

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL FEBRUARY 2, 2010

MILWAUKIE CITY HALL

10722 SE Main Street

2071st MEETING

REGULAR SESSION – 7:00 p.m.

1. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Milwaukie High School Student of the Month Laurie Ellis**
Presenter: Mark Pinder, Principal
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.)* **1**
 - A. **City Council Minutes for the October 6, 2009 Work Session** **2**
 - B. **City Council Minutes for the October 20, 2009 Work Session** **6**
 - C. **City Council Minutes for the November 3, 2009 Work Session** **8**
 - D. **City Council Minutes for the November 17, 2009 Work Session** **10**
 - E. **Appoint Val Hubbard to Arts Committee – Resolution** **17**
 - F. **Appoint Nick Harris to Planning Commission – Resolution** **18**
 - G. **2010 Water System Master Plan** **19**
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.)*

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| 5. PUBLIC HEARING <i>(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.)</i> | 52 |
| A. Proposed Amendments to the Milwaukie Municipal Code 15.04.030, 15.04.070, 15.04.220, 15.04.240 and Adding Section 15.04.215 to Provide for Administrative Civil Penalties for Violations of the Specialty Codes and Building Requirements and Appeal Staff: Tom Larsen, Building Official | 53 |
| B. Jackson Street Improvement Project Supplemental Budget Amendment – Resolution Staff: Alex Campbell, Resource Economic Development Specialist | 72 |
| 6. OTHER BUSINESS <i>(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.)</i> | 83 |
| A. Temporary Surcharge on Wastewater Utility Rate Due to Clackamas County Termination of Service Contract – Resolution Staff: Kenny Asher, Community Development and Public Works Director | 84 |
| B. Establishment of Quiet Zones on the Union Pacific Mainline and Tillamook Branch – Resolution Staff: Wendy Hemmen, Light Rail Design Coordinator | 106 |
| C. Approval of Change Orders 1 and 2 for Additional Federal Stimulus Funding for NE Sewer Extension Project Staff: Gary Parkin, Engineering Director | 128 |
| D. Third Annual Report on Street Surface Maintenance Program Staff: Gary Parkin, Engineering Director and Alex Campbell, Resource Economic Development Specialist | 137 |

7. INFORMATION

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session pursuant to ORS 192.660.
- 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.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

CONSENT AGENDA

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION
OCTOBER 6, 2009**

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes and Susan Stone

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan, Resource and Economic Development Specialist Alex Campbell,

Urban Renewal Feasibility Study Briefing

Mr. Campbell introduced Jeff Tashman and what kinds of investments might be necessary, size of the urban renewal area.

Mr. Tashman said the Scope of work developed with staff and RFP was well-thought-out. They looked at development and parking standards and how those might support or inhibit new development. They projected what kind of development could happen, increment, and estimated revenues and what kind of debt that could support. All recommendations have been done on a technical professional level it was a first look with no public involvement. Their assumptions were only for the purpose of saying if this was feasible and real decisions were made in planning process. They considered a large study area then worked with staff on the definition delineation of opportunity sites including sites that are essentially Greenfield sites like Murphy and McFarland. They include sites that are more redevelopment sites where there is current use of the property but they are being underused. They are characterized by a size that would allow for a significant mixed use development. They made some judgments about how development could occur. They looked at projected population, employment projections, and a general sequence of when development might happen. He showed a summary chart to Council that gave an idea of the scale that was happening. The scale was modest 160,000 square feet of retail, 60,000 square feet of mixed use, 150,000 square feet of office, total of 575 housing units, and lodging with the idea of a hotel developing on the Kellogg Treatment Plant site. They needed to get to how much assessed value would this development contribute. He discussed the real market value. They looked at the whole study area which seemed quite large. When they measured the acreage and the assessed value it exceeded the urban renewal legal limits and they thought there were reasons for looking for smaller area. The main reason was that opportunity sites identified by consultant and staff occurred in some but not all sub areas. There were no opportunity sites in Island Station or the industrial area to the north. They thought there was a desire on the part of the City to focus on the downtown and not spread the effort too thin by including other areas that were not downtown in nature. They came up with a refined study area. If it is decided to do urban renewal decisions will need to be made on the area. The areas he showed on a map of were the areas for the sake of the study and focused on the areas directly related to the downtown. They looked at Island Station and they were sensitive to that area. The limits on size

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and assessed value are by state law 25%. The area was under 15% of size and 11% assessed value. If in the future it was decided that it was an urban renewal area it was not as large as it could be and the City could expand this area or create another one.

He didn't base the study on the largest area that they could legally do. He briefly discussed tax increment financing. Staff had advised them that they were looking to revise parking standards for the downtown area so they added to scope feasibility analysis of some example projects on example sites using proposed parking standards and the impacts on design and financial feasibility.

Mr. Campbell added they also looked at the public area requirements and what share of total development costs those would represent at the example sites.

Mr. Tashman they found the proposed requirement in their judgment was that in areas like the downtown core that would be served by light rail it was possible to develop multi-family units without parking for all units. There would be projects that would work without parking and some that wouldn't work with parking. With office development they found some onsite parking was necessary from market standpoint. The other conclusion about redevelopment on those sites was that none of them would pencil out today or tomorrow because of the market conditions. The final point was on rehab projects for new uses when the downtown is being turned around those kinds of projects led the way followed by increasing rents and more activities that support new development. They put together the projections of new development on opportunity sites over a 20-year period with a substantial financing capacity from urban renewal of \$63.1 million or \$40 million in today's dollars. The capacity would be very limited at the beginning, which was the challenge, but it would increase over time. He referred to a graph that showed how much could be borrowed with bond issues being sold every three years or so. Under those projections through 2016 the total bonding capacity was \$6 million. As opportunity sites are developed we begin to have more capacity. Priority projects were those which were short- to mid-term. Rationale was that urban renewal projects should stimulate private development and create tax increment revenue stream from taxable projects. The debt and revenues are created by redevelopment of opportunity sites. If they don't develop the revenues would not be there. It would take public investment to get those early projects going. The focus would be to focus money on the projects that begin getting sites such as Murphy and McFarland developed. There are other projects that are critical for downtown, but they are not proposing to use urban renewal funds for those because those funds are needed for the opportunity sites. The other projects they determined as critical are light rail, Riverfront Park, and South Downtown Plaza which were critical amenities for those living and working downtown. Staff is still reviewing the deliverable methodology, actual projections for boundary of urban renewal district, project prioritization, impact of PAR and parking standards. Staff will work on those reports and products.

Mr. Campbell said the intention of staff was to give the City Council an opportunity to ask questions and do some additional research from Council and Fire District concerns.

Mr. Tashman discussed the projects in more detail.

Mayor Ferguson asked for Council to hold questions and asked Mr. Campbell to come to another session to answer the questions as well as share additional research done by staff.

Wastewater Partnership Agreement

Mr. Swanson said it will appear for possible action on 10/20. He wanted to know if there were any questions that Council had.

Councilor Chaimov understood scope of obligation of signatory. He asked about the Label fiduciary duty and did not understand the first point.

Mr. Swanson responded the fiduciary duty could be removed and explained they were engaged with a number of issues with WES. One of the purposes of the bylaws was to make recommendations consistent with operations of the County. It seemed some of issues discussed related directly to those issues and if approved at this time would be approving a new process. He felt it could be dealt with by making bylaws effective prospectively.

Councilor Chaimov asked why that would be a bad thing?

Mr. Swanson responded that it may not be a bad thing.

Councilor Stone said when she read the bylaws the duties of the advisory committee did not include rate setting. She thought that it needed to be specified and it should be in there.

Mr. Swanson said that he thought the partnership input would lead to a rate when the BCC made its decisions.

Chris Storey said that Mr. Swanson was correct. The recommendation was to deal with treatment infrastructure which was a component. CCSD1 would also consider conveyance issues and general district obligations that would factor in to rate.

Mr. Eder added this agreement dealt only with waste water treatment as opposed to conveyance. Nothing in this agreement got in the way of affecting local systems.

Councilor Chaimov asked 2.2(a) Fiduciary duty, what did that mean?

Mr. Storey said it was residual of the previous agreement with the idea to follow the law, which was the intent of that paragraph. There was discussion from the City of West Linn to change that to say something else at the partnership meeting this week.

Councilor Stone asked how votes were awarded to the different partner cities?

Mr. Eder this was the product of a process that began nearly 2 years ago with a public task force that had representation from the region. The discussion had to do with how decisions were made. There were 2 districts and multiple parties in the district. The agreement was a weighted voting system that would equalize the 2 districts and would include Milwaukie as a founding member if endorsed by the City. The process of discussion was to evaluate how to fairly allocate votes.

Mr. Swanson explained both districts had 4 votes.

Councilor Barnes TriCity would probably vote together.

Mr. Eder said that Council may be surprised of voting outcome and depended on the issue.

Councilor Stone asked about the criteria of approving a new member, section 4.2(b).

Mr. Storey said there was a long discussion and the intent was to prevent a City from taking on a wholesale customer and passing on the cost of treatment to the rest of the system without consulting the system.

Mr. Swanson said there may be changes after the partnership meeting this week.

Mr. Eder said several cities have endorsed this and so most likely it will go through the process if people have conditions or recommended changes would come back to those cities who had already voted.

Mayor Ferguson were there any other questions from West Linn

Councilor Barnes asked the status of Damascus

Mr. Storey responded that they voted to endorse the agreement along with Happy Valley, River Health, CCSD1 and Oregon City. Gladstone was meeting next week.

Regional Committee Assignments

Held over

Council Goal Setting

Held over

Mayor Ferguson announced executive session.

Mayor Ferguson adjourned the work session at 6:08 p.m.

Pat DuVal, City Recorder

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION
OCTOBER 20, 2009**

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Services Program Coordinator Beth Ragel.

Public Safety Advisory Committee Interview

Don Wiley was interviewed for the Linwood Neighborhood Association representative position.

Sculpture Garden Update

Ms. Ragel staff liaison to the Milwaukie Arts Committee discussed the project just started by the Committee. During the Jackson Street redesign project planning it was noted that people lounge on the grass area at City Hall. The committee thought the area could be re-landscaped to include a sculpture garden with 4-5 pedestals that can be holding rotating art pieces. City staff sought and received a grant from the Clackamas County Tourism and Cultural Affairs Commission for \$18,000 to use towards the project and TriMet said the City could use their \$4000 art budget towards this project for a total of \$22,000. She recently sent out a RFP to receive proposals with that budget in mind. The proposal deadline was Friday. The arts committee along with city staff would review the proposals, and she would like input from Council.

Councilor Barnes was concerned with lighting for security purposes. She didn't want to see sculptures taken away.

Ms. Ragel said the plan is to mount the sculptures that would be on loan to us from local artists. It would be similar to Lake Oswego who has over 50 pedestals and 50 pieces of rotating art. They have had very few problems in Lake Oswego with vandalism and theft. She agreed that lighting was a key issue.

Councilor Barnes asked what would the arts committee be looking for in picking art pieces?

Ms. Ragel said they haven't come up with criteria to determine what types of art they will display. They would need to come up with the criteria once they get the area re-landscaped and the pedestals installed. They were doing the project in phases. The first was securing the grant funding and then determining what and how many pedestals to install.

Councilor Barnes suggested contacting the Milwaukie Art Center and to use some of the student work.

Ms. Ragel said that was a good suggestion and she would contact them. She had contacted the High School and was impressed with the Student's work.

Councilor Stone asked if it was possible to network with artists displaying in Lake Oswego?

Ms. Ragel said she was in contact with Lake Oswego and she was sure they would share their resources.

Councilor Stone asked about the \$4000 TriMet funding coming out of the Jackson Street project. Was something being forfeited from the project?

Ms. Ragel said that TriMet dedicates 1.5% of capital towards art in their projects. The City had requested the use of those funds for the sculpture garden and TriMet agreed. Nothing had been changed or taken away from the Jackson Street Project.

Councilor Stone asked if there were any proposals so far.

Ms. Ragel said she contacted 2 landscape architects to look at the project and get some initial ideas. There were some sketchy ideas from early on. She had been contacted by 7 companies that were interested and thought would submit proposals.

Councilor Stone asked if any Design and Landmarks Committee members were involved in reviewing.

Ms. Ragel would talk with the DLC and ask them to be involved, and since this was an historical site the project would go through the Planning Commission.

Councilor Stone supported the project.

Mayor Ferguson spoke with members of the Budget Committee, community, and City Council. He suggested we perform an audit on the wastewater accounts to see how in line we were with accounting practices and compare it with the rate study that was started 5 years ago. He understood from Mr. Palacios that the City does a rate study about every 5 years. He wanted to direct Mr. Swanson to have Mr. Palacios start on the audit in November and take it back to the Budget Committee and Citizens Utility Advisory Board to see what further work needed to be done. Mr. Palacios felt it could be done within his regular duties and would be done in the first couple of weeks of November.

Mayor Ferguson announced the City Council would meeting in executive session pursuant to ORS 192.660(2)(h) for consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to occur.

Mayor Ferguson adjourned the work session at 5:47 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION NOVEMBER 3, 2009

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes and Joe Loomis

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan, Library Director Joe Sandfort

Library Board Interview

Kay Bower was interviewed for a vacant position on the Ledding Library Board.

Mayor Ferguson directed staff to prepare appointment resolution.

Library Board Work Program for 2009 - 2010

Tom Hogan, Chair, discussed the 2009 – 2010 Work Program, which was a product of the Board chaired by Colleen Schacht. He reviewed their numerous 2009 accomplishments. The Board regularly attended NDA meetings and had incorporated Milwaukie High School involvement with Poetry. They were delighted at the passing of the County Library District and have nominated Mark Docken to sit on that board. It had been an active year and was an active board. He discussed upcoming priorities for 2010 including; Making contacts, networking and creating dialogue with the County in the implementation of the Library district; Pond House priorities were to continue to coordinate and implement structure requirements, develop and use the pond house and support other stakeholders for improvements to facilities and encourage Pond House use; continue the Poetry Series Third Season, and expand the series from readings to include workshops, one youth event and he anticipated sponsoring the summer picnic. They want increased board participation with the Friends and to support Friends as much as possible and develop relationships to increase participation in plant and book sale. They want to continue encouraging library support at NDA meetings to promote the library and the Friends. They want to work with other partners to develop and promote Willamette reader series, develop fundraising strategies for long range fundraising needs including short-term and long-term goals. They would like to see an increase in donations and acknowledge those donations properly. He thanked Council for their support of the Library and Board.

Councilor Barnes said she was proud of the work of the Library Board and Friends organization and commended all.

Councilor Chaimov spoke to his enjoyment when serving on the Library Board.

Councilor Loomis asked where the City was in terms of the Library District?

Mr. Sandfort said the City signed the IGA and he thought the City was a full fledged member of the District. The City should receive the first payment in January.

Councilor Loomis appreciated what was being done with the high school.

Mayor Ferguson said he met with the high school leadership group at the Pond House and appreciated the facility and time they had spent in the Library.

Mr. Sandfort thanked City Council, Pat DuVal and Mr. Swanson for their roles in helping the library to be successful.

Councilor Barnes said one of the goals at the high school was to increase the level of writing and said if there was any way to help in an informal setting at the Library that would be a wonderful way to bring teenagers back to the library.

Mr. Hogan said they were going to sponsor another youth workshop this year, and hopefully if the interest was there they could expand that to two workshops.

Regional Committee Assignments

Mayor Ferguson discussed the RiverHealth Advisory Board and makeup of the current membership.

Councilor Chaimov suggested asking if a member of the Citizens Utility Advisory Board might want to be a member.

Mayor Ferguson said he would ask Mr. Parkin for time on their agenda.

Mayor Ferguson discussed other committee assignments and there were no changes at this time.

Councilor Barnes asked about JPACT and said that the person assigned to C4 was supposed to report to JPACT.

Councilor Loomis asked for more information and said that he was not aware that he was supposed to attend. He would get information and start attending.

Councilor Chaimov asked about IPACT.

Mr. Swanson said he would check to see if someone has been attending regularly.

Goal Setting

Mayor Ferguson put goal setting on the next work session agenda.

Councilor Barnes asked to set a couple of tentative dates. She preferred not to do it in the evening. She proposed Saturday, November 14.

Consensus was November 14 after 2 p.m.; or 12/12 8 a.m.

Mayor Ferguson adjourned the work session at 6:12 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION NOVEMBER 17, 2009

Mayor Ferguson called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Susan Stone, and Joe Loomis

Staff Present: City Manager Mike Swanson, Community Services Program Coordinator Beth Ragel, Resource and Economic Development Specialist Alex Campbell; Community Development and Public Works Director Kenny Asher

City Hall Sculpture Garden Update

Ms. Ragel reported 4 proposals had been received and expected to award the contract in December.

Event Permit Process Changes

Ms. Ragel recommend scheduling a hearing for March or April to address the Cruisin for Hope event, which included boat races. She discussed the 2009 event and concerns raised by residents and particularly the noise from the boat races. She came to Council after the event that would be Policy Changes to address those concerns. She reviewed the 4 recommendations. To implement a referral process to the neighborhood association similar to what planning does for land use and second how parties identify people. She created a chart with benchmarks based on the size of events and the notification requirements, which ranged from small and large events that would be conducted on the boat ramp. She added that they would need to notify residents and they would get mailing lists from the City that would be given to the applicant to notify adjacent property owners, and she further suggested the applicant notify residents within a certain radius. She created a checklist for applicants so they would know what needed to be done and when. These were for large events with 300 or more people. The other recommendation had to do with other agencies that wanted to be notified for certain events. The final recommendation was to develop criteria for potentially restricting water events during certain times of the year. After consulting with the other agencies she didn't think it was necessary to have blanket restrictions if consulting these other agencies. It made more sense to look at events on a case by case basis. In August they also discussed the noise ordinance which City Attorney Monahan was reviewing to determine if amendments were needed. Her understanding was that he would come to Council if he felt there were changes that needed to be made. She did not recommend any changes at this time, and Chief Jordan recommended having PSAC consider the matter. She further recommended scheduling a hearing prior to the 2010 Cruisin for Hope.

Councilor Barnes commented that she felt this was overkill and said that the fireworks show and parades made Milwaukie Milwaukie. She knew there was concern about the boats and she asked if boats might be moved out of that area

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next year. There was too much staff work involved; she had not heard any complaints about the fireworks. She wanted to deal with event applicants on a case-by-case basis.

Councilor Chaimov asked how much more work this process involved and what Ms. Ragel thought might be onerous

Ms. Ragel said she only gets 2 applications of this size – Milwaukie Daze and the Cruisin, so it was not that much work for her. It may feel like overkill for the applicant, which could be frustrating for them. We do know about larger events well in advance so it would give them time to meet requirements and she would not go through this for smaller events.

Councilor Chaimov asked what Ms. Ragel thought might be onerous for the applicant

Ms. Ragel responded the postage for the mailing might be considered onerous; the City would provide mailing labels.

Councilor Chaimov asked Mr. Swanson if we were having a comprehensive review of noise code.

Mr. Swanson City Attorney Monahan is reviewing for legal issues and roosters. The hearing was an oddly written thing because the police have authority over the noise code, but the code says there will be a hearing. They weren't sure who would run the hearing. He was looking at it from the perspective of legal issues.

Councilor Chaimov asked if the review would be done prior to any hearing that would take place.

Councilor Chaimov inclined to finalize the process for fixing the noise code before deciding about public hearing. If someone wants to request a hearing it should be scheduled. The process should be resolved first. He felt Ms. Ragel did fine work in addressing concerns. He would appreciate hearing from the 2 organizations that would be most affected by this. If the Cruisin group said no problem he would be inclined to do it. If it would be a disincentive to holding the events in Milwaukie he would be against it.

Ms. Ragel said one thing that was unclear was the referral process to the NDA. Would the referral be a notification only? They would accept comments, but she wasn't sure about that process.

