

**Ms. Mangle** said there was no record of a written proportionality analysis. The interpretation they made with this happened August 2007. The code had been in place since 2000 and had been applied by staff at face value until she stepped in and made this change. Most of the current staff was not around during those projects, so she did not know what types of considerations were made.

**Mayor Bernard** understood Key Bank was required to give that amount.

**Ms. Mangle** said the City required that Key Bank make those improvements. She did not know the details of what changed in that building. There could have been changes, expansions, and intensifications.

**Councilor Stone** said this was important for understanding. What Council heard tonight was that Key Bank and the church and the theater were all told they had to do public area improvements. In interpreting the code in fact it was not really required of them. But yet they were told they had to. They did what they were told. If they interpreted the code, the interpretation of the code clearly said they did not have to do that because they were not changing the use. That was what she heard tonight.

**Ms. Mangle** said that was Mr. Parecki's assertion.

**Councilor Stone** asked if that was incorrect.

**Ms. Mangle** did not know because she did not know what the projects entailed and the kinds of intensifications that happened. Until August 2007 staff was not interpreting the code and only applying it at face value, in black and white, as they preferred to do. That was how it was done until the director's interpretation was made this year.

**Councilor Chaimov** moved to continue the hearing to the City Council meeting on January 2, 2008 for more discussion. Councilor Loomis seconded the motion.

**Councilor Stone** asked if the reason for holding this over needed to be specified.

**Mr. Monahan** replied it would be valuable for staff to have direction as to the Council's expectations if there were further analysis to be done to get to a decision point on January 2, 2008.

**Councilor Stone** said she had hoped to make a motion to amend the motion to give staff further direction.

**Councilor Chaimov** thought the Council would like to know what was the occupancy of the building immediately prior to the acquisition by Main / Monroe. If one considered it appropriate what were the uses prior to the acquisition if one wanted to evaluate it over time as opposed to immediately prior. He believed the immediate prior use was what was appropriate not over time. That was an issue that needed to be answered so the Council could ultimately make their decision. If staff determined that it was a retail-to-retail use, was there some other calculation or analysis that led staff to believe that there should be some public improvements made even though it was retail-to-retail?

**Councilor Stone** said basically the Council wanted to see the project get off the ground, and Council needed staff help to do that.

**Motion passed unanimously. [5:0]**

**B. Motion to Consider Continuation of Amendments to the Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3**

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to continue consideration of this matter to the January 15, 2008 regular City Council meeting. Motion passed unanimously. [5:0]**

## OTHER BUSINESS

### A. Code Amendment Related to the Administration of the Collection of the City Motor Vehicle Fuel Tax Chapter 3.40.270 – Ordinance

Mr. Campbell provided the staff report. An error was identified in the previous ordinance related to the collection of motor vehicle fuel taxes. Staff requested approval of the proposed ordinance that would clarify that the City was empowered to contract with any branch of the Oregon State Department of Transportation in order to collect the local fuel tax.

**It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings and adoption of the ordinance allowing the City Manager to contract with the Oregon Department of Transportation for collection of the Milwaukie Motor Vehicle Fuel Tax. Motion passed unanimously. [5:0]**

Mr. Monahan read the ordinance two times by title only.

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

#### ORDINANCE NO. 1976:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ALLOW THE CITY MANAGER TO CONTRACT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE COLLECTION OF THE MILWAUKIE MOTOR VEHICLE FUEL TAX.**

### B. A Resolution Amending the City's Public Records Request Policy to Comply with SB 554 and Repealing Resolution 17-1996 – Resolution

Mr. Monahan reported SB 554, adopted by the 2007 Oregon Legislature, created a process that gave more definition to the public as to its rights in making a request for nonexempt public records. There was a requirement under this law that cities adopt a description of how one would go about making a public record request and what the City's responsibilities were in terms of establishing fees and in terms of responding to such requests. He briefly reviewed the City's responsibilities. He noted a scrivener's error in the draft resolution that would be corrected to final execution of the document.

**It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution adopting reasonable measures to ensure the integrity of its records and effectiveness of its office operations and repealing Resolution 17-1996 with the changes as mentioned.**

Councilor Stone heard the City Attorney say there could be public records that the agency could determine were exempt from public view. She asked for examples of what those might be.

Mr. Monahan replied those could be records such as appraisals of real property during negotiations for the purchase of the property, personnel records, and others, which were described under state statute. It was not that the City got to make that determination. It had to follow the guidance of the Attorney General.

Councilor Stone asked if those records were currently available for public inspection.

Mr. Monahan replied they were not. The exempt records were not available to the public at this time. This resolution incorporated the new law and repealed a process the City already had in place to deal with public records requests.

**Councilor Stone** understood the resolution was in compliance with how the City was currently conducting business.

**Mr. Monahan** replied it was in compliance with how the City was conducting business and adding more specificity to address SB 554.

**Motion passed unanimously. [5:0]**

**RESOLUTION NO. 72-2007:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REASONABLE MEASURES TO ENSURE THE INTEGRITY OF ITS RECORDS AND EFFECTIVENESS OF ITS OFFICE OPERATIONS AND REPLEAING RESOLUTION 17-1996.**

**C. Council Reports**

Those reports were made during the work session.

**ADJOURNMENT**

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

**Mayor Bernard** adjourned the regular session at 10:12 p.m.

*Pat DuVal*

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Pat DuVal, Recorder