

# AGENDA

## MILWAUKIE CITY COUNCIL OCTOBER 19, 2004

MILWAUKIE CITY HALL  
10722 SE Main Street

1944<sup>th</sup> MEETING

### REGULAR SESSION - 6:30 p.m.

- I. **CALL TO ORDER**  
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. Recognize Milwaukie High School Tech Cadre (Esther Gartner & Grady Wheeler)
  - B. Advisory Board Interviews
3. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
  - A. City Council Minutes of October 5, 2004
  - B. McLoughlin Boulevard Improvements Project, Revised Resolution to Allow for Condemnation If Necessary -- Resolution
  - C. Certify September 21, 2004 Election Special Results -- Resolution
  - D. Juvenile Diversion Grant -- Resolution
4. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
  - A. Historic Designation for 9908 SE Cambridge Lane (HR-04-01) – Ordinance (Keith Jones)
  - B. Downtown Code Amendments (ZA-04-01) – Ordinance (John Gessner)

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- A. **Adoption of City Investment Policy – Resolution (Stewart Taylor)**  
B. **Approval of Disposition And Development Agreement for the North Main Mixed Use Site Redevelopment Project**

7. **INFORMATION**

8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

# MINUTES

## MILWAUKIE CITY COUNCIL OCTOBER 5, 2004

### CALL TO ORDER

**Mayor Bernard** called the 1943<sup>rd</sup> meeting of the Milwaukie City Council to order at 6:40 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster	Councilor Deborah Barnes
Councilor Joe Loomis	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	JoAnn Herrigel, Community Services Director
Gary Firestone, City Attorney	John Gessner, Planning Director
Stewart Taylor, Finance Director	Grady Wheeler, Information Coordinator
Alice Rouyer, Community Development and Public Works Director	Brion Barnett, Civil Engineer
Paul Shirey, Engineering Director	

### PLEDGE OF ALLEGIANCE

### PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

#### Disability Employment Awareness Month -- Proclamation

**Mayor Bernard** read a proclamation naming October as *Disability Employment Awareness Month*.

#### Recognize Rick Farasy for Contributions to the Island Station Neighborhood

As the City liaison to that neighborhood, **Mr. Wheeler** made several observations about **Mr. Farasy** who served as the Island Station Chair for five years. He really likes people, talking with them, and learning their points of view. In most cases, he learns how to make them laugh and be more comfortable. Over the years, Island Station has had some prickly issues, and Mr. Farasy showed great skill in keeping things on the lighter side. He has also donated a significant amount of time and materials to the Island Station and Lewelling neighborhood pole-topper projects. Mr. Wheeler referred

to an August 2002 *Pilot* newsletter feature regarding Mr. Farasy's involvement and desire to give back to the community.

**Mr. Farasy** said it was a privilege to serve the community for the past five years; however, most of the recognition goes to Molly Hanthorn and Betty and Jim Mishler for their support. The idea of the neighborhood program is great, and he was happy he could help bring it along in his own humble way.

**Mayor Bernard** thanked Mr. Farasy and read the award from the Island Station Neighborhood.

### **Advisory Board Interview**

The City Council interviewed **Randall Welch** for a vacant position on the Riverfront Board. **Councilor Loomis** noted that Mr. Welch had volunteered to help with the Riverfrest and appreciated his continued involvement with the City.

**Councilor Stone** said there were a lot of hot issues surrounding the riverfront development. One of them has to do with the boat ramp and its current condition. She asked for an idea of his vision of the waterfront area.

**Mr. Welch** said it is like the beaches in Oregon that are owned by the citizens. It is really for all of the citizens and visitors who come to the community. He believed the riverfront needed to be available for all of the people, not just some of the people. His vision would be that the area be developed so people can go to the park. He understood boating was a passion for some, and the situation needs to be weighed. Currently, the ramp seems to split the area and acts as a large parking lot. He hoped the riverfront could be a place of enjoyment for all.

**Mayor Bernard** explained there were other applicants for the vacant position yet to be interviewed, and the City Council would contact him after that.

### **CONSENT AGENDA**

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the Consent Agenda that consisted of:

- A. City Council Minutes of September 7 & 21;
- B. OLCC Application for Duffy's Irish Pub, 11050 SE 21<sup>st</sup> Avenue;
- C. **Resolution No. 29-2004**: A Resolution of the City Council of the City of Milwaukie Extending the Current Franchises of the Seven Franchised Garbage Haulers for a Six-Month Period and Authorizing the City Manager to Sign Agreements to That Effect; and
- D. **Resolution No. 30-2004**: A Resolution of the City Council of the City of Milwaukie, Oregon, Transferring Appropriations for Fiscal Year 2004 – 2005.

**Motion passed unanimously.**

## **AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **Historic Designation for 9908 SE Cambridge Lane (HR-04-01)**

**Mayor Bernard** announced that notice was provided for a hearing on an historic property designation for property located at 9908 Cambridge. He opened the hearing at 6:50 p.m. and continued it to October 19, 2004 at a regular City Council session.

### **A. Convert the Design and Landmarks Commission to a Committee, File No. ZA-04-02**

**Mayor Bernard** called the public hearing on the code amendment initiated by the City of Milwaukie order at 6:55 p.m.

The purpose of the hearing was to consider public comment on an ordinance that amended Municipal Code Chapters 2 and 19, File No. ZA-04-02.

**Mayor Bernard** reviewed the order of business for the hearing.

Conflicts of Interest or Jurisdictional Issues: No conflicts of interest or jurisdictional issues were declared.

Staff Report: **Mr. Gessner** provided the staff report. One part of the proposed ordinance converted the Design and Landmarks Commission (DLC) to a Committee, and the other takes the Local Contract Review Board off the list of appointed boards and commissions.

This code amendment has gone through a significant process in work sessions with the Planning Commission, City Council and DLC to ensure the language is correct and that the concerns of the DLC were addressed. He believed the proposed ordinance achieves that. The language was identical to the draft presented at a City Council work session.

In effect, the amendments transfer the decision-making authority from the DLC to the Planning Commission, and the DLC is advisory to the Planning Commission and City Council on all matters over which it previously had decision-making authority. The DLC has an important role in design review, architecture, and historic preservation functions.

**Mr. Gessner** noted a correction to the action requested portion of the staff report. The local contract review board is not recommended for dissolution; rather removal from the list of appointed boards as the City Council performs that function. The adopting ordinance is correct. The purpose for removing the local contract review board from the list of appointed bodies is a housekeeping change.

**Mr. Firestone** said the Local Contract Review Board was on a list of boards and commission to which the provisions of Chapter 2.10 applied. They do not properly apply to the Local Contract Review Board because it has its own chapter. He recommended deleting the reference in Chapter 2.10.

Correspondence: There was no additional correspondence.

Public Testimony: **Les Poole**, 15115 SE Lee, Milwaukie, 97267. We have some big changes coming, and we have high-density coming. There were issues of who delegates what happens – what we save and what we don't save. He was not involved on the City Council, but he would move cautiously with the first aspect of this recommendation. His only concern was that if you are going to have a committee that is advisory, there is a fine line between how much authority is granted. As you centralize power, sometimes it works great and sometimes it doesn't. That is up to the City Council to decide. He wanted to bring that up knowing there have been some interesting decisions lately involving groups that went astray. Think about where we are going to be in a few years. It is time for big changes, and he is looking forward to that part.

Additional Staff Comments: None.

Questions from Council: **Councilor Stone** commented about dissolving of the DLC to a committee. Mr. Poole brought up a very sound idea that we would not want to have this committee be unable to have some kind of authority over the things that they have expertise on. She voiced this before. It was her concern that the people on this committee largely had backgrounds in architecture, graphic design, and so forth. The DLC has produced fine work for the City in the past. She did not like to see taking these kinds of groups of people, although she understood the motive behind it was that there were limitations in terms of being able to staff these. Staff was being spread too thin; therefore, this consolidation. She strongly encouraged staff to continue to poll these people, keep them in the loop with the Planning Commission and hopefully their voices will not be just advisory but will have a lot more weight than that.

Close of Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:03 p.m.

**Council Discussion and Decision: It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and the adoption of an ordinance amending Municipal Code Chapters 2.10, 2.16, 2.18, and 19.323.**

**Motion passed unanimously.**

The city attorney read the ordinance for the first and second times with the changes.

The city recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Lancaster, Councilor Loomis, and Councilor Stone aye; no abstentions.

**ORDINANCE NO. 1936:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 2.10 BOARDS AND COMMISSIONS GENERALLY; CHAPTER 2.16 PLANNING COMMISSION; CHAPTER 2.18 DESIGN AND LANDMARKS COMMISSION; AND CHAPTER 19.323 HISTORIC PRESERVATION OVERLAY ZONE.**

**B. Transportation System Development Charges -- Resolution**

**Mayor Bernard** called the public hearing on the proposed transportation system development charges to order at 7:07 p.m.

The purpose of the hearing was to consider public comment on the proposed increase.

Staff Report: **Mr. Barnett** provided the staff report with Randy Young, Henderson Young and Company. He briefly reviewed the agenda. Because of the public notice requirements, staff asked that the City Council hear the report from staff and consultant along with any public comments, and then continue the hearing to November 2, 2004 to allow for any additional public comment, deliberation, and decision.

The key results of proposed changes are:

1. Shorter SDC project listing. The existing list is quite lengthy and includes every project in the Transportation System Plan (TSP);
2. The system development charge (SDC) list under the new methodology was reduced to about 18 projects and more closely matches the City's existing resources. Under the old methodology, about 17% of the transportation SDC fund could be used toward a project and other sources had to be tapped to make up the remaining 83%.

3. Net effect was a small rate increase. For example, the increase for a new single-family residence would go up from \$1,340 to \$1,481 or about a 10% increase.

**Mr. Young** was engaged by the City to prepare the technical research to update and modify the Transportation SDC. His firm has been engaged in this type of analysis for 25 years and brings experience to the project. He was confident the methodology being recommended was consistent with Oregon law, and the outcomes and results of this rate study are defensible and reasonable for the community. The net result of the work is to recommend a net increase of about 10%. The previous SDC was adopted in 1998, so a 10% increase would not be an unreasonable adjustment in terms of cost living adjustments.

He discussed the differences in the methodology. There have been improvements in the state of the art of trip analysis that allow the City to turn to reliable sources that prove that sometimes for some kinds of development, the number of trips is not an accurate representation of the number of trips that impact the City's transportation system. Some people leave one destination and stop on the way to their ultimate other destination. The current system, for example, would count a trip from work to the store as one trip and from the store to home as another trip. We now have the ability and national data set to say that trip was one trip interrupted, not two separate trips. The land use categories in the new rate study acknowledge that data as being much more reasonable. It is used to adjust many commercial and retail freight categories to a more accurate representation of the impact.

**Mr. Young** provided a summary of the study. In step 1, the projects were evaluated to assure they were consistent with Oregon law and actually added capacity to the system. Specific qualifying criteria were added that the project must improve mobility or reduce congestion in the community. There are two kinds of SDCs that are allowed by Oregon law. The improvement SDCs are projects yet to be built that will meet the needs of future development. Mr. Young discussed the reimbursement SDC. The City is allowed to recapture fees for completed road projects or intersection improvements that have the capacity to serve growth. Of the projects completed in the past few years, and the City may pay itself back from SDC money for six of these. This would allow the City to take \$400,000 to \$500,000 from the existing \$600,000 balance, and pay itself back for improvements already made. Because money is going back into the street fund, there is money available for other projects. It may seem to City Council like a windfall. It is quite legal and could simply be seen as the City's getting back the money it had advanced.

Step 2 was to determine whether there are costs in those projects that are not eligible. State statutes are quite explicit that the projects must add capacity. When the City embarks on a project to improve an intersection or a road, it is rare that money would be spent only to make it bigger or wider or better. It often solves other problems such as safety, access, and vision obstructions. This study identifies

sources of money that will pay for those other non-capacity needs so that what is left is the allowable capacity portion of the project. For example, in the improvements SDC, \$21 million in total projects was identified, but half of that was funding from other sources such as grants or the street fund that will pay for existing deficiencies or safety improvements. The net amount being asked of the SDC payers is the difference. That amount is estimated to be about \$9 million.

Step 3 was to divide that \$9 million amongst all the future anticipated growth using City and regional traffic models. There would be 6,411 more trips in the future than there are today, and they will benefit from the \$9 million.

Step 4 was to determine the cost per trip by dividing that dollar amount by the number of trips. The cost per trip was calculated to be \$1,439.17 for the improvement SDC. It is that cost per trip that is about 10% higher than the current cost per trip.

Steps 5 and 6 were to calculate the trips generated by various types of land uses, and then multiplying the number of trips by the cost. The data set from the Institute of Traffic Engineers (ITE) was used to find the number of trips generated. The example in the report was light industrial which generates about one trip in the p.m. peak hour per 1,000 square feet. Mr. Young went through a theoretical application for a 20,000 square feet light industrial project that would put \$28,200 in the improvement SDC and \$1,420 in the reimbursement SDC. He noted the most intense impact on a system was the p.m. peak hour, and that was the trip number used. The same methodology would apply to any other type of land use.

**Councilor Stone** asked for clarification. If she understood it correctly this was an additional SDC charge that was being proposed because we already have SDC charges.

**Mr. Young** said these amounts would replace the current SDCs -- they were not in addition to the current fees. The replacement is about 10% more than developers currently pay.

**Mayor Bernard** asked how the City was notifying people because when this was done in the County, there was an uproar. He noted a lot of communities are going to 100% and covering all costs. He assumed that was why there were no protests from the development community.

**Mr. Barnett** said there were two or three notifications including the *Clackamas Review* and the *Daily Journal of Commerce*. The study was also presented to the Citizens Utility Advisory Board (CUAB). He understood from the city attorney that state statute required a 60-day notification period.

**Mr. Firestone** added ORS requires a longer period, so the second hearing is needed. Statute does require a hearing and that it be 60 days after. Notice must go

to those have requested notice. It does not specify newspaper notice, and no one has asked to be placed on the City's transportation SDC notification list. There is no list, and therefore no requirement for individual notice.

**Mr. Barnett** commented the official rates and methodology were available to the public on September 3, but no one contacted his office.

Correspondence: None.

Testimony: None.

**Mayor Bernard** announced the hearing would be continued to November 2, 2004 to allow for the public to review the new methodology.

## **OTHER BUSINESS**

**Ms. Herrigel** thanked the Milwaukie Rotary for the welcome sign that was installed on the riverfront near 17<sup>th</sup> Avenue and Harrison Street. There will be an event at the November 5<sup>th</sup> Chamber Greeter's meeting City Hall.

**Ms. Herrigel** urged people to buy *Centennial Memory Books*.

### **A. Agreement with Clackamas Cable Access Board**

**Ms. Herrigel** provided the staff report in which the City Council was requested to authorize the city manager to sign a personal services agreement with the Clackamas Cable Access Board (CCAB) to manage public and government programs. CCAB does business as Willamette Falls TV in Oregon City.

**Ms. Herrigel** released a Request for Proposal (RFP) for public and/or government studio operations in July 2004 and received three responses. A committee reviewed those responses and recommended that the CCAB proposal be forwarded to the City Council for approval. One option in that proposal was to close the Lake Road studio and divert users to Oregon City. The other alternative was to keep the Lake Road facility open, and Willamette Falls would provide staff to operate it. Staff met with Councilor Barnes regarding her concern about availability of the Lake Road facility equipment to high school students. Willamette Falls agreed and would do everything it could to make that happen.

**Ms. Herrigel** recommended the City Council authorize the city manager to sign the agreement and keep the Lake Road facility open to accommodate the high school students. There are funds in this year's budget to operate the facility.