Mayor Ferguson when they hear back from applicants suggested hearing back from Milwaukie Daze also. He asked what other cities do.

Ms. Ragel Portland does refer to neighborhood others may be so large and controversial may go to the City Council or the Planning Commission.

Mayor Ferguson suggested moving forward with Councilor Chaimov's suggestions.

Urban Renewal Feasibility Study

Mr. Tashman introduced the members of his group. They were retained to do a City Feasibility Study for Urban Renewal. The core started looking at a pretty large study area in request for proposals. They looked at it and refined it to make it more focused. They spent a lot of time looking at real estate market obstacles, development of certain sites. They also asked for analysis of existing and proposed development standards particularly parking standards. It is based on analysis projected development over a 20-year planning horizon. They projected

tax increment revenue and debt. They prioritized urban renewal projects. This was a technical report to help Council make a decision on how to pursue urban renewal process. Urban Renewal planning would have public involvement.

The Original study area included industrial area east and west of McLoughlin, Waverly, Island Station, and historic downtown, Lake Road and Ardenwald. They looked at opportunity sites that had the right size, vacant or were re-developable. They looked at location and that led to a recommendation that the study area be narrowed down to include those areas with opportunity sites and exclude those which did not. In terms of excluding areas the Island Station neighborhood was one that was established, mature, and low density. They did not see a huge opportunity nor should there be over time. North Industrial area felt redevelopment could be long term. There were expensive infrastructure needs and could meet only with different land uses over time. The recommended focus was on the narrower part of the original study area: Ardenwald, Historic, and Waverly.

Mr. Tashman reviewed the elements of tax increment financing.

Nancy Guitteau talked about market assessment and key findings. Identified opportunity sites; she stressed that it did not mean these were the only sites that would have development in the next 20 years, but they were the most likely. They only looked at sites with a minimum of 10,000 sq ft. In terms of coming up with a development program for the sites some were vacant but many have existing uses. The development program was based on zoning to begin with and adjacent uses and how they relate to light rail. She believed light rail was a game changer for downtown Milwaukie. It will change the complexion of the downtown and provide significant incremental value to many of the locations surrounding the station area. As that happened it filtered down and extended beyond these improvements. The development programs are mixed-use with ground floor retail and office space above, others are single-use. She gave an example of Milwaukie Lumber as a single use as it is in a downtown residential zone with no retail uses allowed in that zone. Office uses are exclusively in office zone around station location. She thought the office market did not provide market potential of housing in the long run. They have seen that mixed-use with ground floor retail and housing above is very popular around light rail stations. Office market is overbuilt and did provide the market opportunity as retail construction. People can work from many different locations including their homes.

Councilor Barnes asked what Ms. Guitteau thought of the current downtown situation as it is now. Is there too much office space now?

Ms. Guitteau said she was doing this analysis in the worst real estate market in recent history. She didn't find the vacancy rates were any worse than anywhere else. There was a good supply of low cost office space in Milwaukie. She thought that was a very good resource to have. She didn't think there was too much. They foresee owner-occupied office space happening, which was a different animal and was a different tax issue. She saw an opportunity for build-to-suit owner occupied office buildings in Milwaukie. There were river views, parks, light rails and would be a wonderful location for people to work. She thought the economics of building commercial has a rent structure that was so much higher than what the City has now.

Another issue was in the Downtown Development Standards allows for 65', which was a big building and building of that scale will require structured parking. Given the limited size geographically it is unlikely that buildings will go to the

maximum height. It was good to have that, but it wasn't used in their projections because they thought it was unlikely to happen. In terms of timing for projections they do not anticipate significant development between now and 2015. They expect development to increase around the time that light rail happens. The final development was on the wastewater treatment site, but that required moving the plant.

Councilor Chaimov what kind of jump start would urban renewal provide that light rail would not.

Mr. Tashman will speak to that directly. They took a pragmatic and realistic and specific look at what should, would, and could happen in this area. They spend more time looking at market conditions than they might have in another area. He went back to the tax increment financing part of urban renewal and gave an example of tax increment financing on a 10-unit development or 13,000 sq foot commercial space in the amount of \$2 million. Tax increment revenue borrowing capacity about 10%. Project added value of about 10% that was the rule of thumb. Revenues were about 10% of the project value. Projected overtime of growth in refined study area based on development programs for opportunity sites, timing, assumed 3% increase for most of the property and spread revenues over 20 year period. Estimate borrowing capacity \$61.3 million. The real challenge of tax increment revenue financing is that money is needed at the beginning of the program. Overtime capacity is there. The challenge will be at the beginning.

Mr. Tashman gave their professional recommendation on what priorities should be for an urban renewal plan. The consequence of the recommendation was to focus the urban renewal capacity on direct assistance meant not identifying priorities as light rail, Riverfront Park, or plaza. They were not saying don't use urban renewal on those projects because they are not important they felt there would very likely be other sources of revenue that should and could be applied to those projects. The policy is complicated. These 3 priority projects are eligible for financing through general obligation bonds. Helping private development like North Main Village for instance was not eligible for general obligation bonds. On that simple level and other reasons as well they were recommending that the urban renewal resources focus on direct assistance. Examples, public area requirements, Murphy/McFarland planning/infrastructure/quiet zone, site acquisition, storefront program, development incentive fund, downtown parking structure, and McLoughlin Boulevard over crossing to knit waterfront and Kellogg Treatment Plant redevelopment to the downtown.

Councilor Barnes said it looks like the chicken or egg comes first. It will attract more people if you beautify storefront. She would rather see a big project like Riverfront than to beautify a storefront. How do you make the decision?

Mr. Tashman they think of it in a matter of sequencing. They were thinking at the beginning your revenue sources for big projects are limited. One of the most important things you can do to create a market structure for higher rents is to nurture commercial and cultural activity by doing things like storefronts. The thought is as the area becomes more vital people begin to see this was a good place to invest. Then you can use that money to do the bigger projects.

Councilor Barnes have newly revised or renewed building fronts. They are not attracting businesses and have been vacant for some time. In order to attract businesses that we want we need a goal of a vibrant downtown.

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Ms. Guitteau said most of downtown they do not anticipate significant re-development until after light rail which is one of those big things. Currently the rent structure is too low to support new development. So when you assist current tenants with building grants to beautify their storefronts it drives up the rent structure to where it is higher. They are incremental steps that the City assists the currently building stock soon new development begins to make sense. Baby steps are important. They have seen small grant programs provide an incentive to get full use of building stock and increasing rent structure. It is important until there is enough increment to do big projects. Light rail is critical. Small programs do add up.

Mr. Tashman said a practical consideration about urban renewal is that you have to have a plan with a list of projects, and know when things will happen and how it will be paid for. The reality of urban renewal is it is a very management-intensive process. The process is usually opportunity driven. He did a lot of work on land acquisition on the riverfront, which was a very long process. That approach was a very incremental approach. The long-term incremental strategy has worked downtown. It makes sense to continue to do that to reach a certain level to reach capacity to do the larger projects.

Elaine Howard said she worked with a City that has a 20-year old urban renewal plan and they have primarily invested in public projects such as an aquatic park and a museum. They have not invested in private development to grow a tax base that would give them the ability to raise more money. The tradeoff was how much to put into public projects and how much to put in private projects.

Mr. Campbell the difference between those approaches is a big part of the political question. The fire district and other overlapping districts are concerned about public projects without growing the larger tax base of all the jurisdictions. The goal of urban renewal is to increase the tax base.

Councilor Chaimov could a quiet zone be a use for urban renewal in the area.

Mr. Asher replied it was an eligible urban renewal cost, as long as the City was spending the TIF in an urban renewal area. That would benefit both private and public.

Mr. Tashman said the rationale is stronger if say you want housing on sites and need a quiet zone to attract residential development.

Mr. Campbell said the representative from the McFarland site has said the train noise is a challenge.

Councilor Chaimov asked why Waverly was included.

Mr. Tashman replied it was an opportunity site and there was some thought it might be developed to provide some early revenue. They felt there was a connection between a more vital downtown and that area as they were so close. If the decision is to do an urban renewal plan all of this needs to be discussed very publicly and have discussions about what being an urban renewal area meant.

Mr. Swanson said the plan is a document that came out of urban renewal legislation. The value has to change. He asked if the plan required an analysis of impacts on the general fund services.

Mr. Tashman said the report that accompanies the plan requires that analysis. Reducing size of study area when dealing with City general fund or other taxing districts some entities go to legal limits of acres and assessed value because the 3% increase would generate more revenue. That is an approach that may have worked in the past but there are political ramifications. The focus is on areas where development might otherwise not occur. In Milwaukie, Clackamas Fire District #1 is the number one opponent of urban renewal in the state. It would not be political or practical to draw an area that is too large. Decisions about the area needed to be done in a public process.

Mr. Swanson from a budget officer standpoint on the technical analysis he was concerned about the effect of urban renewal. Balancing that went into that similar to projects. You balance the project and not err on side of public non-value projects.

Mr. Tashman said the City needs to say it is focusing on the area that did not grow well without those investments. It is doing urban renewal to create value that would be there into perpetuity that wouldn't be there otherwise. That is the politics of urban renewal now.

Mr. Swanson that has been the difficulty in the past and there is the perception that it will negatively impact existing City services and a lot of consideration needed to go into the balancing.

Mr. Campbell added that there is some evidence the benefits spread beyond the boundaries and there is reason to believe that other areas outside the area will see additional investment both public and private. Staff is interested in putting together a letter of intent to Metro regarding excise tax revenues to help support urban renewal planning in Milwaukie. They would come back with the defined program back to Council. He asked if the City Council was comfortable with doing that.

Councilor Stone was not sure about urban renewal and concerns with CCFD#1. She saw what happened in North Main Village. We have to be realistic in our approach during this economic turbulent time. We are not looking at other revitalization efforts in downtown Milwaukie. She was not convinced this was the option. She would feel a lot more comfortable in making a decision to send a letter about keeping the ball rolling on urban renewal. Urban renewal was not successful everywhere and it was not a 100% solution and particularly given the economic times.

Mr. Campbell he believed staff spent a lot of time looking at options before considering urban renewal. In our research they concluded urban renewal was the only game in town for this kind of scale of change.

Mr. Tashman said there are other tools necessary. Their recommendation would be to do urban renewal along with alternative sources of funding for the

Riverfront Park, structured parking, and plaza. Downtown Milwaukie has already had success without urban renewal, but from a technical standpoint it would be an effective tool to use.

Ms. Howard said urban renewal is a tool in toolbox and urban renewal is not the end all but it is a way to generate funds to help move forward. Is this a good time to do it? In one way this was the perfect time to do it to plan for getting out of bad economic time and help instead of waiting to get things better.

Mr. Swanson was concerned as the budget officer. He wants to keep the police department and library services as strong as they are currently. He calculated in the same time period and came up with about \$300,000 in property taxes on that same value. He felt that was compelling. Places fail because they rely heavily on public investment. Also, they did not look carefully at their own spending needs in terms of general services, which is what he was concerned about. He values the partnership of CCFD#1, and they would need to be an essential party in any discussion. They were now looking to fund the next step to clarify issues and concerns we may have now. He felt this was the next step to get some refined information to make the decision. This was a very 30,000 ft view.

Mr. Asher said reason to do this study may be that Council chooses not to adopt. This was asking professionals in the field if they felt it would work in Milwaukie. This was the answer at this juncture. They felt encouraged that this appeared to be a good fit.

Mr. Swanson he liked that it was done with an honest, realistic, conservative view that did not diminish what had been done.

Ms. Guitteau discouraged vacant storefronts. She thinks there will be interest from the development community because of the many assets of Milwaukie; when light rail comes there will be interest. If you do not want to discourage them you can tell people what tools are available and ready to go. If you don't they will go somewhere else. The City will have to help the early investors. It needs to be addressed from financial feasibility aspect. Light rail will be a game changer.

Mayor Ferguson adjourned the work session at 7:01 p.m.

Pat DuVal, City Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING VAL HUBBARD TO THE MILWAUKIE ARTS COMMITTEE.

WHEREAS, a vacancy exists on the Milwaukie Arts Committee; and

WHEREAS, Milwaukie Charter Section 26 provides that, “the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body,” and

WHEREAS, Val Hubbard possesses the necessary qualifications to serve on the Milwaukie Arts Committee.

Now, therefore, the City of Milwaukie, Oregon resolves as follows:

SECTION 1: That Val Hubbard is appointed to the Milwaukie Arts Committee.

SECTION 2: That her term of appointment shall commence February 2, 2010 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 2, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING NICK HARRIS TO THE MILWAUKIE PLANNING COMMISSION.

WHEREAS, a vacancy exists on the Milwaukie Planning Commission; and

WHEREAS, Milwaukie Charter Section 26 provides that, “the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body,” and

WHEREAS, Nick Harris possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

Now, therefore, the City of Milwaukie, Oregon resolves as follows:

SECTION 1: That Nick Harris is appointed to the Milwaukie Planning Commission.

SECTION 2: That his term of appointment shall commence February 2, 2010 and shall expire on March 31, 2014.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 2, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Gary Parkin, Engineering Director

From: Zachary Weigel Civil Engineer

Subject: 2010 Water System Master Plan

Date: January 22, 2010 for February 2, 2010 Regular Session

Action Requested

Authorize the City Manager to sign a personal services agreement for providing a Water System Master Plan with West Yost Associates, in the amount of \$195,580.00.

History of Prior Actions and Discussions

June 2009: City Council adopts the 2010-2014 Capital Improvement Plan and the 2009/2010 Budget, including the 2010 Water System Master Plan

Background

The current 2010-2014 Capital Improvement Plan identifies a new Water System Master Plan to be completed in the 2009/10 fiscal year. The Water System Master Plan is used to determine existing system deficiencies and needed water system improvements by evaluating future water demand for forecasted growth and expected development. The City's current water master plan, completed in January 2001 by Montgomery Watson, is outdated and an update to the plan has been needed for a few years.

A number of changes have occurred within the City of Milwaukie since adoption of the current Water Master Plan. These changes have affected the assumptions made and data used in development in the current Water Master Plan. Some of these changes

include completion of an inventory of the water system, GIS mapping of the water distribution system, and adoption of water system design standards.

Staff has completed an inventory and GIS mapping of the City's water system. This level of mapping was not available during the previous Water Master Plan and will provide a much more accurate hydraulic model of the City's water system. Also, the City of Milwaukie Public Works Standards was adopted on May 15, 2007 (Resolution 32-2007). The Public Works Standards provide the size of water lines based on the number of residences served. This standardized method of determining water line sizes was not taken into account as part of the previous Water Master Plan.

The water demand projected by the current Water Master Plan is greater than what the City has actually experienced, raising concerns among staff that the current Water Master Plan is out-of-date. For these reasons a new Water Master Plan is needed.

Key elements of the new Water Master Plan include a new hydraulic model of the water system that will integrate with the City's GIS mapping system, which the City will be able to use and update as needed. Other key elements include water demand, storage, and supply forecasting, emergency water supply analysis, water system capital improvement plan, water system development charge update, and water rate study.

The goal for this project is to have a complete Water Master Plan that provides a clear roadmap for the City to make smart and informed decisions as a sustainable and reliable water service provider to the citizens and businesses of Milwaukie.

Request for Proposals (RFP) for the 2010 Water System Master Plan was advertised on December 3, 2009. The City received four proposals, which were evaluated by a team of Engineering, Operations, and Community Development staff. The following table is a summary of all the evaluated proposals.

| <u>Evaluation Ranking</u> | <u>Proposing Firm</u> |
|---------------------------|---------------------------|
| 1 | West Yost Associates |
| 2 | Carollo Engineers |
| 3 | Murray Smith & Associates |
| 4 | Kennedy Jenks Consultants |

West Yost Associates was deemed by the selection committee to have best demonstrated their ability to provide water master planning services and a proven history of providing such service for public agencies. The proposal price submitted by West Yost Associates, \$195,580.00, was not the least of the four proposing firms. However, the selection committee believes that West Yost Associates has best estimated the number of staff hours necessary to provide the level of water master

planning the City requested through the RFP. The difference in cost between the four proposing firms is based primarily on the number of staff hours proposed for the work and not a difference in the hourly cost. Staff's experience with previous projects has shown that when a consultant proposes too few staff hours for a task, the quality and accuracy of the work declines. As part of the proposal evaluation, the number of staff hours assigned for the work in each of the proposals was assessed. The selection committee agrees that West Yost has best allocated the number of staff hours for each task of the water master plan.

Although West Yost does not have recent experience working with the City of Milwaukie, they are familiar with the region having provided water master planning water providers such as Oregon City, Clackamas River Water, and Beaverton.

West Yost is expected to begin the water master plan the first week of February, gathering data to analyze the City's water system. The final Water Master Plan will be completed nine months from the start of the work, with Council adoption scheduled for December 2010.

Concurrence

Engineering staff coordinated with Operations and Planning during development of the Request for Proposals. Engineering staff coordinated with Operations and Community Development in review of the proposals and all concur with this recommendation.

Fiscal Impact

This project is part of the 2009/2010 Budget. The approved Water Fund budget includes \$200,000.00 for this project. The recommended proposal includes a cost not-to-exceed amount of \$195,580.00. Funding for this project is from the Water Capital and Reserve and Water SDC Fund.

Work Load Impacts

The Water Master Plan project can be accommodated within existing Engineering, Planning, and Operations workloads. Engineering staff will provide management of the consulting engineering for the duration of the project. Operations staff will assist with data gathering and flow testing for calibrating the hydraulic model. Planning staff will assist with updating the Comprehensive Plan review and amendments.

Alternatives

- 1) Do not award project (defer indefinitely). The project would be removed from the CIP list and staff would continue to work under the 2001 Water Master Plan.
- 2) Reject all proposals and direct staff to re-advertise for new proposals for any reason.
- 3) Reject all proposals and direct staff to amend the Request for Proposals and re-advertise for submission of new proposals.

Attachments

1. Request for Proposals
2. Resolution



Request for Proposals

for

2010 Water System Master Plan

December 2009

City of Milwaukie
Engineering Department
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
(503) 786-7600

Project Number GEN-09-002

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2010 Water System Master Plan
GEN-09-002

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Request for Proposals

City of Milwaukie

2010 Waster System Master Plan

GEN-09-002

The City of Milwaukie is seeking proposals from qualified and experienced consulting engineering firms for providing Water Master Planning services. Proposals for the 2010 Water System Master Plan will be received at the City of Milwaukie Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 until 2:00 p.m. on Thursday, December 17, 2009. Proposals received after the 2:00 p.m. deadline will not be considered and will be returned unopened to the proposer(s).

The Request for Proposals may be obtained for no cost at the City of Milwaukie, Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 or downloaded from the City of Milwaukie website at <http://www.ci.milwaukie.or.us/notices/rfpbq.html>. The Request for Proposals may be obtained by standard mailing upon request for a fee of \$25.00.

Proposals shall be submitted in a sealed envelope plainly identifying Project Name, Project Number, and Proposer's Name and Address. Proposals shall be addressed to Zachary J. Weigel, Civil Engineer, City of Milwaukie Community Development, 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206.

Addenda will be delivered to all those who have obtained the Request for Proposal by pick-up or mail through the City of Milwaukie Community Development Office. Proposers are advised to check the City's website regularly for addenda and other pertinent notifications.

For additional information regarding this Request for Proposals, please contact Zach Weigel at 503 786-7610 or by email at weigelz@ci.milwaukie.or.us. The City of Milwaukie reserves the right to reject any and all proposals or to negotiate individually with one or more firms, and to select one or more firms on the basis if determined to be in the best interest of the City.

Dated this 3rd day of December 2009.

Section 2 – Introduction and General Information

2.1 Introduction

The City of Milwaukie (City) is an Oregon municipality with a 2008 population of approximately 20,915. The City employs approximately 180 full and part time staff and is governed by a City Council comprised of four Councilors and the Mayor. The Council acts as the Local Contract Review Board for the City.

