

# AGENDA

## MILWAUKIE CITY COUNCIL November 21, 2006

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**1994<sup>th</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

**I. CALL TO ORDER**  
**Pledge of Allegiance**

**2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

**Milwaukie High School Student of the Month**

**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. Council Minutes of October 17, 2006**

**B. OLCC Application for Chan’s Steakery, 10477 SE Main Street – Change in Ownership**

**C. Resolution Authorizing a Lien in the Amount of the City Costs for Abating the Nuisance on the Real Property at 9015 SE Regents Drive**

**4. AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

**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.)*

**None Scheduled**

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. **Proposed Resolution Naming Tax Lots 11E36CB2800, 11E36CB3000, 11E36CB3100 Robert Kronberg Park (Mike Swanson)**
- B. **Feasibility Report on the New Century Players' Proposal to Renovate and Occupy City Property at 37<sup>th</sup> Avenue and Washington Street (Kenny Asher)**
- C. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment 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.

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
OCTOBER 17, 2006**

**CALL TO ORDER**

**Mayor Bernard** called the 1992<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Mike Swanson, City Manager	Larry Kanzler, Police Chief
Gary Firestone, City Attorney	Katie Mangle, Planning Director
Kenny Asher, Community Development/Public Works Director	Ryan Marquardt, Assistant Planner

Media: David Stroup, *The Clackamas Review*

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**Announcements**

**Mayor Bernard** announced the Three Bridges opening event on October 19. He also announced that the first work session and regular session of November would be on November 9, 2006.

The Council would hold a special meeting on October 19, 2006 at 6 p.m. at City Hall to discuss the Citizen Advisory Council (CAC) recommendation for wastewater treatment.

**Clackamas County Sheriff Craig Roberts** provided information on Measure 3-246 the public safety levy. Passage of the measure would add 19 deputies, open 84 jail beds, and provide a core level of service countywide.

**Councilor Collette** understood him to say this was phase 1 of reducing the number of releases and asked if that implied additional levies.

**Sheriff Roberts** replied the priority was to open these 84 jail beds. He was working with the Board of County Commissioners (BCC) to determine if there were funds to build a section of a new facility. The issue was being attacked on several levels by creating inmate work crews, expanding electronic home detention, and mirroring what Washington County did in creating a facility master plan that included a pod design to facilitate future expansion.

**Councilor Stone** asked the percentage of inmates jailed because of meth use.

**Sheriff Roberts** estimated about 70% of those incarcerated were there on meth-related arrests. Seventy-three percent came back as repeat offenders.

**Councilor Stone** said meth use was a huge problem that affected everyone. She was interested in how much of the levy would go to an enforcement program to try and conquer the problem.

**Sheriff Roberts** said there were two components. People in the jail were often still high on meth when they were released. Keeping them in jail until they were sober and clean was absolutely essential. The department was looking at dedicating four deputies to enforcement. He wanted to focus on livability and proactively pursue the problem. A major portion of the levy would be dedicated to enforcement.

**Mayor Bernard** asked what services the sheriff provided the cities.

**Sheriff Roberts** responded there were a variety of services including civil process, a forensic artist, major crimes team, SWAT team, a technology department, and 24-hour records service. The funds would provide staffing so the 84 beds could open.

## **CONSENT AGENDA**

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

- A. Council Minutes August 15, 2006 Regular Session;**
- B. Council Minutes September 5, 2006 Work Session; and**
- C. Council Minutes September 5, 2006 Regular Session.**

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

## **AUDIENCE PARTICIPATION**

- **Ed Zumwalt**

**Mr. Zumwalt** reported that several weeks ago Ann Hupp's garage door was tagged, and Historic Milwaukie Neighborhood District Association (NDA) resident Mike Shepard repainted it for her.

- **Les Poole**

**Mr. Poole** read a prepared statement regarding land use issues which was his specialty. He appreciated Sheriff Roberts's comments. The meth situation was horrible, and unlike any other drug it grabbed hold of these people so quickly. Not far from his home in a nice residential neighborhood there were some unnerving issues. He saw people going downhill quickly. Where did they get money for gas? The only money they had was for their meth and the gas to go pick it up. None of them had a job, so he knew where they got their money. He was strongly in favor of the bond measure, and he wished it could be for more money. It was getting people to pay for what they needed.

He made some comments regarding the community and the region and specific situations in Milwaukie. Numerous land use decisions regarding transportation, planning, and redevelopment of the downtown core have resulted in unintended consequences during the past several years. In addition to costly delays, the pattern has repeatedly damaged the City's reputation with potential investors and of course with its regional partners. He understood that the cost of providing services and quality of life depended on a vibrant downtown, and he supported change. Most citizens were not aware that in order to facilitate that change it took a tremendous amount of money. That money came from Metro. Metro controls TriMet and was a driving force for transit

development and specifically light rail. Unfortunately, when millions of dollars are on the line the local environment was at stake. The neighborhoods were often pitted against each other. Overzealous ideas such as the plan to convert Kellogg Lake Park into a transit center and the initial plan for the ballfields North Clackamas Park (NCP) were typical examples. Recently the intergovernmental agreement (IGA) with Metro for redeveloping the Olson Bros. Texaco and City shared lot has joined the list. Some issues before the City Council were matters of opinion or politics. Property law was finite and not subject to random opinions. Land use designations were often subject to unchangeable conditions and permanent conditions especially regarding the honoring of deeds. With reference to NCP the attempt to ignore the deed restriction to preserve the equestrian horse arena added a major roadblock to an already controversial situation.

Regarding Option 2.5 at Kellogg Lake he addressed some excerpts from the IGA signed in 1991. It clearly stated that six properties at Kellogg Lake, the riverfront, and numerous other locations were all paid for with park money. Some of the property was donated by his family and Dena Swanson formerly Dena Kronberg. The portion of the park obtained from Ms. Swanson contained a restriction that required all of her property be preserved as a park and named in the honor of her late husband. After over a decade passed with no progress Ms. Swanson contacted the City wondering why the agreement had not been honored. During that same month the transit center issue came before the Council when Howard Dietrich revealed plans for Wal-Mart on his property at Tacoma Street. In response to Ms. Swanson request about the park or lack thereof the city manager located a letter that clearly spelled out the legal obligation to preserve all of the property as a park. During a heated Council meeting on November 1, 2005 the letter and its ramifications were deliberated. Councilor Stone and Councilor Loomis along with Mayor Bernard voted to honor the agreement. Councilor Barnes and Councilor Collette continued to push for the transit center as though their political lives depended upon it. During that time frame Councilor Barnes and Councilor Collette in concert with other individuals conducted some exclusive meetings and a very questionable e-mail campaign without the knowledge of others.

**Mayor Bernard** reminded Mr. Poole that his time was up.

**Mr. Poole** said he would be back. Enclosed in the report was a request that in the future we honor the agreement fully that was made with Dena Swanson. That was simply that all of her property be annexed into Kellogg Lake Park and that Kellogg Lake Park be ultimately renamed Kronberg Park. There were five and one-half acres, and we have yet to honor the agreement. Ms. Swanson was trying to avoid taking legal action as was Mr. Poole.

- **Jamie Wilson**

**Ms. Wilson** read her statement. It was an e-mail from Mayor Bernard that was sent to a few select recipients so that it might become public record. "Friends, some of you I only recently added to this list, so you may not have gotten all the facts. It is unfortunate some people are using something I know is very dear to us for political reasons. It is also unfortunate that a few are manufacturing fear among the community in an effort to stop change and allow Milwaukie to reach its full potential. I would like to briefly give you a sample of calls I've gotten and state that manufacturing fear is unethical. Those same people who support one candidate for City Council have been meeting to attack Council on ethical grounds right before election with total disregard for Milwaukie, the Farmers' Market, and the citizens who have worked for years to turn this community around. Some even claim they live in Milwaukie and in fact live in unincorporated Clackamas County and Happy Valley. I get calls from people who ask why you are closing the Farmers' Market. I asked who told them that, and their answer was a lady at the Market handing out flyers. I assured them that isn't true. The

Farmers' Market is supported by City Council and staff and will not be closing. The other day a young boy called and said, "I thought Potter was the Mayor." I assured him I was the Mayor. He asked why the Farmers' Market was closing. I assured him it was not true. I told him I was the business manager and co-founder of the Farmers' Market and that it was very dear to my heart. I asked where he heard this, and he said a man handed him a flyer and told him that. A transition team was being created by the City that will help plan for the move that will take place in 2008. The Farmers' Market is not part of the City. It is funded by Celebrate Milwaukie, Inc., a non-profit 501C23 of which I am the treasurer and co-founder. I co-founded the Farmers' Market when I was president of the Milwaukie Downtown Development Association. I ask you to get the facts and know the Milwaukie City Council has always stood for ethical government. Don't be a part of this Chicken Little mentality. The sky is not falling. If you are unsure of my commitment to the community and that of my family my name is listed below. Feel free to contact me at this e-mail address or call me at 503.544.2418. Jim Bernard." Then he lists his associations and accomplishments. Ms. Wilson made her comments. She did not appreciate the 'us against them' sentiment this e-mail suggested. Mayor Bernard, if you know the individuals that have a problem with you, you ought to talk with them, myself included, directly. At the last Council meeting Les Poole made a long statement about his residency in unincorporated Milwaukie that was addressed by Councilor Loomis. Councilor Loomis stated in effect that the Council's attitude was one of inclusion. Clearly from the e-mail not all of the Council was like-minded on the matter. To her knowledge none of the group urging the citizens to act to keep the Farmers' Market where it was has stated the Market was closing. They were stating it would no longer be in the Texaco lot where people have come to appreciate it over the past 8 years. As you can see this has caused great concern among the employers – the citizens of Milwaukie. No one with whom she met in regard to the controlled development of the Texaco lot is anti-change or anti-development. They were pro-information and pro-Milwaukie who wanted what was best for the citizens and not what Metro dictated was best. They wanted the citizens to have a meaningful voice in the development of downtown. She knew there was a committee made up of citizens who would review the development plans. She had attended that open meeting – inconvenient as the time was – and came to understand these citizens were hand-picked by the City after interviews she imagined were determined on the citizens' amiability toward such development before placing them on said committee. If there was a problem with the dissemination of information she had chosen she expected to be addressed personally and not gossiped about behind her back. She would be willing to meet with the Mayor any convenient time to address the matter. The Council should be grateful it had a constituency that cared about the future of the City rather than belittling the opinions and hard work of those who truly cared.