**Councilor Stone** asked in terms of usage of the Lake Road facility right now. How many people use it per month?

**Ms. Herrigel** responded the studio has 2-3 users on a regular basis, but a lot of equipment is checked out. Mr. Wheeler has been working with the Cable Access Board to encourage more users. Staff is aware that usership is low and wants to make an effort to bring that number up. If that does not work in the next budget cycle, staff would likely recommend closing the Lake Road facility and perhaps going with something less or using the Willamette Falls studio in Oregon City.

**It was moved by Mayor Bernard and seconded by Councilor Barnes to authorize the city manager to sign a personal services agreement with the Clackamas Cable Access Board. Motion passed unanimously.**

**B. Recommendation for the Tillamook Branch Light Rail Alignment and Alternative 2.5 (Kellogg Lake) Transit Center**

**Mr. Swanson** provided the staff report. This was the subject of the September 21, 2004 City Council meeting at which deliberations were held, and members voted 3-2 to support the recommendation as outlined in the resolution. At the end of that meeting, the City Council requested that staff return with a formal resolution that would incorporate both the substance of the decision and outline the various mitigation steps that would be taken. He read the mitigation features:

1. The Tillamook Branch Design Option light rail alignment through the North Milwaukie Industrial District is recommended to be designated in place of the Main Street and crossover alignment within the South Corridor Project as the preferred alternative;
2. The environmental studies required to amend the Report consistent with the recommendations contained in this Resolution be done;
3. Alternative 2.5 (Kellogg Lake) is recommended to replace Southgate as the preferred site for relocation of the existing on-street Milwaukie Transit Center, including the following mitigation and design considerations and direction to City staff as part of the continued project development process:
  - a. Mitigation and design elements related to the transit center relocation address adverse traffic impacts within the Milwaukie Historic and Ardenwald/Johnson Creek neighborhoods, and that the elements be developed with participation of neighborhood representatives and residents and City staff; and
  - b. Mitigation and design elements, including but not limited to architecture, noise containment, landscaping, and lighting, address adverse impacts on the homes adjacent to Kellogg Lake and/or in close proximity to the recommended site, and that the elements be developed with participation of homeowners and/or residents and City staff; and
  - c. Mitigation and design elements address environmental concerns, including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties, that open space enhancements be created where possible, and that the elements be developed with

- participation of the City's Riverfront Board, Parks and Recreation Board, interested citizens, and City staff; and
- d. Mitigation and design features address law enforcement and public safety concerns, and that the features be developed with participation of the Milwaukie Police Department, neighboring residents, and Milwaukie High School staff, students, and parents; and
  - e. Staff explore the potential adverse impacts, if any, on City Hall and Farmers' Market operations, and that mitigation and design elements be developed as appropriate; and
  - f. Mitigation and design elements address issues arising from bus traffic in the downtown while preserving adequate transit options for Milwaukie residents, and that the options be developed with participation of neighborhood representatives, residents, transit users, downtown business representatives, and City staff; and
  - g. Staff initiate appropriate action at the appropriate time with respect to amendment of the *Milwaukie Comprehensive Plan* and the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
4. Development of the transit facilities be coordinated with other projects in central Milwaukie as schedules allow in order to minimize impacts, reduce costs, and achieve the best civic designs, consistent with the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
  5. Staff submit a monthly written activity report to the Council at its second meeting of the month with respect to the above recommendations and mitigation and design initiatives; and
  6. A copy of this resolution and recommendation be forwarded to the South Corridor Policy Committee for consideration in a modified LPA and to TriMet for consideration in advancing project development plans.

He noted that item 5 was added to keep the City Council informed in a report each 2<sup>nd</sup> meeting of the month and suggested adding this as a regular agenda item.

**It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution recommending the Tillamook Branch light rail alignment and alternative 2.5 (Kellogg Lake) transit center site.**

**Councilor Stone** referred to the third "whereas" on page one regarding an "environmental impact statement that was prepared and public comment was heard."

**Mr. Swanson** explained that referred to the South Corridor process.

**Councilor Stone** referred to the sixth "whereas" on the same page where it talks about the "Working Group be designated to examine issues related to the Southgate Crossover Design Option...." Everything she has read and all the literature they have gotten specifically regarding the Working Group charge stated that they were to develop a recommendation or a set of recommendations for resolution of design

issues related to the transit center, future light rail alignment, and park-and-ride facilities located in the LPA referring to the Southgate site. She thought that should be put in the resolution because that was what they were charged to do.

**Councilor Stone** referred to page 3, section c – mitigation and design elements address environmental concerns including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties. She would like it to say, “potential environmental impacts on Kellogg Lake and wildlife habitat in adjacent properties.”

**Councilor Stone** commented on deliberation as used on page 2 of the resolution in the third “whereas.” She commented that she did not think the City Council fairly deliberated this issue at all. If you really look at the definition of deliberation, “it is to think about or discuss issues carefully, to weigh in mind and ponder; characterized by, resulting from careful and thorough consideration; characterized by awareness of the consequences; slow, unhurried and steady; allowing time for a decision on each individual action involved.” She did not think the City Council did that. This was a huge decision. In the work session just before coming to Council an hour ago, Councilor Barnes asked that the City Council not make a decision on looking to increase the sewer rates. We were talking about a 1.46% increase – 53 cents. She did not want it to be a hurried decision. This is a decision that has magnitude greater than 53 cents on your sewer bill. She felt the City Council really needed to stop and think about what it was doing here. As far as she could tell from all the literature she received, there was nothing that said we have to move on this quickly. She wanted to reiterate that she thought it would be more prudent for the City Council to look at making sure that we have indeed examined and mitigated the Southgate sites and looked at the ODOT site first before proceeding with this site. She would hate to see the City get itself into litigation, and she thought this was exactly where this was going to head if we did this.

**Councilor Barnes** clarified that she asked to postpone any decision or discussion until after this meeting adjourned, so the Council would have more time when it went back into work session. That was what she was discussing. She also brought to her attention there is a communication agreement that clearly states several issues, and she thought Councilor Stone was trading water in regards to section 2. She would like that placed on the record. This Council has made a decision and has signed an agreement to that extent.

**Motion passed 3 – 2 with the following vote: Mayor Bernard, Councilor Barnes, and Councilor Loomis aye, and Councilor Lancaster and Councilor Stone no.**

**RESOLUTION NO. 31-2004:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RECOMMENDING THE TILLAMOOK BRANCH LIGHT RAIL ALIGNMENT AND ALTERNATIVE 2.5 (KELLOGG LAKE) TRANSIT CENTER.**

**Mayor Bernard** announced the work session would reconvene after adjournment of the regular session. The City Council would also hold an executive session pursuant to ORS 192.660 (2) (e) to discuss real property transactions.

## **ADJOURNMENT**

**It was moved by Councilor Barnes seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.**

**Mayor Bernard** adjourned the regular session at 7:40 p.m.

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Pat DuVal, Recorder



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Alice Rouyer, Community Development/Public Works Director**

**From: Paul Shirey, Director of Engineering**  
**Brion Barnett, Civil Engineer**

**Subject: McLoughlin Boulevard Improvements Project, revised resolution to allow for condemnation if necessary**

**Date: October 1, 2004 for the October 19 meeting**

### **Action Requested**

Authorize the Mayor to sign a revised resolution authorizing the City of Milwaukie and its right-of-way (ROW) agent (ODOT) to use condemnation, if necessary, to acquire property for the project.

### **Background**

During the October 7, 2003 Council meeting, Council authorized the Mayor to sign an IGA with ODOT for right-of-way (ROW) acquisition and a resolution authorizing the City and its ROW agent (ODOT) to use condemnation, if necessary, to acquire property for the project. The original resolution listed all the properties along the original project limits (Harrison Street to the Kellogg Creek Bridge).

During the design process, the project team determined that a section of existing curb and sidewalk outside the project limits needs to be replaced. The specific section of curb and sidewalk is located on the east side of McLoughlin, between Harrison Street and Scott Street. The replacement is necessary because the existing 2 to 4 inches of curb exposure (distance from the roadway surface to the top of the curb) does not meet the ODOT standard (7 inches) and poses a safety risk to pedestrians.

Additionally, the existing curb along the northeast corner of the intersection of McLoughlin/Harrison is scheduled for reconstruction with a new larger radius curve. This will help larger vehicles trying to negotiate a northbound turn onto McLoughlin.

The larger radius will require an easement from the owner of the Reliable Credit property. The sidewalk construction will also necessitate relocation of the existing door at the tattoo shop located immediately north of Reliable Credit. The revised resolution will allow ODOT to negotiate with the property owners not previously listed in the original resolution.

### **Concurrence**

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the revised resolution and support signing it to enable the ROW acquisition process to proceed.

### **Fiscal Impact**

None, if Council authorizes the Mayor to sign the revised resolution. The current estimated cost of construction is \$2.4 million dollars (this includes a 50% contingency). The total city match for the project is still estimated to be approximately \$220,000 dollars and is appropriated in the City's Streets Fund budget for FY 2004-2005.

If the revised resolution is not signed, the project could be delayed by 2-4 months and the City could incur additional legal fees in an attempt to negotiate with the prospective property owners.

### **Work Load Impacts**

A staff team from the Engineering and Community Development Departments continue to coordinate with ODOT and local Milwaukie residents and representatives as necessary. The project is part of the work program for both departments.

### **Alternatives**

The Council has the following alternatives:

- Approve revised resolution.
- Suggest amendments to the revised resolution.
- Do not authorize the Mayor to sign the resolution to allow for condemnation.

### **Attachments**

Attachment A – Revised Resolution for ROW acquisition

**ATTACHMENT A**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AMENDING RESOLUTION NO. \_\_\_\_\_, RELATING TO THE ACQUISITION OF PROPERTY FOR RIGHT-OF-WAY**

**WHEREAS**, City Council adopted Resolution No. \_\_\_\_\_ on \_\_\_\_\_ to authorize right-of-way agents to take certain actions relating to the acquisition of property for the McLoughlin Boulevard Improvements Project; and

**WHEREAS**, because of changes in the design and scope of the project, additional property needs to be acquired and the authority of the right-of-way agents needs to be expanded to allow them to act for the City as to those properties;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Milwaukie, Oregon, that:

Section 1: Resolution No. \_\_\_\_\_ is amended by amending Exhibit 1 to that resolution to read as shown in the attached Exhibit 1.

Section 2: This resolution shall be effective immediately upon passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on \_\_\_\_\_, 2004.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis Crew Corrigan & Bachrach, LLP

\_\_\_\_\_  
Pat DuVal, City Recorder

By: \_\_\_\_\_  
City Attorney

## EXHIBIT 1

<b>Property Owner</b>	<b>Property Address</b>	<b>Tax Lot Number</b>
Gail O. Southwell (Trustee)	10600 SE McLoughlin Blvd.	11E35AA00500
L & B Holzman, LLC (Reliable Credit)	10633 SE Main Street	11E35AA00700, 11E35AA00800
Olson Brothers Enterprises (Texaco)	10700 SE McLoughlin Blvd.	11E35AA01000
City of Milwaukie	10808 SE McLoughlin Blvd.	11E35AA01100
Way Chan (ABC Kitchen)	10880 SE McLoughlin Blvd.	11E35AA01200
Raul Ponce and William Roberts	1906 SE Monroe Street	11E35AA02100
Atlantic Richfield Company	10966 SE McLoughlin Blvd.	11E35AA01900
Universe Corporation (Astro)	11010 SE McLoughlin Blvd.	11E35AD00800
Pacific One Bank	11050 SE McLoughlin Blvd.	11E35AD00700
Glen and Doris Smith (Cash Spot)	10966 SE McLoughlin Blvd.	11E35AD01100
Metro		11E35AD00900
City of Milwaukie	10993 SE McLoughlin Blvd.	11E35AA02200
City of Milwaukie	10937 SE McLoughlin Blvd.	11E35AA02300
WMB Investment Co. (Vic's Tavern)	10901 SE McLoughlin Blvd.	11E35AA02400
City of Milwaukie	10877 SE McLoughlin Blvd.	11E35AA02500
David McMillan (Antique Mall)	10875 SE McLoughlin Blvd.	11E35AA02600
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02700
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02800
City of Milwaukie	10707 SE McLoughlin Blvd.	11E35AA05000

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
RECORDING THE CERTIFIED ELECTION RESULTS FOR THE SEPTEMBER 21,  
2004 SPECIAL ELECTION.**

**WHEREAS**, Section 13 of the Charter requires the certified elections results be made a part of the record of proceedings of the City Council; and

**WHEREAS**, the election results from the September 21, 2004 Special Election have been certified by the Office of the Clackamas County Clerk; now, therefore;

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE,  
CLACKAMAS COUNTY, OREGON THAT:**

Section 1: The certified election results, attached hereto as Exhibit "A" and incorporated herein, are hereby made a part of the record of proceedings of the City Council.

Section 2: This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on October 19, 2004.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Ramis, Crew, Corrigan & Bachrach, LLP

RESOLUTION NO. \_\_\_\_\_

RUN DATE: 09/28/04 09:41 AM

REPORT-EL45

PAGE 001

VOTES PERCENT

PRECINCTS COUNTED (OF 10) . . . . .	10	100.00
REGISTERED VOTERS - TOTAL . . . . .	11,376	
BALLOTS CAST - TOTAL . . . . .	3,321	
VOTER TURNOUT - TOTAL . . . . .		29.19

3-134 MILWAUKIE CITY ANNEXATION MEASURE

VOTE FOR 1

YES . . . . .	1,565	47.12
NO. . . . .	1,756	52.88
Total . . . . .	3,321	
Over Votes . . . . .	0	
Under Votes . . . . .	0	

	R E G I S T E R E D	V O T E S	B C A A L S L T O S	T P U E R R N C O E U N T T A G E	3-134 MILWAUKIE CITY ANNEXATION MEASURE			
10 PRECINCTS					Y E S	N O	O V V O T E R S	U N O T D E E R S
0051 PRECINCT 051	1267	357	28.18	197	160	0	0	
0053 PRECINCT 053	1099	313	28.48	136	177	0	0	
0054 PRECINCT 054	1030	257	24.95	123	134	0	0	
0056 PRECINCT 056	913	253	27.71	98	155	0	0	
0057 PRECINCT 057	1219	375	30.76	171	204	0	0	
0058 PRECINCT 058	816	297	36.40	144	153	0	0	
0060 PRECINCT 060	1270	394	31.02	203	191	0	0	
0062 PRECINCT 062	1333	396	29.71	163	233	0	0	
0063 PRECINCT 063	1213	348	28.69	183	165	0	0	
0064 PRECINCT 064	1216	331	27.22	147	184	0	0	
GRAND TOTALS	11376	3321	29.19	1565	1756	0	0	

CERTIFIED COPY OF THE ORIGINAL  
SHERRY HALL, COUNTY CLERK  
BY: *Darlene Kenney*  
Deputy  
9-29-04



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager

**From:** Larry R. Kanzler

**Subject:** Renew Intergovernmental Agreement – Juvenile Crime Diversion Program

**Date:** September 27, 2004

**Action Requested**

Adopt a resolution authorizing the Mayor to sign and renew the current Intergovernmental Agreement with Clackamas County, which provides pass-through grant funding for the Milwaukie Police Department's Juvenile Diversion Program.

**Background**

During the past several years, the resources of the Clackamas County Juvenile Department have been depleted by the increasing demand for juvenile intervention of criminal offenders. In the past, police departments throughout Clackamas County could arrest a juvenile for a crime and refer that juvenile to the Juvenile Department of Clackamas County, knowing full well that there would be some timely sanction imposed by the Juvenile Court. That condition no longer exists.