The City provides drinking water to approximately 6500 residential, commercial, industrial, and institutional customers through connections to the City's 100 miles of water distribution system. The City source of water supply is provided by 7 groundwater wells located throughout the City producing up to 6.5 MGD of drinking water. From June 1998 until November 2007, approximately 0.5 MGD of surface water was purchased from Clackamas River Water to supplement the City's groundwater supply.

The City's distribution system is comprised of four pressure zones. The two lower pressure zones, Zone 1 and Zone 2, comprise over 85% of the transmission and distribution system. Pressure zones 3 and 4 are located on the east side and northwest corner of Milwaukie, respectively. Both zones are directly fed by separate pressure sustaining booster pump stations and are strictly residential service. A 1.5 MG above grade reservoir serves Zone 1 and Zone 4. Zone 2 is served by a 1.5 MG elevated storage tank. The Stanley Reservoir is a 3.0 MG above grade storage tank that provides services to Zone 2 and Zone 3 through the use of pump stations.

The City's distribution system consists primarily of cast iron, ductile iron, and PVC. Milwaukie, being surrounded by Portland and urban Clackamas County, has experienced little development, resulting in very little expansion of the City's water system. Recent water system improvement projects have consisted primarily of maintenance and replacement projects within the existing water system. New and replaced portions of the distribution system piping primarily consist of ductile iron.

2.2 Issuance of Request for Proposals

Request for Proposals (RFP) documents may be obtained for no cost at the City of Milwaukie, Community Development Office located at 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206 or downloaded from the City of Milwaukie website at:

<http://www.ci.milwaukie.or.us/notices/rfpbq.html>

RFP documents may be obtained by standard mailing upon request for a fee of \$25.00. The Project Manager is Zach Weigel of the Engineering Department, who is the sole point of contact for all questions, concerns, and protests. He can be reached at 503 786-7610 or by email at weigelz@ci.milwaukie.or.us.

2.3 Submission of Proposals

Each Proposer shall provide four copies of their proposal, sealed in an envelope plainly identifying Project Name, Project Number, and Proposer's Name and Address. Proposals shall be addressed and submitted to the following location by 2:00 p.m. on Thursday, December 17, 2009.

City of Milwaukie
Community Development
Zachary J. Weigel, PE
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

All proposals must arrive at the City of Milwaukie Community Development Office on or before the time and date due. Electronically mailed or faxed proposals will not be accepted.

2.4 Request for Proposals Schedule

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a firm/individual for the Water Master Plan. This schedule is subject to change if it is in the City's best interest to do so.

- | | |
|---|-------------------------------|
| • Advertise Request for Proposals | December 3, 2009 |
| • Deadline to Submit Changes to RFP | December 13, 2009, 2:00 p.m. |
| • Deadline to Request Additional Information | December 13,, 2009, 2:00 p.m. |
| • Last Date for Addenda | December 14, 2009 |
| • Proposals Due | December 17, 2009, 2:00 p.m. |
| • Evaluation of Proposals Complete | December 22, 2009 |
| • Notify Proposers of Interviews (if necessary) | December 22, 2009 |
| • Proposer Interviews (if necessary) | January 4 to 5, 2010 |
| • Notice of Intent to Award | January 7, 2010 |
| • City Council Hearing | January 19, 2010 |
| • Notice of Award | January 20, 2010 |
| • Commencement of Contract | January 25, 2010 |

2.5 Changes to the Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued to all those who have obtained the RFP by pick-up or mail through the City of Milwaukie Community Development Office. Addenda will be made available for download on the City's website at:

<http://www.ci.milwaukie.or.us/notices/rfpbq.html>

Proposers are advised to check the City's website regularly for addenda.

A prospective Proposer may request a change in the RFP by submitting a written request to the address set forth in Subsection 2.3. The request must specify the provision of the RFP in question, and contain an explanation of the requested change. All requests for changes to the RFP must be submitted to the City no later than the date set forth in Subsection 2.4.

The City will evaluate any request submitted, but reserves the right to determine whether to accept the requested change. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

All addenda shall have the same binding effect as though contained in the main body of the RFP. Oral instructions or information concerning the scope of work of the project give out by anyone other than the Project Manager shall not bind the City.

No addenda will be issued later than the date set in Subsection 2.4, except an addendum, if necessary, postponing the date for receipt of Proposals, withdrawing the invitation, modifying elements of the proposal resulting from delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal. Receipt of each addendum shall be acknowledged in writing as part of the Proposal.

2.6 Confidentiality

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which Proposer requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the Proposal the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer should not mark the entire proposal document "Confidential."

2.7 Cancellation

The City reserves the right to cancel contract award for the 2010 Water System Master Plan at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of contract award.

2.8 Late Proposals

All Proposals that are not received by the Proposal Due Date in Subsection 2.4 will not be considered and will be returned unopened to the Proposer(s). Electronically mailed or faxed proposals will not be accepted. Delays due to mail and/or delivery handling, including, but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

2.9 Disputes

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

2.10 Proposer's Representation

Proposers, by the act of submitting their Proposals, represent that:

- A. They have read and understand the Proposal Documents and their Proposal is made in accordance therewith;
- B. They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- C. Their Proposal is based upon the requirements described in the Proposal Documents with exception, unless clearly stated in the response.

2.11 Conditions of Submittal

By the act of submitting a Proposal in response to this Request for Proposals, the Proposer certifies that:

- A. The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.
- B. The Proposer has examined all parts of the Request for Proposals, including all requirements and contract terms and conditions thereof, and, if its Proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- C. The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and that no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
- D. The Proposer has quality experience providing water system master planning in a capacity similar to the duties outlined within the scope of services.

2.12 Proposer Requests Interpretation of Request for Proposal Documents

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the Proposal Documents. Proposers requiring clarification or interpretation of the Proposal Documents shall make a written request for the same to the Project Manager.

The City shall make interpretations, corrections, or changes to the Proposal Documents in writing by published Addenda in accordance with Subsection 2.5. Interpretations, corrections, or changes to the Proposal Documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

2.13 Proposer Requests for Additional Information

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted in writing to the Project Manager prior to the deadline to request additional information stated in Subsection 2.4.

The City shall respond to requests for additional information in writing by published Addenda in accordance with Subsection 2.5. Responses to requests for additional information made in any other manner will not be binding.

2.14 Competition

Respondents are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement with this Request for Proposals, which the respondent believes, will inordinately limit competition.

2.15 Complaints and Inequities

All complaints or perceived inequities related to the Request for Proposals or award of work referenced herein shall be in writing and directed to the Project Manager. Such submittals will be reviewed upon receipt and will be answered in writing.

2.16 Cost of Request for Proposals and Associated Responses

The City is not liable for any costs incurred by a Proposer in the preparation and/or presentation of a Proposal. The City is not liable for any cost incurred by a Proposer in protesting the City's selection decision.

2.17 City Requests for Clarification, Additional Research, & Revisions

The City reserves the right to obtain clarification of any point in a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal or for information of any Proposer. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of the responsible Proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by the City, become part of the public records and may be disclosed accordingly.

The City reserves the right to request revisions of proposals after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

2.18 Rejection of Proposals

The City reserves the right to reject any or all Proposals received as a result of this Request for Proposals. Proposals may be rejected for one or more of the following reasons, including but not limited to:

- A. Failure of the Proposer to adhere to one or more of the provisions established in the Request for Proposals.
- B. Failure of the Proposer to submit a Proposal in the format specified herein.
- C. Failure of the Proposer to submit a Proposal within the time requirements established herein.
- D. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding of the City that it is in the public interest to do so.

2.19 Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer for sixty calendar days following the time and date designated for the receipt of Proposals. Proposals submitted early may

be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the Proposal Due Date. Such notice shall be in writing over the signature of the Proposer and submitted to the Project Manager. All such communication shall be so worded as not to reveal the amount of the original Proposal or any other material contents of the original Proposal.

Withdrawn proposals may be resubmitted up to the Proposal Due Date provided that they are then fully in conformance with the Request for Proposals.

2.20 Proposal Ownership

All Proposals submitted become and remain the property of the City and, as such, are considered public information and subject to public disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502.

Unless certain pages or specific information are specifically marked “proprietary” and qualify as such within the context of the regulations stated in the preceding paragraph, the City shall make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this Request for Proposals without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

2.21 Duration of Proposal

Proposal prices, terms and conditions shall be firm for a period of at least ninety days from the Proposal Due Date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the ninety day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

2.22 Intergovernmental Cooperative Agreement

Pursuant to ORS 279A, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor’s obligation to the City. Any estimated purchase volumes listed herein do not include other public agencies and the City makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this Request for Proposals to any and/or all public agencies.

2.23 Affirmative Action/Nondiscrimination

By submitting a proposal, the Proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the Proposer specifically certifies, under penalty of perjury, that the Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Section 3 – Scope of Work

3.1 Introduction

The City of Milwaukie (City) is seeking high quality and responsible services from a qualified and experienced individual or firm to provide water system master planning at a competitive price.

3.2 Term of Service

The contract resulting from this Request for Proposals (RFP) shall be for a period of nine months, commencing in January 2010.

3.3 Scope of Work

The previous Water System Master Plan is dated January, 2001 and was completed by Montgomery Watson. A new water system master plan is necessary due to changes that have occurred since the 2001 Water System Master Plan was completed.

- A. The typical update period for a water system master plan has past, therefore necessitating the timely need for this project.
- B. The City needs to be flexible when planning for future growth, with a clear understanding of the improvements necessary for expansion of the water system. This is something that the 2001 Water System Master Plan did not accomplish.
- C. In May 2007, the City adopted new public works standards, which include new design and construction standards for the City's water system. These new standards have changed many of the assumptions that were made as part of the development of the 2001 Water Master Plan. As a result, many of the recommended projects are no longer relevant.

This new master plan will identify and prioritize necessary or desirable improvements for the City of Milwaukie. The master plan will propose facility modifications or additions necessary to address the predicted future needs for water supply, treatment, storage, distribution and the efficient delivery of water services. The planning period for this master plan is 20 years.

Task 1 – Project Management

1.1 Project Administration

Consultant shall provide a Project Administration Plan to direct, coordinate, and monitor the activities of the project with respect to budget, schedule, and contractual obligations. The Project Administration Plan shall be updated on a biweekly basis and submitted to the City.

1.2 Coordination Meetings

Consultant shall provide a minimum of biweekly conference calls and/or meetings between the Consultant and City personnel to review project progress, discuss project challenges and findings, and review early study results. Consultant shall ensure that the City personnel and Consultant team members maintain a shared understanding regarding study direction, objectives, and deliverables.

1.3 Quality Assurance and Quality Control Review

Consultant shall conduct internal Quality Assurance and Quality Control meetings and follow-up with technical experts as necessary during the course of the project.

Task 2 – Data Gathering

2.1 Kickoff Meeting and Project Overview

Consultant shall initiate the project kickoff meeting. Consultant shall prepare an agenda for the kickoff meeting, invite necessary attendees, collect data, and discuss the schedule of the project.

2.2 Conduct Interviews

Consultant shall conduct interviews with City personnel familiar with the water distribution system to collect information on the operation and maintenance of the system and known deficiencies, if any. Consultant shall make site visits with City personnel to specific facilities if necessary. The following is a list of City employees that have been identified to help answer questions and provide information about the water system.

Gary Parkin – Engineering Director

Mike Clark – Water Operations Department Manager

Dave Butcher – Asset Management Technician

Don Simenson – Water Quality Coordinator (Production)

Jamie Clark – Utility II (Maintenance)

2.3 Collect and Review Current Mapping and Water System Data

Consultant shall submit a list of information to be collected (including but limited to, GIS layers, water rights documentation, planning documents, system components, analysis criteria, water supply/source alternatives, water utility billing data, and deficiencies and repair data) and provided by the City. Consultant shall obtain water system information for water systems outside of the city limits from the water provider servicing the area. The provided information shall be reviewed by the Consultant to determine if it is sufficient for completion of the project objectives. If the information is not sufficient, the Consultant shall suggest alternatives.

Task 3 – Water Demand Study

3.1 Calculate Existing Production

Consultant shall determine current system-wide water use based on water production records. Monthly water production records will be provided for Consultant's review and summary. Consultant shall identify the maximum water use for the period of available record and develop seasonal water use trends. Consultant shall calculate water usage for average day, maximum day, and peak hour demand conditions. Calculated use for these conditions will be used to adjust customer water demands before they are allocated to the hydraulic model.

3.2 Calculate Existing Customer Usage

Consultant shall calculate individual user water demands from water billing data. Water use for individual water users will be calculated for average day, maximum day, and peak hour demand.

3.3 Develop System Wide Diurnal Patterns

Consultant shall develop diurnal water use graphs for both small and large users using hourly water production and tank level data that are representative of the maximum day water use patterns for the City.

Task 4 – Hydraulic Model

4.1 Modeling Software Selection

Consultant shall assess current electronic capabilities and provide a brief decision matrix and recommendation in deciding which modeling software best meets the near term and long term needs of the City. The matrix shall include any needed improvements to City's electronic capabilities. The City desires to have an extended simulation period model built on a GIS platform. The mapping software the City currently uses is ESRI, utility data collection provided by Hansen, utility billing information provided by INCODE.

4.2 Model Preparation

The model shall include water system mains, laterals, hydrants, meters, tanks, pumps, valves, and interties. Dimensions and operational controls shall be added for each facility.

4.3 Assign Water Demands

Consultant shall create four demand sets in the model to hold maximum hour and minimum, average, and maximum day demands. Diurnal water use graphs shall be used to calculate a series of multipliers (peaking factors) to be used as part of the model to adjust hourly demands. The diurnal pattern will be entered into the model and assigned to all demand nodes.

4.4 Fire Flow Evaluation

Consultant shall provide a model which allows for temporary floating fire flow junctions to be assigned at any point in the system for use in evaluating fire flow capacity. Fire flow evaluation output shall include a hydrant curve, a formatted report including exported pressure and flow data and a system evaluation report. The system evaluation report shall include an evaluation of the system pressures and velocities encountered during the fire flow and a list of locations at which the pressure falls below minimum levels as designated by the City.

4.5 Model Verification

4.5.1 Develop Model Verification Plan

Consultant shall prepare a draft calibration plan for the model and submit to the City for review. The plan will identify locations for fire flow and pump tests, identify SCADA data to be gathered, and document the testing protocol. Pump tests will include gathering data for a single operating point at each pump or pump station to confirm model pump curves.

4.5.2 Perform Model Hydraulic Verification Testing

Consultant shall provide testing plan, including time frame required. Consultant shall coordinate with the City to conduct calibration testing. City personnel shall assist in performing flow testing, and will be responsible for supplying any tools and equipment required for operation of system facilities. Consultant shall be responsible for supplying all other equipment required for testing.

4.5.3 Perform Model Hydraulic Verification

Consultant shall develop computer model simulations or scenarios for each of the fire flow calibration tests. Model results from the calibration simulations will be compared with the field data and measured against the calibration criteria. Comparisons that fall outside the established criteria will be identified and adjustments and/or corrections to the model will be made until satisfactory results are obtained. Pump test data points will be compared to pump curves in the model. Pump curves in the model will be adjusted if necessary. Calibration efforts will be

coordinated with and reviewed by the City to determine the appropriate level of calibration. The initial pressure calibration target shall be within 5% accuracy. If calibration at some locations cannot be achieved within the time limit, written suggestions will be made as to possible reasons for the discrepancy and what steps might be taken to improve calibration at that location. Consultant shall keep friction coefficient values within realistic range.

4.6 Hydraulic Model Training

Consultant shall provide an electronic copy of the model to the City. Consultant shall schedule one day of training for approximately 4 City staff members, to be held at City facilities or Consultant's office, and provide a color copy of the technical reports to each attendee. Consultant shall provide color copies of material presented at the training session to each attendee. Training shall cover, at a minimum, all functions of the water model as created by the various project tasks.

Task 5 – Water System Supply and Demand Forecast

5.1 Water System Demand Forecast

Consultant shall create future water demands for the model based on four scenarios.

- A. Existing Milwaukie Water System + Expected Growth
- B. Scenario A + Dual Interest Area A
- C. Scenario B + Dual Interest Area B
- D. Scenario C + Milwaukie UGMA

Expected growth shall be determined based on land use planning for areas yet to be fully developed and/or supplied. The City shall provide land use planning for build out. See Attachment C for boundaries of dual interest areas and Milwaukie's urban growth management area (UGMA). At a minimum the Consultant shall include the following:

- A. Review existing comprehensive plan and other documents to determine the City's future service area.
- B. Review previous estimates of the per capita demand factors and meter records for selected user categories to update unit demand factors. Compare with data from Clackamas River Water for areas located outside the City's existing service area.
- C. Review and update, if necessary, the previously estimated unaccounted for water use records from the City's customer billing and master meter records if available.

Consultant shall identify most beneficial connection points to the City's water system for Scenarios A-D. Consultant shall modify the model developed for the existing distribution system to include the layout of future system piping and other future facilities for Scenarios A-C. Future demands and fire flows will be added to all appropriate future model junctions. Junctions for Scenario D shall be updated to model future water demands on Milwaukie's existing water system.

5.2 Water System Storage and Supply

Consultant shall evaluate the City's storage and supply capacities to insure that they meet operational and regulatory requirements under the four future water demand scenarios listed in Task 5.1. Consultant shall evaluate alternatives to increase City's storage and supply needs to meet future water demand Scenarios A-C under Task 5.1. Consultant shall identify storage and supply deficiencies in Milwaukie's existing water system under Scenario D.

Task 6 – Distribution System Evaluation

6.1 Establish Design and Evaluation Criteria

Consultant shall produce a technical memorandum with criteria to be used in the evaluation of the distribution system and the design of proposed improvements. The criteria will be based on the latest governing regulatory requirements, general engineering practice, and City Public Works Standards.

6.2 Evaluate Existing Distribution System Capacities.

6.2.1 Existing Distribution System

Consultant shall evaluate the distribution system using the hydraulic model to determine its capacity to deliver water under peak demand conditions as well as under fire flow conditions. The following model scenarios will be run and evaluated using:

- A. Peak Hour Demands (during Maximum Day)
- B. Average Maximum Day Demand Plus Fire Flow (evaluated at fire flow junctions)

Consultant shall review storage and supply capacities to insure that they meet operational and regulatory requirements. All deficiencies discovered in the distribution systems will be identified.

6.2.2 Pressure Zone Breaks

A number of deficiencies exist between the different pressure zones of the City's water distribution system. These deficiencies include missing pressure reducing valves, valves used to separate zone breaks, and water mains left unconnected.

Consultant shall evaluate the distribution system using the hydraulic model and water system mapping to determine locations for pressure reducing valves to separate the pressure zones and eliminating the existing deficiencies. Consultant shall identify projects to install/replace pressure reducing valves.

6.2.3 Abandon Obsolete Water Mains and Transfer Services

For a number years the City installed water mains and for budgetary reasons did not transfer water services to the new main and abandon the old main. These areas that have multiple water mains make it difficult to determine how these water mains are connected.

Consultant shall identify redundant water mains and water services that need to be transferred to a different water main. Consultant shall identify projects to transfer water services and abandon redundant water mains.

Task 7 – System Condition Assessment

Consultant shall develop a database to assess the condition of the City's water system. The database shall separate the City's water system into segments, such as storage tanks, pumps, wells, pressure reducing valves, and water distribution system by street block length (street intersection to street intersection). Consultant shall develop a rating system to apply to the water system segments. The rating system would be used to rank each segment based on highest priority of replacement or repair. The rating system would be a numerical points system based on items such as:

- A. Increase Capacity (Determined by Task 6.2)
- B. Date Until Street Surface Maintenance Program Street Cutting Moratorium Imposed
- C. Existing Deficiencies
 - i. Number of Repairs

- ii. Condition
- iii. Years Left in Expected Life Cycle
- iv. Dangerous Materials (Lead Joint, Asbestos Pipe, etc.)