**Mayor Bernard** intended to meet with Ms. French to discuss the situation.

- **Jeff Klein**

**Mr. Klein** said unlike Ms. Brinkman he did not intend to buy a bag today. He had plans to come and speak after going home and reading some e-mails. The people that came forward and volunteered for positions did an incredible job as did the staff. This also included the people who came forward to be members of boards and commissions and well as the Mayor and Councilors. It was important to realize that everyone was a volunteer. He read an editorial in *The Clackamas Review* by a previous Councilor. One of the things that stood out for Mr. Klein was that the Council was choosing like-minded people. It reminded him of the time he came before the City Council to interview for the Planning Commission. It had a number of positions that were open for a very long time, and the City had been waiting for people to step forward. It was important to realize that. It was not a matter of like-minded people being chosen but the people who came

to find out information and get involved and got wrapped up in this for the love of the City. That was what made them come forward to help. If there was a like-minded view it was the fact that people did love the City and had cares and wants for its future. Those who come forward should be thanked. They spend a lot of hours mulling through things. Milwaukie had a very good process on how things were accomplished. People may throw rocks once the process happened, but during the process it was an amazing things. People come together to pull vastly different ideas together to come to one common goal. Sometimes he was frustrated at the end when the goal was there because it might not be something he felt was good for Milwaukie, but that was the process. That was how the City moved forward. There was a group of people entrusted to make the decisions and pass on their recommendation. He thanked everyone who volunteered in their positions and that helped staff. Mr. Klein announced the Lewelling Neighborhood Park dedication on Saturday, October 21. In his mind this Park defined what made Milwaukie a great place. The conception through the completion was one of those fantastic processes. The plan was a goal, and the goal was not a plan. The goal was the park, and kids are playing there daily. He was pleased he could play a small role. He was proud it was in the neighborhood and in the City of Milwaukie. Do not forget sidewalks on Logus Road.

- **Sharon Sugarman**

**Ms. Sugarman** was excited to hear about the park development and the speaker's excitement. Citizen involvement was people doing things together to get what they truly wanted. She spoke about the Texaco site. When she first went to the Farmers' Market and the City's booth she was concerned about condos and a tall building. She asked how citizens could be involved in the planning process. It seemed like a good idea to do development down there and bring people down to the City. Those were good goals. A nice community meeting place like the Farmers' Market only year-round and all days of the week. Mr. Asher told her it would be open to citizen involvement. There was this great procedure to involve people. There was a citizens committee, and they would start meeting in the fall. She kept asking how average people got involved. He told her there would be open meetings where people could come and speak. She has been to those meetings. They had an opportunity to say what they liked or did not like about it and what they would like to see there. Her concern was the existing IGA. Mr. Swanson said because it was already outlined it was already limiting. It did not seem that the citizens committee could do much outside of it. One of the committee members asked if some trees could be saved if the development was not sidewalk-to-sidewalk. The response was that the City would have to renegotiate with Metro. She heard a lot of people talk not just at the Farmers' Market but at these meetings. Nobody wanted a five-story building. Everyone was concerned about parking and traffic, the lack of green space, the blocking off from the river, and moving the Farmers' Market. These were all real concerns. People had some really good ideas. They talked about making a year-round Farmers' Market. People were very creative. They have seen other places Milwaukie might consider modeling. But with the existing IGA it did not seem Milwaukie had that opportunity. It was already something that was set. Maybe the City could choose the color of the bricks, but she did not know the people could choose a whole lot else from what she understood of the agreement. She asked why the Council could do away with the IGA so there could be true citizen involvement. Now there were meetings in place. There was a committee. There was a forum where people could say what they liked and did not like, but it was limited by this IGA. It seemed to her in order to really have citizen involvement the City needed to get rid of the IGA and begin again. She asked the Council to consider getting rid of the IGA so there could be a truly creative process that involved citizens.

**Mayor Bernard** said at the work session Council talked about letting the committee work through the process and review any potential proposals. The Council decided the committee should continue to talk about it during the process. It was not known at this point what height building would be proposed. The Council would support an open process that allowed for imagination and potential. None of the Council members leaned toward a five- or six-story building and wanted to see a building that fit with the character of the City and produced the outcome everyone hoped for. He did not think the IGA said the development had to be sidewalk-to-sidewalk.

**Councilor Collette** said by most standards it was very flexible. It was a 1:1 ratio that meant it had to be a 40,000 square foot building, but that did not necessarily mean that had to be the footprint. It could be a two-story, 20,000 square foot building or some other combination.

**Ms. Sugarman** said it did speak to one parking space per condo. The City agreed to exert best efforts to make it a minimum five-story building. There was some very specific language about what this building would look like. She was at the meeting where one of the people on the committee asked about not making it a 1:1. Mr. Swanson said then the City would have to renegotiate with Metro. That may not be a big deal.

**Mr. Firestone** said the City would use its best efforts to amend its zoning and development codes to allow that type of development. It did not require that the design be that way or commit the committee to any particular approach. It just said the City would use best efforts to amend the zoning code. "Best efforts" language was used when there was a recognition between the parties that the party committing to do something could not be forced to take the final action. In this case it would take City Council action to amend the Zoning Ordinance. The City did not commit to the Council's taking action. Essentially what this said was that staff would work toward allowing a type of development that Metro would like to see to permitted. Best efforts was limited to what could be legally be done. The Council could say not to do it. It was not an absolute commitment to doing those things. Unless otherwise directed by Council there was a commitment by the City in order for Metro to participate in the project and give the City an interest in the property. Best efforts was a level of commitment that said staff would cooperate toward that end unless directed otherwise by Council. There was no commitment on the Council to take action to amend the zoning code. All those things listed were things that Metro at that time would like to see that were not allowed in the zoning code. The language recognized that it may not happen, but Metro wanted the City at the appropriate time to amend the zoning code. It was the City's way of agreeing without committing to amending the code. There was no obligation whatsoever to design a building that was a minimum of five stories or had floor area ratio. That was not part of the agreement. The only part of the agreement was that staff would until directed otherwise by Council cooperate with Metro's efforts to have a zoning change.

**Ms. Sugarman** understood it was up to the Council to redirect.

**Mayor Bernard** said it had to go through the Planning Commission first.

**Councilor Stone** thought Ms. Sugarman brought up a good point that the Council had not talked about in the work session and that was the issue of parking. She asked Mr. Firestone since this IGA was flexible on certain points was parking one of them. It allocated not more than one space per unit. That would be an issue. North Main has not opened so it remains to be seen what would happen.

**Mr. Firestone** explained again it was the best efforts language. In his interpretation and in Metro's that staff would work toward that end unless directed otherwise by Council,

and there was no commitment for the Council. It would be a matter of changing the parking ratio, but it was not an absolute agreement. The committee recommendation did not have to do that. If the Committee came up with a recommendation that did not work for Metro, then it might all go away. On the other hand if the committee came up with something that was totally unacceptable to the Council, then it would not happen anyway. The Council could ultimately decide what could be approved on the site. If the proposal was currently in accord with existing zoning, then the Council would have to approve that. If the proposal was for something that was not consistent with the current zoning, then the ultimate decision would be the Council's.

## **PUBLIC HEARING**

### **Milwaukie Municipal Code Amendments ZA-06-02 – Ordinance**

**Mayor Bernard** called the public hearing on the legislative zoning ordinance amendment initiated by the City of Milwaukie to order at 7:53 p.m.

The purpose of the hearing was to consider an ordinance to adopt proposed amendments to the Zoning Ordinance including Title 14 – sign ordinance text amendments; Title 12 – street, sidewalks, and public places ordinance text amendments; Title 17 – land division ordinance text amendments; and Title 19 – zoning.

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

The City Council decision will be the final decision of the City. All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precludes an appeal based on that criterion or issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals.

**Councilor Barnes** announced her husband was a registered business owner in Milwaukie, and his primary business was sign making.

**Mr. Firestone** said one question was conflict of interest and if it was possible the spouse might financially benefit from the regulations. He thought it was reasonable to say the decision would not affect his business. This was not an actual conflict of interest for her spouse, and he did not believe there was anything in this that would definitely lead to his financial benefit. There could arguably be a possible conflict of interest in some situations if one type of sign were favored over another. Councilor Barnes could announce that potential and continue to participate or chose not to participate.

**Councilor Barnes** announced the potential for conflict and she would like to continue to participate.

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

**Mayor Bernard** called for a brief recess while counsel reviewed the statutes.

**Mr. Firestone** reviewed the statutes and confirmed that Councilor Barnes could participate after announcing a potential and not actual conflict of interest. It was worthwhile to mention in this situation the potential was remote, and it was unclear how anything would affect her husband's financial interests. In those situations it was appropriate. Councilor Barnes may participate because it was a potential conflict and not actual.

No member of the audience made any challenges to any Council member's ability to participate in the decision.

Correspondence: The Council received a fax from Daryl Winand, Portland Metropolitan Association of Realtors that supported the Planning Commission's recommendation but expressed concerns about subsection 14.28.020(B) – Notice.

Staff Report: **Ms. Mangle** reported that signs do affect character of place as well as communication. This was a public hearing on proposed amendments to several sections of the Milwaukie Municipal Code (MMC). A majority of the amendments had to do with Title 14 plus minor amendments to Titles 12, 19, and 17. She introduced Assistant Planner Ryan Marquardt.

The main focus was on the sign code. Signs were regulated in the City as were buildings and land. The process for regulation was similar to other types of objects in the environment. The difference was that there were freedom of speech concerns as well as aesthetics, safety, and appropriateness. Article 1, Section 8 of the Oregon State Constitution addressed additional freedom of speech concerns. Milwaukie's sign code was written in 1975, and the text regulations had not changed much since then. In 1981 the City first prohibited signs in the right-of-way, and in 2000 the entire downtown zone and the related sign code were adopted. The focus of the amendments was not to change those regulations. The intent was to address the Oregon Supreme Court's March 2006 new decision on how cities could regulate signs. There were regulations related to freestanding signs, wall signs, and illuminated signs that varied between zones. For example, regulations in residential zones were more restrictive than in commercial zones.