Prior to the implementation of this program in 2001, when Milwaukie police officer arrested juvenile criminal offenders, and the report of the criminal behavior was referred to the Juvenile Department, routinely there was no sanction levied against the juvenile for their criminal conduct. The Juvenile Diversion Program is filling that gap by addressing, through a diversion panel comprised of local citizens, first time minor offenders.

The purpose of the panel is to listen to the offender's reasons for committing the crime and then negotiate a restitution agreement. This program has successfully used locally sponsored diversion panels to address criminal behavior by first time offenders since the inception of this program. The program has resulted in more than 70% of the first time offenders being held accountable for their criminal behavior, and more than 50% have not re-offended within 18 months of going before the diversion panel. The goal of the program is to get juvenile offenders to acknowledge their involvement in the crime charged, and be held accountable for their conduct. That self acknowledged responsibility serves to dissuade future misconduct.

This years pass-through diversion grant money is reduced from \$24,500 to a total of \$13,000, and even this money is in jeopardy if the State's revenue package doesn't pass this spring. I have purposely delayed presenting renewal of this pass-through grant to Council because of the tenuous commitment of State funding. If voters reverse State funding and tax increases passed by the Legislature in the spring, these monies will terminate and the program will cease. Neither the City of Milwaukie, nor the Police Department budgeted any money to support operation of this program. State funding provides total funding for this program.

This Intergovernmental Agreement will renew the existing agreement between the City of Milwaukie and Clackamas County for \$13,000 to implement and administer the Juvenile Diversion Program from July 1, 2004 to June 30, 2005.

### **Concurrence**

Milwaukie Police Department  
City Attorney

### **Fiscal Impact**

Provides \$13,000 in grant funds to operate the Juvenile Diversion Program.

### **Work Load Impacts**

Approximately 20 hours of staff time to prepare and administer administrative program support.

### **Alternatives**

None

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AND RENEW THE INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY FOR A GRANT TO MAINTAIN THE JUVENILE CRIME DIVERSION PROGRAM.**

**WHEREAS**, the City of Milwaukie is developing strategies to provide high quality livable communities ; and

**WHEREAS**, the City Council has directed city staff to develop cost effective programs to improve community livability; and

**WHEREAS**, first time juvenile criminal offenders need immediate intervention to discourage continued criminal activity ;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council authorizes the Mayor to sign and renew the intergovernmental agreement with Clackamas County to receive a grant in the amount of \$13,000 to provide juvenile crime intervention for the City of Milwaukie, Oregon.

Introduced and adopted by the City Council on October 19, 2004.

This resolution is effective on October 19, 2004.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

# INTERGOVERNMENTAL AGREEMENT

(FY'05)  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY, OREGON  
AND  
CITY OF MILWAUKIE

## I. Purpose

This agreement is entered into between Clackamas County (COUNTY) and City of Milwaukie for the cooperation of units of local government under the authority of ORS 190.010.

This agreement provides the basis for a cooperative working relationship for the purpose of continuing the local diversion panel for high-risk juveniles as part of the Clackamas County Juvenile Crime Prevention Plan.

## II. Scope of Work and Cooperation

### A. City of Milwaukie agrees to:

- 1) Assess all youth residing within the boundaries of the North Clackamas School District, who are referred to the Clackamas County Juvenile Department for status offenses, violations, all Class C Misdemeanors and all Class B Misdemeanors and specified Class A Misdemeanors (Exhibit 1, II. 12).
- 2) Complete a Risk Assessment for all youth determined to be eligible to participate in the local diversion program (Exhibit 1, II. 13).
- 3) Enter into and monitor compliance of youth's Diversion Agreement conditions (Exhibit 1, II. 14).
- 4) Coordinate and keep open communications with the Clackamas County Juvenile Department Liaison regarding case planning, progression of the case and final disposition of the case.
- 5) Develop an implement a volunteer services component.
- 6) Complete Quarterly Progress Work Plan (Exhibit 1) and Fiscal (Exhibit 3) reports.

### B. The COUNTY agrees to:

- 1) Forward copies of appropriate documents, including police reports, to the City of Milwaukie Diversion Program.
- 2) Serve as a centralized depository for all records involving juvenile offenders.
- 3) Provide liaison staff for technical assistance, case consultation and networking as required.

## INTERGOVERNMENTAL AGREEMENT

- 4) Accept any and all diversion cases in which the juvenile and/or parents refuse to participate or have failed to adequately complete the local diversion program.
- 5) Allow youth who score two risk factors, on Exhibit 1, II. 13 to be eligible for Clackamas County Juvenile Department funded resources.

### III. Compensation

The COUNTY agrees to pay **City of Milwaukie** an amount not to exceed \$13,390 for the services outlined in Section II.A.

AGENCY shall be paid on a cost reimbursement basis and shall submit invoices and accompanying performance reports as described in Exhibits 2 and 3 attached hereto.

All requests for payment are subject to the approval of the COUNTY and will be submitted to:

Rodney A. Cook, Director  
Office for Children & Families  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045-4035

### IV. Liaison Responsibility

Chief Larry Kanzler will act as liaison from the **City of Milwaukie** for this project. Mark McDonnell will act as liaison from the COUNTY.

### V. Special Requirements

- A. The COUNTY and **City of Milwaukie** agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. The COUNTY and the City of Milwaukie agree to indemnify, save harmless and defend each other, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the City of Milwaukie or Clackamas County employees, subject, where applicable, to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7. The conditions described in the Intergovernmental Agreement supercede examples described in exhibits 1 through 3.

During the term of this contract AGENCY shall maintain in force at its own expense, each insurance noted below:

## INTERGOVERNMENTAL AGREEMENT

1. Comprehensive General Liability

Required by COUNTY  Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of comprehensive general liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

2. Comprehensive Automobile Liability

Required by COUNTY  Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of comprehensive automobile liability insurance in the amount of not less than \$500,000 combined single limit for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

3. Professional Liability

Required by COUNTY  Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage and malpractice or error and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

4. Additional Insurance Provision

All required insurance shall include the following provision, provided however that professional liability insurance which excludes coverage based upon the presence of indemnification or hold harmless clauses shall not be subject to the requirements of subsection a.:

- a. the insurance shall include the COUNTY as an additional insured and refer to and support the AGENCY's obligation to hold harmless the COUNTY, its officers, commissioners and employees;
- b. the insurance shall provide for 30 days written notice to the COUNTY in the event of cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under the insurance;

## INTERGOVERNMENTAL AGREEMENT

c. the insurance shall provide for written notice to the COUNTY within thirty (30) days after any reduction in the general annual aggregate limit.

- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- D. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the **City of Milwaukie** which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.
- E. This agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

### VI. Amendment

This agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this agreement only after the written amendment has been signed by both parties.

### VII. Term of Agreement

This agreement becomes effective when this contract is signed by all necessary parties, but not prior to July 1, 2004. This contract will terminate June 30, 2005.

This agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

Upon termination of this agreement, any unexpended balances of agreement funds shall remain with the COUNTY.

INTERGOVERNMENTAL AGREEMENT

GOVERNMENTAL UNIT  
CITY OF MILWAUKIE

CLACKAMAS COUNTY  
Chair: Bill Kennemer  
Commissioner Martha Schrader  
Commissioner: Larry Sowa

\_\_\_\_\_  
By

\_\_\_\_\_  
Signing on Behalf of the Board:

James Bernard

\_\_\_\_\_  
Name (Typed)

\_\_\_\_\_  
Irene Fischer-Davidson, Director  
Department of Human Services

Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

10722 SE Main

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Approved as to Content:

Milwaukie, OR 97222-6537

\_\_\_\_\_  
City/Zip

\_\_\_\_\_  
Rodney A. Cook, Division Director

503-786-7555

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

93-6002212

\_\_\_\_\_  
TIN, FIN or S.S.#

\_\_\_\_\_  
Gary Firestone, City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Larry Kanzler, Police Chief

\_\_\_\_\_  
Date

# INTERGOVERNMENTAL AGREEMENT

## EXHIBIT 1

### SCOPE OF WORK AND PERFORMANCE STANDARDS

- I. AGENCY shall meet all performance outcomes as outlined in attached Work Plan.
- II. Performance Standards:
  1. **Community Based, Holistic Approach**
    - AGENCY programs and services shall be community-focused, incorporating the greatest level of input from multiple stakeholders, including clients, families, and other agencies.
    - AGENCY programs and services shall have ongoing community investment and involvement.
  2. **Family-Centered Programs**
    - AGENCY programs and services shall involve families in all aspects, recognizing that they are the most important teachers, caregivers, and role models for their children.
    - AGENCY programs and services shall support and strengthen families in providing the foundation for the physical, social, emotional, and intellectual development for their children.
  3. **Establish/Maintain Effective Partnerships**
    - AGENCY, in order to enable data linkages, information sharing, and ongoing collaboration between partners to most effectively meet and address needs, shall ensure that appropriate staff attend OCF contractor's meetings, and training sessions, and participate in other activities as required by COUNTY.
    - AGENCY shall develop and promote continuous communications with similar organizations.
  4. **Utilize a Balanced SWOT (Strengths, Weaknesses, Opportunities, Threats) Approach**
    - AGENCY programs and services shall address both the risks/deficiencies, challenges and the strengths/assets/opportunities in their communities.
  5. **Implement Research Based Accountability**
    - AGENCY, in order to ensure programs and services are based on research-based, proven practices, shall complete and submit the Best Practices Assessment as required by OCF. In areas where proven practices are not available, AGENCY is encouraged to develop innovative strategies based on research principles.
    - AGENCY programs and services shall include research-based measurements of success to enable tracking of effectiveness toward meeting planned outcomes. These data shall be monitored by OCF on the Quarterly Work Plan. Quarterly Work Plans are to be submitted on or before date due.

## INTERGOVERNMENTAL AGREEMENT

1st Quarter, Jul 1 – Sep 30: due on Oct 29, 2004  
2nd Quarter, Oct 1 – Dec 31: due on Jan 31, 2005  
3rd Quarter, Jan 1 – Mar 31: due on Apr 29, 2005  
4th Quarter, Apr 1 – Jun 30: due on Jul 29, 2005

6. **Reflect and Incorporate Diversity**
  - AGENCY, in order to provide programs and services that meet the needs of diverse cultures and people with disabilities, shall complete and submit the Cultural Competency Assessment and Action Plan as required by OCF.
  - AGENCY, in order to provide programs and services that meet the needs of girls, shall complete and submit the Gender Specific Services Assessment and Action Plan as required by OCF.
7. **Internal Controls**
  - AGENCY shall submit a completed Annual Fiscal Capability Assessment to OCF on or before October 29, 2005.
8. **Funder Recognition**
  - AGENCY shall demonstrate good faith efforts to acknowledge the COUNTY's Commission on Children & Families when communicating with media representatives and when creating and distributing flyers describing services, workshops and other contract related details.
9. **Resource Expansion**
  - AGENCY shall demonstrate good faith effort to secure other funding to increase program capacity, enter into collaborative efforts and initiatives, and/or decrease dependence on long-term Commission on Children and Families funding.
10. **Use of Grant Funds**
  - No grant funds shall be used, directly or indirectly, to promote or oppose any political committee, or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.
11. **HIPAA Compliance**
  - If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), AGENCY agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, if the work performed under this Contract is covered by HIPAA, AGENCY shall comply with the following:

## INTERGOVERNMENTAL AGREEMENT

- i. Privacy and Security of Individually Identifiable Health Information. On or after April 14, 2003, AGENCY, its agents, employees and subcontractors shall protect individually identifiable health information obtained or maintained about Department's clients from unauthorized use or disclosure, consistent with the requirements of HIPAA. This Contract may be amended to include additional terms and conditions related to the privacy and security of individually identifiable health information.
- ii. Data Transaction Systems. Any electronic exchange of information on or after October 16, 2002, between AGENCY and COUNTY to carry out financial or administrative activities related to health care will be in compliance with HIPAA standards for electronic transactions published in 65 Fed. Reg. 50312 (August 17, 2000). The following types of information exchanges are included: Health care claims or equivalent encounter information; health care payments and remittance advice; coordination of benefits; health claim status; enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; referral certification and authorization; first report of injury; and health claims attachments. This Contract may be amended to include additional terms and conditions related to data transactions.
- iii. Consultation and Testing. If AGENCY reasonably believes that the AGENCY's or COUNTY's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, AGENCY shall promptly consult the COUNTY's HIPAA officer. AGENCY or COUNTY may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the COUNTY's testing schedule.

### **12. Diversion Panel Cases**

- AGENCY shall use the misdemeanor classification and criteria for referral to the juvenile diversion panel.

### **13. Oregon Juvenile Crime Prevention Screen/Assessment**

- AGENCY shall assess level of risk in juveniles for determining eligibility for appropriate services using the Oregon Juvenile Crime Prevention Screen/Assessment instrument.

### **14. Clackamas County Diversion Agreement**

- AGENCY shall use the Clackamas County Diversion Agreement with youth participating in the local diversion program.

## INTERGOVERNMENTAL AGREEMENT

### III. Performance Standards-County:

County shall:

1. Administer this contract in compliance with the Commission on Children and Families Act (Oregon laws 1993), and the Oregon Administrative Rules for the Commission on Children and Families, Chapter 423.
2. Communicate with service providers about contract performance and about Office for Children and Families' operations, standards and objectives.
3. Provide technical assistance to the AGENCY in developing activities to address the needs of minority youth, program contract amendments, wellness referrals, collaborative services, community development projects and resources.