Consultant shall design database to be clear and simple for City personnel to update on an annual basis. The City would use the database to determine priority for capital maintenance projects for each fiscal year.

Task 8 – Emergency Supply

Consultant shall evaluate the City’s water system using the hydraulic model and recommend water system intertie connections for emergency water supply to all adjacent water service providers. Consultant shall analyze and recommend emergency water intertie’s that may be necessary between two water service providers through the City’s water system, such as City of Portland and Oak Lodge. Consultant shall identify projects to construct recommended water system interties.

Task 9 – Dual Interest Area Water Provider Transfer

Consultant shall research and explain the requirements, regulations, and process of transferring water service responsibilities between water service providers.

Task 10 – Milwaukie Comprehensive Plan Review

Consultant shall evaluate Chapter 5 Transportation/Public Facilities/Energy Conservation of the Milwaukie Comprehensive Plan. Consultant shall recommend changes to the Comprehensive Plan based on the results of the 2010 Water Master Plan. Consultant shall assist City personnel with writing staff reports and providing supporting data for amending the City’s Comprehensive Plan.

Task 11 – Water System Capital Improvements Plan

11.1 General

Consultant shall group identified improvements into projects with planning level cost estimates of $\pm 20\%$ accuracy prepared for each project. Consultant shall develop a 20-year Capital Improvement Plan (CIP) for the water system. The improvement projects will be prioritized in order of importance and suggested dates for construction will be assigned.

11.2 Capital Maintenance Plan

Consultant shall identify projects determined as part of Task 7. The projects shall be grouped by anticipated year for construction and the estimated annual costs summarized.

11.3 Capital Growth Plan

Consultant shall identify projects determined as part of Task 5. The projects shall be grouped on two levels, first by the future water demand scenarios A-C of Task 5.1 and second by anticipated year for construction. Consultant shall assume Scenario B completed within the next 10 years and Scenario C completed within the next 20 years. Consultant shall summarize the estimated annual costs.

Task 12 – Staffing Level Analysis

Consultant shall perform an analysis of the City’s staffing level. The analysis shall determine the Water Operations, Engineering, and Administration staffing level necessary to adequately maintain and manage the City’s water system. Consultant shall draw comparisons from other nearby City’s with similar sized water systems, maintenance programs, and population.

Task 13 – System Development Charge and Rate Study

13.1 Water System Development Charge Update

Consultant shall recommend an updated Water System Development Charge (SDC), including improvement, reimbursement, and administrative fees, in accordance with State of Oregon SDC statutes. Consultant shall provide a brief decision matrix and recommendation in deciding which water SDC methodology will best meet the needs of the City. As part of the methodology evaluation, Consultant shall review and evaluate the latest Metro SDC methodology recommendations and determine if any may be of benefit to the City.

Consultant shall compile the Water System Development Charge (SDC) project list, including project costs, using the Water System Capital Improvements Plan of Task 10 and input from City personnel. Consultant shall calculate the improvement fee by determining the cost of the capacity increasing portion of each project.

Consultant shall calculate the amount of eligible unused capacity in the existing water system using City asset information, policy information from the Water Master Plan, and input from City personnel. Consultant shall use the value of the unused water system capacity to calculate the reimbursement fee.

Consultant shall calculate the administrative portion of the Water SDC in accordance with State of Oregon SDC statutes and input from City personnel.

13.2 Water Rate Study

Consultant shall perform a cost of water service study and recommend an updated water utility rate structure that is easy to administer and understand. The recommend rate structure shall be consistent with industry practice for utility rate making in Oregon. The recommend rate structure shall insure that the water utility is fully recovering the cost of providing water services, including analysis of the following factors:

- A. Current and future costs of providing water in accordance with established and anticipated standards and regulations.
- B. Current and future costs of maintenance and operation of the water system.
- C. Projected demands.
- D. Availability of supply.
- E. Funding of capital growth projects.
- F. Funding of capital maintenance projects.
- G. Funding of water system security projects identified by City's Water System Vulnerability Assessment.
- H. Funding of cross-connection program.
- I. Impact of current and future environmental regulations and water conservation elements.
- J. Adequate reserves for depreciation, emergencies, catastrophes, and other appropriate purposes.
- K. Other impacts as identified.

Consultant shall summarize the impacts of the recommended rate structure and proposed rate on rate payers. The summary shall include at a minimum the following:

- A. Analysis of the benefits of the recommended rate changes weighed against the financial impacts to the rate payers.
- B. Justification for any special classes of customers under the recommended rate structure.

- C. Assessment of recommended water rates equity for all types of property ownership, including multi-family units.

The recommended rate structure shall provide clear and direct identification of annual revenues appropriate to fund operating activities, maintenance, and infrastructure improvements. The recommended rate structure shall be compatible with the City's electronic billing system and include an easy to use electronic model, in either Microsoft Excel or Access, to be used by the City for future rate setting. Consultant shall compare the proposed new rates to other utilities providing water services in the region.

Task 14 – Water System Master Plan

14.1 Draft Water System Master Plan

Upon completion of Tasks 1-12, Consultant shall submit 3 printed copies and 1 digital copy in PDF format of a draft Water System Master Plan report to the City for review and comment. At a minimum, the report shall include the following:

- A. An Executive Summary.
- B. Colored maps that are clear, easy to understand, and of professional quality of the City's water system, identified deficiencies, and proposed improvements.
- C. Summary of existing water system.
- D. Population projections and water demand summary.
- E. Documentation of modeling methodologies and assumptions.
- F. Technical information, analysis, and discussion of results for each task making use of charts, graphs, and figures of professional quality to clearly and efficiently convey the information, findings, and conclusions.
- G. Justification for recommend work to be accomplished.
- H. System Condition Assessment
- I. Water System Capital Improvements Plan
- J. System Development Charge and Utility Rate Study
- K. Other supporting documentation.

Consultant shall prepare the Water System Master Plan and associated materials in accordance with City standards for style and grammar. The Water System Master Plan and associated materials shall be independently reviewed for conformance with these standards prior to submittal.

Consultant shall provide draft version of Water System Condition Assessment Database and Water Utility Rate Study Electronic Model to the City for review and comment.

Consultant shall incorporate City review and comments of the draft materials and resubmit for additional reviews in accordance with Task 13.1 until final City approval of the draft materials. Re-submittal of complete document for secondary review is not required. Edited materials may be submitted as replacement pages.

14.2 Final Water System Master Plan

Upon City approval of the draft materials, Consultant shall produce final report and submit 6 printed copies and 1 digital copy in PDF format. Consultant shall provide a final electronic copy of the Hydraulic Model, Water System Condition Assessment Database, and Water Utility Rate Study Model. Consultant shall provide all Water System Master Plan maps in electronic format compatible with the City's GIS system.

14.3 Public Meetings

Consultant shall plan on attending the following meetings to present, discuss, and answer questions regarding the Water System Master Plan.

- | | |
|--|--|
| A. Public Open House | 1 Evening Meeting |
| B. Citizens Utility Advisory Board (CUAB) Meet 1 st Wednesday of Every Month (6:00 pm – 8:00 pm) | 2 Evening Meetings |
| C. Planning Commission Meet 2 nd & 4 th Tuesday of Every Month (6:30 pm – 10:00 pm) | 1 Evening Work Session 2 Evening Public Hearings |
| D. City Council Meet 1 st & 3 rd Tuesday of Every Month Work Session (5:30 pm – 7:00 pm) Regular Session (7:00 pm – 10:00 pm) | 2 Evening Work Sessions 2 Evening Public Hearings |

Section 4 – Proposal and Proposer Requirements

4.1 Submittal of Proposals

In order to be considered for this project, each Proposer must provide four total copies of their proposal. All proposals must arrive at the issuing office on or before the listed time and date due. A corporate officer who has been authorized to make such a commitment must sign the proposals. Proposals shall be sealed in an envelope, plainly identifying Project Name, Project Number, and Proposer's Name and Address. The document shall be addressed and delivered to the issuing office identified in Section 2.3.

4.2 Proposer Requirements

The following minimum criteria will apply:

- A. Each Proposer shall have no fewer than ten years experience, no fewer than five of which are within the State of Oregon, in providing all the types of services required within the Scope of Work in Section 3.3.
- B. Proposer shall demonstrate, to the satisfaction of the City, the ability to provide the services required within the Scope of Work in Section 3.3 to the City and shall demonstrate a proven history of providing such service for public agencies.
- C. Proposer shall not have a record of substandard workmanship. The City will verify this requirement by communication with the licensing authority, the Proposer's clients and references, and as many other references as the City may deem appropriate.

4.3 Proposer Representations

The Proposer further agrees to the following:

- A. To examine all specifications and conditions thoroughly.
- B. To provide for appropriate insurance, deposits, and performance bonds, as required.
- C. To comply fully with the scope of services as attached to the agreed contract.
- D. That any and all registration and certification requirements required for Contractors are met as set forth in the Oregon Revised Statutes.

4.4 Proposal Format and Requirements

4.4.1 Proposal Format

Proposers are encouraged to provide clear, concise proposals that contain only information required to respond to the needs of this project. Proposals shall be type written with the body text consisting of a serif font at least 12-point (e.g. Times New Roman, Garamond). Proposals shall be double sided and stapled once in the upper left hand corner. The City requests that submittal materials contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 1/2" x 11" sheet.

4.4.2 Introductory Letter (One Page Maximum)

Include the name of the proposing firm and its principal business address and phone number where the relationship will be managed. The letter should address the firm's willingness and commitment, if selected, to provide the services offered and a description of why the Proposer believes it should be selected. The letter should be addressed to the Project Manager at the address identified in Section 2.3. Provide telephone and fax numbers, email addresses, and mailing addresses for Proposer's project contact/manager. A statement in the letter of interest shall specifically stipulate that the consultant accepts all terms and conditions contained in the RFP and model Personal Services Agreement. The letter shall name the person(s) authorized to represent the consultant in any negotiations and the name of the person(s) authorized to sign any contract or agreement, which may result. The letter of interest must be signed by a legal representative of the Consultant firm or institution, authorized to bind the firm or institution in contractual matters.

4.4.3 Proposer's Experience (Four Pages Maximum)

Proposer shall describe the firm's and any key subconsultant's firm size, office locations, and relevant capabilities and resources in relation to this project. Only experience on completed projects should be included in this section. This section should include:

- A. Experience with Water Master Planning services for municipal water agencies, including water system development charge and utility rate studies.
- B. Experience developing long range cost estimates for water projects.
- C. Experience developing long range critical path scheduling including design, permitting, bidding, and construction related.
- D. Experience in water systems planning, water pipeline design, water system modeling, transfer of water service provider jurisdiction, and SDC and utility rate studies.
- E. Similar projects with other government agencies.
- F. Procedures and/or policies associated with or related to work quality and cost control.
- G. Management and organizational capabilities.

4.4.4 Project Team Experience (Four Pages Maximum)

Proposer shall identify the team to be assigned to the project by name, including at a minimum the principal, project manager, key staff, and any sub-consultants. Proposer shall describe the project team's qualifications and experience on completed projects related to this specific project. Proposer shall explain the project team's expertise regarding all tasks associated with the scope of work. This section should include:

- A. Approximate number of people to be assigned to the project.
- B. Extent of principal and project manager involvement.
- C. Principal, project manager, key members, and subconsultant experience with:
 - Water systems planning, distribution systems design, water system modeling, transfer of water service provider jurisdiction, and SDC and utility rate studies.
 - Developing long range project cost estimates.
 - Developing long range critical path scheduling, including design, permitting, bidding, and construction related activities.
- D. Unique qualifications.
- E. Current assignments and location.
- F. Roles and responsibilities of key staff on this project.

- G. Percentage of time key staff will be devoted to this project for the duration of the project, based on a 40-hour work week.

Proposer may submit individual resumes of key staff for this project. Individual resumes are considered an attachment to the Proposal and are not subject to page limitations of this section. However, please limit each resume length to two pages.

4.4.5 Project Understanding (Two Pages Maximum)

Proposer shall demonstrate its preliminary understanding of the project by providing a clear and concise description of the project and major issues, based on the information provided in this RFP.

4.4.6 Project Approach (Six Pages Maximum)

Proposer shall clearly define the tasks and activities necessary to meet the objectives outlined in the scope of work of Section 3.3. This section should include:

- A. Description of the tasks and activities, the methodology that will be used to accomplish them, and which team members will work on each task.
- B. Description of the products that would result from each task and activity.
- C. Identification of points of input and review with staff.
- D. Estimated time frame to complete each task.
- E. Proposers are invited to suggest additional (optional) work tasks that could be performed in conjunction with or subsequent to the scope of work of Section 3.3. Any such tasks are to be described as optional and the benefits of performing such tasks shall be described. Such optional tasks are not likely to be included in the initial authorized agreement, but will be considered by the City for relevancy and for possible future use.

4.4.7 Project Cost (Two Pages Maximum)

Proposer shall include a spreadsheet of the estimated number of person-hours associated with each task identified in the project approach. This spreadsheet shall specify the number of hours each staff member will work on each task. The Proposer shall provide a not-to-exceed amount for full project completion, based on the scope of work of section 3.3.

4.4.8 Project Schedule (Two Pages Maximum)

Proposer shall include a proposed project schedule identifying key tasks and milestone dates and their associated duration.

4.4.9 Past Projects (One Page per Project Maximum)

Proposer shall provide project descriptions of up to five completed projects that meet the criteria listed in Section 4.4.3 and 4.4.4. Proposer shall list the firm(s) and project team member(s) that worked on the listed projects. Proposer shall provide historical percent deviation from the Master Planned value to final constructed total project cost value of referenced projects.

Proposer shall submit a copy of one recent Water Master Plan that reflects the firm's quality of work. This project submittal is considered an attachment to the Proposal and is not subject to page limitations of this section.

4.4.10 References (Two Pages Maximum)

Proposer shall include references for each of the projects listed in Section 4.4.9. List contact name, title, agency, phone number, e-mail address, and mailing address.

4.4.11 Proposal Form (Attachment A)

Please complete the attached Proposal Form, Attachment A, with the required signature and other information. Please return this form with the Proposals in a sealed envelope in accordance with Section 4.1.

4.4.12 Sample Personal Services Agreement (Attachment B)

Review sample personal services agreement, Attachment B. Please review the agreement in consideration of the Proposal.

4.4.13 Map of Milwaukie Dual Interest Areas and UGMA Boundaries (Attachment C)

A map of the Milwaukie Dual Interest Areas and UGMA boundaries has been included for informational purposes. Please review the map in consideration of the Proposal.

4.4.14 Planning Style, Grammar, and Usage Standards (Attachment D)

The Planning Style, Grammar, and Usage Standards shall be used by the Consultant to prepare the Water System Master Plan and associated materials. Please review the standards in considerations of the Proposal.

4.4.15 Addenda

All Addenda of this RFP shall be submitted as part of the Proposal. Receipt of each Addendum shall be acknowledged by the Proposer by signing in the appropriate designated location. Each Proposer shall ascertain, prior to submitting a Proposal, that the Proposer has received all Addenda issued by the City.

Section 5 – Proposal Selection and Evaluation

5.1 General Information

Each proposal will be judged on its completeness and quality of its content. The City reserves the right to reject any or all proposals and is not liable for any costs the Proposer incurs while preparing or presenting the proposal. All proposals will become part of the public file, without obligation to the City. Upon the completion of the evaluations, the City intends to negotiate a contract with the Proposer whose proposal is deemed to be most advantageous to the City.

5.2 Selection Review Committee

The Selection Review Committee may be comprised of up to five members. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. The City may also seek expert advice to help review proposals. Such advisors to the Selection Review Committee may attend evaluation meetings, Proposer presentations, evaluate the proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed, or otherwise brought to an end, have communications with any Proposers regarding their proposals or the process.

Scoring will be completed covering all areas listed in Section 5.4 in the Evaluation Criteria. Scores for each Proposal shall be added together to arrive at a final score for each Proposer. Proposals will then be ranked in descending order by the total Proposal score.

The City is seeking value from the service requested. While cost is important to the overall evaluation process, the experience and qualifications will be assigned a higher value. If additional information is deemed necessary as part of the evaluations, such information will be solicited in order to allow the committee to complete the evaluation process.

5.3 Interviews

Proposers selected for final evaluation (if necessary) may be required to make an oral presentation of their proposal to the Selection Review Committee. Such presentation shall provide an opportunity for Proposers to clarify their proposal to ensure thorough mutual understanding. The Selection Review Committee may interview the Proposers and ask additional questions related to the proposal and the scope of work. The City will schedule the time and locations of the interviews, if required, on the dates indicated in Section 2.4. Interviews will take place at a location to be determined by the City. Firms invited to the interview will be responsible for making and paying for their own travel arrangements.

5.4 Scoring and Evaluation Criteria

The Selection Review Committee will evaluate the proposals. The role of the Selection Review Committee is to evaluate the proposals submitted and make a recommendation of award. The criteria listed below will be used to determine the finalists and apparent successful Proposer.

Each proposal shall be limited in length and judged as a demonstration of the Consultant's capabilities and understanding of the project.

Evaluation criteria, maximum points and page limitations will be as follows:

| Criteria | Maximum No. Pages | Score |
|-------------------------|-------------------|------------|
| Introductory Letter | 1 | 3 |
| Proposer's Experience | 4 | 10 |
| Project Team Experience | 4 | 15 |
| Project Understanding | 2 | 15 |
| Project Approach | 6 | 30 |
| Project Cost | 2 | 10 |
| Project Schedule | 2 | 5 |
| Past Projects | 5 | 10 |
| References | 2 | N/A |
| Proposal Format | N/A | 2 |
| Total | 28 Pages | 100 Points |

5.5 Best and Final Offers

If in the best interest of the City, the Selection Review Committee chooses to employ a method of Proposal selection leading to best and final offers, the City may conduct private discussions with qualified Proposers as allowed by ORS 279B.060(6).

5.6 Ranking of Proposals

Proposals may be ranked by the Selection Review Committee based on evaluation of responses and interviews (if any), with the first-ranked Proposal being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposal being the Proposer next most appropriate, all in the sole judgment of the Selection Review Committee.

Proposal scores will be totaled and ranked. Any Proposal in response to this RFP shall be considered de facto permission to the City to disclose the results, when completed, to selected reviewers at the sole discretion of the City.

Section 6 – Contract Requirements

6.1 Contract Award

The award of a contract is accomplished by executing a written agreement that incorporates the entire RFP, Proposer's Proposal, clarifications, addenda, and additions. All such materials constitute the contract documents. The Proposer agrees to accept the contract terms of the attached Personal Services Agreement unless substantive changes are made without the approval of the Proposer. The issuing office and project manager of Section 2.3 is the sole point of contact for the issuance of the contract. The contract shall be substantially in the form of the sample "Personal Services Agreement" in Attachment B.

6.2 Contract Administrator

The Contract Administrator for the 2010 Water System Master Plan shall be the project manager listed in Section 2.3.

Attachment A – Proposal Form

Proposal Representations

The undersigned hereby submits this Proposal to furnish all work, services systems, materials, and labor as indicated herein and agrees to be bound by the following documents: Request for Proposal, Personal Services Contract, and associated inclusions and references, specifications, Proposal Form, Proposer response, mutually agreed clarifications, appropriately priced change orders, exceptions which are acceptable to the City, and all other Proposer submittals.

The undersigned hereby certifies and represents that the Proposer:

- 1) has examined and is thoroughly familiar with the Request for Proposal and full understand its intent; and
- 2) has examined and is thoroughly familiar with the Personal Services Contract, agrees to accept the contract terms, and execute such contract upon award of the contract; and
- 3) understands that the City reserves the right to accept a proposal or reject all proposals if deemed in the best interest of the City; and
- 4) understands that all information included in, attached to, or required by this Request for Proposal shall be public record subject to disclosure within the context of the federal Freedom of Information Act and Oregon Revised Statutes (ORS) 192.501 and ORS 192.502.