The proposed sign amendments would eliminate the content-based provisions of the City's sign code. In 2006 the Court of Appeals found that a separate regulation of on-premises and off-premises signs was a content-based regulation. It was concluded that governments may impose content-neutral, time, place, and manner restrictions of speech so long as those restrictions left adequate means for expression. There was still language in the Milwaukie code that could be interpreted as being based on content. The effort of this project was to eliminate that.

**Ms. Mangle** provided examples of content. A mural, for example, cannot be looked at as being different from advertising. They were both wall signs. The code needed to address the shape of the sign and not content. She provided examples of on-premises and off-premises signs. The recent Oregon Supreme Court decision was that cities could no longer discriminate between the two. The intent of the project was to remove all of the content-based regulations and purely regulating on time, place, and manner; protecting the City against challenges to the decision-making process for signs; and making the code easier to use.

Along the way some minor policy changes came up. Ninety-five percent of the amendments in the staff report were technical corrections and solutions to the content-based issue. The other 5% were issues. Many of the technical issues came from staff and the city attorney. The minor policy changes came from the community including the Design and Landmarks Committee (DLC) and the Planning Commission. She reviewed the proposed solution. The City must now consider murals as wall signs which meant they were subject to wall sign standards in each zone. In the downtown zone, wall signs may only be 16 square feet. The Planning Commission directed staff to pursue other options in order to be more creative in the future with something like wall easements. That was put off to a future project.

Internally illuminated cabinet signs were another issue. The downtown design guidelines discouraged internally illuminated cabinet signs. The word "discouraged"

was not very clear, and though the code would require someone wanting to install an internally illuminated cabinet sign to go through the DLC and the Planning Commission, there was no approval criteria. There have been a number of frustrated applicants who did not know what they were up against. The Planning Commission and DLC did not fee they had clear guidance in making their decisions. In talking with both of those groups and in the spirit of implementing the downtown design guidelines the related minor change in the proposal was to prohibit internally illuminated cabinet sign in the downtown district. The existing signs would be required to be turned off in five years. In 2010 all of the signs in the downtown would have to come into compliance with the regulations that were imposed in 2000 with the rest of the downtown plan.

**Mayor Bernard** declared an actual conflict of interest because he had such signs on his buildings in the downtown and handed the gavel to Council President Barnes. He left the dais.

**Councilor Collette** referred to the slide and asked if the “Seattle’s Best” sign was neon.

**Ms. Mangle** said the code described it as an internally illuminated cabinet sign that was not square. The Dark Horse sign was considered 20 separate internally illuminated cabinet signs. The Wonderland sign, for example, was externally illuminated because the business did not receive Planning Commission permission for an internally illuminated sign. The sign was visible both at night and during the day. She felt the design guidelines were looking for signs designed in concert with the architecture and contributed to the character of the downtown. This was only in the downtown zone and did not affect the sign zones in other areas.

**Councilor Stone** asked Ms. Mangle to clarify for the audience the boundaries of the downtown area.

**Ms. Mangle** replied all the downtown zones were roughly between McLoughlin Boulevard and 21<sup>st</sup> Avenue and between Hwy 224 and Lake Road. It was the downtown grid. She did review these with North Main developer Tom Kemper, and the sign guidelines he had for his tenants were much more restrictive than those in the downtown design guidelines.

**Councilor Stone** asked if the “Regina Celeste” sign on the slide was an internally illuminated cabinet sign.

**Ms. Mangle** replied it was called a halo sign. The lighting was not coming through plastic. The letters were opaque, and the lighting formed a halo around the letters. The Planning Commission and DLC did not like the internally illuminated cabinet signs because the light was coming through plastic, and there was a lot of glare and did not have a pedestrian-friendly character. The idea was for a sign to have a little more articulation and design. Some of the DLC members suggested if the regulations were being made a little more conservative in the downtown, then the Council should also consider allowing more flexibility in the guidelines. An adjustment process was included that provided special consideration in unique circumstances. There were already adjustment processes, but some criteria were added specifically for flexibility in the downtown. Those would allow for special consideration of a sign if it did not meet the exact letter of the code as long as it met the downtown design guidelines in terms of being pedestrian oriented, serving the character of the City, and those types of things. It was also with the idea that some signs would meet the guidelines and would not meet the code but might serve to protect a historic landmark or a tree or character. These would go through the Planning Commission.

Another minor policy change was under community service and community use signs. Right now a limited number of signs were allowed outright. Community service uses were churches, schools, government buildings, playing fields, recreation sites, and things of that nature. Conditional uses would be for small businesses in a neighborhood or small offices. A limited number of small signs were allowed, or they were allowed the signs in the underlying zone. In a commercial or industrial zone, they could pretty much do whatever those uses could do. A lot of school and churches were in residential zones with limited sign allowances. This was an effort to give a little more. Larger signs would require Planning Commission approval. The current code language governing those signs was very vague, and there were not standards related to area, size, or height. There were no approval criteria when the Planning Commission had to make a decision, and the city attorney strongly recommended that approval criteria be added. The change the Planning Commission recommended was that small signs of 16 square feet or less and up to 6 feet be reviewed by staff. Signs larger than that would need Commission review. She provided examples of these types of signs and discussed how signs were measured. The code proposal included that the Planning Commission needed to consider the proximity of the sign to residential areas, the functional classification of the street, and the scale of surrounding development in its review.

Another issue the Planning Commission identified as a problem was that temporary banner signs proliferated and seemed permanent. There were a lot of banner signs that were not permitted, and only temporary banner signs were exempted from permits. If they stayed up for years, then they were not temporary. They were being used in a way that was not upholding the purpose of the sign code that was not only about safety but also making the City a clean, attractive place. The proposed change was that banner signs greater than 16 square feet would be allowed without a permit only at community service properties, and they may remain there for six months. That meant a banner of less than 16 square feet could be put up as temporary which meant the duration of the activity or for a reasonable amount of time. If it was over 16-feet, then a permit would be required unless it was a community service property like a church, government, park, or something of that nature.

**Councilor Barnes** asked about the sponsor signs at Milwaukie High School that were up all year long.

**Ms. Mangle** replied there was a comment from a citizen who testified at the Planning Commission. The length of time was extended to six months in response to concerns. The banners up at the playing fields were for sponsorship of the teams during the season. The citizen who commented thought that was a reasonable approach because the signs would likely rotate with each playing season. The sign code regulated signs visible from the public right-of-way or other properties. Many of the signs in playing fields were focused internally so were not subject to the sign code.

**Councilor Collette** asked if the Ardenwald Neighborhood would need a permit for its summer concert series banner which she believed was larger than 16 square feet.

**Ms. Mangle** said the park was a community service use so the sign was all right. She thought the Planning Commission trying to balance the true community benefit of being able to communicate community events and still having a little more control over banners. A business or a residence may get a permit for a banner and treat it as a wall sign. Sign permits were \$95 so it did not limit anyone's ability to have a banner. The hope was that there was enough of a hurdle that it would not just be a freebie to have signs in ways they would not otherwise be allowed to.

**Councilor Stone** understood they could be in place for up to six months.

**Ms. Mangle** replied if they were greater than 16 square feet they could stay up for six months on community service use property. What was currently the practice and would continue to be the practice was that banners less than 16 square feet were temporary signs such as real estate signs could be up during the duration of the activity.

**Councilor Stone** asked how the regulations would affect the signs across roadway like the neighborhood speed watch banners.

**Ms. Mangle** replied the City was allowed to put signs in the right-of-way. There was a minor policy change regarding billboard signs as a direct result of the courts ruling. Billboard signs had been prohibited in Milwaukie since 1979. They were prohibited because they were defined as off-premises signs advertising something that was not on the premises. Signs whether they were on- or off-premises were treated as freestanding signs. The Planning Commission proposed changing the limit for freestanding signs to 250 square feet. This was something that only affected commercially zoned properties. The limit for industrial properties was already 250 square feet. Letters were sent to all the commercial property owners just as letters were sent to all the downtown property owners about the internally illuminated cabinet signs. One change that Chief Kanzler requested that was similar to comments from the neighborhood leaders had to do with sign spam. The neighborhood was concerned that there were a lot of illegal signs going up. The current code required 30-days notice before removing a non-hazardous illegal sign. A lot of signs were in the right-of-way or caused a nuisance or spam. The proposed policy change was that the City be allowed to immediately remove illegal signs. It allowed the City to impose a fee up to \$100 per day. The City may give notice. It also listed several things the City needed to consider when removing, moving, citing, or demanding removal of a sign. It needed to be considered whether the sign created traffic or safety hazards; the impacts of the sign on the community; and whether the violation was curable. Removing a sign and charging \$100 per day was not the first course of action. It would allow the City to take action without the 30-day notice requirement. It would apply to spam signs as well as others that were illegally placed in the right-of-way.

Staff made a concerted effort to provide information to those affected by these changes. Information was sent to the Neighborhood District Associations, the land use chairs, Portland realtors, various agencies, and posted on the City's website. There were some inquiries about the freestanding signs and the internally illuminated cabinet sign change. None of the people had no real concerns once they understood the magnitude of the change. Ms. Mangle addressed the comment from Daryl Winand who represented the Portland Metropolitan Association of Realtors. He had several concerns and comments that were worked through, but she believed he still had one outstanding. Just as with buildings and lots, something became non-conforming if it was legally created and then the regulations changed. It would not be allowed to be built under current regulations. There were a lot of houses, lots, and signs out there that were nonconforming. The code allows buildings to keep going, but they cannot be re-built. With nonconforming signs the code requires that they be brought into conformance within 10 years of the policy change. The most notable example of this was when the downtown sign zones were created to implement the downtown design guidelines in 2000. That meant that wholesale changes were made that would affect most of the properties in the downtown. In 2010 all of the properties would need to bring their signs into conformance. For many that will mean just turning off the light in the internally illuminated cabinet signs. City staff will likely send out a letter and work with those property owners to bring things into compliance. How will the City alert sign owners of pending deadlines to bring signs into conformance? Mr. Winand submitted proposed language he felt would address his concern. That was to require the City to give notice to property owners one or two years before the 10 years deadline. Although she

understood his concern, Ms. Mangle did not believe that was a reasonable expectation. There was no inventory of the signs or when they were permitted. It was easy to imagine that the City would begin contacting property owners in 2009 to make sure people knew about the change. Outside of downtown staff typically finds out about nonconforming signs by complaints by neighbors or people coming in for a building permit. The philosophy of the City was to work with property owners to solve the problem and not penalize them on the spot for something of which they may not have been aware.