INTERGOVERNMENTAL AGREEMENT

PROGRAM/PROJECT WORK PLAN

2004-2005

<b>Organization:</b> City of Milwaukie	<b>Strategy</b> City of Milwaukie Diversion Panel
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<b>Contact:</b> Chief Larry Kanzler Milwaukie Police Dept. 10722 SE Main Milwaukie OR 97222-6537	<b>Phone:</b> (503) 786-7555 <b>E mail:</b> Kanzlerl@ci.milwaukie.or.us	<b>Report For:</b> (N/A) <input type="checkbox"/> 1st Qtr: July 1, 2004 – Sept. 30, 2004 <input type="checkbox"/> 2nd Qtr: Oct. 1, 2004 – Dec. 31, 2004 <input type="checkbox"/> 3rd Qtr: Jan. 1, 2005 – Mar. 31, 2005 <input type="checkbox"/> 4th Qtr: Apr 1, 2005 – June 30, 2005
--	--	---

<b>Outcome Goal:</b> <input type="checkbox"/> <b>Goal 1</b> Strong Nurturing Families	<input type="checkbox"/> <b>Goal 2</b> Healthy Thriving Children	<input checked="" type="checkbox"/> <b>Goal 3</b> Positive Youth Development	<input type="checkbox"/> <b>Goal 4</b> Caring Communities and Systems
---	---	---	--

<b>High level Outcomes:</b> Reduce Juvenile Arrest Rate	<b>Start Date:</b> Upon Approval	<b>End Date:</b> 6/30/05
--	-------------------------------------	-----------------------------

Specific OUTCOMES: (With Expected Targets)	Performance Measurement Instrument:	Baseline Data	1st Quarter 7/1/04-9/30/04	2nd Quarter 10/1/04-12/31/04	3rd Quarter 1/1/05-3/31/05	4th Quarter 4/1/05-6/30/05	Total or %	Comments
1) 80% of the youth participants will successfully complete an Individual Diversion Agreement (IDA) [OCCF #3.07.01]	1) Results to be reported semi-annually using Juvenile Dept. records as: # youth on IDA's # Successful % Successful	1) 80% success rate measured semi-annually						

**INTERGOVERNMENTAL AGREEMENT**

<p>2) 80% of the youth participants will not be referred to the Juvenile Dept. for another law violation for a 12-month period of time following termination of services. [OCCF #3.07.03]</p>	<p>2) Results to be reported semi-annually using Juvenile Dept. records as: # Assessed # Successful % Successful</p>	<p>2) 80% success rate measured 6 months and 12 months after program completion</p>								
---	--	---	--	--	--	--	--	--	--	--

<b>OUTPUTS: (Services)</b>	<b>Performance Measurement Instrument:</b>	<b>Baseline Data</b>	<b>1st Quarter 7/1/04-9/30/04</b>	<b>2nd Quarter 10/1/04-12/31/04</b>	<b>3rd Quarter 1/1/05-3/31/05</b>	<b>4th Quarter 4/1/05-6/30/05</b>	<b>Total or %</b>	<b>Comments</b>
<p>1) By June 30, 2005, 44 youth will be referred for diversion program services and be put on an individual diversion agreement (IDA).</p>	<p>1) Reported quarterly as number of youth referred and number of youth being put on an individual diversion agreement (IDA)</p>	<p>1a) 44 youth referred 1b) 44 youth with IDA</p>						

INTERGOVERNMENTAL AGREEMENT

OUTPUTS: (Services)	Performance Measurement Instrument:	Baseline Data	1st Quarter 7/1/04- 9/30/04	2nd Quarter 10/1/04- 12/31/04	3rd Quarter 1/1/05- 3/31/05	4th Quarter 4/1/05 - 6/30/05	Total or %	Comments
<p>2) By June 30, 2005, 44 youth will receive intensive community services to ensure accountability for completing the individual diversion agreement (IDA) to include options not limited to the following services: completion of written essay, participate in counseling, attend drug &amp; alcohol evaluation/ education program, attend victim impact panel, complete specified hours of community service, completion of volunteer service, restitution paid, participate in victim offender mediation program, participate in a personal skills class. Program expected to operate through June 30, 2005.</p>	<p>2) Reported quarterly as number of youth completing 1 or more individual diversion agreement (IDA) options through case management services</p>	<p>2) 85% success rate or 37 youth completing 1 IDA options</p>						

INTERGOVERNMENTAL AGREEMENT

Developmental Activities <i>(Note: Please see Exhibit 1 of the contract for required Developmental Activities)</i>	Measured By and How:	Baseline	1st Quarter 7/1/04-9/30/04	2nd Quarter 10/1/04-12/31/04	3rd Quarter 1/1/05-3/31/05	4th Quarter 4/1/05-6/30/05	Total	Comments
<p>1) Primary provider to update the Office for Children and Families' Best Practice Assessment Survey and Workplan or Gender Specific Services or Cultural Specific Services Self-Assessment.</p> <p>Target: By 12/31/04, update one assessment and workplan.</p>	<p>1) The number of assessments and surveys completed per year.</p>	<p>1) NA</p>						
<p>2) Participate in any State or County-sponsored Gender and/or Cultural Specific and/or evidence-based training and/or contractor's meeting</p>	<p>2) Meeting Dates; reported quarterly</p>	<p>2) NA</p>						

INTERGOVERNMENTAL AGREEMENT

<p>3) Participants, staff and clients will participate in Juvenile Dept. evaluation &amp; training requirements.</p>	<p>3) Date of training &amp; number attending reported quarterly and Number of pre/post program assessment given reported quarterly.</p>	<p>3) NA</p>							
<p>4) Provider to provide semi-annual update which demonstrates that program is "evidence-based."</p>	<p>4) Submitted with quarterly report period ending 12/31/04 and 6/30/05</p>	<p>4) NA</p>							

# INTERGOVERNMENTAL AGREEMENT

## EXHIBIT 2

### PAYMENT PROCEDURES AND REPORTING REQUIREMENTS

#### 1. PAYMENT PROCEDURES

The compensation authorized in this agreement shall include reimbursable expenses as prescribed in the COUNTY-approved budget in Exhibit 3 and in accordance with OMB Circulars A-87 if agency is a local government, A-122 if non-profit, A-133 if college. This amount does not include expenses for unusual and special activities or materials not included in the scope of services. Such unusual and special expenses will not be incurred without prior COUNTY approval. In addition, expense totaling an amount greater than the total budget for this project shall not be incurred without prior written consent of the COUNTY.

##### a) **Payment Options:**

AGENCY shall submit a monthly Request for Funds and Fiscal Report within 15 days of the end of each month. COUNTY reserves the right to reduce monthly payment by the amount of unexpended funds during the previous month. The monthly fiscal report shall be in accordance with the approved budget in Exhibit 3.

**OR**

AGENCY shall submit a quarterly Request for Funds and Fiscal Report within 15 days of the end of each quarter. COUNTY reserves the right to reduce quarter payment by the amount of unexpended funds during the previous quarter. The quarterly fiscal report shall be in accordance with the approved budget in Exhibit 3.

The COUNTY shall make payment to AGENCY within 30 days of receipt and approval of each funds request and fiscal report submittal. AGENCY shall submit a quarterly Program Performance Progress Report in accordance with Exhibit 1, and section 3 of Exhibit 2 of this contract.

Reimbursement request required to be prepared and submitted by AGENCY to the COUNTY shall be accurate and correct in all respects, supported by attached documentation and traceable to source documents through AGENCY's accounting records. Should inaccurate reports be submitted to the COUNTY, the COUNTY may elect to have AGENCY secure the services of a certified accounting firm. Cost of such accounting services are to be borne by AGENCY and not reimbursed from funds authorized by the agreement unless specifically agreed to between AGENCY and COUNTY in writing.

AGENCY shall submit a financial statement covering all expenditures within 30 days following the end of the contract. When the total funds advanced does not equal the AGENCY's total actual expenditures and the total budget, the financial statement shall include either:

## INTERGOVERNMENTAL AGREEMENT

- A. A request for reimbursement of program expenditures. Such request shall not bring the total of funds received by the AGENCY in an amount in excess of the budget; or
- B. Contract amendment suitable to both the COUNTY and AGENCY.
- C. The return of all unexpended funds to the COUNTY.

AGENCY shall return all unexpended funds to the COUNTY within 10 days of the contract's termination when such termination is due to the AGENCY's failure to provide services in accordance with the contract.

Withholding of Contract Payments: Notwithstanding any other payment provision of this contract, should the AGENCY fail to submit required reports when due or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the AGENCY submits required reports, performs required services, or establishes to the COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the AGENCY.

## 2. RECORDKEEPING

AGENCY shall keep detailed records of time and expenditures incurred and funded by this contract. Such records shall adequately identify the source and application of funds for activities within this contract in accordance with the provisions of OMB Circular (A-110 for non-profits, A-102 for local governments). These records shall allow accurate statements pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income in accordance with generally accepted accounting practices.

AGENCY shall maintain a system of internal control comprising a documented plan of all coordinating procedures adopted to account for and safeguard its assets, check the adequacy and reliability of its accounting data, promote operating efficiency, and assure adherence to applicable regulations.

Expenditures shall be supported by properly executed payrolls, time records, invoices, vouchers, or other source documentation evidencing in proper detail the nature and propriety of charges. All accounting documents shall be clearly identified and readily accessible.

Financial records and supporting documents pertinent to this agreement shall be retained by AGENCY for a period of three years from the date of completion of the contract except as follows:

- Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

## INTERGOVERNMENTAL AGREEMENT

### 3. PROGRAM REPORTS

AGENCY shall submit program performance reports for each quarter of the fiscal year. These quarterly reports are to include: 1) cover sheet/request for funds, 2) work plan outcomes, services and development activities performance report, 3) financial statement. The quarterly reports are due to the COUNTY within 30 days of the end of each fiscal year quarter.

AGENCY shall complete and submit other reports as required and supplied by the COUNTY.

### 4. MONITORING

COUNTY shall evaluate the services provided under this contract primarily by quarterly workplan progress reports. The COUNTY may also conduct on-site monitoring of services. These site visits usually include on-site monitoring of client case files, client/parent/staff interviews, and review of program and agency policies, procedures, and files. COUNTY shall give written notification of problem areas related to performance under this contract, including requirements and time lines of corrective action.

The AGENCY will gather data necessary to complete quarterly workplan performance and budget, and any other reports required by the COUNTY.

The AGENCY will provide the client confidentiality releases necessary to facilitate annual site visits by the COUNTY. Site visit activities include, but are not limited to, review of client case files, program personnel policies, and program services procedures.

At any time during normal business hours and as often as the COUNTY, or other appropriate state or federal representatives may deem necessary, the AGENCY shall make available to the COUNTY for examination all its records with respect to matters covered by this contract for the purpose of making surveys, audits, examinations, excerpts and transcripts.

Should any records not meet the minimum standards of grant administration of the COUNTY, the COUNTY reserves the right to withhold any or all of its funding to AGENCY until such time as the standards are met. The COUNTY may require AGENCY to use any or all of the COUNTY's accounting and administrative procedures used in planning, controlling, monitoring and reporting all fiscal matters relating to this contract.

The COUNTY reserves the right to dispatch auditors of its choosing to any site where any phase of the project is being conducted or controlled in any way. If any audit or examination determines the AGENCY has expended funds which are questionable or disallowed, the AGENCY shall be given the opportunity to justify questioned and

## INTERGOVERNMENTAL AGREEMENT

disallowed expenditures prior to the COUNTY's final determination. Any disallowed costs resulting from the final determination shall be remitted to COUNTY from AGENCY's non COUNTY-administered funds, payable by check within 30 days of final determination.

### 5. AUDIT

AGENCY shall have an annual audit performed of projects funded by this agreement unless specifically waived in writing by COUNTY. Audits shall be performed by an independent certified accountant in accordance with GAO Audit Standards, OMB Circulars (A-133 and A-110 for non-profits, A-128 for local government agencies), and generally accepted auditing standards. Audit schedules shall clearly show statement of COUNTY-funded assets, liabilities, fund balance, revenues, and expenditures separately from non COUNTY-funded assets, liabilities, fund balance, revenues and expenditures.

Auditor shall be selected competitively and AGENCY should contract with auditor to assure proper scope, reports and timelines are maintained.

Audits are not required for cost reimbursement contracts under \$25,000.

*Audits are due 120 days after the end of the contract period.*

### 6. CAPITAL PURCHASES

Capital purchases through children and youth services grants are subject to Oregon Administrative Rule 436-10-036 which indicates capital purchases to be the property of the COUNTY unless the COUNTY determines otherwise.

Capital purchases through children and family services grants are defined according to State of Oregon purchasing rules; initial value of more than \$1,000, and a useful life of more than two years.

Capital purchases indicated in the budget of this contract (Exhibit 3) are subject to the COUNTY's capital purchase Reversion Interest policy and procedure; the COUNTY may inventory the condition and use of the capital goods of this contract on a yearly basis.

The capital goods are to be owned by the AGENCY, subject to the COUNTY's right to reclaim ownership should the goods not be used for children and youth services. The AGENCY will notify the COUNTY if any items listed in Exhibit 3 are ever used for purposes other than for children and family services, are ever to be sold, are ever damaged, or ever worn out.

## EXHIBIT 3

### BUDGET

1. AGENCY shall submit for COUNTY approval a budget indicating the amount of COUNTY funds allocated for project performance as described in the scope of services. Budget shall be in sufficient detail to provide a sound basis for the COUNTY to effectively monitor compliance with the contract.

Any allocations of budgeted costs not directly allocable to the project shall be made in accordance with OMB Circular A-87, A-122 and A-133, and shall be properly documented by budget attachments.

2. Program income defined as amounts generated by the use of COUNTY funds shall be used to expand the program. AGENCY shall keep records to accurately record and report the use of program income.
3. AGENCY and the COUNTY shall administer budget adjustments and balances through the following processes:

#### ADJUSTMENTS

AGENCY shall not make minor or major budget adjustments without prior written approval of the COUNTY.

Major budget adjustments are defined as:

- those changes that move funds between the major budget categories of Personal Services, Materials and Services, Capital Outlay or Equipment, or
- those changes that exceed 10% within a major budget category.

Minor budget adjustments are those changes where less than 10% of the funds within a budget category (Personal Services, Materials and Services, Capital Outlay or Equipment) are moved between expenditure line items.

The COUNTY, working through the Commission on Children & Families and staff of the Office for Children & Families, will work with the AGENCY to manage budget adjustments.

#### BALANCES

The AGENCY is to forecast any expected grant balance and notify the Office for Children and Families by April 30 of each fiscal year. See also Payment Procedures in Exhibit 2.

4. Line item budget (COUNTY provided form attached).

**Clackamas County Office for Children and Families  
Budget Summary (FY'05)**

<b>Budget Category</b>	<b>JCP Amount</b>	<b>Match (if any)</b>
<b>A. Personnel</b>	\$ <u>11,390</u>	\$ _____
<b>B. Fringe Benefits</b>	\$ <u>2,000</u>	\$ _____
<b>C. Travel</b>	\$ _____	\$ _____
<b>D. Equipment</b>	\$ _____	\$ _____
<b>E. Supplies</b>	\$ _____	\$ _____
<b>F. Construction</b>	\$ _____	\$ _____
<b>G. Consultants/Contracts</b>	\$ _____	\$ _____
<b>H. Other</b>	\$ _____	\$ _____
<b>Total Direct Costs</b>	\$ _____	\$ _____
<b>I. Indirect Costs</b>	\$ _____	\$ _____
<b>TOTAL PROJECT COSTS</b>	\$ <u>13,390</u>	\$ _____
<b>Juvenile Crime Plan Funds Request</b>	\$ <u>13,390</u>	\$ _____
<b>Match Amount</b>	\$ _____	\$ _____



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Alice Rouyer, Community Development and Public Works Director**  
**John Gessner, Planning Director**

**From: Keith Jones, Associate Planner**

**Subject: Historic Designation for 9908 SE Cambridge Lane (HR-04-01)**

**Date: September 29, 2004 for the October 19, 2004 meeting**

### **Action Requested**

Adopt the Design and Landmarks Commission's recommendation to amend the Comprehensive Plan to change the historic designation for the property at 9908 SE Cambridge Lane from "unrankable" to "contributing".

### **Background**

The owner of the house located at 9908 SE Cambridge Lane is requesting that the historic designation of the property be changed from "unrankable" to "contributing". Comprehensive Plan Map #4 (Historic Resource Map) and Appendix 1 (Historic Resources Property List) will be amended by ordinance under this proposal, if approved.

In 1988, the City inventoried historic property and adopted rules for protection. Historic properties were placed in three categories including:

- "significant" - properties with outstanding historic qualities.
- "contributing" - properties with good historic value but not outstanding.
- "unrankable" - properties that are valuable but lack information to rank or not rank them.

The historic regulations contained in the zoning ordinance indicate that “unrankable” property should be ranked once additional information becomes available. No new evidence is known to exist now that didn’t exist in 1988. However, the regulations do not indicate how information would ever become available to rank the property and allow the owner to receive a building permit. A historical account of the house does exist in the book titled “Twas Many Years Since: 100 Years in the Waverly Area 1847-1947” by Elizabeth F. Dimon which was published in 1981.

The Design and Landmarks Commission held a hearing on August 25, 2004 and adopted a recommendation that the City Council approve the request. Historic designation requests are based on the following criteria:

1. The property must be assessed using the Historic Evaluation Worksheet.
2. The proposed ranking must comply with Zoning Ordinance Section 19.905 – Approval Criteria For All Amendments and Comprehensive Plan Chapter 2 – Plan Review and Amendment Process.