Receipt of Addenda

Bidder acknowledges that addenda numbers _____ have been delivered and examined as part of the Request for Proposal.

Fee Proposal

The undersigned hereby proposes and, if selected, agrees to furnish all services in accordance with the Request for Proposal, and Addendums, for the not-to-exceed amount shown immediately below.

Please provide the grand total, not-to-exceed, amount of your proposal below. The details of your a cost proposal should be included in your response according to Section 4.4.7 of the Request for Proposal.

| Proposal Total Not-to-Exceed Amount | |
|-------------------------------------|---------|
| _____ | _____ |
| Written | Figures |

Certifications

Non-Collusion

The undersigned Proposer hereby certifies that it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, potential Proposer, firm or person, in connection with this solicitation, to submit a collusive or sham proposal, to

refrain from bidding, or manipulating or ascertain the price(s) of other Proposers or potential Proposers, or to secure through any unlawful act an advantage over other Proposers or the City. The fees and prices submitted herein have been arrived in an entirely independent and lawful manner by the Proposer without consultation with other Proposers or potential Proposers of foreknowledge of the prices to be submitted in response to this solicitation by other Proposers or potential Proposers on the part of the Proposer, its officers, owners, providers, representatives, employees or parties in interest, including he affiant.

Conflict of Interest

The undersigned Proposer and each person signing on behalf of the Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the City Council, officer, employee, or person, whose salary in whole or in part by the City , has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Reciprocal Preference Law

Residency

The undersigned Proposer certifies that their firm is a () Resident Proposer () Non-resident Proposer.

Signature Block

The Proposer hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Proposer Firm Name

Mailing Address, City, State, Zip

Telephone Number

Facsimile Number

Proposer Name

Proposer Email Address

Signature

Date



REQUEST FOR PROPOSAL

2010 WATER SYSTEM MASTER PLAN

DATE DUE: Thursday, December 17, 2009
TIME DUE: 2:00 p.m.

Addendum #1

Section 3.1 – Add the following:

The City's budget for the 2010 Water System Master Plan is \$200,000.00.

Section 3.3

Task 4.5.2 Perform Model Hydraulic Verification Testing - Add the following:

The City has recently completed GIS mapping of the water distribution system. The mapping includes GPS location of fire hydrants and valves, water main lines, and water main sizes. Because the water system data has been recently compiled, the City has had little time to verify the accuracy of the information through our daily maintenance and construction projects. As a result, the Consultant should expect and account for additional calibration testing for the hydraulic model as part of their proposal.

Technical Questions:

Zachary J. Weigel, Civil Engineer
City of Milwaukie
Phone: 503 786-7610
Fax: 503 774-8236
Email: weigelz@ci.milwaukie.or.us

RFP Questions:

Zachary J. Weigel, Civil Engineer
City of Milwaukie
Phone: 503 786-7610
Fax: 503 774-8236
Email: weigelz@ci.milwaukie.or.us

SUBMIT PROPOSAL TO:

City of Milwaukie
Zachary J. Weigel, Civil Engineer
Johnson Creek Office – Community Development
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97222

ATTACHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE 2010 WATER SYSTEM MASTER PLAN PROJECT.

WHEREAS, the City is working under an outdated 2001 Water System Master Plan; and

WHEREAS, an update of the water master plan was approved for funding in the 2009/2010 budget; and

WHEREAS, a formal request for proposal process in accordance with City's Public Contracting Rules was conducted, and

WHEREAS, West Yost Associates is deemed most able to provide water master planning services;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the 2010 Water System Master Plan project with West Yost Associates, in the not-to-exceed amount of \$195,580.00.

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 2, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)

5.
PUBLIC HEARING



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Tom Larsen, Building Official

Subject: Milwaukie Municipal Ordinance Amendment _____
Proposed Amendments to the Milwaukie Municipal Code To Provide
For Administrative Civil Penalties For Violations Of The Specialty
Codes And Building Requirements And Appeal Therefrom,
Amending §§ 15.04.030, 15.04.070, 15.04.220 And 15.04.240 And
Adopting New Section 15.04.215.

Date: January 21, 2010 for the February 2, 2010 Regular Session

Action Requested

Adopt the proposed amendments to the Milwaukie Municipal Code, to achieve compliance with Senate Bill 915 (see Attachment 1, Ordinance, and Exhibits A, B, C).

History of Prior Actions and Discussions

There have been no prior actions or discussions regarding this matter.

Background

The State Building Codes allow local jurisdictions to collect an investigation fee in the amount of the permit fee whenever work is done without a permit. This is, by law, an investigation fee and not a fine, thereby limiting the jurisdiction's ability to deal with a few serious offenders who disregard the law and put the safety of the public at risk.

As a result, Milwaukie, like most jurisdictions in the state, has adopted a local ordinance that sets fines for violations of the State Building Codes. Building Department staff always encourages voluntary compliance; however there are some cases where the only recourse is to assess a monetary penalty.

During the last legislative session, Senate Bill 915 was passed into law and became effective January 1, 2010. The bill (see Exhibit A) requires that building code violations be processed as civil penalties and not through the municipal court system. It also requires that the maximum civil penalty for a building code violation shall not exceed that amount in ORS 455.895.

Maximum of \$1,000 per day and maximum total of \$5,000 for each violation.

These limitations do not apply to violations of the Erosion Control or FOG Ordinances, moved buildings, swimming pool barriers, dangerous buildings, work in the Right-of-Way, violations of the Zoning Ordinance, or any other violations that are not violations of the Building, Plumbing, Mechanical and Electrical Specialty Codes.

Initial concern from Building Officials throughout the state was that there may be some builders who would decide that paying the \$5,000 fine would be cheaper than complying with the code. Staff feels, however, that there is adequate protection provided in one or more of the ordinances or codes listed in the paragraph above. Since January 1, 2003, the Building Department has processed 118 violations. Of these, only nine have gone to the point of citations. Six of those were assessed penalties of \$1,000 to \$2,000. There were three citations greater than \$5,000 during this time period. Each of these offenders could have been cited under another code or ordinance.

| Violation | Citation / Judgment ** | Applicable Code / Ordinance |
|--|-------------------------------|------------------------------------|
| Occupancy of commercial Building without Certificate of Occupancy. | \$24,000 / \$24,146 | Zoning Code |
| Change of Use without a building permit. | \$61,000 / \$312 | Dangerous Building Code |
| Mechanical / structural work without permits. | \$44,000 / \$25,171 | Dangerous Building Code |

** Historically, if the violation has been resolved by the time the matter goes to court, the judge has drastically reduced the fine. If the offender does not appear, the judge typically fines the full amount plus an assessment.

Concurrence

The City Attorney has reviewed Senate Bill 915 and has provided direction (see Exhibit B).

The Community Development / Public Works Director concurs with the requested action.

The Code Enforcement Coordinator concurs with the requested action.

Fiscal Impact

The requested action will have negligible fiscal impact due to the expected low volume of violations that actually go to the point of citation.

Work Load Impacts

The requested action will have a minor work load impact due to the expected low volume of violations that actually go to the point of citation.

Some of the work formerly performed by the Code Enforcement Coordinator will now be performed by the Building Official. In the event of an appeal, the Director of Community Development and Public Works will hear appeals and make final determinations. The Building Department has adequate staff to perform the needed actions.

Alternatives

1. Approve the amendments.
2. Approve the amendments with modifications. Substantial modifications to the proposed amendments could place the City out of compliance with state law.
3. Continue the hearing to allow for more discussion.

Attachments

1. Draft Ordinance for Adoption
 - a. Exhibit A; Senate Bill 915
 - b. Exhibit B; Attorney's Review and Concurrence
 - c. Exhibit C; Amendments—Clean Version

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 15.04 OF THE MILWAUKIE MUNICIPAL CODE TO PROVIDE FOR ADMINISTRATIVE CIVIL PENALTIES FOR VIOLATIONS OF THE SPECIALTY CODES AND BUILDING REQUIREMENTS AND APPEAL THEREFROM, AMENDING §§ 15.04.030, 15.04.070, 15.04.220 AND 15.04.240 AND ADOPTING NEW SECTION 15.04.215.

WHEREAS, the City of Milwaukie, Oregon, administers specialty codes and building requirements adopted by the state; and

WHEREAS, Senate Bill 915, passed by the state legislature in 2009, amends provisions with respect to the enforcement of the state building code; and

WHEREAS, the legislature found that enforcement of the state building code in a fair, equitable and uniform manner throughout the state was a matter of statewide concern. Now, Therefore,

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

Section 1. The Municipal Code of Milwaukie Section 15.04.030 is amended to read as follows: (underlined words added and stricken through deleted)

Chapter 15.04.030 Appeals.

A. Any person aggrieved by a decision of the building official, other than a decision to impose an administrative civil penalty pursuant to Section 15.04.070C, shall first appeal the decision in writing to the building official and request a written determination.

B. In the case of an appeal of a decision of the building official to impose an administrative civil penalty pursuant to Section 15.04.070C, an aggrieved person may appeal the decision to the city manager or his or her designee.

~~C. B.~~ If the person disagrees with the written determination of the building official, he or she may file an appeal with the appropriate State of Oregon Building Codes Division Program Chief.

~~D. C.~~ An appeal shall be solely on the basis of an interpretation of the code and shall not be used as a request for a waiver or modification.

Section 2. The Municipal Code of Milwaukie Section 15.040.070 is amended to read as follows: (underlined words added and stricken through deleted)

A. The building official is authorized to enforce all the provisions of this chapter. The building official shall have the power to render written and oral interpretations of this chapter and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this chapter.

B. In accordance with prescribed procedures and with the approval of the appointing authority, the building official may appoint technical officers, inspectors and other employees to carry out the functions of this chapter, including enforcement.

C. In addition to any other enforcement mechanism authorized by this code, other than those set forth in Chapter 1.08, upon a determination by the building official that a person has violated a provision of this Chapter or a rule adopted thereunder, the building official may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (1) to (11) of this subsection. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

1. Prior to imposing an administrative civil penalty under this section, the building official shall pursue reasonable attempts to secure voluntary correction, failing which the building official may issue a notice of civil violation to one or more of the responsible persons to correct the violation. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five (5) calendar days.

2. Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. If the required correction has not been completed by the date and time specified in the order, the building official may issue a notice of administrative civil penalty to each person to whom an order to correct was issued.

3. Notwithstanding subsection (1) above, the building official may impose an administrative civil penalty without having issued an order to correct the violation or having made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

4. In imposing a penalty authorized by this section, the building official shall consider:

a. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;

b. Any prior violations of statutes, rules, orders, and permits;

c. The gravity and magnitude of the violation;

d. Whether the violation was repeated or continuous;

e. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;

f. The violator's cooperativeness and efforts to correct the violation; and

g. Any relevant rule of the building official.

5. The notice of administrative civil penalty shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. A notice of administrative civil penalty shall include:

a. A description of the alleged violation and a reference to the particular code provision or rule involved;

b. A statement that the City intends to assess an administrative civil penalty for this violation and sets forth the amount of the penalty or penalties imposed;

c. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (3), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated;

d. A statement of the party's right to appeal the assessment of the administrative civil penalty to the City Manager or City Manager's designee, and

e. The means and deadline by which an aggrieved person must file such appeal.

6. Any person who is issued a notice of administrative civil penalty may appeal the penalty to the City Manager or City Manager's designee. The City Manager's designee shall not be the building official or building inspector. The provisions of Section 15.04.215 of this code shall govern any requested hearing, except that the burden of proof shall be on the building official.

7. An administrative civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager or City Manager's designee within fifteen (15) days of the issuance of the notice of administrative civil penalty. If the responsible person appeals the administrative civil penalty to the City Manager or City Manager's designee, the penalty shall become final, if at all, upon issuance of the City Manager or City Manager's designee's decision affirming the imposition of the administrative civil penalty.

8. Each day the violator fails to remedy the code violation shall constitute a separate violation.

9. Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in subsection (7) shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (11) below, other provisions of this code, or state statutes.

10. The civil administrative penalty authorized by this section shall be in addition to:

a. Assessments or fees for any costs incurred by the City in remediation.

cleanup, or abatement, and

b. Any other actions authorized by law.

11. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid thirty (30) days after such penalty becomes final, the building official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the building official shall notify the responsible person that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the docket of City liens. The lien shall be enforced in the same manner as liens established by Municipal Court judgment pursuant to Code Section 1.08.300. The interest shall commence from the date of entry of the lien in the City's lien docket.

12. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to subsection (3) of this section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

Section 3. The Municipal Code of Milwaukie is amended to add a new Section 15.04.215 which shall read as follows:

15.04.215 Appeal of Notice of Administrative Civil Penalty for Violation of the Structural Specialty Code.

A. A person aggrieved by a Notice of Administrative Civil Penalty issued by the building official for violation of this Chapter may, within fifteen (15) days after the date of notice of the action, appeal in writing to the City Manager or his or her designee. The appeal shall be accompanied by a \$250 appeal fee as established by the City and shall state:

1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

B. An appellant who fails to file such an appeal within the time permitted waives the objection. Except as provided in subsection (F) of this section, the appeal fee is not refundable.

C. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

D. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager or City Manager's designee within thirty (30) days of the receipt of

the notice of intent to appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

E. The City Manager or City Manager's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager or City Manager's designee deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

F. The City Manager or City Manager's designee shall issue a written decision within ten (10) days of the hearing date. The decision of the City Manager or City Manager's designee after the hearing is final and may include a determination that the appeal fee be refunded to the applicant upon a finding by the City Manager or City Manager's designee that the appeal was not frivolous.

Section 4. The Municipal Code of Milwaukie Section 15.04.220 is amended to read as follows: (underlined words added and stricken through deleted)

15.04.220 Appeal procedure.

A. Any person aggrieved by a decision of the building official other than the imposition of an administrative civil penalty, made pursuant to the following specialty codes may appeal that decision to the following:

1. Electrical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division, Chief Electrical Inspector.
2. Structural Specialty Code. Appeals may be made to the State of Oregon, Building Codes Structures Board.
3. Mechanical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.
4. Plumbing Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division.
5. One and Two Family Dwelling Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.
6. Manufactured Dwelling Code. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.
7. Recreational Park and Organizational Camp Regulations. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.
8. All other appeals may be made to the appropriate board or agency.

B. An appeal shall be in writing, shall describe the basis for the appeal and shall first be filed with the building official.

Section 5. The Municipal Code of Milwaukie Section 15.04.240 is amended to read as follows: (underlined words added and stricken through deleted)

15.04.240 Penalties.

A. Any person violating any of the provisions of this chapter for which a special penalty has not been expressly provided shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars per violation. Each day that a violation exists is a separate offense.

B. The administrative civil penalty referred to in subsection (C) of section 15.04.070 shall be an amount set by the building official not to exceed \$5,000.00 or \$1,000.00 per day for continuous violation.

Section 6. Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis, PC

Pat DuVal, City Recorder

EXHIBIT A

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled Senate Bill 915

Sponsored by Senator MORSE

CHAPTER

AN ACT

Relating to the regulation of structures.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 455.

SECTION 2. (1) The Legislative Assembly finds and declares that enforcement of the state building code in a fair, equitable and uniform manner throughout this state is a matter of state concern.

(2) If a municipality administers a building inspection program under ORS 455.148 or 455.150, a monetary penalty assessed under the program for a violation must be assessed as a civil penalty. This subsection does not prohibit a municipality from charging a violator an increased permit fee or investigative fee, seeking injunctive relief from a violation or taking any enforcement action that does not include a monetary penalty. This subsection does not limit the terms or conditions of any voluntary agreement for the resolution of a violation.

(3) A municipality may not assess a civil penalty for a violation under a building inspection program unless the municipality provides to the party that is subject to the civil penalty:

(a) Notice that:

(A) Describes the alleged violation, including any relevant code provision numbers, ordinance numbers or other identifying references;

(B) States that the municipality intends to assess a civil penalty for the violation and states the amount of the civil penalty;

(C) States that the party may challenge the assessment of a civil penalty; and

(D) Describes the means and the deadline for informing the municipality that the party is challenging the assessment of the civil penalty; and

(b) A municipal administrative process other than a judicial proceeding in a court of law, that affords the party an opportunity to challenge the civil penalty assessment before an individual, department or body that is other than the municipality's building inspector or building official.

(4) If the municipality assesses a civil penalty for a violation under a building inspection program, the amount of the civil penalty assessed for the violation may not exceed the maximum civil penalty amount authorized for an equivalent specialty code violation under ORS 455.895.

(5) The costs incurred by a municipality in providing notice and administrative process under this section are building inspection program administration and enforcement costs for the purpose of fee adoption under ORS 455.210.

SECTION 3. Section 2 of this 2009 Act applies to a civil penalty assessed on or after the effective date of this 2009 Act for a violation occurring before, on or after the effective date of this 2009 Act.

Passed by Senate May 4, 2009

.....
Secretary of Senate

.....
President of Senate

Passed by House June 2, 2009

.....
Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State

EXHIBIT B

JORDAN SCHRADER RAMIS PC ATTORNEYS AT LAW

Two Centerpointe Dr Ste 600
Lake Oswego OR 97035
www.jordanschrader.com

Phone: (503) 598-7070
Toll Free: (888) 598-7070
Fax: (503) 598-7373

LEGAL MEMORANDUM

TO: Tom Larsen, Building Official

FROM: Cynthia Phillips

DATE: September 22, 2009

RE: **Questions stemming from the passage of SB 915**
File No. 49979-36738

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

I was asked by Bill Monahan to take a look at your e-mail of September 14, 2009, and answer the questions posed. We, therefore, reviewed SB 915 and found it to be somewhat of an enigma. We then reviewed the legislative history of the bill to determine what the legislature intended in passing it. The following is a short synopsis of the legislative history behind the bill.

The legislative history of this bill shows that the legislature was concerned about a single case out of Corvallis, Oregon, in which a building code violation was cited into municipal court. The violation was adjudicated as a criminal matter, over the objections of the violator. Senator Morse, from Benton County, a friend of the violator, brought the bill to underscore the general rule that if a building code violation needs to be adjudicated, it should be adjudicated as a violation, according to state law. As an aside, this bill is kind of like swatting a gnat with a sledge hammer. We all know that in matters of statewide concern, like the building codes, state law trumps local law. However, in an effort to make this perfectly clear, Section 2 of the bill states that enforcement of the state building code is a matter of statewide concern. As of January 1, 2010, the procedure to be followed to enforce the building code is contained in ORS 183.745.

We also noticed that the bill evidences a general distrust of municipal court judges in favor of an administrative process and also evidences a distrust of municipal building officials in favor of a hearings officer, department or board (which shall not include the building official or a building inspector of the City).

Based upon the legislative history of SB 915, our answers to the questions that you have posed are as follows:

You wrote: "I need some input on the requirements of SB 915, which takes effect on January 1 and sets a limit of \$5,000 fines for violations of the state building code. I am a bit confused by the reference to a civil penalty. In the past, we have cited offenders in Municipal Court. Is that not a civil penalty? If we don't go through the court system, how do we ensure that we get the money?"

September 22, 2009

Page 2

Our comments are: The civil penalty referred to in the bill is not the same as a fine for violation of the municipal code. The bill provides that the civil penalty for violation will not exceed that provided in ORS 455.895. Civil penalties under this section shall be imposed as provided in ORS 183.745. Collection of a civil penalty may be enforced by assessing a lien against the property, see ORS 187.745(6). We would not advise taking adjudication of building code violations to the municipal court anymore.

You wrote: "The bill requires an appeal before a board or an individual that is not a building inspector. I believe a board is too cumbersome for the rare occasions that we actually cite anyone. I would propose Kenny or Mike Swanson as the person to hear the appeal."