**Councilor Stone** asked why 10 years was chosen.

**Ms. Mangle** said it had originally been 7 years, and that time came around. The code was changed to 10 years in 2000 because of the staff time involved in notifying the property owners and to work toward conformance. Staff did not currently have a list of nonconforming signs, so it was difficult to have a wholesale project to notify people of the changes.

**Councilor Stone** asked how would people know their signs were not conforming and needed to be fixed in 10 years. She asked why it was in there if it could not be enforced.

**Ms. Mangle** replied it made the most sense in the downtown because of the wholesale remodeling of the downtown with one vision. It made more sense downtown also because there were a lot of signs that would change as properties turned over. The idea was that in order to move toward conformance and that vision there needed to be a deadline for getting people to remodel their signs.

**Councilor Stone** asked if there could be a provision that says under new ownership the sign must conform within six months of new ownership with a clause that brought it into compliance earlier than the 10 years.

**Mr. Firestone** was not sure about the change in ownership. Some jurisdictions have tried various triggers for requiring something to come into compliance. His concern had to do with providing equal treatment. Did the City have a rational basis for treating a new owner differently than an old owner? One of the reasons it was 10 years was because depending on the type of sign, some of them were expensive. If people just put in a new sign and the City changed the code, then they had a reasonable expectation to get out the value they put into it. Seven to ten years was the time frame established because of that concern. Apart from the changes in the downtown area, the only other major change he was aware of was the limitation of the very, very large signs. There were not that many of them out there. As with all enforcement if something is brought to the City's attention and it has been ten years, then the City can enforce. There was no inventory, and it would be expensive to do one. He was not sure there would be much benefit in doing an inventory.

**Ms. Mangle** thought if someone came in and wanted to make improvements to their sign which was common with a new property owner they were allowed to change just the face of the sign as long as they did not change the structure or the size. They were allowed to do that by right, but once they started making structural changes or wanted to move the sign, they were required to come into conformance with the current code.

**Councilor Collette** understood someone could buy the business, change the face of the internally illuminated cabinet sign, and keep it.

**Ms. Mangle** said that was correct.

**Councilor Stone** did not think that was smart.

**Ms. Mangle** replied that had happened recently and people had been told that in 2010 they would be required to bring the sign into conformance with the code. People had just changed the plastic face with the new logo, and that was legitimate right now.

**Councilor Collette** asked if there had been an effort to get the new design guidelines out to downtown businesses so they were aware that changes were coming and that those guidelines would have to be met at some time. She wanted to ensure people aware that the new guidelines were in place.

**Ms. Mangle** understood there was a widespread discussion of the downtown guidelines. Measure 56 required the City to send out notices when there were zone changes that would place more limitations on someone's property, and it was required on the action currently before the Council for consideration. When the zone changes occurred in 2000 in the downtown a brochure was mailed to property and business owners. She addressed the proposed amendments to Title 12 – sidewalk benches which was being amended for the same reasons. It currently discussed content and location, so it was the same type of thing. None of the policies were changed. It was getting the content-based language out and focusing on benches in the right-of-way that needed to be permitted. There were minor changes to Titles 17 and 19 that were housekeeping amendments. They did not change the policies but made corrections or added missing words.

The proposed amendments were recommended unanimously by the Planning Commission that held a public hearing and found the amendments met the criteria for approval. The City Council was the decision-making body for legislative amendments to the code. There were three key issues for adoption of legislative amendment: (1) did they meet the approval criteria; (2) do the proposed amendments affirm and clarify existing policy regarding signs, land use, and land division, making the code more effective; and (3) whether the amendments implemented to purpose of the sign code which was to promote the “neat, clean, orderly, and attractive appearance” to the City.

In regard to the approval criteria, the Planning Commission and the City Council held public hearings. The Planning Commission recommended that the City Council approve the amendments. The amendments also met the approval criteria of being consistent with the Comprehensive Plan and other parts of the code and state and Metro regulations. The main purpose of this project was to ensure the municipal code complied with state regulations.

In addition to some content-based amendments, criteria was added to describe decision-making and allow the City to more defensibly implement the Title. Some tables and graphics would be added to make the regulations easier to understand for applicants and staff. Criteria were being added to make the code more objective and therefore more defensible. Some mistakes were corrected to make the regulations more understandable.

Do the minor policy changes meet the purpose of the sign code? The Planning Commission found that they did because they supported the downtown design guidelines that were already adopted and approved by the community. The criteria for review of signs for community services uses and conditional uses focused on compatibility with the surrounding residential area that was further emphasizing and supporting what was in the Comprehensive Plan and zoning code. The practice of limiting the size of freestanding signs which was also a tradition in Milwaukie would continue. The growing number of temporary signs would be limited to further address the neat, clean, orderly, and attractive appearance of the City.

This was a proposed legislative amendment to the sign code, and the Planning Commission recommended approval. The options were to approve the proposed

amendments and adopt the ordinance; approve the amendments with modifications; or take no action.

Correspondence: Noted at the beginning of the hearing.

Public Testimony in Support: None.

Neutral Testimony: None.

Public Testimony in Opposition:

- **Ed Parecki, SE McLoughlin Boulevard**

**Mr. Parecki** brought out some points based on the presentation. Part of the remodel and beautification of the downtown zone was getting permission and going through the approval process for an internally illuminated cabinet sign which he received about a year ago. His sign was conforming however at this time it was not illuminated. He paid over \$10,000 for the sign based on the proposal. In this proposal there was a 2011 deadline in five years, but his sign was currently conforming. That meant that until it was nonconforming he had ten years from the time it became nonconforming. There was a discrepancy in the verbiage. Technically he should have 10 years from the date it became nonconforming. This ordinance stated it was 2011, so he had a problem with the way that was worded. He pointed out on McLoughlin Boulevard there were numerous national businesses that had internally lit signs such as gas stations and the US Postal Service. Mayor Bernard's business had an internally lit sign, as did Starbuck's. Based on this proposal come 2011 all of the signs would need to be turned off. He found it hard to believe these businesses would just sit back and allow that to happen and particularly the national chains that invested a lot of money in their signage. It was difficult to attract tenants if one did not offer something like an internally lit sign on a major thoroughfare like McLoughlin Boulevard. His building which as of yesterday was 100% leased. He thought part of the success was the fact that he had an internally lit sign to offer the tenants a little more exposure during the evening hours when there was still a lot of traffic. People still whizzed by but they could catch a glimpse of a sign that was very nicely done and approved by the planning department. His sign met all the design guidelines of the current plan and the proposed plan. In 2000 it met everything. Now he was hearing that in five years he had to turn it off. He put a lot of money into the building and did not like to hear he would have to turn it off. One of his questions was if there was any mitigation from the City if he had to turn off the sign and potentially lose tenants and potentially lose the attraction of that building based on a code that was being changed. He was only opposing the one section of the proposed ordinance. He went through a lot of hoops to get this approved in 2005, and he was very concerned to hear that if the Council put the gavel down then the sign would have to go off in five years when though he should really have 10 years.

**Mr. Firestone** said Mr. Parecki was correct that there was an inconsistency in his reading between the general 10-year standard and a specific standards relating to internally illuminated cabinet signs. It would be possible to amend the proposed language relating to the internally illuminated cabinet signs. The Council could provide an exemption. There was a deadline of December 31, 2001 for internally illuminated cabinet signs in the downtown zones. The City Council could choose to provide a different deadline or that the regular 10 years would apply to those signs that received a City approval after the downtown design code was established. As written there was a specific deadline for internally illuminated cabinet signs in the downtown zone that was shorter than the general 10-year standard.

**Mr. Parecki** said the changes to the code did not clarify it but rather made it more complicated.

**Mr. Firestone** said technically it was not inconsistent. The shorter deadline of 2011 would apply because the general 10-year standard did not apply to internally illuminated cabinet sign in the downtown zone. The Council could amend that if it chose.

**Councilor Loomis** asked Mr. Parecki when he went through the hoops to remodel the building if there was an understanding that he would have to the sign down.

**Mr. Parecki** said there was none given whatsoever. The only question had to do with being an illuminated sign, and the code read it was discretionary as to whether or not it had to be accepted. He did not recall the exact language, but it was in the packet. He was able to show staff the sign, and it was not ugly and was actually beautiful. Staff agreed to make an exception in this case and allow it to be internally illuminated. He was not under the impression he would have to remove it at anytime otherwise he would not have invested as much as he did.

**Councilor Collette** asked if it was extended to 10 years from now would it give Mr. Parecki enough time to light it externally or do whatever was needed to comply in 10 years. Would that be less onerous?

**Mr. Parecki** replied it would be less onerous. He could see a 10-year amortization of the sign versus 5 years. He could live with it. He could illuminate it externally any time, but it would be a waste of the money he put into it. He was concerned about holding up his end of the lease agreement. The terms were three to five years with options to renew.

**Councilor Stone** understood the issue was that it was internally lit and not that the City did not want the sign to be illuminated. Obviously that was needed to draw business, as do many other businesses. Could there be a provision to look at individual signs that came before the City to determine whether or not they were acceptable.

**Mr. Parecki** replied that was what was in the code now, and the point was not whether it was internally or externally lit. He created a cabinet and went to the extra expense of making it internally lit. That was the point.

**Councilor Collette** explained the current code discouraged internally illuminated cabinet signs, but Mr. Parecki was given an approval.

**Councilor Stone** asked if there was any provision the City Council could make. This was a new sign; it was approved by the City; and it was a nice sign. Could it be grandfathered in? That was all she was asking. If it was a sign that was approved and it was conforming, then that would be her question.

**Councilor Collette** understood Mr. Parecki was given special approval. Were there a lot of internally illuminated cabinet signs in the downtown that were unattractive that this amendment would eliminate.

**Ms. Mangle** replied that was the intention. They were not pedestrian friendly and emitted a lot of glare. It was possible that one could have a sign that was pedestrian friendly and aesthetically pleasing and supported the downtown design guidelines. The external illumination was strongly preferred fundamentally in the downtown design guidelines. There were lists of recommended sign lighting and lists of lighting that were not recommended. Internally illuminated cabinet signs were on the "not recommended" list which translated into being discouraged in the code.

**Councilor Loomis** asked what would happen to Mr. Parecki's sign under the existing code.

**Ms. Mangle** said it was permitted under the existing code. It was conforming and legal, so this would be a policy change.