The owner indicates that using the information in the book by Ms. Dimon and comparing his property with other historic designated properties in the Waverly area provides sufficient evidence to support a “contributing” designation. This conclusion is based on the fact that the home was designed by a notable architect, Morris Whitehouse, and because the English Cottage style is a rare design. The applicant indicates that the house should not be classified as “significant” mainly because the home is not a highly visible landmark and the original architectural design was modified. The owner proposes to restore the building closer to its original design which includes replacing a sunroom, an original design feature that was removed in the 1960s (see Attachment 4). The proposal complies with the approval criteria to amend the Comprehensive Plan (See Exhibit B of Attachment 1).

### **Concurrence**

The Design and Landmarks Commission, City Attorney, and Planning Director concur with the proposal.

### **Fiscal Impact**

The proposal will not affect city revenues or expenditures and therefore there are no fiscal impacts.

### **Work Load Impacts**

Two hours of staff time is needed to update the Comprehensive Plan to show the change in designation.

### **Alternatives**

The Council has the following decision-making options:

1. Adopt the Design and Landmarks Commission recommendation and findings in support of a “contributing” designation.
2. Deny the request and maintain the status of the property as “unrankable” and adopt new findings in support of this decision.

### **Attachments**

1. Proposed City Council Ordinance with Design and Landmarks Commission recommended findings in support of the “contributing” designation.
2. Example Historic Evaluation Worksheet
3. Applicant’s narrative.
4. Plans including site plans, floor plans and elevation drawings

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN TO CHANGE THE HISTORIC DESIGNATION OF PROPERTY AT 9908 SE CAMBRIDGE LANE FROM "UNRANDKABLE" TO "CONTRIBUTING".**

**WHEREAS**, the property owner applied for an application (File HR-04-01) to change the historic designation of the property from "unrankable" to "contributing"; and

**WHEREAS**, the Design and Landmarks Commission conducted a public hearing on August 25, 2004 in accordance with Milwaukie Municipal Code Chapter 19.323.5 and 19.1011.4 and recommended approval to the City Council; and

**WHEREAS**, the City Council conducted a public hearing on October 19, 2004 in accordance with Milwaukie Municipal Code Chapter 19.323.5 and 19.1011.4; and

**WHEREAS**, the proposal is consistant with evaluation criteria supporting the "contributing" historic designation; and

**WHEREAS**, the proposal is consistent with MMC 19.905 and Comprehensive Plan Chapter 2 which governs amendments to the Comprehensive Plan; and

**WHEREAS**, the Comprehensive Plan Map Amendment implements the change in historic landmark designation for property located at 9908 SE Cambridge Lane from "unrankable" to "contributing"; and

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

- Section 1.** Findings. Findings of fact in support of the proposed amendment is attached as Exhibit A.
- Section 2.** The proposal is consistent with criteria governing amendments to the Comprehensive Plan as shown in Exhibit B.
- Section 3.** Comprehensive Plan Map Amendment. The Comprehensive Plan Map #4 and Comprehensive Plan Appendix 1 Historic Resources Property List are amended so property addressed as 9908 SE Cambridge Lane is ranked as "contributing" historic property.

## ORDINANCE NO. \_\_\_\_\_

## Exhibit A

## Findings of Fact and Conclusions

1. The applicant has applied for a Historic Resource Designation (HR) application to designate the "unrankable" property at 9908 SE Cambridge Lane as "contributing" in accordance with Section 19.323.5.
2. "Contributing" property must score 43 to 52 points on the evaluation worksheet or 10 in one or more categories. By comparing the property to neighboring historical homes, the property scored a total of 36, with a score of 10 for its Historical Association and, therefore, qualifies as "contributing" property.
3. The applicant has demonstrated that the property scores a 10 under Historical Association since the building was designed by notable Architect Morris Whitehouse and, therefore, shall be ranked as a "contributing" property under Section 19.323.3. The score corresponds with the ranking of 10 for other neighboring houses designed by important local architects Richard Sunderleaf (9712 and 9717 SE Cambridge Lane) and William Widden (9900 SE Cambridge Lane).
4. Comprehensive Plan Map #4 and Comprehensive Appendix 1 Historic Resources Property List shall be changed to reflect the new historic designation.
5. The proposal is consistent with applicable state, regional and Milwaukie Comprehensive Plan policies (Statewide Planning Goal 5 and the Historic Resources Element of the Comprehensive Plan).

*Protecting historic resources is Goal 5 of the Statewide Planning Goals. This proposal complies with Goal 5 by designating historic resources.*

- d. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

*No changes or impacts to public facilities would result from this designation proposal.*

- e. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.1400.

*The use and underlying R-10 zoning of the property would not change with this designation proposal and would not affect the transportation system.*

2. The proposal is consistent with the Comprehensive Plan Chapter 2 – Plan Review and Amendment Process as follows:

Objective #1 – Policy 7 - All Plan amendments will be evaluated based on the following criteria:

- Conformance with the Comprehensive Plan, its goals and policies and spirit.

*The proposal is consistent with this section as stated in MMC 19.905 criteria above.*

- Public need for the change.

*Designating historic property has been identified as a public need in Chapter 3 – Historic Resources Element.*

- Public need is best satisfied by this particular change

*Public need is satisfied as stated above.*

- The change will not adversely affect the health, safety, and welfare of the community.

*Public health and safety will not be affected.*

- The change is in conformance with applicable Statewide Planning Goals

*Designating historic resources is in compliance with Goal 5.*

- The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

*No functional plan or other regional policies apply.*

# ATTACHMENT 2

RS 5.A. 9

## CITY OF MILWAUKIE CULTURAL RESOURCE EVALUATION FORM

### Criteria for Establishing Significance

Name:	Rank:
Address:	Legal:
Date of Construction:	Zone:
Style:	Land Size:
Type:	Use:

### HISTORICAL ASSOCIATION

**PERSON/GROUP/ORGANIZATION:** Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

**EVENT:** Associated with an event that has made a significant contribution to the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

**PATTERN:** Associated with, and illustrative of, broad patterns of cultural, social, political, economic, or industrial history in the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

---

SUBTOTAL:

## ENVIRONMENT

LANDMARK: Significance as a visual landmark.

Symbol for the City	10
Conspicuous/well-known in community	7
Conspicuous/well-known in neighborhood	5
Not conspicuous/well-known	0

SETTING: Significance because current land-use surrounding the property contributes to the integrity of the pertinent historic period.

Excellent	4
Very Good	3
Good	2
Fair/Poor	0

CONTINUITY: Significance because the property contributes to the continuity or character of the street, neighborhood, or community.

Establishes character	7
Important in maintaining character	5
Compatible	3
Incompatible	0

---

SUBTOTAL:

---

TOTAL:

9908 SE Cambridge Lane  
 Milwaukie, OR. 97222  
 503-659-2207 (h)  
 503-913-6634 (m)  
[lyndonM@barcodesupply.com](mailto:lyndonM@barcodesupply.com)

**ATTACHMENT 3**

**RS 5.A. 12**

August 4, 2004

City Of Milwaukie  
 Attention: Keith Jones  
 Associate Planner  
 Community Development  
 6101 SE Johnson Creek Blvd  
 Milwaukie, OR. 97206  
[jonesk@ci.milwaukie.or.us](mailto:jonesk@ci.milwaukie.or.us)

**Ref: Building Permit Application for a Historic Resources Designation of an "Unrankable" Property**

- 1) Background
  - a) 9908 SE Cambridge Lane, site 38, is listed on Appendix 1 – Historic Resources Property List – as an "Unrankable" property for lack of information and has not been scored.
  - b) The property is identified as "an early important house" in the "Twass Many Years Since", 100 Years in the Waverley Area 1847-1947, Elizabeth F. Dimon, Milwaukie, OR. 1981.
  - c) To the new owners this publication is the only known resource for information on the property and is the source for all historical references to the property.
- 2) Purpose of the Application
  - a) The new owners, Cindy and Lyndon Murray, acquired the property in September 2003 and now wish to renovate the property.
  - b) The last known renovation was done in 1967 (City Building Permit #3028 dated April 14, 1967) during which the character of the property was compromised with the removal of the sunroom and conversion into an lengthened living room and master bedroom, and the addition of a carport attached to the cottage.
- 3) Ranking
  - a) The owners believe the property should be a "Contributing Property" with a score of 36 primarily because of the 10 Ranking on Person under Historical Association . This score is based on similar properties in the neighborhood especially 9900 SE Cambridge Lane (Site 17; Score 27), immediately to the North and 9911 Cambridge Lane (Site 3; Score 50) to the West.

No	Address	History			Architecture					Envirn.			Total
003	9712 SE Cambridge Lane	10	0	0	10	4	2	7	7	5	4	7	56
004	9717 SE Cambridge Lane	10	0	0	10	4	0	7	7	5	4	5	52
006	9911 SE Cambridge Lane	10	0	0	10	2	0	7	7	5	4	5	50
008	10200 SE Cambridge Lane	0	0	0	10	4	0	7	10	5	4	5	45
005	9900 SE Cambridge Lane	10	0	0	3	2	0	3	0	0	4	5	27
038	9908 SE Cambridge Lane	10	0	0	3	2	2	3	7	0	4	5	36

9908 SE Cambridge Lane  
Milwaukie, OR. 97222  
503-659-2207 (h)  
503-913-6634 (m)  
[lyndonM@barcodesupply.com](mailto:lyndonM@barcodesupply.com)

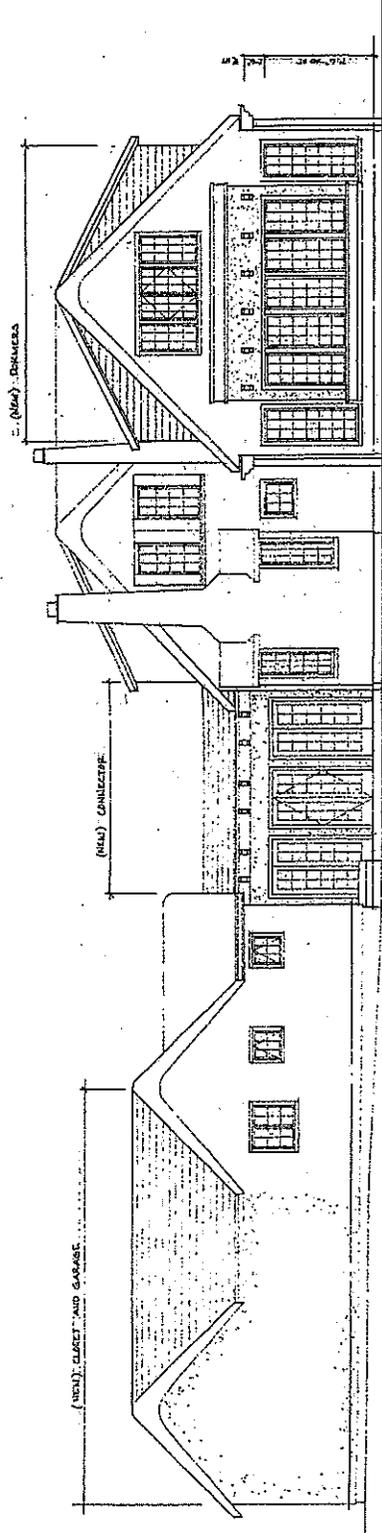
RS 5.A. 14

- d) A flat-roofed carport was added to the cottage. The original and still existing garage is almost 50 yards from the house and, as a result, is impractical in a modern context.
- 6) Proposed Changes
- a) Every reasonable effort is being made by the owners to undo the damage done in 1967 to the exterior integrity of the house and to restore the original look and feel of the house while updating the electrical, plumbing systems and optimizing space utilization without adding to the footprint of the house.
- b) The 1967 extension "unbalances" the house. The owners propose adding dormers that match existing ones to the extension to restore balance. The East side existing dormer will be extended and a new one will be added to the West side.
- c) The windows in the dormers and at the South end of the house will match the rest of the house and the original as closely as possible. The look and feel of the sun room will be restored.
- d) The "Greek" style entrance will be removed and weather protection provided by an entrance that picks-up the existing second floor eyebrow.
- e) The pantry window which was enlarged in 1967 will be put back to its original dimensions.
- f) The carport will be incorporated into the cottage and made to look as if it were an integral part of the original design. This will be achieved by extending the roof with the same peaks and connector as the cottage and main house and by using the same design for the garage doors as the existing detached garage.
- g) Currently the cottage is connected to the main house via a covered walkway that is badly damaged with extensive dry rot and is not in a safe condition. The proposed design calls for the connector to be made permanent and converted into an all-weather walkway which includes a relocated utility room. The look and feel will be entirely consistent with the rest of the house.