Our comments are: So long as the "individual, department or body" that hears the challenge to assessment of the civil penalty does not include the building official or a building inspector, you will be OK. Therefore, having Community Development Director Kenny Asher or City Manager Mike Swanson hear the appeal will meet the intent of the statute.

You asked: "Do you think we need to amend the MMC, particularly Section 15.04.240?" Answer: Yes. We would amend several sections of the code to better conform to the current statutes. Please let us know if you would like us to prepare an ordinance that would bring the City into compliance with SB 915.

You asked, "Do you agree that dangerous building, vacant buildings, swimming pool barriers and house relocations are not subject to the limitations of this bill because they are locally adopted and not part of the state building code?" Answer: Yes, we do.

If you have any further questions, please give me a call.

EXHIBIT C

15.04.030 Appeals.

A. Any person aggrieved by a decision of the building official, other than a decision to impose an administrative civil penalty pursuant to Section 15.04.07C, shall first appeal the decision in writing to the building official and request a written determination.

B. In the case of an appeal of a decision of the building official to impose an administrative civil penalty pursuant to Section 15.04.070C, an aggrieved person may appeal the decision to the city manager or his or her designee.

C. If the person disagrees with the written determination of the building official, he or she may file an appeal with the appropriate State of Oregon Building Codes Division Program Chief.

D. An appeal shall be solely on the basis of an interpretation of the code and shall not be used as a request for a waiver or modification. (Ord. 1923 § 1 (Exh. A) (part), 2003; Ord. 1775 § 1, 1994)

15.04.070 Authority of the building official.

A. The building official is authorized to enforce all the provisions of this chapter. The building official shall have the power to render written and oral interpretations of this chapter and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this chapter.

B. In accordance with prescribed procedures and with the approval of the appointing authority, the building official may appoint technical officers, inspectors and other employees to carry out the functions of this chapter, including enforcement. (Ord. 1814 § 2 (part), 1997)

C. In addition to any other enforcement mechanism authorized by this code, other than those set forth in Chapter 1.08, upon a determination by the building official that a person has violated a provision of this Chapter or a rule adopted thereunder, the building official may impose upon the violator and / or any other responsible person an administrative civil penalty as provided by subsections (1) to (11) of this subsection. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

1. Prior to imposing an administrative civil penalty under this section, the building official shall pursue reasonable attempts to secure voluntary correction, failing which the building official may issue a notice of civil violation to one or more of the responsible persons to correct the violation. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five (5) calendar days.

2. Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. If the required correction has not been completed by the date and time specified in the order, the building official may issue a notice of administrative civil penalty to each person to whom an order to correct was issued.

3. Notwithstanding subsection (1) above, the building official may impose an administrative civil penalty without having issued an order to correct the violation or having made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

4. Imposing a penalty authorized by this section, the building official shall consider:

- a. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
- b. Any prior violations of statutes, rules, orders, and permits;
- c. The gravity and magnitude of the violation;
- d. Whether the violation was repeated or continuous;
- e. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- f. The violator's cooperativeness and efforts to correct the violation; and
- g. Any relevant rule of the building official.

5. The notice of administrative civil penalty shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. A notice of administrative civil penalty shall include:

- a. A description of the alleged violation and a reference to the particular code provision or rule involved;

- b. A statement that the City intends to assess an administrative civil penalty for this violation and sets forth the amount of the penalty or penalties imposed;
- c. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (3), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated;
- d. A statement of the party's right to appeal the assessment of the administrative civil penalty to the City Manager or City Manager's designee, and
- e. The means and deadline by which an aggrieved person must file such appeal.

6. Any person who is issued a notice of administrative civil penalty may appeal the penalty to the City Manager or City Manager's designee. The City Manager's designee shall not be the building official or building inspector. The provisions of Section 15.04.215 of this code shall govern any requested hearing, except that the burden of proof shall be on the building official.

7. An administrative civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager or City Manager's designee within fifteen (15) days of the issuance of the notice of administrative civil penalty. If the responsible person appeals the administrative civil penalty to the City Manager or City Manager's designee, the penalty shall become final, if at all, upon issuance of the City Manager or City Manager's designee's decision affirming the imposition of the administrative civil penalty.

8. Each day the violator fails to remedy the code violation shall constitute a separate violation.

9. Failure to pay a penalty imposed hereunder within ten (10) days after the penalty becomes final as provided in subsection (7) shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (11) below, other provision of this code, or state statutes.

10. The civil administrative penalty authorized by this section shall be in addition to:

- a. Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and
- b. Any other actions authorized by law.

11. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid thirty (30) days after such penalty becomes final, the building official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the building official shall notify the responsible person that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the docket of City liens. The lien shall be enforced in the same manner as liens established by Municipal Court judgment pursuant to Code Section 1.08.300. The interest shall commence from the date of entry of the lien in the City's lien docket.

12. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to subsection (3) of this section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

15.04.215 Appeal of Notice of Administrative Civil Penalty for Violation of the Structural Specialty Code.

A. A person aggrieved by a Notice of Administrative Civil Penalty issued by the building official for violation of this Chapter may, within fifteen(15) days after the date of notice of the action, appeal in writing to the City Manager or his or her designee. The appeal shall be accompanied by a \$250 appeal fee as established by the City and shall state:

1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

B. An appellant who fails to file such an appeal within the time permitted waives the objection. Except as provided in subsection (F) of this section, the appeal fee is not refundable.

C. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal.

Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

D. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City manager or City Manager's designee within thirty (30) days of the receipt of the notice of intent to appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

E. The City Manager or City Manager's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence of City Manager or City Manager's designee deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

F. The City Manager or City Manager's designee shall issue a written decision within ten (10) days of the hearing date. The decision of the City manager or City Manager's designee after the hearing is final and may include a determination that the appeal fee be refunded to the applicant upon a finding by the City Manager or City Manager's designee that the appeal was not frivolous.

15.04.220 Appeal procedure.

A. Any person aggrieved by a decision of the building official, other than the imposition of an administrative civil penalty, made pursuant to the following specialty codes may appeal that decision to the following:

1. Electrical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division, Chief Electrical Inspector.
2. Structural Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.
3. Mechanical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.
4. Plumbing Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division.
5. One and Two Family Dwelling Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.
6. Manufactured Dwelling Code. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

7. Recreational Park and Organizational Camp Regulations. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

8. All other appeals may be made to the appropriate board or agency.

B. An appeal shall be in writing, shall describe the basis for the appeal and shall first be filed with the building official. (Ord. 1814 § 2 (part), 1997)

15.04.240 Penalties.

A. Any person violating any of the provisions of this chapter for which a special penalty has not been expressly provided shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars per violation. Each day that a violation exists is a separate offense. (Ord. 1814 § 2 (part), 1997)

B. The administrative civil penalty referred to in subsection (C) of section 15.04.070 shall be an amount set by the building official not to exceed \$5,000.00 or \$1,000.00 per day for continuous violation.



To: Mayor and City Council

Through: Mike Swanson, City Manager &
Kenneth Asher, Community Development & Public Works Director

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Supplemental Budget Amendment for the Jackson Street
Improvement Project

Date: January 22 for February 2, 2010 Regular Session

Action Requested

Authorize supplemental budget amendment to appropriate \$100,000 for City contribution to the Jackson Street Improvement Project from Fund 315; or approve use of \$50,000 in already-appropriated monies in Fund 150 and appropriate \$50,000 from Fund 320. Authorize Budget Appropriation of TriMet pass-through to support the project.

History of Prior Actions and Discussions

January 2010: Council approved a Resolution authorizing amendment to project IGA with ODOT, transferring ARRA funds from Linwood Ave. to Jackson Street.

November 2009: Council approved a Resolution (No. 73-2009) authorizing an IGA with TriMet to govern Jackson Street Improvement project cooperation and cost share between the City and TriMet.

April 2009: Council approved a Resolution (No. 20-2009) authorizing original project IGA between ODOT and the City governing stimulus fund contribution to the project.

March 2009: Council approved a Resolution (No. 14-2009) providing for design funds to expand the Jackson Street bus shelter project to ensure project eligibility for federal stimulus funding.

Background

The Jackson Street Improvement Project includes the following elements:

- Full reconstruction of Jackson Street and streetscape (Main to 21st Avenue).
- Utility under-grounding.
- New bus shelters, consolidating the existing scattered grouping of bus shelters along Jackson and 21st Avenue to two high-quality shelters on Jackson.
- Stormwater pre-treatment facilities (aka, rain gardens).
- “Bulb outs,” street furniture, street trees, trash cans, pedestrian-scale lighting, and City medallions, in conformance with the Public Area Requirements (PAR) element of the Downtown and Riverfront Land Use Framework.

The project, in combination with future TriMet service changes to reduce layovers and add new bus stops at Washington Ave., fulfills the highest priority transit project identified in the City’s Transportation System Plan.

The most recent cost estimate for the project (at 100% plans) put the total cost of all elements of the project at \$1.49 million. In addition, ODOT requires a “bid risk” contingency to be available at the time of bid letting (i.e., the bid opening), currently scheduled for March 4, 2010. ODOT’s policy is to award a project if bids come in at up to 10% above the engineer’s estimate of construction cost (if the low bid exceeds 110% of the estimate, the City would have the opportunity to alter and re-bid the project)¹. The bid risk “contingency” is expected to be approximately \$71,725. Therefore, the combination of City, TriMet and ARRA funds that need to be available at the start of March 2010 is expected to be \$1.56 million, of which \$71,725 is the bid risk “contingency.” Currently available project resources are \$1.46 million.

Staff proposes resolving this gap by appropriating either (a) \$100,000 of Street Surface Maintenance Program (Fund 315) monies for the Jackson Street project, or (b) using \$50,000 from the Capital Projects line in fund 150 (already budgeted) and \$50,000 of State Gas Tax receipts (Fund 320).

At January 19, 2010, Regular Session, the clear sense of the majority of Council members was that the project was worthy of support, but there was a high degree of concern and sensitivity to using any SSMP funds for the project.

The project includes over \$175,000 of street surface improvements. (Because of the high volume of bus traffic on the street, the plan includes a full re-construct of the street with concrete, rather than asphalt.) Jackson Street is classified as a collector and is an

¹ The timeline requirements of ARRA funds would technically be met at this point, as the release of the initial bid has “obligated” the ARRA funds—the key milestone required in federal statute—even if it were to be re-bid.

eligible street under the SSMP program. It was rated at a PCI of 81 in 2004, but has had significant wear since that time.

The sensitivity to the use of Street Surface Maintenance funds was expressed in terms of both (1) impacts on overall project schedules and progress and (2) regarding expenditure on streets not originally identified in the SSMP.

Regarding net impact to the fund: The large majority (over \$70,000) of the funding “gap” is necessary only to cover the bid “risk” contingency, i.e., the potential that bids come in above the engineer’s estimate. However, bids are, in fact, coming in below engineer’s estimates in the current bid environment. Therefore, the likelihood of these funds being needed is very low. (ODOT’s practice is still that adequate funds to cover the bid risk contingency be committed to move forward with advertising.) In fact, the current bid environment suggests that there is a good likelihood that there is no gap at all, i.e., if the low bid were 5% below the engineer’s estimate (and bids are often coming in 10-20% below), all adequate funds are already appropriated.

If the total cost of the project to the SSMP fund were to reach \$30,000 (which is the higher end of the likely scenarios), the net impact on the SSMP financial position would be marginal (less than 5% of annual revenues). In addition, the City’s overall pavement condition, on collectors and arterials, would be clearly improved; direct, “hard” construction costs devoted to street surface within the project exceed \$175,000.

Council requested assurance that unexpended funds would be returned to the SSMP fund. If bids come in as expected, i.e., below the engineer’s estimate, very little or no money would ever actually be transferred to ODOT—the requirement is simply that the budget authority exist to cover the potential of a high bid. Any unexpended appropriated funds are required to return to Fund 315 under Oregon budget law, i.e., these are dedicated funds. Unexpended appropriations would roll over into the fund balance in the following year, or if monies were to be “called” by ODOT but then re-funded to the City, the refund would be credited, by law, to the originating fund.

In regard to the issue of the expenditure not having been outlined in the original project list: the SSMP very clearly allows the kind of action requested here. The SSMP project schedule was a “model” and was intended to be updated and adjusted as new needs arise and circumstances change. On page 6, under Project Selection, the Program directs the City to consider “the cost benefits of grouping multiple projects (both coordinating with other utility projects and tackling adjacent streets ... to minimize mobilization costs), and other project needs (for instance, recently built new projects that require overlays...)” The relatively small contribution from the SSMP to the Jackson Street project performs very well in terms of the direction that in “allocating resources among projects, staff prioritizes projects with the greatest return (i.e., street life extension versus cost).”

The second alternative staff proposes is funding half of the project from already appropriated Capital Project funds in Fund 150 and half from a new appropriation in Fund 320. The Capital Project line in the City Manager section of Fund 150 is budgeted at \$75,000, of which \$20,000 is already committed to the Jackson Street project by prior Council Resolution. There are no other encumbrances on that fund, nor any other project commitments according to the City Manager.

Fund 320 monies would be made available through a transfer from contingency/reserve to a new capital project line item. HB 2001, which became law in 2009, will provide additional monies to Fund 320, beginning in small quantities this fiscal year. Projected gas tax revenues in FY '10-'11 are \$220,000 above budgeted revenues for this year, providing sufficient new revenues to re-establish the reserve balance in FY '10-'11.

Concurrence

Engineering has provided concurrence on the appropriateness of the use of SSMP funds on the Jackson Street project. The Streets Supervisor feels that either action recommended would be appropriate.

Fiscal Impact

The use of SSMP funds would impact the fund balance within the SSMP, but would not significantly impact City's project planning nor delay any projects that are time-critical. The use of Fund 150 and Fund 320 monies would impact respective fund balances for the next fiscal year.

Work Load Impacts

Significant staff resources have been invested in this project over the preceding year. Continued staff support, particularly related to construction, is anticipated through summer 2010, and is within existing work plans.

Alternatives

Staff recommends the use of SSMP funds. Council may elect to use the three identified sources (up to \$50,000 in Capital Projects in Fund 150, up to \$100,000 in Contingency in Fund 315, and up to \$100,000 in Reserves in Fund 320) in any combination. Council may wish to direct staff to return to Council immediately after the bid let to re-appropriate funds no longer necessary to cover bid risk to Contingency.

Attachments

1. Appropriation Transfer Resolution to Fund Project Gap from Fund 315 (SSMP)
2. Appropriation Transfer Resolution to Fund Project Gap from Fund 320 (Street/Gas Tax)
3. Supplementary Budget Resolution to Appropriate TriMet Pass-Through
4. Total project costs and resources

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING A TRANSFER OF CONTINGENCY FOR JACKSON STREET**

WHEREAS, the Federal government established the American Recovery and Reinvestment Act (ARRA) of 2009 with the purpose of stimulating the economy, in part, through the funding of local public improvement and transportation projects; and

WHEREAS, the City and TriMet have both previously committed funds, supplementing ARRA funds, to the Jackson Street Improvement Project; and

WHEREAS, available resources are anticipated to fall short of the funds necessary to complete the project; and

WHEREAS, approximately \$70,000 of the needed funds are only necessary as a “bid risk contingency” and are likely to not be expended; and

WHEREAS, Jackson Street is classified as a “Collector,” and is eligible for expenditure of City Street Surface Maintenance Program funds; and

WHEREAS, the preliminary ODOT engineer’s cost estimate for the project includes over \$175,000 of hard costs related to “curb to curb” street surface improvements; and

WHEREAS, the Council intends to create a new line item in the Capital Outlay category of Fund 315 Streets/Surface Maintenance Expenditures exclusively for use on the Jackson Street project; and

WHEREAS, ORS 294.450 allows a transfer of fund resources and appropriation authority within a fund if authorized by a city council resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie hereby transfers \$100,000 in resources and appropriation authority from Fund 315 Expenditures Contingency and Reserve (Contingencies) to Fund 315 Expenditures Capital Outlay (Jackson Street) and creates a new line item “Jackson Street” in the current fiscal year budget.

| <u>Fund</u> | <u>Category</u> | <u>Adopted Budget</u> | <u>Change</u> | <u>Supplemental</u> |
|-------------------------------|-----------------|-----------------------|---------------|---------------------|
| 315 Streets/ Surface Maint | Contingency | \$492,162 | (\$100,000) | \$392,162 |
| 315 Streets/ Surface Maint | Capital Outlay | \$815,000 | \$100,000 | \$915,000 |

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 3, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING A TRANSFER OF CONTINGENCY FOR JACKSON STREET**

WHEREAS, the Federal government established the American Recovery and Reinvestment Act (ARRA) of 2009 with the purpose of stimulating the economy, in part, through the funding of local public improvement and transportation projects; and

WHEREAS, the City and TriMet have both previously committed funds, supplementing ARRA funds, to the Jackson Street Improvement Project; and

WHEREAS, available resources are anticipated to fall short of the funds necessary to complete the project; and

WHEREAS, approximately \$70,000 of the needed funds are only necessary as a “bid risk contingency” and are likely to not be expended; and

WHEREAS, the Capital Projects line item in Fund 150 – Administrative Services, City Manager, has sufficient unencumbered funds previously appropriated to cover one-half (\$50,000) of the total project funding gap; and

WHEREAS, with the passage of HB 2001, Fund 320 will be receiving additional State Highway Fund revenues adequate to rebuild reserves in the next fiscal year; and

WHEREAS, the Council intends to create a new line item in the Capital Outlay category of Fund 320 Streets/State Gas Tax exclusively for use on the Jackson Street project; and

WHEREAS, ORS 294.450 allows a transfer of fund resources and appropriation authority within a fund if authorized by a city council resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie hereby transfers \$100,000 in resources and appropriation authority from Fund 320 Expenditures Contingency and Reserve (Reserve: In Lieu of Improves) to Fund 320 Expenditures Capital Outlay (Jackson Street) and creates a new line item “Jackson Street” in the current fiscal year budget.

| <u>Fund</u> | <u>Category</u> | <u>Adopted Budget</u> | <u>Change</u> | <u>Supplemental</u> |
|-------------------------------|-----------------|-----------------------|---------------|---------------------|
| 320 Streets/ State Gas Tax | Contingency | \$141,460 | (\$50,000) | \$91,460 |
| 320 Streets/ State Gas Tax | Capital Outlay | \$0 | \$50,000 | \$50,000 |

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 3, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RECEIVING AND ACCOUNTING FOR UNANTICIPATED REVENUE FROM TRIMET FOR A SPECIFIC PURPOSE, APPROVING APPROPRIATION OF SUCH REVENUE.