**Councilor Loomis** understood the downtown design guidelines discouraged this type of sign.

**Ms. Mangle** assumed Mr. Parecki had to go through the Planning Commission and Design and Landmarks Committee to get approval for his sign.

**Councilor Loomis** understood all signs that were conforming to date that were downtown could be there forever unless the code was amended.

**Ms. Mangle** replied if they were conforming that was correct.

**Mr. Firestone** said currently there was at least one sign that received the approval. The earlier ordinance was written in a way that discouraged internally illuminated cabinet signs in the downtown area and allowed them only with Planning Commission approval. All of the existing signs became non-conforming unless the owner chose to seek Planning Commission approval. Some later people have come in and sought approval. There was at least one granted. That sign was legal and was not contrary to anything currently. All the other signs downtown pre-dated the downtown design guidelines and regulations. They were currently nonconforming and would have to go even under the existing code. For this particular sign, it was currently legal and could probably stay there forever. It was probably unique among internally illuminated cabinet signs in the downtown. Most of them were there before 2000. They were nonconforming and did not get Planning Commission approval. This was a different situation, and he thought there was a valid point made. The Council could deal with it by saying if the property owner got Planning Commission approval, then the sign could be kept. It could say if the property owner got Planning Commission approval, then the 2011 deadline did not apply, but the regular 10-year amortization period did making the sign nonconforming after that period.

**Councilor Loomis** was concerned there were businesses such as Mayor Bernard's for example. What happened to his sign under the current code?

**Ms. Mangle** replied that sign was in place prior to 2000. In 2010 if it did not comply with current policy then it would be nonconforming and subject to that section which said it should either be removed or brought into compliance on or before 10 years plus one day of the date it became nonconforming. The existing code said nonconforming signs may be continued for a period of 10 years from the effective date of the ordinance codified in this chapter. The policy was not changing but rather being clarified for all the properties downtown.

**Councilor Collette** understood all of them were nonconforming if they were put in before 2000, and they were within that 10 year period of nonconformance. At the end of the 10-year period the signs and other design things that were in place before the downtown design guidelines were adopted in 2000.

**Mr. Firestone** said there were code provisions and there were guidelines. There were code provisions that contained clear standards. If they were inconsistent with any code criteria then they were nonconforming. Inconsistency with the guidelines did not make them nonconforming because they did not have to get an approval at that time.

**Ms. Mangle** said it was the illumination of the cabinet signs that was under discussion. For example, the Wonderland sign was not approved by the Planning Commission for internally illuminated cabinet sign. Once denied internal illumination, the owners decided to externally illuminate the sign with gooseneck lamps. She understood Mr. Parecki's point regarding buying a sign for a certain function and no longer allowed to do so. It could still be illuminated externally and function as a sign.

**Councilor Collette** asked if one form was more energy efficient than another.

**Ms. Mangle** did not know.

**Mr. Firestone** understood the main purpose of the regulation was aesthetics.

**Councilor Collette** said it would be nice to have efficiency be a criterion at some point.

**Councilor Loomis** understood the service stations on McLoughlin Boulevard would have to turn their lights off in four years and illuminate them some way. That was the code right now.

**Ms. Mangle** said right now internally illuminated cabinet signs were only discouraged; not prohibited. The proposed code would prohibit them. However, if they had pole signs, for example, those were prohibited in downtown Milwaukie. There were a lot of old pole signs in the downtown such as the Kellogg Bowl sign.

**Councilor Loomis** asked if these signs would be grandfathered if nothing was changed. He had an issue with people who had a sign – have always had a sign and followed what the City asked them to do. It was there, and it was in working order. The City should leave them alone. When it was not in working order, then the City should tell them to get it out. Or when a new business came in. He was fine with that. He was not comfortable with telling people who met all previous regulations and stipulations and followed the rules, and now the City was telling them aesthetically it did not like the way it looked. He was not comfortable with that and would not support it if that was the proposal.

**Ms. Mangle** the answer to the internally illuminated cabinet sign was that right now those were allowed and would not have to go away in four years. Pole signs were also addressed in 2000, even if the amendments were not adopted today, would be nonconforming in the downtown in 2010. That was already in the code. There were already a number of limitations oriented toward design and creating a unified, high quality, pedestrian-oriented environment in the downtown. That was already in the code. The nonconforming section was already in the code that required nonconforming signs to come into compliance in 10 years. The one change was adding internally illuminated cabinet signs to that list.

**Councilor Stone** asked Ms. Mangle to point to a city that was currently operating under these kinds of regulations with these types of sign codes in place so the City Council could have an idea of where it was going with this. She shared the same sentiments with Councilor Loomis as to what this did to businesses. She did not want to discourage businesses from coming here especially if they were in compliance and got staff approval for their signs.

**Ms. Mangle** replied the City of Lake Oswego's downtown zone was the aesthetic model for what the Planning Commission discussed.

**Mr. Firestone** added Lake Oswego was extreme in rooting out all nonconforming signs. There was a limited period of time, and the city was aggressive. They have won in court their ability to make businesses or any sign order to remove their nonconforming signs after a period of time.

**Councilor Stone** asked if there were other cities in the region besides Lake Oswego that was doing similar things in terms of sign regulations.

**Ms. Mangle** believed any of the design districts in Portland had those types of restrictions on size, height, and manner. In addition to Lake Oswego, staff looked at Sellwood and Westmoreland for lighting alternatives.

**Councilor Loomis** had more questions on the Milwaukie High and church banner issues. He asked if the signs on the outside of the fence were conforming or nonconforming. They were not inside the football arena.

**CITY COUNCIL REGULAR SESSION – OCTOBER 17, 2006**

**DRAFT MINUTES**

**Page 17 of 21**

**Ms. Mangle** replied they could be up for six months, and then they would have to be changed. Banners were a flimsy material and were not intended to be a permanent sign, so it needed to be maintained in that manner.

**Councilor Loomis** said to him it showed there were people in that high school that cared finally and who were out hitting streets and businesses were supporting them. He saw a community and school that was involved. His concern was just because there were banners up there the whole time did not mean they were the same banners. How will the City regulate. It will be sponsors that will say they want to do it again and again. Can they do that? It was a mechanism of fundraising and spirit and community. It did not bother him. It was pedestrian friendly to him.

**Ms. Mangle** said that was discussed at the Planning Commission. Tim Salyers talked about it in his role as a coach and the importance of fundraising and community building. That was why the timeline was extended to six months to make sure that use and those types of signs were not precluded at community spaces like schools and fields. The intent was to capture and allow those types of signs while acknowledging they were banners and temporary. Six months would probably be sufficient to rotate them out. The change was made from 30 days to six months in response to that concern.

**Councilor Barnes** had the same concerns as Councilor Loomis. Those banners go up at the football season, and the track was used later in the year. It was a much longer period than six months. She felt banners should be up for the entire school year rather than six months. She was concerned that the six months would not work for the high school. Those banners cost between \$250 and \$500 which became expensive if it had to be replaced every six months. This was a donation to the school and athletic department.

**Ms. Mangle** said the current code only allowed banners to be used in conjunction with temporary events and not in place for a period longer than of 30 days. They can be permitted as real signs otherwise. The proposal was an effort to address the need for community service signs and the use of banners in this and other ways. The proposal allowed for a longer period of time than what was in the current code. Staff could look at other options if the Council did not feel this addressed it. Permitting the signs was another option.

**Councilor Barnes** would prefer that the City's code enforcement officers did not go to Milwaukie High School and say the signs needed to be taken down. That was not good public relations for the City, and that concerned her a great deal.

**Councilor Collette** thought the City had better things to do.

**Councilor Loomis** was comfortable having them up during the school year. Take them down at the end of the school year and put them back up in the fall.

**Mr. Firestone** said generally the regulations applied to all community services uses. It would be difficult to craft something for schools. The Council could simply change it to one year. The understanding would be that a single banner for one year, and in the next year a different banner would go up on community use service sites. That was one possibility. On that particular issue there were size restrictions that the Council should also consider with a limitation of 40 square feet per site.

**Councilor Barnes** recommended that the Council look at this further. She was not comfortable voting on this one way or another because she had a lot of questions. She felt the Council needed more time to review and suggested more people be included in the conversation before making any decision. She recommended the hearing be continued.

**Ms. Mangle** said the primary motivation was to make the code more defensible and eliminate what might be interpreted as unconstitutional content-based language. She read the language suggested by the city attorney. "The City has attempted to have a sign code that regulates the size, structure, and location of signs, but not their content. The City recognizes that the Oregon Supreme Court in *Outdoor Media Dimensions, Inc. v. Dept. of Transportation*, has recently clarified the law as to content-based restrictions on signs. One effect of that decision was to classify restrictions as being content-based that were not considered content-based under previous decision of the Oregon Court of Appeals. Under *Outdoor Media Dimensions*, some provisions of the City's sign code may be interpreted as being content-based. The City Council interprets the code as being content-neutral. Any provision of the sign code that allows a sign of a certain physical type (e.g. monument sign or wall sign) and size is interpreted as allowing any sign of the same physical type, size, and location, regardless of content. In considering sign permit applications, sign approvals as part of land use applications, and enforcement actions, the City will ignore the content of the sign and make decisions solely on other grounds, such as they physical type of sign, size, and location."

**Mr. Firestone** asked the City Council to move to adopt that interpretation of the code in the event the City might face any challenges to its existing regulations.

**Councilor Collette** understood all that was saying was that the code was considered content neutral.

**Mr. Firestone** replied it said the existing code was content neutral until there was an opportunity to amend the code.

**Councilor Collette** understood the other changes would not be adopted.

**Ms. Mangle** said this was what staff was having to do all the time because of the content references as well as on- and off-premises signs. The staff must act in a constitutional manner and interpret the code to be content neutral. Mr. Firestone was proposing an official statement from the City that that was the policy. Hopefully that would protect the City until the code was amended.

**Councilor Stone** asked if there was some reason the City needed to do that. Was there something on the horizon?

**Mr. Firestone** said one reason was that various entities have challenged and have occasionally been successful in challenging sign code sections that were unconstitutional making the entire code unconstitutional. That has happened successfully, so he recommended avoiding that situation. While the chances may not be great, one did not want to lose sign code litigation. It was expensive and miserable to go through.