RECEIVED

JUL 19 2004

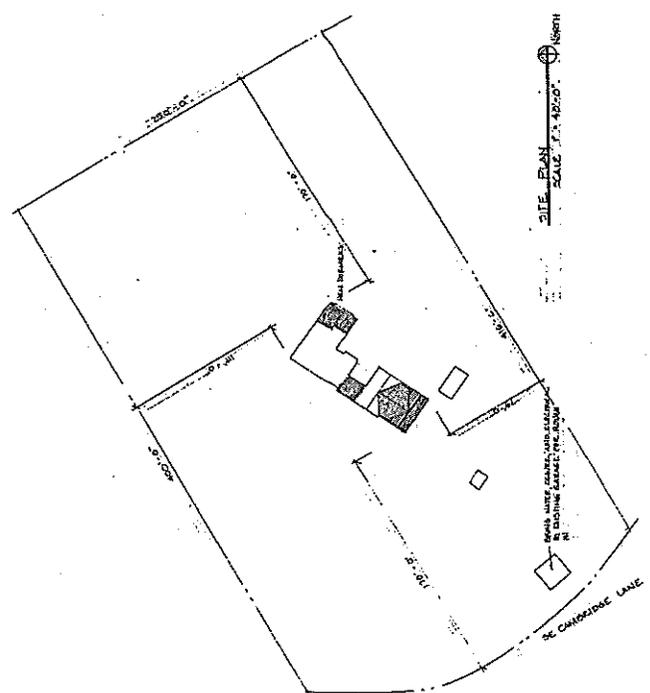
CITY OF MILWAUKIE  
PLANNING DEPARTMENT



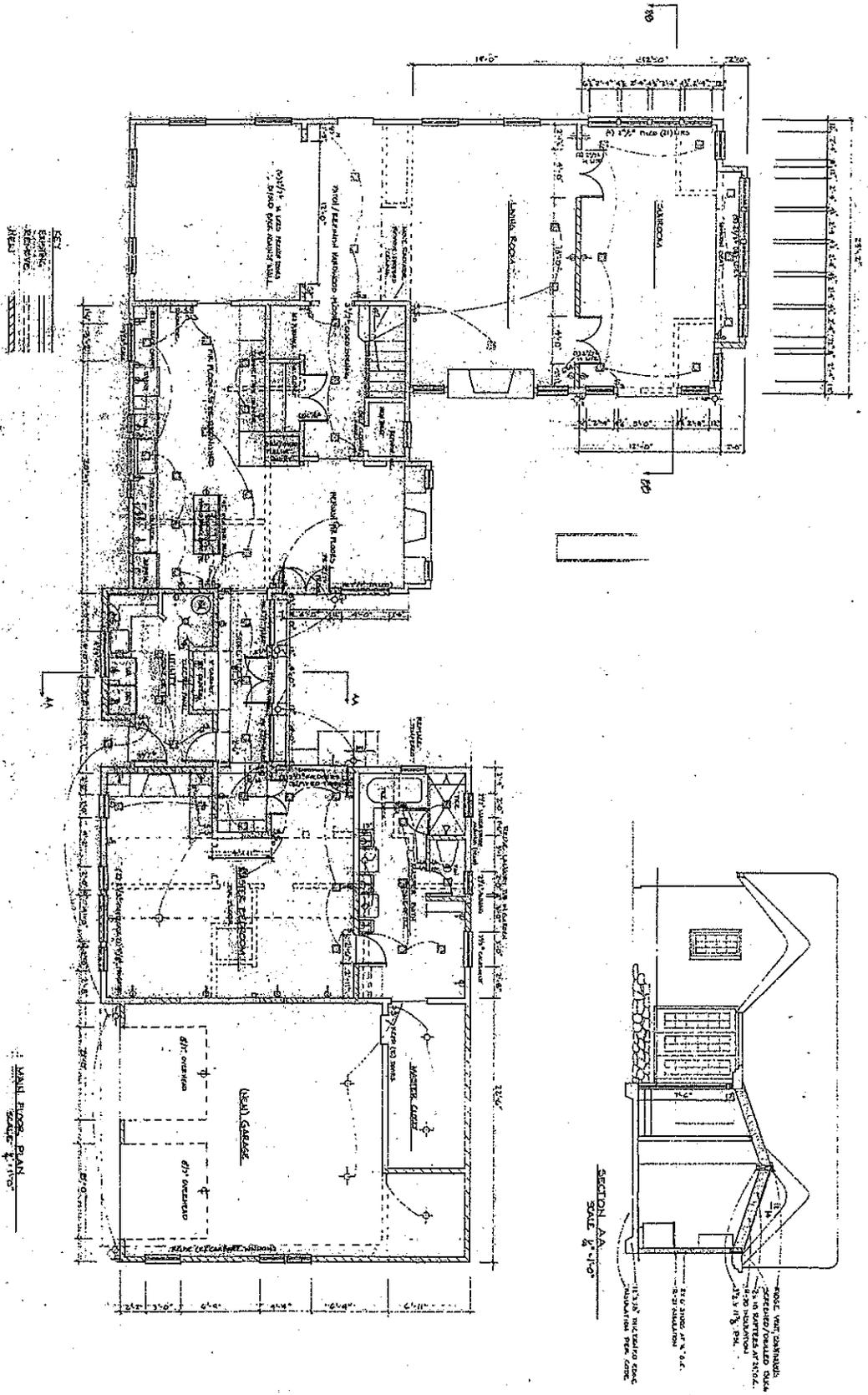
NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CONCRETE	100	YD	10.00	1000.00
2	CEMENT	100	YD	10.00	1000.00
3	BRICKS	100	YD	10.00	1000.00
4	ROOFING	100	YD	10.00	1000.00
5	PAINT	100	YD	10.00	1000.00
6	LABOR	100	YD	10.00	1000.00
7	FOUNDATION	100	YD	10.00	1000.00
8	WALLS	100	YD	10.00	1000.00
9	FLOORING	100	YD	10.00	1000.00
10	CEILING	100	YD	10.00	1000.00
11	MECHANICAL	100	YD	10.00	1000.00
12	ELECTRICAL	100	YD	10.00	1000.00
13	PLUMBING	100	YD	10.00	1000.00
14	LANDSCAPE	100	YD	10.00	1000.00
15	PERMITS	100	YD	10.00	1000.00
16	INSULATION	100	YD	10.00	1000.00
17	GLASS	100	YD	10.00	1000.00
18	DOORS	100	YD	10.00	1000.00
19	WINDOWS	100	YD	10.00	1000.00
20	STAIRS	100	YD	10.00	1000.00
21	BATHS	100	YD	10.00	1000.00
22	KITCHENS	100	YD	10.00	1000.00
23	HALLS	100	YD	10.00	1000.00
24	CLIMBING	100	YD	10.00	1000.00
25	ROOFING	100	YD	10.00	1000.00
26	PAINT	100	YD	10.00	1000.00
27	LABOR	100	YD	10.00	1000.00
28	FOUNDATION	100	YD	10.00	1000.00
29	WALLS	100	YD	10.00	1000.00
30	FLOORING	100	YD	10.00	1000.00
31	CEILING	100	YD	10.00	1000.00
32	MECHANICAL	100	YD	10.00	1000.00
33	ELECTRICAL	100	YD	10.00	1000.00
34	PLUMBING	100	YD	10.00	1000.00
35	LANDSCAPE	100	YD	10.00	1000.00
36	PERMITS	100	YD	10.00	1000.00
37	INSULATION	100	YD	10.00	1000.00
38	GLASS	100	YD	10.00	1000.00
39	DOORS	100	YD	10.00	1000.00
40	WINDOWS	100	YD	10.00	1000.00
41	STAIRS	100	YD	10.00	1000.00
42	BATHS	100	YD	10.00	1000.00
43	KITCHENS	100	YD	10.00	1000.00
44	HALLS	100	YD	10.00	1000.00
45	CLIMBING	100	YD	10.00	1000.00
46	ROOFING	100	YD	10.00	1000.00
47	PAINT	100	YD	10.00	1000.00
48	LABOR	100	YD	10.00	1000.00
49	FOUNDATION	100	YD	10.00	1000.00
50	WALLS	100	YD	10.00	1000.00
51	FLOORING	100	YD	10.00	1000.00
52	CEILING	100	YD	10.00	1000.00
53	MECHANICAL	100	YD	10.00	1000.00
54	ELECTRICAL	100	YD	10.00	1000.00
55	PLUMBING	100	YD	10.00	1000.00
56	LANDSCAPE	100	YD	10.00	1000.00
57	PERMITS	100	YD	10.00	1000.00
58	INSULATION	100	YD	10.00	1000.00
59	GLASS	100	YD	10.00	1000.00
60	DOORS	100	YD	10.00	1000.00
61	WINDOWS	100	YD	10.00	1000.00
62	STAIRS	100	YD	10.00	1000.00
63	BATHS	100	YD	10.00	1000.00
64	KITCHENS	100	YD	10.00	1000.00
65	HALLS	100	YD	10.00	1000.00
66	CLIMBING	100	YD	10.00	1000.00
67	ROOFING	100	YD	10.00	1000.00
68	PAINT	100	YD	10.00	1000.00
69	LABOR	100	YD	10.00	1000.00
70	FOUNDATION	100	YD	10.00	1000.00
71	WALLS	100	YD	10.00	1000.00
72	FLOORING	100	YD	10.00	1000.00
73	CEILING	100	YD	10.00	1000.00
74	MECHANICAL	100	YD	10.00	1000.00
75	ELECTRICAL	100	YD	10.00	1000.00
76	PLUMBING	100	YD	10.00	1000.00
77	LANDSCAPE	100	YD	10.00	1000.00
78	PERMITS	100	YD	10.00	1000.00
79	INSULATION	100	YD	10.00	1000.00
80	GLASS	100	YD	10.00	1000.00
81	DOORS	100	YD	10.00	1000.00
82	WINDOWS	100	YD	10.00	1000.00
83	STAIRS	100	YD	10.00	1000.00
84	BATHS	100	YD	10.00	1000.00
85	KITCHENS	100	YD	10.00	1000.00
86	HALLS	100	YD	10.00	1000.00
87	CLIMBING	100	YD	10.00	1000.00
88	ROOFING	100	YD	10.00	1000.00
89	PAINT	100	YD	10.00	1000.00
90	LABOR	100	YD	10.00	1000.00
91	FOUNDATION	100	YD	10.00	1000.00
92	WALLS	100	YD	10.00	1000.00
93	FLOORING	100	YD	10.00	1000.00
94	CEILING	100	YD	10.00	1000.00
95	MECHANICAL	100	YD	10.00	1000.00
96	ELECTRICAL	100	YD	10.00	1000.00
97	PLUMBING	100	YD	10.00	1000.00
98	LANDSCAPE	100	YD	10.00	1000.00
99	PERMITS	100	YD	10.00	1000.00
100	INSULATION	100	YD	10.00	1000.00



- Comments:**
1. Review all surfaces to be finished with 1/2" dry pack.
  2. Concrete strength to be 3000 psi.
  3. All concrete to be placed in 24 hours.
  4. All forms and shoring to be removed in 48 hours.
  5. All forms and shoring to be removed in 48 hours.
  6. All forms and shoring to be removed in 48 hours.
  7. All forms and shoring to be removed in 48 hours.
  8. All forms and shoring to be removed in 48 hours.
  9. All forms and shoring to be removed in 48 hours.
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  17. All forms and shoring to be removed in 48 hours.
  18. All forms and shoring to be removed in 48 hours.
  19. All forms and shoring to be removed in 48 hours.
  20. All forms and shoring to be removed in 48 hours.



201E PLAN SCALE 1/4" = 1'-0"

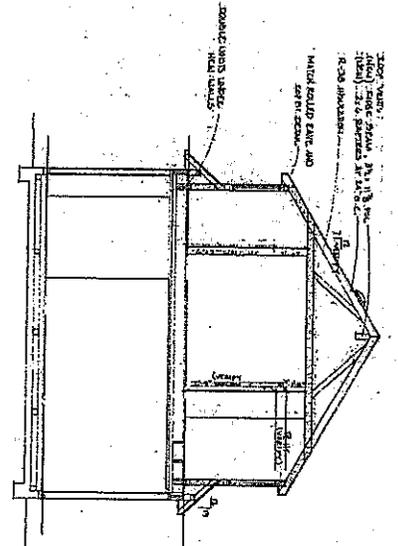
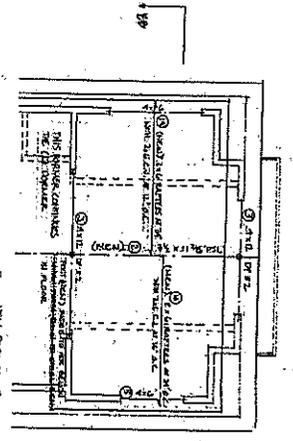
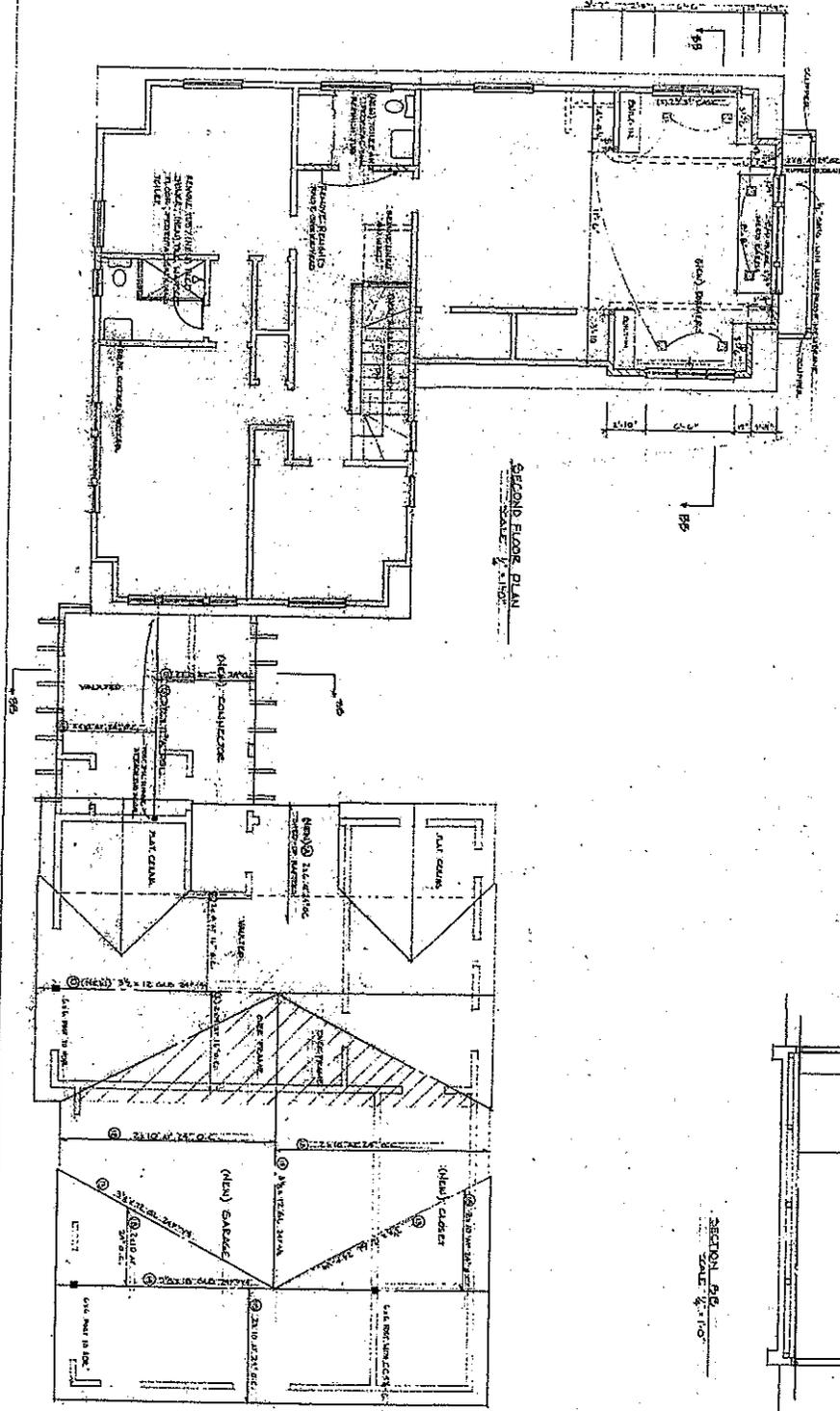


SECTION A-A

1/2" = 1'-0"	1/4" = 1'-0"
1/8" = 1'-0"	1/16" = 1'-0"
1/32" = 1'-0"	1/64" = 1'-0"
1/64" = 1'-0"	1/128" = 1'-0"
1/256" = 1'-0"	1/512" = 1'-0"
1/1024" = 1'-0"	1/4096" = 1'-0"

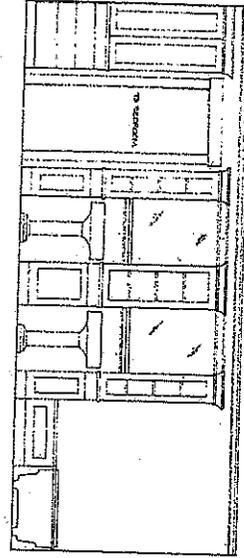
MAIN FLOOR PLAN  
SCALE 1/8" = 1'-0"

SECTION A-A  
SCALE 1/4" = 1'-0"

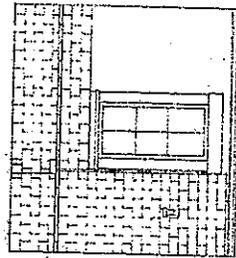


MURRAY RESIDENCE • 97 CAMBRIDGE LAKE • MILWAUKEE • 53222 • DESIGNED BY JUDITH LOST

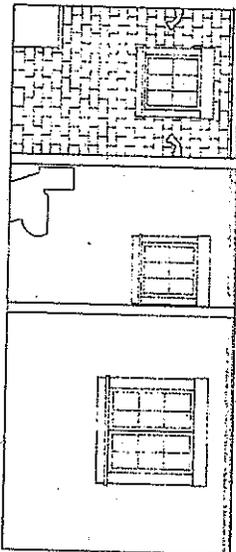
ROOM - FRAMING PLAN FOR  
2ND FLOOR DISTANCE 1/8" = 1'-0"  
SCALE 1/8" = 1'-0"