WHEREAS, the Federal government established the American Recovery and Reinvestment Act (ARRA) of 2009 with the purpose of stimulating the economy, in part, through the funding of local public improvement and transportation projects; and

WHEREAS, the City and TriMet have both previously committed funds, supplementing ARRA funds, to the Jackson Street Improvement Project; and

WHEREAS, the City has received \$139,625 in funds from TriMet as payment for construction costs associated with transit on-street improvements for Jackson Street; and

WHEREAS, ORS 294.326 allows specific purpose grants to be appropriated by resolution without the necessity of a supplemental budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie hereby receives \$139,625 from TriMet as payment for construction costs associated with transit on-street improvements and creates a new line item "TriMet Jackson Street" in Fund 150 Grant Revenue; and establishes additional appropriation authority in Fund 150 City Manager Expenditures Capital Outlay (Capital Projects) of \$139,625 to pay such construction costs as follows:

| Fund | Category | Adopted Budget | Change | Supplemental |
|----------------|----------------|----------------|-----------|--------------|
| 150 Admin Svcs | Grant Revenue | \$1,500 | \$139,625 | \$141,125 |
| 150 Admin Svcs | Capital Outlay | \$75,000 | \$139,625 | \$214,625 |

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 3, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 4

TriMet Funds

| | |
|---|------------------|
| Tot. TriMet funds | \$497,000 |
| Art set-aside | -\$7,455 |
| TriMet HHPR contract | -\$54,920 |
| Reserve for shelter | -\$295,000 |
| Bal. avail for ODOT construction | \$139,625 |

City Funds

| | |
|---|-----------------|
| City funds | \$40,000 |
| HHPR contract expended | -\$24,775 |
| TCE appraisal | -\$3,000 |
| TCE payment | -\$3,800 |
| Reserve for tree removal & electrical | -\$13,000 |
| Bal. avail for ODOT construction | -\$4,575 |

ARRA funds

| | |
|---|------------------|
| Tot. ARRA funds* | \$933,000 |
| HHPR base contract | -\$131,114 |
| HHPR conting. expected | -\$6,030 |
| Possible ODOT billings* | -\$35,000 |
| Bal. avail for ODOT construction | \$760,856 |

*After ARRA consolidation

**PE at \$20K, constr at \$15K

Total Funds Required to Award

| | |
|---|------------------|
| Itemized bid items (per 100% eng. est.) | \$693,004 |
| 3.5% contingency | \$24,255 |
| Sub-total | \$717,259 |
| 10% of sub-total (bid risk) | \$71,726 |
| 110% of sub-total | \$788,985 |
| Construction Engineering (incl. conting. items) | \$196,500 |
| Total | \$985,485 |

Summary

| | |
|-------------------------------|------------------|
| Total Resources | \$1,470,000 |
| Total Cost | -\$1,487,853 |
| Total Cost+Bid risk | -\$1,559,579 |
| All funds avail to construct | \$895,906 |
| Total funds required to award | -\$985,485 |
| Gap (incl. bid risk) | -\$89,579 |

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Community Development and Public Works Director

Subject: Temporary Surcharge on Wastewater Utility Rate Due to Clackamas County Termination of Service Contract

Date: January 6 for January 19, 2010 Regular Session

Action Requested

Adopt a temporary Wastewater Service Surcharge of \$2.00 per 100 feet of cubic water used (ccf) per Equivalent Dwelling Unit (EDU) until a new Wholesale Agreement is executed with Clackamas County. A typical household, which is 1 EDU, uses about 7 ccf of water per month. This would result in an increased utility bill of approximately \$14 per month for a typical water customer in Milwaukie.

History of Prior Actions and Discussions

September 2009: Staff briefed Council on various wastewater-related issues facing the City, including the County's decision to unilaterally terminate the longstanding wastewater treatment service contract with the City and demand that the City pay \$25 a month, per EDU, for wastewater treatment service. City customers have been paying approximately \$11 a month for this service.

Background

The City of Milwaukie owns and operates a system of pipes that collect wastewater from Milwaukie homes and businesses. This wastewater is sent to the Kellogg Plant for treatment. The City jointly owns the plant with Clackamas County, but the County operates the treatment facility. Historically, Clackamas County has charged the City for the cost of treating Milwaukie's wastewater at the plant. These two costs – the cost of sending the wastewater to the plant, and the cost of treating that wastewater before

discharge into the Willamette River – make up the two parts of the wastewater utility rate that Milwaukie ratepayers pay (although these two parts are not split out explicitly on the utility bill, and the utility bill has other charges on it). The amount of water sent into the system by the individual household or business is factored into the rate charged.

Monies collected by the City for these two purposes (providing safe and dependable wastewater collection service and treatment service) are deposited in the City's Wastewater Fund and used to pay for personnel, repairs, testing and other expenses for both systems -- the collections system and the treatment system.

For reasons explained below, the Wastewater Fund is now in jeopardy of not being able to cover these costs.

Risk Factors for the Wastewater Fund

In the early 1970's, City of Milwaukie ratepayers paid more than \$1.5 million dollars to help construct the Kellogg Wastewater Treatment Plant. This entitled the City to 40 percent of the plant's capacity. Today, and through the years, the City has only used about 25 percent of that capacity.

Over time, City of Milwaukie ratepayers contributed more than \$11 million in upgrades to the Kellogg Plant. These contributions were made through Milwaukie's annual payment to Clackamas County Service District No. 1 (Clackamas County) for plant operations, which was governed by a contract between the two governments.

On June 25, 2009, the County Board of Commissioners (BCC) unanimously decided to terminate this contract. The BCC explained that it took this action because the BCC believes Milwaukie should pay Clackamas County for actual *District-wide* treatment expenses, not just expenses incurred for treating Milwaukie's wastewater as was provided in the contract. (The BCC's June 25 letter is Attachment 1).

On July 23, 2009, the BCC notified the City of new terms by which the County would treat Milwaukie's wastewater at Kellogg. The BCC stated that beginning August 1, 2009, it would begin charging Milwaukie \$25.31 per EDU (per month), a roughly 110 percent increase over what ratepayers currently pay for the service. Further, the BCC said that if Milwaukie did not agree to a new contract with the District by February 28, 2010, then Milwaukie should make arrangements to send its wastewater somewhere else, as "the District (BCC) makes no guarantees that it will be in a position to provide service to Milwaukie long-term." (The BCC's July 23 letter is Attachment 2).

Beginning in September 2009, the County starting sending the City monthly bills for wastewater service (for the prior month's service) in the amount of \$224,500 per month

(\$25.31 per EDU x 8870 Milwaukie EDUs = \$224,500). (See Attachment 3). Taken over the year, the total cost for treatment that the County is now imposing on the City is approximately \$2.5 million. The City's budget cannot handle this cost increase, nor does it have a sewer rate structure in place to raise this money.¹ In prior years, the equivalent service (which the City pays for from ratepayer utility payments), cost the City about \$1 million dollars less, or roughly \$1.4 million.

The Milwaukie City Council has not agreed to pay the County \$224,500 per month. The City budgeted approximately \$100,000 per month for treatment service, and is paying a little more than that (\$120,000) as a show of good faith to recognize that some cost escalation for the treatment service is understandable and acceptable. The County continues to bill the City at \$224,500 per month, and is now charging the City interest on the uncollected balance.

The City no longer has a contract that guarantees treatment cost, or provision of treatment service for that matter. The BCC's decision to unilaterally cancel the 1970 contract, which occurred after the current fiscal year budget was prepared, combined with the BCC's subsequent decision to more than double the cost of treatment for Milwaukie, is large risk to the Wastewater Fund. As nearly 100 percent of the Fund's revenue is from user fees (i.e. utility payments from ratepayers), there are very few options for cushioning the fund against this kind of potential cost escalation without raising additional revenue from Milwaukie customers.

The Milwaukie City Council has made attempts to protect its customers from this enormous cost increase, nonetheless.

Measures Taken to Protect Ratepayers and the Wastewater Fund

First and foremost, the City has not signed a new contract for treatment services with the County under the County's given terms. Doing so would have meant ratepayers would pay approximately \$14 per month over today's rates *with future rate hikes to be determined annually by the BCC*. This increase, and future increases, could be made to fund infrastructure improvements outside of Milwaukie to transmit and treat the wastewater of others. The City Council has not agreed to this.

Back in May 2009, the City did offer a compromise to the County. The City offered to charge all Milwaukie ratepayers an additional \$1.50 per month to help pay for a portion of the expansion of the TriCities Plant that would permanently lower the amount of

¹ City of Milwaukie Resolution 52-2005 set a 6% increase for sewer rates for five years beginning on January 1, 2006, with a 3.75% increase in the sixth year, 2011. These rate increases were adopted to cover maintenance, inflation and reserves for participating in a regional wastewater agreement (Clearwater) and the percentages are on the entire sewer charge (treatment and collections), not just treatment.

wastewater going to Kellogg. The Council viewed this as a step toward downsizing or decommissioning the Kellogg Plant. This compromise was rejected by the County.

The Council is also examining past wastewater charges levied by the County against the City which may be in error. For example, the County is seeking an additional \$485,000 from Milwaukie for treatment costs incurred during the 2007-08 fiscal year. The City believes that among other things, the County may have incorrectly measured the proportional share of wastewater that Milwaukie sent to the Kellogg Plant. The City has not agreed to pay this amount, and is in discussions with the County about the past bill.

Finally, the City has expended revenue from the Wastewater Fund to establish Milwaukie's rights and verify the City's legal positions in the dispute with the County over wastewater treatment. This is a Wastewater Fund expense, but staff believes it is being done to protect the Wastewater Fund and Milwaukie ratepayers. Unanticipated professional and legal fees have been incurred to answer the following kinds of questions:

- Has the County been over-billing the City for treatment costs?
- What are the industry standards for wastewater utility rate-making, and is the County following these standards?
- How was the Kellogg Plant initially funded and do those facts give Milwaukie rights and powers in determining future rates and investments for Milwaukie customers?
- Do people in Milwaukie and elsewhere in Clackamas County understand the nature of this dispute, and how can the City best inform the public on the issues?
- What's the best way for the City to interact with the County, given the position that the County has taken?

The current state of disagreement has raised expensive legal and communication challenges. The County's decision to unilaterally cancel an almost 40-year old cost-sharing arrangement has undermined the City's ability to anticipate and decide on future utility costs for Milwaukians. To be prudent, the City must now prepare explanations of its positions -- whether these be for the County, the Milwaukie ratepayers, or a judge, as the issue may ultimately be decided in court. On a separate matter related to the Kellogg Plant, the County did in fact sue the City rather than work through differences. The County has since dropped the lawsuit; however the City incurred significant legal expenses defending itself. The possibility of additional legal action is another risk factor facing the Wastewater Fund. The Milwaukie Council has not yet raised a legal challenge, but retains this option.

A summary of the disagreement with the County, as expressed in the current rate discussion and proposed action, is included as Attachment 4, "Where Would the Money Go?"

Fiscal Impact²

The Wastewater Fund began this fiscal year with a balance of \$1.1 million, projected user fee revenues of approximately \$3.5 million, and reserves of \$1.2 million, for a total revenue projection of \$5.8 million.

Expenditures in the Fund were budgeted at \$3.7 million, allowing for a projected balance at the end of the current fiscal year of approximately \$2.1 million.

As mentioned in the Background section of this report (top of page 3), at \$2.5 million, (the county's imposed rate), Milwaukie's wastewater service charges are now \$1.3 million more than the City budgeted for that specific expense.

Additionally, the County is seeking roughly \$500,000 for treatment service provided in fiscal year 2007-08, and the City expects to receive another "true-up" bill of \$100,000 for service provided in 2008-09.

Finally, the City has expended approximately \$200,000 for legal and professional fees to: examine the County's rate-setting methodology; review the historical file on Kellogg's construction financing; defend the City from a lawsuit brought by the County on a Kellogg permit issue; give legal advice about the City's rights to wastewater treatment at Kellogg; and consult on citizen communications based partially on a countywide survey on wastewater treatment issues.

Without a new agreement, the City may have to defend itself in another lawsuit, or take legal action to ensure that Milwaukians retain the right to use the plant that they helped pay for. While this would be an unfortunate turn of events, staff is required to alert the Council about risks to basic City services, and depletion of the Wastewater Fund is such a risk.

Thus, a worst case scenario facing the Wastewater Fund for the current fiscal looks like this:

² Figures used in this section were provided by then Finance Director Ignacio Palacios in November 2009.

| FY 09-10 Revenue Available (Projected) | | FY 09-10 Expenses (Worst Case) | |
|---|---------------|---|---------------|
| Beginning Fund Balance | \$1.1m | Treatment for 2009-10 | \$2.5m |
| User Fees (Rate Revenue) | \$3.5m | Treatment for Prior Years | \$0.6m |
| Reserves | \$1.2m | Other Operating Expenses ³ | \$2.8m |
| Total | \$5.8m | Total | \$5.9m |
| Ending Fund Balance | -\$0.1m | | |

Not only would the Fund end the current fiscal year with a negative balance, it would have had its entire reserve account wiped out – an account which had in it, at year’s start, over \$1 million dollars.

The temporary surcharge under Council consideration is projected to raise approximately \$800,000 before the end of the fiscal year. This would allow the Fund to cover all expenses and maintain roughly \$700,000 in reserves.

| FY 09-10 Revenue Available (Projected) | | FY 09-10 Expenses (Projected) | |
|---|---------------|--|---------------|
| Beginning Fund Balance | \$1.1m | Treatment for 2009-10 | \$2.5m |
| User Fees (Rate Revenue) | \$3.5m | Treatment for Prior Years | \$0.6m |
| Reserves | \$1.2m | Other Operating Expenses ⁴ | \$2.8m |
| Total | \$5.8m | Total | \$5.9m |
| Ending Fund Balance | (\$0.1m) | | |
| Additional Revenue from Surcharge | \$0.8m | | |
| Total with Surcharge | \$6.6m | | |
| Ending Fund Balance (with Surcharge) | \$0.7m | | |

In the worst case scenario, the Wastewater Fund will see all its existing revenues, including all reserves, exhausted by the end of May 2010. The proposed surcharge, assuming it remains in place through the end of the fiscal year (i.e. no new contract with the County), would allow the Fund to carry a positive balance with reserves into fiscal year 2010-11.

The importance of reserves in a utility account cannot be overstated. Best practices for wastewater utilities, which (usually) have a fairly stable and predictable rate revenue stream is a forty-five day reserve or just over 12% of cash operating expenses. This would be about \$360,000 for Milwaukie’s Wastewater Fund. Wastewater utility reserves have historically also covered the “true-up” obligation to the County for actual treatment costs (these are not known until after the fiscal year has ended), and perhaps most

³ Includes ongoing professional and legal fees for negotiations and/or litigation concerning new contract.

⁴ Includes ongoing professional and legal fees for negotiations and/or litigation concerning new contract.

importantly, capital improvement and maintenance projects in the City-owned collections system. (See Attachment 5 for Engineering Department memo on risks to the collections system). Finally, the Wastewater Fund, like all the city's utility funds, transfers some of its revenue to support the Engineering and Community Development Departments, Public Works management and the Streets Department.

The proposed surcharge is a temporary measure, to be replaced by a permanent rate increase as agreed to by the City and County under a to-be-negotiated contract. When the agreement is executed, the surcharge will be dropped and a new rate will be established for wastewater service in the City. Monies collected under the surcharge are proposed to be retained by the City for Fund expenses as described above.

As proposed, the resolution exempts low-income Milwaukie customers, many of whom are already identified as such in the billing system. For others seeking the low-income utility exemption, the process to apply is on the City's web page and requires income verification.

Concurrence

On November 4, 2009, the Citizens Utility Advisory Board (CUAB) met and discussed the financial health of the City's wastewater utility, given current uncertainties caused by the County's actions. At that meeting, the CUAB recommended Council increase wastewater rates. The actual rate proposed was \$13 per EDU (the City's compromise offer to the County in May 2009). The CUAB has not taken action on the temporary surcharge as proposed in this report.

The Budget Committee has not met to discuss the temporary surcharge. The Council has the option to convene the Budget Committee to seek input on the requested action. The surcharge as proposed is expected to raise approximately \$125,000 per month. Each month's delay will reduce the amount available (through the end of the fiscal and calendar year) by \$125,000.

The Wastewater Utility Supervisor and Operations Director concur with the proposed action. The City's wastewater consultant also concurs.

Work Load Impacts

Work load for implementing rate changes in the City falls on the Finance Department, which is currently short-staffed without a Director. Nevertheless, the surcharge could take effect as soon as the February billing cycle, which is based water usage as measured by meter readouts from December through February for half the City's customers. The second group of utility customers would see the surcharge for the first time on their March bill, which would reflect water usage from January through March.

There are no other workload impacts associated with the action; however there are considerable workload impacts in achieving a new agreement with the County. Significant staff time has been spent, and will continue to be spent on the issue, by the Community Development Department, Community Services Department, City Manager and City Attorney.

Alternatives

The Council has several alternatives to consider:

1. The Council can adopt the temporary surcharge as proposed.
2. The Council can adopt a temporary surcharge, but modify the methodology used.
 - a. The proposed surcharge is based on water usage, so high-usage businesses and households would pay proportionately more. An alternative is to apply the surcharge as a fixed amount so everyone pays the same. The same amount of money, or more or less, could be raised, depending on the fixed charge selected.
 - b. The Council can elect to raise more or less money by changing the per ccf value. At \$1/ccf, the temporary surcharge would raise approximately \$400,000 for example (by fiscal year end), leaving an ending fund balance of an estimated \$300,000 (worst case scenario).
3. The Council can adopt the surcharge, but delay its implementation in the hopes of reaching a new agreement with the County. Similarly, the proposed surcharge extends into the first six months of the next fiscal year (absent a new agreement with the County). Council may elect to drop this extension, or to change the length of time the surcharge is proposed to remain in place.
4. The Council can reject the proposal, seeking instead to cut costs in the Wastewater Fund next fiscal year. The utility expects to spend roughly \$100,000 a year on maintenance projects. The utility also receives approximately \$200,000 a year from the general fund through 2012 in repayment for the Cash Spot acquisition. This schedule could be accelerated. Personnel cuts to either the wastewater utility division or the supporting departments would cause important city services to suffer, but do offer another alternative to the proposal.

5. The Council can reject the proposal and enact a permanent wastewater rate increase that could be modified by a new wholesale agreement, or one which could attempt to anticipate the cost of service under a new agreement so as to avoid another modification.

Staff recommends the Council adopt the temporary surcharge as proposed. The alternatives leave the Wastewater Fund and the city's utility at greater risk, and although it is difficult to pass higher costs on to Milwaukians, there are even higher costs ahead if action isn't taken now. As importantly, the surcharge is intended for the Council to use as it best sees fit for the future of the utility and the City. This is a vastly different kind of charge than is proposed by the County, which would result in Milwaukie dollars leaving the City for use in other places, and at the discretion of others.

Attachments

1. BCC June 25, 2009 Letter Terminating Service
2. BCC July 23, 2009 Letter Imposing New Rate and Possible Cutoff
3. August 2009 Monthly Billing Invoice
4. Summary Table Rate Discussion and Differences, "Where Would the Money Go"
5. Engineering Department Memo on Fiscal Risks to the Collections System
6. Resolution



**CLACKAMAS
COUNTY SERVICE DISTRICT
No. 1 (CCSD #1)**

Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Steve Wheeler
Acting District Administrator

June 25, 2009

**CCSD #1
Governing Board**

Lynn Peterson
Chair

Bob Austin

Jim Bernard

Charlotte Lehan

Ann Lininger

**River Health
Advisory Board**

Juliana Andrade
District Resident

Marlo Dean
City of Damascus

Markley Drake
City of Happy Valley

Eric Hofeld
Chair, District Resident

Steve Kennett
District Resident

Ron Weigel
District Resident

Jeff Winner
District Resident

Mayor Jeremy Ferguson
Michael Swanson, City Manager
City of Milwaukie, City Hall
10722 SE Main Street
Milwaukie, OR 97222

RE: Wastewater Service Agreement Termination

Dear Mayor Ferguson and Mr. Swanson:

Clackamas County Service District No. 1 (the "District") provides wastewater treatment service to the City of Milwaukie (the "City") pursuant to the intergovernmental agreement entered into on November 25th, 1970, as amended and updated from time to time (the "1970 IGA"). The terms on which the District would continue to provide service to the City have been the subject of intense negotiations, beginning in the fall of 2007, and continuing during that nearly two year period through now.