**Councilor Stone** understood this would protect the current code.

**Mr. Firestone** said that was correct. The intent was to say the City would interpret the current code in a content-neutral manner. That would give the City another defense against constitutional challenges to any sign regulation.

**Councilor Collette** said that made sense, and she had no problem with the piece.

**It was moved by Councilor Stone and seconded by Councilor Collette to adopt the policy statement as drafted by the City attorney as a resolution statement for adoption with alternatives 3 or 4 in regards to constitutionality of the sign code. Motion passed 4:0 with the following vote: Council President Barnes and Councilors Collette, Loomis, and Stone voting 'aye.' Mayor Bernard had recused himself.**

It was moved by Councilor Collette seconded by Councilor Stone to continue the public hearing to a date certain December 5, 2006. Motion passed 4:0 with the following vote: Council President Barnes and Councilors Collette, Loomis, and Stone voting 'aye.' Mayor Bernard had recused himself.

## **OTHER BUSINESS**

### **A. Kellogg Plant Zoning Amendments, Continuance**

Mr. Swanson said approximately six months ago there was a package of amendment to the code and Comprehensive Plan. The code amendments dealt with two broad issues. One was changing the community service overlay provisions to community service use and several amendments to the municipal code that dealt with declaring the Kellogg Treatment Plant as a nonconforming use and requiring its removal no later than December 31, 2015 followed with penalties. At the same time the City Council did approve changes to the Comprehensive Plan that had to do with major utilities. Those amendments occurred while the Citizen Advisory Council (CAC) was in the middle of its process, so it was thought best to continue the actual adoption of the zoning amendments that would require the closure of the Kellogg Treatment Plant as of 2015. Those were continued to August 15, 2006, and at that time the hearing was continued to this date. He suggested since the CAC process was still underway that the code amendments would not be conducive to settling that. He proposed continuing consideration of the adoption of the Kellogg Treatment Plant zoning amendments to February 20, 2007. That date was chosen based on the Land Use Board of Appeal (LUBA) appeal of the Council's action on the Comprehensive Plan amendments. The paperwork had been filed, but the record was not certified. The LUBA appeal was being continued until there was some kind of resolution on the actual wastewater treatment strategic plan decision.

It was moved by Councilor Barnes and seconded by Councilor Collette to continue the Kellogg Plant Zoning Amendments to February 20, 2007. Motion passed unanimously. [5:0]

Mr. Firestone suggested the four Councilmembers provide any comments to Ms. Mangle by November 5 regarding the proposed sign code amendments, so the department might be prepared with alternate language.

Councilor Collette would like the minutes of the Planning Commission meetings.

Councilor Barnes asked that they also be posted on the City website.

### **B. Council Reports**

Councilor Stone attended the beaded swale tour that provided a visual of what Kellogg Lake could look like with the dams removed and treatments to Kronberg Park. She attended the Get Motivated seminar through the Chamber. She planned to attend the Lewelling Park and 3 Bridges dedication ceremonies and the Farmers' Market meeting.

Councilor Barnes' students were editing the Milwaukie Candidates' Forum, and she thanked Mr. Stroup for moderating. She would attend the Lewelling Park Dedication and the Young Leaders luncheon at the Chamber.

Mayor Bernard attended the Pacific Program. He would attend the Farmers' Market meeting and the special Council meeting with the CAC.

Mayor Bernard announced the Council would meet in executive session pursuant to ORS 192.660(2)(h) to discuss pending litigation with legal counsel.

## **ADJOURNMENT**

**CITY COUNCIL REGULAR SESSION – OCTOBER 17, 2006**

**DRAFT MINUTES**

**Page 20 of 21**

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

**Mayor Bernard** adjourned the regular session at 9:39 p.m.

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Pat DuVal, Recorder



**To:** Mayor Bernard and Milwaukie City Council  
**Through:** Mike Swanson, City Manager  
**From:** Larry R. Kanzler, Chief of Police  
**Date:** November 6, 2006  
**Subject:** **O.L.C.C. Application – Chan’s Steakery – 10477 S.E. Main Street**

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Chan’s Steakery – 10477 S.E. Main Street.

**Background:**

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



To: Mayor and City Council

Through: Mike Swanson, City Manager  
JoAnn Herrigel, Community Services Director

From: Tim Salyers, Code Compliance Coordinator

Subject: Resolution Authorizing a Lien in the Amount of City Costs for Abating the Nuisance on the Real Property at 9015 SE Regents Dr.

Date: November 9, 2006

**Action Requested**

Approve the proposed resolution, which assesses the costs of the nuisance abatement, including administrative overhead, on real property located at 9015 SE Regents Dr., pursuant to Milwaukie Municipal Code Section 8.04.200.

**Background**

The Code Compliance Department received a request from a neighbor to inspect the premises located at 9015 SE Regents Dr. for an offensive odor. Code Compliance Coordinator, Tim Salyers, went to the property and saw a badly burned house. Violations of MMC Sections 8.04.070B, E, F, H, & I were identified specifically, as an offensive odor, cinders, decaying food, debris, and two inoperable vehicles.

During the months of June and July 2006, there were many attempts to communicate with the owner of the property and after receiving no response and because of the necessary removal of the nuisances, the Code Compliance Department began the abatement process. The Milwaukie Municipal Code Sections 8.04.170-8.04.190 establishes the procedures for abatement.

In the months from June to October, the house was demolished and the vehicles were removed. The total cost for abatement was \$13,617.50.

On October 11, 2006, an abatement summary was sent to and received by, the property owner at his current address. Milwaukie Municipal Code states that the property owner has 10 days from the date of the notice to file an objection. The

Council Staff Report -- Resolution Authorizing a Lien in the Amount of City Costs for Abating the Nuisance on the Real Property owned by Craig Wessel.  
Page -- 2

Code also states that the costs must be paid within 30 days otherwise a lien will be put upon the property where the violation occurred.

There has been no objection and no payment as of today as required by Milwaukie Municipal Code Section 8.04.200.

**Concurrence**

The City Manager, City Attorney, City Recorder, and Community Services Director concur with this recommendation.

**Fiscal Impact**

If the recommended action is not taken, the City of Milwaukie will not recover the costs incurred.

If the recommended action is taken, the City of Milwaukie will eventually recover the costs incurred, and will have an interest rate of 6% per annum from the date of entry of the lien.

**Work Load Impacts**

None

**Alternatives**

Deny approval of resolution

**Attachments**

1. Resolution
2. October 11, 2006 letter from City Recorder Pat DuVal to Property Owner.
3. Milwaukie Municipal Code Sections 8.04.170-8.04.200

# ATTACHMENT 1

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ASSESSING THE COSTS OF ABATEMENT OF THE NUISANCE LOCATED AT 9015 SE REGENTS DR AND ENTERING THE SAME ON THE DOCKET OF CITY LIENS PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200(D).**

**WHEREAS**, notice of a nuisance was issued and posted on the property located at 9015 SE Regents Dr, Milwaukie, Oregon on July 25, 2006; and

**WHEREAS**, the property owner or person in charge of the property did not abate the property or file a protest to the notice of a nuisance within ten (10) days of the posting; and

**WHEREAS**, the City abated the nuisance after first obtaining a warrant to enter the property to do so; and

**WHEREAS**, the City has maintained an accurate accounting of the costs of abatement, including administrative overhead; and

**WHEREAS**, on October 11, 2006, the City forwarded to the owner, or person in charge, a notice of the abatement costs in compliance with Milwaukie Municipal Code Section 8.04.200(A) et seq; and

**WHEREAS**, there has been no objection filed to the abatement costs within ten (10) days after the notice nor have the costs of the abatement been paid within thirty (30) days from the date of the notice.

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL, CITY OF MILWAUKIE, STATE OF OREGON, THAT, PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200(C):**

Section 1. The assessment of the costs for the abatement of the said nuisance, including administrative overhead, is in the amount of \$13,617.50.

Section 2. The above assessment of costs shall be entered in the docket of city liens.

Section 3. This resolution is effective immediately upon adoption.

**IT IS FURTHER RESOLVED THAT** the City may also record the lien as a lien in the County lien records.

Introduced and adopted by the City Council on \_\_\_\_\_.

This resolution is effective on \_\_\_\_\_.

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

ATTEST:

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

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

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

Document2 (Last revised )

# ATTACHMENT 2



October 11, 2006

Craig Wessel  
4543 SE Arden St  
Milwaukie, OR 97222

Certified Mail # 7006 0100 0004 9592 4883

## Abatement Costs of Nuisances on Your Property at 9015 SE Regents Dr, Milwaukie OR 97222

Mr. Wessel:

An abatement of numerous code violations has occurred on your property. The City of Milwaukie has done the following work on your property, which will now be entered onto the City's lien docket:

<u>Work Completed by Contractors or City Employees</u>	<u>Cost</u>
Environmental Assessment	\$1,750.00
Asbestos Removal	\$1,500.00
House Demolition	\$6,774.74
Sewer Cap	\$ 58.75
Fill & Grading	\$ 744.00
Water Cap	\$ 7.50
<b>Total</b>	<b>\$10,834.99</b>

<u>Administrative Staff Time</u>	<u>Hours</u>	<u>Cost</u>
Tim Salyers, Code Compliance Coordinator	60	\$2,100.00
Ben Labes, Code Compliance Temp	2	\$ 32.51
JoAnn Herrigel, Community Service Director	1	\$ 60.00
Kelly Somers, Operations Director	1	\$ 60.00
Tom Larsen, Building Official	3	\$ 150.00
Rick Pauker, Utility Worker II	1.5	\$ 52.50
Jamie Clark, Utility Worker II	.5	\$ 17.50
Nick Manriquez, Utility Worker I	1.5	\$ 45.00
Dick Torpey, Utility Worker I	8.5	\$ 265.00
<b>Total</b>		<b>\$2,782.51</b>

**Grand Total \$13,617.50**

The cost as indicated will be assessed to and become a lien against the property unless paid within **thirty (30) days** from the date of this notice.

If the owner or person in charge of the property objects to the cost of the abatement as indicated, he or she may file a notice of objection with the city recorder not more than **ten (10) days** from the date of this notice.

Sincerely,

Pat DuVal  
City Recorder  
503-786-7502

## ATTACHMENT 3

### **8.04.170 Abatement—Notice.**

A. Upon determination by the city manager that a nuisance as defined in this or any other ordinance of the city exists, the city manager shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.