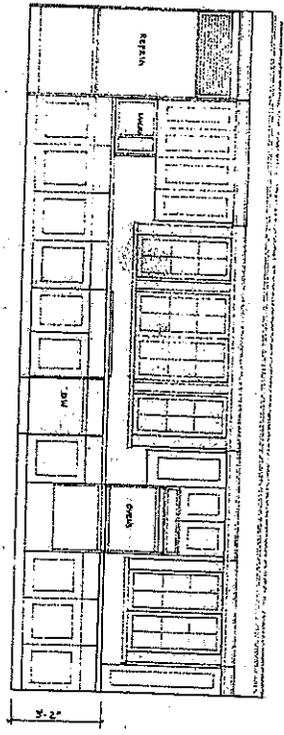
MASTER BATH  
SCALE: 1/8" = 1'-0"



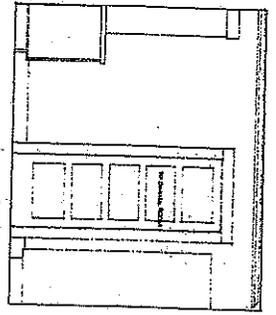
FINISH/BRICK WALL  
SCALE: 1/8" = 1'-0"



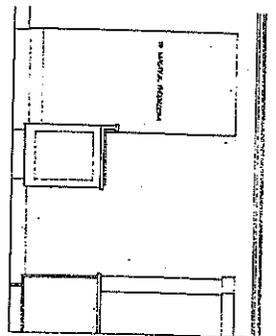
FINISH/BRICK WALL  
SCALE: 1/8" = 1'-0"



KITCHEN  
SCALE: 1/8" = 1'-0"



CHINA CABINET WALL  
SCALE: 1/8" = 1'-0"



FINISH/BRICK WALL  
SCALE: 1/8" = 1'-0"



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Alice Rouyer, Community Development & Public Work Director

**From:** John Gessner, Planning Director  
Lindsey Nesbitt, Associate Planner

**Date:** October 8, 2004 for the October 19, 2004 Council Meeting

**File:** ZA-04-01

**Applicant:** City of Milwaukie Community Development

**Site Address:** Downtown Zones

**NDA:** All

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### **Action Requested**

**Adopt the proposed ordinance amending Zoning Ordinance Section 19.312 and the Milwaukie Zoning Map as recommended by the Planning Commission and Design and Landmarks Commission.**

### **Background Information**

In September 2000, the City Council adopted the Downtown and Riverfront Land Use Framework Plan. The plan was developed to create more vitality in the downtown, to draw businesses and residents to the downtown, and to connect the riverfront to the downtown. In conjunction with developing the Downtown and Riverfront Land Use Framework Plan, the downtown area was rezoned to allow for a mix of uses including commercial and office buildings, transit center, hotel, multifamily housing, townhouses, and retail along Main Street.

New code language was drafted for the downtown implementing the Downtown Plan. The Zoning Ordinance includes development standards for site development, public area requirements for improvements along streets, and design standards that regulate development in the downtown to ensure an active, attractive, and accessible environment for shoppers, employers, and residents.

In April 2003, the Milwaukie Downtown Design Guidelines were adopted. The guidelines were developed to provide a framework within which to review development in the

downtown and to support and compliment the adopted Downtown and Riverfront Land Use Framework Plan.

The North Main redevelopment site was originally defined in the Downtown Plan and zoning code as a site for a new downtown transit center. In 2001, the City Council abandoned the transit center plan in favor of a public-private venture to develop the site for mixed-use development.

Over the past seven months, a team of Community Development staff and consultants have been working with the developer to prepare the mixed-use project anticipated for the former Safeway site. During the process of creating the proposed plan, the team discovered that in some instances the downtown zoning code needed to be adjusted in order to accomplish the overall goals of the project.

On September 28, 2004, the Planning Commission conducted a public hearing and adopted a motion recommending the City Council approve the proposed code changes and ordinance. On September 29, 2004, the Design and Landmarks Commission adopted a motion concurring with the Planning Commission's September 28, 2004 recommendation.

### **Key Issues**

1. The City of Milwaukie Community Development Department, the applicant in this application, has submitted a package of code amendments to Section 19.312 Downtown Zones. The amendments are submitted in support of the North Main Redevelopment Project slated for a Planning Commission hearing on December 14, 2004.
2. The City is proposing the following code changes to the Downtown Zone:
  - a. Townhouses and ground floor multifamily housing are not presently permitted in the Downtown Storefront (DS) Zone. The proposed change will permit townhouses and multifamily development in a limited portion of the Downtown Storefront Zone. This provision is implemented through designation of the area as the "Village Concept Area".
  - b. Presently, surface parking lots and driveway curb cuts are not permitted within 50 feet of Main Street. The proposed code amendment will permit surface parking lots and driveway curb cuts within 50 feet on Main Street subject to specific limitations including Planning Commission review and approval.
  - c. Presently, unenclosed upper level balconies are not permitted to project into the right-of-way.

The proposed amendment will permit unenclosed upper level projections up to 4 feet into the right-of-way subject to Fire, Building, and other code limitations.

- d. The proposed amendment will modify design standard criteria to create more flexibility for the Planning Commission and the Design and Landmarks Commission in allowing expressly prohibited materials to be used subject to a review process.
3. Staff believes the applicant has demonstrated compliance with applicable approval criteria and recommends approval.

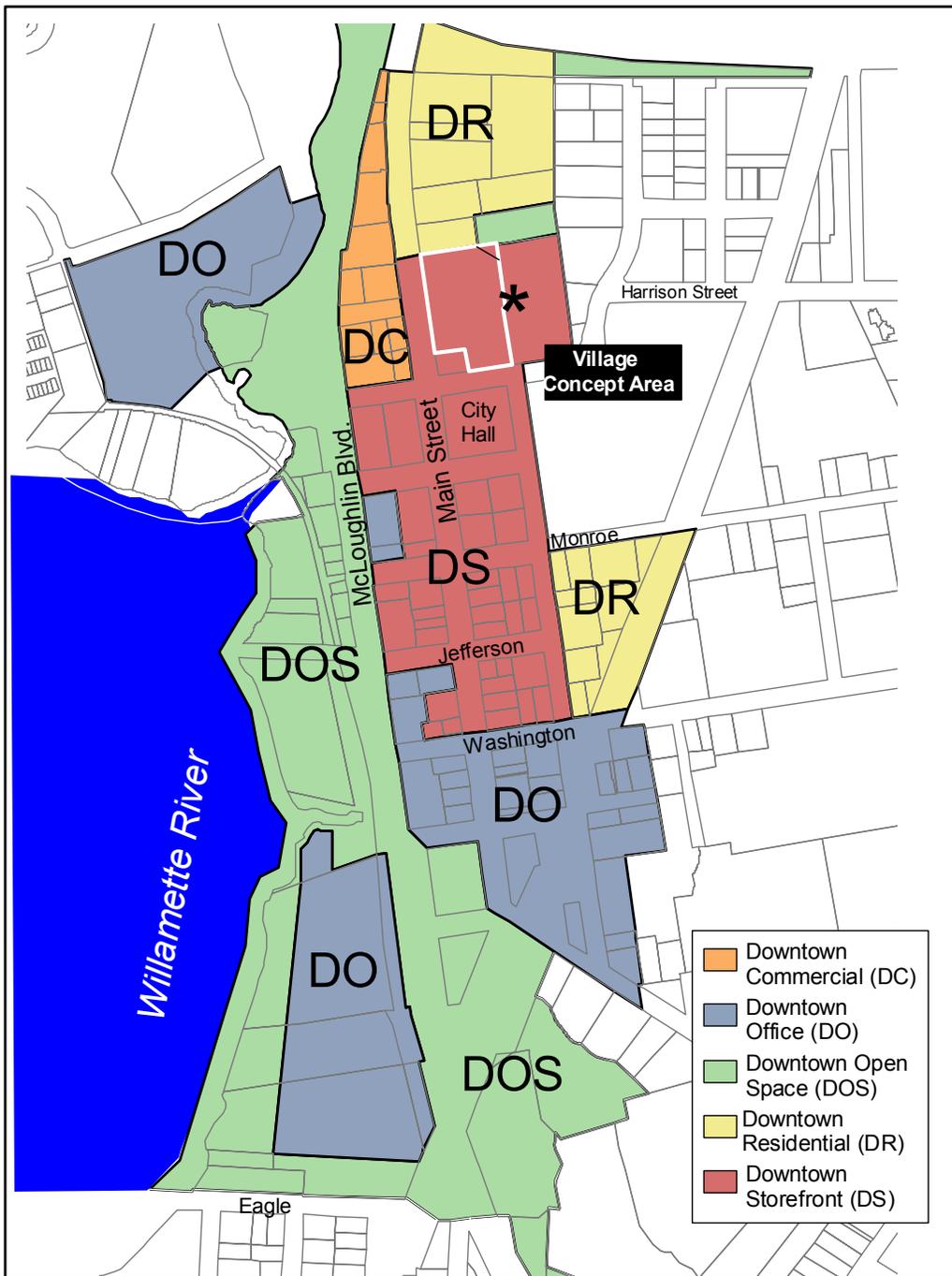
### **Analysis of Key Issues**

#### **1. Creation of the “Village Concept Area” and allowing townhouses and multifamily housing in a limited portion of the Downtown Storefront (DS) Zone.**

The purpose of the DS Zone is to preserve and enhance the commercial “Main Street” character of downtown Milwaukie. The DS Zone allows for a full range of retail, service, business, and residential uses. Retail uses are required on ground floors fronting on Main Street. Office and residential uses are permitted on upper floors.

Staff believes the proposed change is reasonable as follows:

- Townhouses and ground floor multifamily housing will be permitted only on the Safeway site, thereby preserving desired commercial development potential on other sites zoned DS (See map below).
- The site of the Village Concept Area was previously planned for transit center development. With that proposal having been abandoned, it is appropriate to look at suitable alternate uses on the property.
- Commercial uses will still be provided along the ground floor of Main Street.
- Mixed-use residential development supports the downtown.
- The City Council has given prior policy direction to develop a mixed-use project on the site. The proposed “Village Concept Area” code amendment implements that policy.



**2. Proposed curb cuts and surface parking lots within 50 feet of Main Street.**

The DS Zone is defined by a continuous facade of buildings close to the street with adjacent on-street parking particularly along Main Street. Off-street parking is not required for developments in the DS Zone. The applicant is proposing to amend the code to permit surface parking lots and curb cuts within 50 feet of Main Street subject to the following limitations:

- a. The Planning Commission must approve the request.
- b. The applicant must demonstrate that the overall project meets the intent of the code by providing a continuous facade of buildings close to Main Street.
- c. The off-street parking area is visually screened from view of Main Street.
- d. The community need for the off street parking in the area outweighs the need to provide a continuous facade of buildings for the development site.

The applicant is requesting to amend this portion of the code for the following reasons:

- a. Allowing surface parking lots will assist new developments with meeting adequate fire code provisions.<sup>1</sup>
- b. The amendment will give the Commission the discretion to modify this requirement, taking into account the shortage of on-street parking and off street parking in certain areas of the downtown.
- c. The Commission will have the authority to permit surface parking lots and curb cuts within 50 of feet Main Street when it finds that the value of the off-street parking outweighs the need to maintain a continuous facade of buildings.

**3. Allow upper story balconies and projections into the right-of-way**

Currently, provisions regulating balconies are listed in the Landscaping and Open Space section of the Development Standards. The code also establishes minimum dimensions of 6 feet in depth by 8 feet in width for balconies.

The applicant proposes to move the code section governing balconies out of the development standards section and relocating it into the design standards section. Moving this section to Design Standards will allow dimensions of balconies to be modified through the Modifications of Design Standards rather than going through a standard variance process.

Currently, upper level balconies are not permitted to project into the right-of-way. The applicant is proposing to insert a provision that will permit unenclosed upper level

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<sup>1</sup> Fire code provisions require fire truck access to all sides of buildings that do not have frontage on a public street.

balconies to extend into the right-of-way no more than 4 feet.<sup>2</sup> The applicant has indicated this provision will allow developers to flexibly use the right-of-way space for outdoor upper level balconies provided other fire, building, and public works standards are met.

Staff believes that balconies encourage outdoor use of space and add to the mixed use and residential character of downtown.

**4. Modification to design standards.**

The downtown design standards are intended to encourage building design and construction with durable high-quality materials. They are intended to support the development of a cohesive, attractive, and safe downtown area and encourage private investment. The standards are intended to be clear and objective.

The developer for the North Main project has expressed interest in using prohibited materials and window treatments. The applicant is proposing to amend the modification of design standards criteria to allow the modification and use of prohibited materials subject to limitations.

The modification will allow developers to modify various design standards using approval criteria other than the typical variance criteria. The applicant believes this will offer the Planning Commission and the Design and Landmarks Commission flexibility in granting modifications that will both meet the intent of the code and positively contribute to the appearance of the downtown.

**5. Staff believes the applicant has demonstrated compliance with applicable approval criteria. (See Exhibit 3 of the proposed ordinance for details.)**

The key code change with regard to land use is the "Village Concept Area". Section 905(b) (1) requires consideration of six elements. The following summarizes the applicant's response. See also applicant's narrative.

*Site Location and Character of the Area*

The proposed code amendments for the North Main site support and enhance the character of the area. The character of the area and uses adjacent to the site are commercial/retail, public service (Ledding Library, City Hall) and open space.

*Predominant Land Use Pattern and Density of the Area*

The current land use pattern in the downtown is a mix of commercial/retail, municipal services and open space. It is surrounded by a dense residential neighborhood.

*Mitigation Measures*

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<sup>2</sup> Subject to building, fire, safety, and public works standards.

The proposed code amendments support increased density but is not expected to create the need for any significant mitigation measures. The Milwaukie Downtown and Riverfront Land Use Framework Plan and Downtown Zoning Code call for accommodating increasing density in the downtown. Generally, there is capacity in the downtown to support increased density. Existing water, sewer, power and phone services are adequate. Some upgrade of the storm system may be needed but can be accommodated.

Any project development will require a transportation impact analysis and full development review process. Traffic and transportation study may reveal the need for some mitigation such as improving safety at the intersections of 21 and Harrison and Harrison and Main Streets. Potential mitigation measures will be identified at the time of development review.

#### *Expected Changes in the Development Pattern*

The "Village Concept Area" implements proposed changes in the development pattern by allowing first floor residential uses on the former Safeway site. No other changes to existing or planned land use patterns are expected.

#### *Need for Use allowed by Amendment*

The need for the proposed first floor residential use comes from existing downtown planning policies that encourage downtown housing and City Council direction with regards to the specific redevelopment proposal for the former Safeway site.

#### *Lack of Suitable Alternative Site already Zoned for the Use*

Because of the uniqueness and the goals of the project, there are no other alternative sites already zoned for the use. This project best fits in the downtown with its mix of commercial/retail shops, housing and high- density development. It is a unique site that is highly visible in the downtown. An innovative village concept area is sought because of the site's high visibility and impact as a catalyst for future revitalization in the downtown.

### **Code Authority and Decision Making Process**

Milwaukie Zoning Ordinance Sections:

1. 19.900 Amendments
2. 19.1011.4 Major Quasi Judicial Review
3. 19.1011.5 Legislative Actions
4. 19.1400 Transportation Planning, Design Standards and Procedures

### **Comments**

Historic Milwaukie Neighborhood District Association (NDA) (Verbal comments from Ed Zumwalt) – Historic Milwaukie is in support of the North Main project, but is concerned

about traffic control. The NDA expressed concern with future traffic and the number of trips that will be generated by the proposal, as well as how the additional traffic will be managed.

### **Concurrence**

The Planning Commission, Design and Landmarks Commission, City Attorney, and staff concur with the proposal.

### **Fiscal Impact**

There are no expected fiscal effects of the proposed amendments, as they would not directly affect budget revenues or expenditures.