B. At the time of posting, the city recorder shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner or person in charge of the property at the last known address of such owner or other person.

C. The notice to abate shall contain:

1. A description of the real property, by street address or otherwise on which such nuisance exists;

2. A direction to abate the nuisance within ten days from the date of the notice;

3. A description of the nuisance;

4. A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property;

5. A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the city recorder within ten days from the date of the notice.

D. Upon completion of the posting and mailing the person posting and mailing the notice shall execute and file a certificate stating the time and place of such mailing and posting.

E. An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or the person shall not make the notice void and in such a case the posted notice shall be sufficient. (Ord. 1028 § 18, 1964)

### **8.04.180 Abatement—By owner.**

A. Within ten days after the posting and mailing of the notice as provided in Section 8.04.170, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

B. The owner or person in charge protesting that no nuisance exists shall file with the city recorder a written statement which shall specify the basis for so protesting.

C. The statement shall be referred to the council as a part of the council's regular agenda at the next succeeding meeting. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the council and the council shall thereupon determine whether or not a nuisance in fact exists and such determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where a written statement has been filed as provided.

D. If the council determines that a nuisance does in fact exist, the owner or other person shall within ten days after such council determination abate such nuisance. (Ord. 1028 § 19, 1964)

#### **8.04.190 Abatement—By city.**

A. If, within the time allowed, the nuisance has not been abated by the owner or person in charge of the property, the city manager may cause the nuisance to be abated.

B. No abatement shall occur under this section unless preceded by issuance of a judicial warrant authorizing entry, search, seizure and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property.

C. The city recorder shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses. (Ord. 1722 § 2, 1992: Ord. 1028 § 20, 1964)

#### **8.04.200 Assessment of costs.**

A. The city recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

1. The total cost of abatement including the administrative overhead;
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty days from the date of the notice;
3. That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the city recorder not more than ten days from the date of the notice.

B. Upon the expiration of ten days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed.

C. If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of six percent per annum. Such interest shall commence to run from date of entry of the lien in the lien docket.

E. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 1028 § 21, 1964)



**TO: Mayor and City Council**  
**FROM: Mike Swanson, City Manager**  
**DATE: November 1, 2006**  
**RE: Proposed Resolution Naming Tax Lots 11E36CB2800,  
11E36CB3000, 11E36CB3100 Robert Kronberg Park**

### **ACTION REQUESTED**

The action requested is adoption of the proposed RESOLUTION NAMING TAX LOTS 11E36CB2800, 11E36CB3000, AND 11E36CB3100 ROBERT KRONBERG PARK.

### **BACKGROUND**

By now the history is well known to everyone, so I will not repeat much of it, other than to say that the December 1991 transfer of property from Dena Swanson to the City consisted of three parcels. They are outlined on the attached map.

On June 6, 2006 the City Council approved a motion to rename one of the three parcels Robert Kronberg Park. All steps that were required for a renaming were completed in accordance with City requirements.

In a conversation with Dena Swanson within the past month I learned that two of the tax lots had not been included in the June 6, 2006 action. In researching this matter I found that tax lots 11E36CB2800 and 11E36CB3000 had been inadvertently omitted from consideration. One is a small triangular parcel on the north end of the property transferred, and the other is a parcel on the east end of the property transferred that is largely under water.

It was the staff's intention and, I believe, the intention of the City Council that the entire December 1991 transfer, including the two parcels mistakenly omitted, be included in the renaming. The proposed resolution fulfills that intention.

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

**A RESOLUTION NAMING TAX LOTS 11E36CB2800, 11E36CB3000, AND 11E36CB3100 ROBERT KRONBERG PARK**

**WHEREAS**, in December 1991 the City of Milwaukie purchased Tax Lots 11E36CB2800, 11E36CB3000, and 11E36CB3100 (“Real Property”) from Mrs. Dena Swanson; and

**WHEREAS**, a condition of the sale was that the Real Property be used as a park and named after her late husband Robert Kronberg; and

**WHEREAS**, in December 2005 Mrs. Swanson confirmed her intention that the said conditions remain in effect; and

**WHEREAS**, on June 6, 2006 the Milwaukie City Council approved a motion to “approve the proposed naming of tax lot #11E36CB3100 to Robert Kronberg Park;” and

**WHEREAS**, Tax Lots 11E36CB2800 and 11E36CB3000 were inadvertently omitted from the June 6, 2006 motion; and

**WHEREAS**, it was the intention of the City Council that all of the Real Property transferred by Mrs. Swanson in December 1991 be renamed Robert Kronberg Park.

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

Section 1: That Tax Lots 11E36CB2800, 11E36CB3000, and 11E36CB3100 be named Robert Kronberg Park.

Section 2: This resolution is effective upon adoption.

Introduced and adopted by the City Council on November 21, 2006.

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Pat Duval, City Recorder

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



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager

**From:** Kenny Asher, Community Development and Public Works Director

**Subject:** Feasibility Report on the New Century Players Proposal to Renovate and Occupy City Property at 37<sup>th</sup> Ave. and Washington

**Date:** November 21, 2006

### **Action Requested**

None. This is an informational update to Council in response to a proposal received by the City from the New Century Players theater group, concerning real property owned by the City at 11022 SE 37<sup>th</sup> Avenue.

### **Background**

On September 13, the City received a proposal from a local theater nonprofit organization called the New Century Players ("NCP"), requesting that the City consider NCP's offer to renovate and then lease from the city, the city-owned house at 37<sup>th</sup> and Washington. The City Manager subsequently asked Community Development/Public Works staff to address the feasibility of NCP's proposal, which included an estimate of approximately \$35,000 worth of in-kind renovation work in exchange for use of the property.

Specifically, the City Manager asked about the city's ongoing interest in the site, given the location of our Well No. 7 and pump house at the site, the land use approval requirements that NCP would be subject to, and the feasibility of the renovation plan put forth by NCP. This memo will address each of those questions in order:

### **Ongoing Interest in the Well Utilities**

Based on discussions with the City Attorney, Engineering Director and Water Quality Coordinator, staff recommends that any lease structure with a future user of the site provide well protection in accordance with regulations requiring a 100 foot protective zone

and protective covenants on the property. The City should seek the following protective requirements:

1. No use of herbicides or pesticides. Any request for use of such must be made at least 45 days in advance. The City's Water Quality Control Coordinator must review and forward request to Oregon Drinking Water Program Hydrologist for further review. The request must contain the following information.
  - A. Purpose of chemical use.
  - B. Label name of product and copy of label and MSDS.
  - C. Graphic depiction of area of use
  - D. Application rate and total use.
2. Only small amounts of low nitrate organic fertilizer may be used in landscape areas and only with prior approval of the City's Water Quality Control Coordinator.
3. Vehicle parking must be on pavement.
  - A. No parking at any time in the first position next to north side of well house.
  - B. All tenant vehicles must be able to move on short notice to facilitate emergency repairs to well site or emergency operations.
4. Storage of hazardous substances i.e.: fuel, chemicals (other than routine household cleaners in less than one gallon containers), fertilizer organic or synthetic is prohibited.

### Land Use Considerations

*Past Land Use Actions:* The site received approval as a government office use in 1971 (File# C-1971-007). This designation pre-dates the creation of the community service overlay in 1984. The sign on the east side of the property received approval as a consideration item (File# CI-92-01).

*Zoning:* Located in the R5 zone. Offices / community arts uses are not allowed outright or conditionally in the R5 zone. The use would need to be approved through a Community Service Use (CSU) as a Private Institution. Though the property has been used as governmental office space, it appears that the New Century Players are a different enough tenant and organization to require CSU review. Since the City owns the property, it is possible for the City to initiate the CSU review, thereby avoiding charging the full land use review fees to the New Century Players nonprofit.

*Parking:* Property appears to have 9 spaces. The living area, per Clackamas County Assessor data, is 3,350 square feet. If used as an office, the most appropriate use in

Table 19.503.9 is professional services, which requires a minimum parking ratio of 1 space for every 370 square feet of gross lease-able area. If all 3,350 square feet were considered leaseable, 9.05 spaces would be required. It is likely that not all of the living area is leaseable, so the existing parking is probably adequate. Improvements such as wheel stops or re-striping may be required.

*Transportation Impacts:*

Transportation improvement requirements of Chapter 19.1400 of the Milwaukie Municipal Code apply when a proposed development triggers a transportation impact study or when the improvements to the site are more than \$200,000 (adjusted for inflation). Based on the letter from New Century Players, the proposed improvements will be approximately \$35,000, which will not trigger transportation improvements. It is also not likely that the value of improvements will be considered substantial redevelopment. Substantial redevelopment is defined as redevelopment valued at over half the assessed structure value.

If the proposed development does not establish a new community service use, a change of use, an increase the gross floor area, or a significant increase in the number of generated trips, a transportation impact study may not be required. However, because the development site has been vacated for a number of years, the use has not generated trips for a significant period of time. As a result, engineering staff could consider requiring a transportation impact study for the proposed use.

If the proposed development triggers the requirements of Chapter 19.1400, the applicant will be responsible for improving the streets fronting the proposed development property to city standard. The improvements include widening the street and construction of curb, planting strip, and sidewalk. The amount of the improvements required will be proportional to the impact of the development.

*Historic Resource:* The property is an unranked historic resource. Prior to any changes that affect the exterior of the structure (“alterations”), the site must go through the process for designation or deletion of an historic resource, as described in MMC 19.323.4. This process involves a hearing before the Planning Commission and City Council to determine if the resource should be ranked as a contributing or significant historic resource, or removed from the historic inventory entirely. It appears that the site was declared an unranked historic resource when the historic resource inventory was created, and has not gone through the process of designation or deletion.

Alterations are defined as a change, addition, or modification of a landmark that affects the exterior of the landmark. Ordinary maintenance and repair are exempt from this definition, so long as the maintenance does not involve a change in design, material, or appearance of such structure, or which is required by the building official in order to remedy an unsafe or dangerous condition. The following items listed in the proposed improvements would likely be considered alterations: new access to cellar; refurbishment of the front porch; replacement of the roof; and window replacement.

*Outstanding Issues:* The ADA ramp on the north side of the building was installed as a temporary structure, subject to the final disposition of an historic resource review. Since the site has not had this review, the ramp, technically, should not be allowed to remain in place.