### **Work Load Impacts**

There are no workload impacts of the proposed amendment other than administrative tasks including legal notice and records management normally associated with code amendments.

### **Alternatives**

The Council has the following decision-making alternatives:

- a. Adopt the proposed ordinance.
- b. Reject the proposed ordinance.
- c. Direct staff to modify the proposal and return for further consideration.
- d. Take no action.

### **Attachments**

1. Applicant's Narrative
2. Adopting Ordinance



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Stewart Taylor, Finance Director

Subject: Resolution – Adopting City Investment Policy

Date: September 22, 2004 for October 5, 2004 City Council Meeting

**Action Requested**

Approve the resolution adopting a City Investment Policy.

**Background**

Oregon Revised Statutes Chapter 194 sets forth the regulations for county and municipal finance administration. Among the provisions is a requirement that surplus funds be invested according to a written order of the governing body. The written order is generally provided through an investment policy adopted by the County Commission or City Council. Before a governing body can adopt an investment policy, the policy must be submitted to the Oregon Short Term Fund Board (OSTFB) for review and comment. The investment policy should be reviewed and readopted by the governing body following a change in the investment environment or following turnover in a key staff position.

The current investment policy for the City of Milwaukie was last reviewed by the OSTFB in August, 1993. Because of changes in the investment environment and turnover in both the City Manager and Finance Director positions, it is appropriate for the City Council to review and readopt the City's investment policy

The proposed policy was reviewed by the OSTFB on September 29, 2004. The policy incorporates minor changes to the existing policy that create additional investment opportunity while maintaining the priority of objectives for safety, liquidity and yield.

**Concurrence**

None required.

**Fiscal Impact**

The policy establishes parameters for short-term investment of surplus City funds.

**Work Load Impacts**

Managing the City's investments is included in the duties of the Finance Director.

**Alternatives**

1. Approve the policy as proposed.
2. Modify the policy.
3. Do not approve the policy.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A CITY INVESTMENT POLICY**

**WHEREAS**, Chapter 194 of the Oregon Revised Statutes sets forth the regulations for county and municipal finance administration; and

**WHEREAS**, the statute provides that surplus funds be invested according to a written order of the governing body; and

**WHEREAS**, the written order consists of an investment policy reviewed by the Oregon Short Term Fund Board and adopted by the City Council; and

**WHEREAS**, the current City investment policy was last reviewed by the Short Term Fund Board in August, 1993; and

**WHEREAS**, the policy suggests a periodic review by the City Council and comment by the Short Term Fund Board upon turnover in key personnel and changes in the investment environment; and

**WHEREAS**, the proposed policy has been reviewed by the Short Term Fund Board and incorporates changes to the existing policy that create additional investment opportunity for available city funds; and

**WHEREAS**, the primary objective of the investment policy continues to be preservation of capital and protection of investment principal.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON:**

The investment policy attached as Exhibit A dated October, 2004 is hereby adopted.

**BE IT FURTHER RESOLVED** that this resolution shall be effective immediately upon its passage.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
Ramis, Crew, Corrigan & Bachrach, LLP



**Investment Policy**  
**October, 2004**

# City of Milwaukie Investment Policy

## I. Scope

This policy shall apply to all investable funds of the City of Milwaukie except for deferred compensation fund assets, pension fund assets, and assets of restricted trust and escrow funds. Included under the provisions of this policy are financial assets of general operating funds, enterprise funds, special revenue funds and any other funds not specifically excluded which are recognized in the City's Comprehensive Annual Financial Report.

The investment portfolio will have seasonal and operational fluctuations but will typically range between twelve and fourteen million dollars. Funds will be invested in conformance with all cited city, state and federal regulations.

## II. Objectives

The primary objectives, in priority order, of investment activities shall be safety, liquidity and yield.

**Safety.** Preservation of capital and protection of investment principal are the foremost objectives of the investment program.

**Liquidity.** The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This will be accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands. Furthermore, since all possible cash demands cannot be anticipated, securities in the portfolio will be limited to those with active secondary or resale markets. A major portion of the available surplus funds shall be deposited in the Local Government Investment Pool (LGIP) in order to achieve next-day liquidity for short-term needs.

**Yield.** The investment portfolio shall be designed with the objective of attaining a market value rate of return throughout budgetary and economic cycles. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The portfolio shall be limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed.

## III. Standards of Care

**Prudence.** The standard of prudence to be used for managing the City's assets is the "prudent investor" rule which states, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for

investment considering the probable safety of their capital, as well as the probable income to be derived.”

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally risk-free and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security before maturity is in the best long-term interest of the City.

The City’s Custodial Officer (ORS 294.004 (2)) and staff acting in accordance with this investment policy, written procedures, and Oregon Revised Statutes 294.035 and 294.040 and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price change or other loss in accordance with ORS 294.047, provided that these deviations and losses are reported as soon as practical and action is taken to control adverse developments. Losses that are sustained in the City’s portfolio shall be charged against current or future investment earnings.

**Ethics and Conflicts of Interest.** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall disclose in writing to the City Manager any material interests they have in financial institutions that conduct business with the City. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio.

Officers and employees shall comply with ORS 244.040 (Code of Ethics), ORS 244.120 (Methods of Handling Conflicts), GARS Article 3.15 (Standards of Conduct), any amendments to these provisions, and any Code of Ethics applicable to employees that the City may adopt in the future.

**Delegation of Authority.** The ultimate responsibility and authority for the investment of City funds resides with the City Council. The City hereby designates the Finance Director as the Custodial Officer for the City’s funds. The Custodial Officer shall invest City funds in accordance with ORS Chapter 294, Public Financial Administration, and with this investment policy. This policy shall constitute a “written order” from the City Council per ORS 294.035. The Custodial officer, with the consent of the City Manager, may further delegate the authority to invest City funds to additional City finance personnel.

Subject to required procurement procedures, the City may engage the support services of outside professionals in regard to its financial program, so long as it can be demonstrated or anticipated that these services produce a net financial advantage or necessary financial

protection of the City's resources. External service providers shall be subject to Oregon Revised Statutes and the provisions of this investment policy.

#### **IV. Safekeeping and Custody**

**Agencies.** Investment and safekeeping services shall only be made in qualifying obligations offered through agencies and instrumentalities of the United States as qualified pursuant to ORS 295.005 to 295.165. In addition, all financial institutions and broker/dealers must provide the following, as appropriate:

- Audited financial statements
- Proof of National Association of Securities Dealers (NASD) certification
- Proof of state registration
- Certification of having read and understood the City of Milwaukie's investment policy
- Certification of agreement to comply with the City of Milwaukie's investment policy

An annual review of the financial condition and registration of participating financial institutions and broker/dealers shall be conducted by the Custodial Officer.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis in accordance with ORS 294.145 (4) and (5). It is the intent of the City that all purchased securities be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

Except for the State of Oregon Local Government Investment Pool, time deposit open accounts, Certificates of Deposit and savings accounts, all investment securities purchased by the City, and all purchased securities under the terms of a City approved Master Repurchase Agreement, shall be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

**Internal Controls.** The Custodial Officer shall establish and maintain a system of written internal controls consistent with this policy designed to prevent the loss of public funds due to fraud, error, misrepresentation or imprudent actions by third parties or by employees of the City. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. Written internal controls shall be reviewed and tested at least annually or upon any extraordinary event such as turnover of key personnel or the discovery of inappropriate activity.

**Accounting Method.** The City shall comply with all required legal provisions and generally accepted accounting principles (GAAP) relating to investment accounting. The accounting principles are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants (AICPA), and the Financial Accounting Standards Board (FASB).

**Annual Audit.** The Custodial Officer shall establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. The review shall include the following issues:

- Control of collusion,
- As much as possible, the separation of transaction authority from accounting and record keeping,
- Custodial safekeeping,
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary,
- Clear delegation of authority to subordinate staff members, and
- Written confirmation of transactions for investments and wire transfers

In addition, an independent special review by an external auditor should be conducted upon any extraordinary event such as turnover in key personnel or the discovery of any inappropriate activity.

**Pooling of funds.** Except for cash in certain restricted and special funds, the Custodial Officer shall consolidate cash balances from all funds to maximize opportunities for investment and investment earnings. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

**Collateralization.** All bank deposits, time deposits, certificates of deposit, and savings accounts, shall be collateralized through the collateral pool for any excess over the amount insured by an agency of the United States government in accordance with ORS 295.015 and ORS 295.018. The Custodial Officer is responsible for insuring that a Certificate of Participation has been issued to cover City deposits.

## **V. Investment Parameters**

All investments of the City shall be made in accordance with Oregon Revised Statutes: ORS 294.035 (Investment of surplus funds of political subdivisions; approved investments), ORS 294.040 (Restriction on investments under ORS 294.035), ORS 294.135 (Investment maturity dates), ORS 294.145 (Prohibited conduct for custodial officer), ORS 294.805 to 294.895 (Local Government Investment Pool). Any revisions or extensions of these sections of the ORS shall be assumed to be part of this investment policy immediately upon being enacted.

**Maturities and Diversification.** To the extent possible, the Custodial Officer shall match investments with anticipated future cash flow requirements. Investment maturities shall generally be less than 90 days but may exceed 18 months upon specific City Council approval of a written investment policy. Prior to City Council approval, the investment policy must be submitted to the Oregon Short Term Fund Board for review and comment. The policy must include guidelines concerning maximum investment maturity dates.

Maturities shall be consistent with the following:

- At least fifty percent of the actual portfolio must mature within 93 days.
- Up to 25 percent of the actual portfolio may mature in over one year.
- No investment may mature in over three years.

Diversification shall be consistent with the following:

- At least 10 percent of the actual portfolio must be in U.S. Treasury and/or U.S. Government Agency securities.
- No more than 25 percent of the actual portfolio may be in Bankers Acceptances or Repurchase Agreements.
- No more than 25 percent of the actual portfolio may be in time certificates of deposit.
- No more than 30 percent of the actual portfolio may be invested in any one financial institution with the exception of the Local Government Investment Pool to the extent allowed under ORS 294.810.

## **VI. Other Investment Guidelines**

**Prohibited Conduct.** Oregon State Statutes have addressed several areas of prohibited conduct for the Custodial Officer when making investments, ORS 294.145. Specifically, the Custodial Officer shall not:

- Make a commitment to invest funds or sell securities more than fourteen business days prior to the anticipated date of settlement of the purchase or sale transaction,
- Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest,
- Lend securities to any person or institution, except on a fully collateralized basis, and except when such lending is specifically permitted under an investment policy adopted pursuant to ORS 294.135 (1)(a), or
- Pay for any securities purchased by the custodial officer until the officer has received sufficient evidence of title thereof. Evidence of title shall be consistent with modern investment, banking and commercial practices and may include physical possession, book entry and automated recordation of such title. However, the Custodial Officer may instruct one or more custodian banks, as defined in ORS 295.005, to accept or release securities as the Custodial Officer considers advisable to be held in safekeeping for collection of principal and interest or other income.

**Performance Evaluation.** The Custodial Officer shall periodically establish a benchmark yield for the City's investments. Considerations for establishing the benchmark yield shall include the current yield on the State of Oregon Local Government Investment Pool, and the average yield on the three-month U. S. Treasury Bill. When comparing the performance of the City's portfolio, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return.

**Policy Review.** This investment policy shall be reviewed periodically by the Custodial Officer, the City Manager and the City Council. The policy shall be submitted to the Oregon Short Term Fund Board for review and comment if the City intends to invest in maturities exceeding 18 months or if material changes are made since the last OSTF Board review.

(Revised 10/2004)



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Alice Rouyer, Director of Community Development & Public Works**

**From: Jeffrey King, Project Manager**

**Subject: Approval of Disposition And Development Agreement for the North Main Mixed Use Site Redevelopment Project**

**Date: October 4, 2004 for October 19, 2004 Council Meeting**

### **Action Requested**

The City Council is requested to authorize the City Manager to execute the Disposition and Development Agreement (DDA) between the City and Main Street Partners, LLC in support of the North Main Redevelopment project.

### **Background**

In November 2001, the City purchased the former Safeway site in downtown Milwaukie with the intention of teaming with a private developer to create a mixed residential and retail project on the site. Staff has now progressed to requesting the Council to authorize the City Manager to sign the final DDA with the developer. The DDA is a legally binding agreement that defines the terms of the real estate and development deal between the City and the developer, including property conveyance to the developer. The DDA also outlines the formal obligations of each party.

The City has completed several steps in advancing a partnership to redevelop the North Main site into a mixed-use project with retail space, for sale housing and rental units. The process began in April 2003, with Council's selection of Peak Development to enter into negotiations with the City to develop the site.

In July 2003, City Council approved a Memorandum of Understanding (MOU) between Peak Development and the City. The MOU is a non-binding agreement that gave Peak the right to negotiate exclusively with the City. It also outlined the goals and responsibilities of both parties. The MOU also set up the parameters for the Disposition and Development Agreement (DDA). In the spring of 2004, Tom Kemper of KemperCo was added to the developer's team. An entity called Main Street Partners LLC was created. On April 20, 2004, Council consented to the assignment of the MOU from Peak Development to Main Street Partners, LLC. The content of the original MOU remained the same. The assignment of the MOU helped insure a smooth transition and maintained the same vision, goals and responsibilities that the City outlined in the original document. Since that time, Community Development staff, the City Attorney, and the developer have been preparing and refining the DDA.

The key components of the DDA include:

- Sale and conveyance terms for the property;
- Predevelopment Loan provisions including protection of City from any loss;
- Project Schedule/timely performance provisions by the Developer;
- Duties of the Developer and Developer Conditions;
- City Responsibilities/Conditions, including:
  - terms for financing and constructing Harrison and Main Street public infrastructure improvements;
  - permitting angled parking on Main Street; and
  - assistance in assigning the November 2001 State property purchase loan to the developer;
- Developer obligation to provide \$25,000 security deposit;
- Project financing;
- Developer obligation to construct project in accordance with approved plans; and

The DDA sets out clear responsibilities for each party. The document outlines the legal performance standards and obligations needed by both the City and developer.

### **Concurrence**

The Director of Community Development & Public Works, City Manager and the City Attorney drafted the DDA with the developer. Staff and the City Attorney recommend Council approval of this document.

### **Fiscal Impact**

The DDA outlines several long-term City financial obligations:

- The City is required to construct approximately \$750,000 in off-site public infrastructure improvements. Work includes the extension of 21<sup>st</sup> Street and sidewalk and streetscape improvements. The improvements will be funded by a Special Public Works Fund (SPWF) loan from the State Economic and Community Development Department and City of Milwaukie Transportation SDCs. The SPWF will be amortized over 20 years with an annual cost of approximately \$55,000.
- Vertical Housing Tax Abatement of City property taxes worth approximately \$105,150 will be provided to the project over ten years.
- Sale and conveyance of the "Safeway site" property to Main St. Partners, LLC. for the amount of the Community Incentive Loan Fund balance. The balance is estimated at \$650,000 at the time of sale in the late spring of 2005. Main Street Partners LLC will assume the loan payments.

Long-term project benefits include:

- The project will provide \$184,096 in City SDCs (not including parks SDC);
- The project will provide the City with an estimated \$2,180,000 in property taxes over 20 years after deducting for the Vertical Housing Tax Abatement.

### **Work Load Impacts**

Existing staff and consultant are managing this project. They are part of existing Community Development staff work plan and budget.

### **Alternatives**

1. Approve DDA as presented.
2. Approve DDA with modifications.
3. Delay approval of DDA for further review.
4. Decline to approve DDA.

### **Attachments**

Disposition and Development Agreement with exhibits