### Renovation Requirements and NCP Proposal Feasibility

The building was constructed in approximately 1930 as a Single Family Residence. It is currently listed on the City of Milwaukie Historic Resources Property List as an “unrankable” property.

At some point the building was converted to office occupancy. Although the Building Official was unable to find any record of a formal Change of Use process, he did find building permits as far back as 1985 identifying the building as a B Occupancy, signaling that continued use as office space would be acceptable. Any other use, however, would require additional review.

The Building Official performed a site visit and reviewed the inspection report from Crawford Inspection Service dated July 13, 2004. Aside from any Planning or Engineering requirements, the following items – at a minimum – need to be addressed.

1. Repair the accessible entry ramp to a safe condition. Most of the posts holding the guardrail are leaning and are not capable of providing the code required structural support.
2. Install a code compliant handrail on at least one side of the front entry stair.
3. Install a code compliant handrail on at least one side of the stairs to the second floor. Replace the window on the landing with tempered glazing.
4. Contract with a licensed electrical contractor to repair all electrical deficiencies noted in the inspection report.
5. The chimney on the north side of the building should be either removed or additional stabilization measures implemented. A licensed structural engineer must design any such measures. The fireplace should not be used in any case without a chimney cleaning and inspection by a company licensed for such work.
6. Repair all damaged or blocked attic or under floor vents. Remove and replace all insect damaged wood noted in the report. Treat the structure for the removal of carpenter ants and powder post beetles. This may be problematic due to the proximity of the city well site.
7. Abandon the oil furnace. There is evidence of oil leaking, and the venting is suspect. The supply ducts are not insulated, many joints are leaking, and some ducts are physically disconnected. If funds are limited, a series of electric baseboard or cadet type heaters may be a viable alternative.

8. Replace the roof and repair any related dry rot or structural damage.
9. Install energy efficient windows throughout the building and repair any related dry rot or structural damage.

The Building Official has concluded that although the NCP proposal is quite thorough and shows a commitment to upgrading the property, the schedule of priorities would need to be altered for the City to have confidence in the fitness and occupancy of the structure:

**First Year:** NCP proposes the refurbishment of the interior as well as landscaping upgrades with a budget of \$11,500. Items 1 through 5 as outlined above. These items should be easily accomplished within their budget and should be completed prior to any occupancy of the building. I would also expect that a reputable HVAC contractor be engaged to service the existing furnace and verify its safety prior to occupancy.

**Within Three Years:** NCP proposes to continue landscaping upgrades, stabilize the handicap ramp and replace the roof with a budget of \$16,000. Items 6 through 8 as outlined above. While completion of these items may strain their budget figure, I believe these are minimum requirements necessary to ensure safety and protect the city's investment.

**Within Five Years:** NCP proposes to replace the furnace and the windows, with a budget of \$8,000. Item 9 above. The windows should be replaced sooner if possible, as every year that passes will only add to the water damage and ultimately, the cost.

The building is not currently accessible to persons with disabilities (beyond the entry ramp). Since it was converted to office occupancy prior to 1991, it is not required to be accessible and nothing in the items listed above would trigger accessibility upgrades. However, any future remodeling, such as moving walls, remodeling bathrooms etc., will require that up to 25% of the remodeling budget be dedicated to the removal of architectural barriers (ORS 447.241).

### **Concurrence**

None, as there is no action requested. Staff has briefed the chair of the Hector Campbell neighborhood association and the executive director of the Milwaukie Museum on the NCP proposal. Should Council direct staff to proceed, concurrence on the lease structure would be sought from the City Attorney.

### **Fiscal Impact**

None, as there is no action requested. Should Council direct staff to proceed, due diligence would be performed to ensure that the fiscal impact to the City would be assessed prior to entering a lease with the New Century Players.

### **Work Load Impacts**

None. Community Development staff can manage this process and negotiation given current workloads.

### **Alternatives**

None, as no action is being requested at this time. Staff is seeking general guidance from Council on the merits of the proposal and possible partnership.

### **Attachments**

Attachment 1: New Century Players September 13 Proposal to the City of Milwaukie

Attachment 2: Email direction from City Manager to staff from September 28, 2006

# ATTACHMENT 1



7740 SE Harmony Rd.  
Milwaukie, OR 97222

503-367-2620  
www.newcenturyplayers.com  
info@newcenturyplayers.com

September 13, 2006

Mayor Bernard  
Milwaukie City Council  
10722 SE Main St.  
Milwaukie, OR 97222

**Re: Renovation and Lease of city-owned property at 11022 SE 37th Ave, Milwaukie, 97222**

Dear Mayor and City Council members:

Greetings and thank you for your time and consideration regarding the following proposal.

*New Century Players*, an IRS recognized 501(c)3 not for profit arts organization, would like to propose the renovation and use of the above stated property under certain conditions and with certain agreements.

**Background:** *New Century Players* has been in existence for almost three years. At this point, the company still runs with a volunteer board of directors and completely volunteer staff. We have maintained this ability to operate and expand because of the generosity of the local North Clackamas School District #12 and through partnerships with North Clackamas Parks and Recreation and the North Clackamas Chamber of Commerce. We operate with over 1000 volunteer hours each year to bring quality live entertainment to our local community. For the past three years these three entities have offered us rehearsal and performance space along with a mailing address so that we could begin official operations. For the past two years, we have been seeking office, meeting and storage space that could help us expand our programs for the local community. In the late spring of 2006, at the urging of Milwaukie City Councilor Deborah Barnes, we contacted Milwaukie Community Development Director Kenny Asher for assistance with our real estate needs. We explained to Mr. Asher that we wanted to be in the City of Milwaukie because our company was founded on the following mission statement: *Our mission is to build community in the greater Milwaukie, Oregon area by providing opportunities for artistic expression through live performances.* With our mission statement so clearly focused on Milwaukie, we want and need to be centered there. After several months, we heard back from Mr. Asher about a possible location.

**Property:** On Tuesday, September 5<sup>th</sup>, representatives from *New Century Players* toured the building with Mr. Asher and Councilor Collette, with whom we had met previously to discuss the formation of an Arts organization for Milwaukie. On Tuesday, September 12, 2006 *New Century Players* looked over the property, the building, and the landscaping with two licensed contractors: John Moran and Terry Lybecker. They helped us to determine the following facts about the building in its current condition:



*Our mission is to build community in the greater Milwaukie, Oregon area by providing opportunities for artistic expression through live performances.*

- Overall, the interior first and second floors are in good condition and only in need of some patching, paint, cleaning and minor repair.
- The cellar/basement is in need of major repair and cleaning.
- The furnace will eventually need to be abandoned.
- The fuel tank needs to be capped and eventually abandoned.
- There are two young pines at the rear of the building that need to be removed as they are debilitating the roof and are close to affecting the foundation.
- The roof needs to be replaced in the near future.
- A new heat pump needs to be installed.
- For efficiency the windows will need to be replaced in the future.
- If public access is necessary, all floor vents will need to be replaced to bring the common areas up to code.
- The handicapped access is still in good condition, but the hand railing needs to be stabilized.
- The front porch needs to be sanded and refurbished for safety reasons.
- The landscaping and exterior of the house need work to make this a viable, attractive piece of property for the city, the neighborhood, and its occupants.

**Proposal:** As a local arts, not-for-profit organization, *New Century Players* would like the City of Milwaukie to consider becoming the future home of the New Century Players, bringing this growing arts organization to Milwaukie and simultaneously revitalizing a once-beautiful old house. Subject to review by boards, lawyers, etc., New Century Players proposes to renovate the property in exchange for a \$1 yearly lease, under which New Century Players could set up offices, storage and meeting space. New Century Players estimates the value of this renovation to be at least \$35,000.

- **First Year**
  - o Immediate refurbishment of interior first and second floors equaling \$2500 in materials and labor.
  - o Cleaning, refurbishment, and creation of new access to cellar/basement equaling \$4000 in materials and labor.
  - o Landscaping of grounds and exterior of the building equaling \$5000 in materials and labor.
  - o Office space for new city Arts organization.
  - o Co-op meeting and conference space for arts groups and local community artists.
- **Within Three Years**
  - o Maintenance of property and surrounding landscape equaling \$5000 in materials and labor.
  - o Stabilization of handicap access ramp, and refurbishment of front porch equaling \$2000 in materials and labor.
  - o Removal of two young pines in rear of building and replacement with two or more deciduous trees appropriate to the property and climate equaling \$1500 in materials and labor.
  - o Replacement of roof equaling \$7500 in materials and labor.
- **Possible Maintenance within first Five Years**
  - o Installation of heat pump and central air (excluding current furnace and fuel tank abandonment and any asbestos abatement.)
  - o Window replacement (for energy efficiency) equaling \$8,000 in materials and labor.

Under these conditions, *New Century Players* would also agree to get any appropriate approvals before pursuing any major expense or repairs on the property or grounds (e.g. council, planning commission, neighborhood association). *New Century Players* would accomplish above conditions through volunteer work, pro bono contractor work, paid labor, grants and fundraising. They agree to gladly accept help and input from the Milwaukie City Council, the future Arts organization for the city and the Hector Campbell neighborhood association.

*New Century Players* would like to also partner with an Arts organization for the city and with the adjacent Milwaukie Museum to create a cultural center for the City of Milwaukie both in philosophy and in location, if the city so desires.

**Timeline:** *New Century Players* would like to assume immediate occupancy of the above property upon city council approval of above proposal.

New Century Players is excited about being a part of this community and we look forward to growing and expanding as the city goes through redevelopment. Thank you so much for your consideration and we hope to hear from you soon!

Sincerely,

Kelley Marchant, Managing Director  
Board of Directors, New Century Players

## ATTACHMENT 2

**Asher, Kenny**

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**From:** Swanson, Miko  
**Sent:** Thursday, September 28, 2006 11:14 AM  
**To:** City Council  
**Cc:** DuVal, Pat; Asher, Kenny  
**Subject:** New Century Players/11022 SE 37th Avenue

I wanted to update you on the status of the New Century Players' request to lease the above property. I believe that you all received the letter dated September 13, 2006 requesting that the City lease the property to the organization. Staff is reviewing the condition of the facility in order to make a realistic estimate of the improvements that would be required. In addition, there is a City well on the property, and we are assessing the need for a provision(s) regarding that facility. Once we have answers we will be bringing this before Council. Kenny has contacted representatives of the organization to let them know that we are studying their request.

Mike