As you know, the Board of County Commissioners, acting as the governing body of the District (the "Board"), determined in an October 2007 study session that a change in the 1970 IGA was necessary. The District has been ordered by the Oregon Department of Environmental Quality ("DEQ") to undertake the Phase I capital program to relieve the overburdened Kellogg Plant, which has been releasing untreated sewage into the Willamette River during major storm events. The majority of this new investment is being used to construct additional treatment capacity at the Tri-City Plant in Oregon City and new conveyance infrastructure to deliver the wastewater there for treatment. As I'm sure you know, the District could have constructed the capacity at the Kellogg Plant for a higher overall cost but at a lower cost to District ratepayers since the City, under the 1970 IGA, would have been obligated for approximately 30-35% of the costs of all Kellogg Plant improvements. The construction at the Tri-City Plant represented the lowest-cost option available and shows the District's good faith in dealing with the City. Since the construction would not primarily be at Kellogg, the 1970 IGA did not provide a mechanism for the City to contribute its equitable share toward this lowest-cost option known as the Phase I Capital Program. Therefore, the Board directed staff to negotiate a new agreement with the City that allowed for all parties, both within and outside the District, to contribute equitably.

The Board asked staff to conclude an agreement with Milwaukie based on two policies that the District reaffirms here. New development and growth must pay its own way, and all existing ratepayers must pay an equitable and fair share of the actual costs of District operations. This is distinct from the 1970 IGA's methodology that Milwaukie will pay for the actual cost of a specific treatment asset. Instead,

Serving North Clackamas County, Damascus, Happy Valley, Johnson City and Milwaukie.

Telephone : (503) 742-4567 Facsimile: (503) 742-4565

www.RiverHealth.org/feedback.cfm

Wastewater Service Agreement Termination

June 25, 2009

Page 2

Milwaukie is being asked to pay for actual District-wide treatment expenses, since the District is now providing treatment services through more than one facility. The importance of this policy to the City of Milwaukie and its aspirations to recover its waterfront should be unmistakable. Absent the principle of a regional cost sharing for all District capital costs, the future expense of downloading and replacing the Kellogg Plant will fall squarely upon the roughly 8,800 Milwaukie customers.

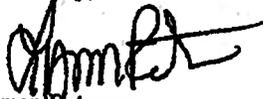
The District and the City have not been able to reach agreement on mutually acceptable terms for a new IGA over the last 18 months of discussion. As a result of the City's lack of financial contribution towards the Phase I capital program costs, District customers are faced with a rate increase of approximately 18% this fiscal year. This is in contrast to the planned 8% increase if the City was equitably participating in the District-wide rate necessary to support the DBQ-required capital improvements at multiple facilities. This puts the District and its ratepayers in a difficult position.

To remedy this revenue shortfall, to spur negotiations, and to make clear the Board's position that the 1970 IGA is no longer a viable framework for the relationship between the parties, the Board has unanimously agreed to terminate the 1970 IGA. Therefore we hereby provide notice under the 1970 IGA, specifically as amended by the July 1987 Agreement extending the 1970 IGA to June 30, 1988, and thereafter by month-to-month, that the District is terminating the 1970 IGA. In light of the month-to-month relationship, the termination of the 1970 IGA will be effective as of July 31, 2009.

To be clear, the District does not intend to cut off treatment of the City's wastewater. We recognize the difficulties in making any transition in wastewater infrastructure and guarantee that the District will continue to provide the best wastewater treatment service possible at the most equitable rate. However, the financial terms of the 1970 IGA are terminated, and if the City continues to deliver wastewater to the District for treatment after the termination date, the District will charge the City a reasonable market wholesale treatment rate that will compensate for the actual cost of providing the service. The District will provide a more specific breakout of the intended rate in the next few weeks, as well as a timeline for how long the City can expect to continue to receive service, for your consideration.

It is our hope that this action will help move the parties forward into a new relationship based on community values and goals and the establishment of a new wholesale rate that more accurately reflects the District's actual costs of providing service.

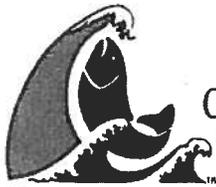
Sincerely,



Lynn Peterson
Chair, CCSD#1 Governing Board

cc: CCSD#1 Board
Riverhealth Advisory Board, CCSD#1

ATTACHMENT 2



Beyond clean water.

CLACKAMAS
COUNTY SERVICE DISTRICT
No. 1 (CCSD #1)

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Steve Wheeler
Acting District Administrator

July 23, 2009

**CCSD #1
Governing Board**

Lynn Peterson
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Ann Lininger

**River Health
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Juliana Andrade
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Steve Kennett
District Resident

Ron Weigel
District Resident

Jeff Winner
District Resident

Mayor Jeremy Ferguson
City of Milwaukie, City Hall
10722 SE Main Street
Milwaukie, OR 97222

RE: Future Relationship Between CCSD#1 and Milwaukie

Dear Mayor Ferguson:

We write this letter to you in the hopes of establishing a framework for resolving the outstanding issues between us and moving the conversation forward. We also want to make clear our expectations in any interim period until such a resolution is reached.

How We Got Here

The Kellogg Creek wastewater treatment plant ("Kellogg Plant") located in Milwaukie and serving both Clackamas County Service District No. 1 ("CCSD#1" or "District") and the City of Milwaukie ("Milwaukie"), has for several years been experiencing difficulty in treating wastewater during major rain events, leading to the discharge of raw sewage into the Willamette River on a frequent basis during the rainy winter seasons. The District, as the regulated entity under environmental law, was ordered by the Oregon Department of Environmental Quality ("DEQ") to construct additional capacity to stop the pollution of our waterways. The District chose, as the most cost-effective option available, to construct such additional capacity at the Tri-City wastewater treatment plant ("Tri-City Plant") located in Oregon City. Moreover, the district is aware of Milwaukie's desire to eliminate use of the Kellogg Plant, and expansion of the Tri-City Plant rather than the Kellogg Plant furthers that goal.

Mayor Jeremy Ferguson
July 23, 2009
Page 2

The District recognizes that under the previous agreements between Milwaukie and CCSD#1, Milwaukie is not under any contractual obligation to pay for additional capacity constructed at any site other than the Kellogg Plant. Therefore, the Board of County Commissioners, acting as the governing body of the District (the "Board"), directed staff to renegotiate the terms of Milwaukie's wastewater treatment service agreement to reflect Milwaukie's proportionate share of the actual costs the District is incurring in providing the capital improvements and wastewater treatment services to all of its customers. Staff made initial presentations to Milwaukie staff and its City Council to begin the negotiations in the fall of 2007. In the nearly two years since, we have made no substantial progress in resolving the issue of Milwaukie contributing its proportionate share to cover the District's costs of providing service to all of its customers. Given the fact that negotiations with Milwaukie had stalled, the revenue obligations necessary to finance the initial portion of the capital improvements were being issued, District rate increases were being implemented and Milwaukie was not paying its fair and equitable share of the costs of providing services, the Board unanimously agreed to terminate the service contract between CCSD#1 and Milwaukie. This termination was effective July 31, 2009, as stated in the letter to you dated June 25, 2009.

Community Rate Offer

It is the District's hope that Milwaukie will enter into a mutually acceptable agreement setting forth the terms and conditions for receiving wastewater treatment service from the District. The District has previously provided Milwaukie with proposed terms (the "Community Rate Offer") and that offer remains available to Milwaukie during this interim period. The availability of the Community Rate Offer is conditioned on Milwaukie pursuing good faith negotiations with the District.

Decision Timeline

Milwaukie has been presented with the opportunity to consider whether it desires to continue receiving wastewater treatment services from the District. The District is willing to offer Milwaukie until February 28, 2010, to reach an agreement on the terms for continued service. Failing that date, CCSD#1 requests that Milwaukie begin implementing efforts to find another wastewater treatment provider, with the obligation that Milwaukie cease delivering wastewater for treatment to the Kellogg Creek Plant by June 30, 2015. If Milwaukie seeks to reach an agreement after the February 2010 deadline, the District makes no guarantees that it will be in a position to provide service to Milwaukie long-term.

Mayor Jeremy Ferguson

July 23, 2009

Page 3

Current Amounts Due

To conclude the terminated 1970 agreement, the District expects prompt payment from Milwaukie for the outstanding true-up amounts for Fiscal Year 2007-2008 in the amount of \$485,456. As usual, the District will invoice Milwaukie for the true-up amounts for Fiscal Year 2008-2009 after a full review of accrued costs is completed this fall. The month of July 2009 will be billed under the now-terminated 1970 Agreement, and will be trued up when the appropriate costs are known.

Terms for Future Service

CCSD#1 understands the practical impossibility of Milwaukie reordering its wastewater conveyance system and making alternate arrangements for service in the short term. The District's mission is to create community value by providing sustainable wastewater services, and consistent with that will continue to provide wastewater treatment services in the interim until a formal agreement is reached or Milwaukie ceases delivering wastewater for treatment as contemplated in this letter.

During the interim, however, the District must recover the reasonable cost of providing treatment services (a "District Cost Recovery Rate"). To arrive at an appropriate rate, the District has calculated the total cost of providing service to its customers and the per equivalent dwelling unit ("EDU") per month rate necessary to support these costs at the completion of the current capital program, which includes operations and maintenance, debt service for issued obligations, retail operations, and prefinancing of growth infrastructure. From that rate of \$43.67, the District subtracted the retail component of its total costs since Milwaukie would only require wholesale service. This calculated a District wholesale rate of \$33.35 per EDU per month, representing the cost of service that current District ratepayers will pay.

The District, although not under any obligation to do so, also chose to subtract from any rate calculation the costs associated with that portion of the debt service associated with the prefinancing of infrastructure for future customer needs, since the District recognizes that Milwaukie is at near build-out from a customer perspective. This reduced the wholesale service rate by an additional \$8.04 per customer per month, arriving with a District non-growth wholesale rate of \$25.31. This calculation for the

Mayor Jeremy Ferguson
July 23, 2009
Page 4

District Cost Recovery Rate as reasonable compensation for its services would be stated thus:

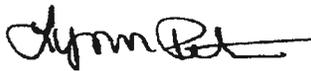
- Gross stand alone revenue requirement: \$43.67 per District EDU
- Less District retail costs: (\$10.32)
- Equals District Wholesale Rate \$33.35 per EDU
- Less cost of debt service related to growth: (\$8.04)
- No finance fee, per District's last offer: \$0.00
- Wholesale Cost Recovery Rate: \$25.31

Therefore, beginning August 1, 2009, the District will charge Milwaukie a rate of \$25.31 per EDU per month to recover the actual and reasonable costs of the provision of service. The District is not seeking to impose any risk premium for the short-term nature of Milwaukie's obligation to pay related to the obligations of the related debt financing. Milwaukie has stated that its current EDU count is 8,870, and the District is willing to accept this calculation. The District will invoice Milwaukie at the end of each such month.

Please remit this cost of service amount within 30 days from the end of the month in which service is utilized. For example, payment for service in the month of August will be due on September 30, 2009. Any amounts outstanding after such due dates shall accrue interest at the District's cost of interim borrowing to cover the cash flow deficiency, including recovery of related loan fees and administrative costs.

The District hopes that this reset of the relationship will help bring clarity to both parties' long-term plans, whether to establish a new service agreement going forward or to make arrangements for Milwaukie's disconnection from the District's system. We look forward to reaching that clarity with you in the near future.

Sincerely,



Lynn Peterson, Chair
Board of County Commissioners
Acting as the Governing Body of CCSD#1

C: Mike Swanson, Milwaukie City Manager
Milwaukie City Council
CCSD#1 Riverhealth Advisory Committee

ATTACHMENT 3



Water Environment Services
 A Department of Clackamas County
 150 Beavercreek Rd.
 Oregon City, OR 97045
 503-742-4567 - Billing Inquiries
 503-742-4565 - Fax
 www.clackamas.us/wes



| ACCOUNT NO. | DUE DATE |
|-------------|-----------|
| 14-01774-02 | 9/30/2009 |

| CUSTOMER NAME | BILL DATE | BALANCE FORWARD | INCLUDES PAYMENTS RECEIVED BY |
|---------------------------------|------------------------------|-----------------|-------------------------------|
| CITY OF MILWAUKIE CURRENT | 9/01/2009 | 0.00 | 8/31/2009 |
| SERVICE ADDRESS | | SERVICE FROM | SERVICE TO |
| 10722 MAIN ST | | 8/01/2009 | 8/31/2009 |
| DESCRIPTION OF SERVICES | UNITS | AMOUNT | |
| 11M SANITARY SEWER | PAYMENT AUTHORIZATION | | 224,499.70 |
| | VENDOR# | | |
| | PO # | | |
| | GL A/C # | | |
| | AMOUNT \$ | | |
| SIGNATURE | | | |
| PLEASE PAY THIS AMOUNT → | | | 224,499.70 |

Detach and Return The Remittance Coupon Below With Your Payment



Water Environment Services
 A Department of Clackamas County
 150 Beavercreek Rd.
 Oregon City, OR 97045

| DUE DATE | AMOUNT DUE |
|-------------|-------------|
| 9/30/2009 | 224,499.70 |
| ACCOUNT NO. | AMOUNT PAID |
| 14-01774-02 | |

check for change of address
 (see back of stub for details)



CITY OF MILWAUKIE CURRENT
 10722 MAIN ST
 MILWAUKIE OR 97222



Remit To: Water Environment Services
 PO Box 6940
 Portland, OR 97228-6940

ATTACHMENT 4

WHERE WOULD THE MONEY GO?

| Rate Changes Under Consideration → Rate Details ↓ | Old Wholesale Contract (Existing Condition for Ratepayers ¹) | Temporary Surcharge | Current County Positions | New Wholesale Contract (to be negotiated) |
|--|---|--|---|--|
| Cost per Typical Water-Consuming Household | \$11/month | Additional \$14/month (\$25 total) | \$20-\$25/month | To be determined |
| Enacted by | Milwaukie City Council | Milwaukie City Council | Clackamas County Board of Commissioners (BCC) | To be determined |
| Paid To | Clackamas County | City of Milwaukie | Clackamas County | Clackamas County |
| Pays For | Cost of treating Milwaukie's wastewater at the Kellogg Plant only | Higher treatment costs, wastewater-related professional/legal costs, capital improvement and maintenance costs | Cost of expanding infrastructure to treat wastewater produced and treated outside of Milwaukie | To be determined |
| Stays In Place | Already expired. Agreement terminated by Clackamas County on 7/31/09 | Until execution of a new Wholesale Contract, or December 31, 2010 | Until BCC adjustment, to be considered annually "based on all factors...(concerning) the District's system" | To be determined |
| Contributes to Kellogg's Downsizing or Decommissioning | No | Yes | No | To be determined |

¹ City of Milwaukie Resolution 52-2005 set a 6% increase for sewer rates for five years beginning on January 1, 2006, with a 3.75% increase in the sixth year, 2011. These rate increases were adopted to cover maintenance, inflation and reserves for participating in a regional wastewater agreement (Clearwater) and the percentages are on the entire sewer charge (treatment and collections), not just treatment.

Interoffice Memorandum

To: Kenny Asher, Director of Community Development and Public Works

From: Gary Parkin, Engineering Director
Jason Rice, Associate Engineer

Date: January 11, 2010

Re: Fiscal Risk Effects to the City's Wastewater CIP and CMP Priorities

Were Wastewater Funds not available for Capital Improvement/Capital Maintenance Projects (CIP and CMP Projects) as of July 1, 2010, the system would not appear to suffer at first. The City would move forward over the next few years and more than likely not notice a difference in service.

CIP Projects at this point are further apart and fewer in number than in the past because the City of Milwaukie's sewer infrastructure is almost built out, with the exception of the federally supported Northeast Sewer Extension Project. Of the projects planned over the next 10 years, most are scheduled for when the City can afford to do them under our current rate schedule. Not completing these projects would not only extend the staff time used to maintain the infrastructure, but would also increase capital needs as the system ages. By dedicating more of the Sewer utility crews' time to these issues, under current staff loads, we would be decreasing the amount of time spent elsewhere in the City. Daily tasks may become weekly and so on. A failure of a CIP pipe would cost the City an exorbitant amount of money to fix.

The goal in developing the CMP was to reduce unnecessary staff time spent on issues that could be fixed relatively easily. Not funding CMP Projects would be much more noticeable to staff since more time is already being devoted to these areas. Again, there would be less time for other issues within the City under the current staffing levels. A failure of a CMP pipe would still cost more than the preventative maintenance would have, but since the scope of these projects is so much smaller, there would be less of an impact as compared to a CIP failure.

All of this is somewhat speculative. We can guess when a pipe or pump may fail, but the truth is that such events are unpredictable. CIP/CMP projects are planned with the understanding that the City should spend a dime to save a dollar. Examples are included below:

Brookside Force Main Extension

The affects of not completing this project will be felt as the NE Milwaukie Sewer Extension Project completes. As properties connect to the newly installed main south of Johnson Creek the flow will enter the Brookside Pump Station and ultimately need to be pumped out. This pumping is done through a force main which empties into a main that is currently undersized. The City could potentially face some sewage backups into homes along Filbert Street as flows increase.

Master Plan (and every 5 years thereafter)

The impact of not completing a Master Plan is low. Without an up-to-date master plan, it's difficult to have an accurate rate schedule and plan an accurate schedule for capital projects. Our Stormwater Fund is an example of what happens when there is no master plan (or accurate rate structure) to work from.

Jefferson Street Siphon

Found to be undersized 16+ years ago, this project has been delayed simply because of the difficulty in constructing it. Over half of Milwaukie's flow comes through this pipe which needs to be upsized (or duplicated leading into the Kellogg Treatment Plant). Not completing this project would increase project cost and allow backups at the plant to continue to occur.

Johnson Creek Siphon

Found during the development of the Master Plan, the sewer main (siphon) under Johnson Creek is exposed to the creek itself. Staff is concerned about the concrete encasement around this pipe becoming damaged by debris floating downstream to the Willamette River. We aren't sure when or if a failure of this line may occur, but a failure would be catastrophic. Raw sewage entering the river would incur large fines and high construction costs associated with the emergency repair.

Deferring CMP Project Funding (\$100,000 annually in the Master Plan) comes at a cost, as in higher maintenance costs, increased risk of catastrophic failure, and less time to perform preventative maintenance activities as more time is devoted to unfixed problem areas.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON ADOPTING A TEMPORARY SURCHARGE FOR WASTEWATER TREATMENT SERVICE DUE TO UNILATERAL TERMINATION OF THE CITY'S SERVICE CONTRACT BY CLACKAMAS COUNTY SERVICE DISTRICT NO. 1.

WHEREAS, the Board of County Commissioners (BCC), acting as the governing body of Clackamas County Service District No. 1 (the District), is a decision-making body on matters regarding the use and operation of the Kellogg Wastewater Treatment Plant; and

WHEREAS, the City of Milwaukie has, over time, paid several million dollars for construction and operation of the Kellogg Plant in exchange for treatment of Milwaukie's wastewater; and

WHEREAS, this arrangement between the City and the District, initially formed through an Intergovernmental Agreement entered into by the parties in November 1970 and amended several times thereupon, constituted a contract for wholesale treatment service (Wholesale Contract); and

WHEREAS, in 2007, the BCC determined that the City of Milwaukie must pay a share of the actual cost of the entire District operations, which was not a term in the Wholesale Contract; and

WHEREAS, the estimated cost of District operations includes large capital costs associated with the expansion of pipelines and treatment facilities that do not serve the City of Milwaukie, but which are required because of residential and commercial growth that Clackamas County and others permitted outside the City of Milwaukie; and

WHEREAS, the City of Milwaukie has repeatedly communicated to the BCC that charging the City of Milwaukie for the cost of past growth in the District is unfair and that accepting such charges would be fiscally irresponsible for the City; and

WHEREAS, in 2009, the BCC unanimously voted to unilaterally terminate the Wholesale Contract; and

WHEREAS, on July 23, 2009, the BCC notified Milwaukie that the City had until February 28, 2010, to agree to the District's terms for continued wastewater treatment service, which included a new rate of \$25.31 per EDU per month (approximately \$14.00 per month more than the historical cost per month per EDU); and

WHEREAS, the BCC's imposed rate of \$25.31 per month equates to a treatment charge to the City of approximately \$2.5 million per year, a service charge the City has neither accepted nor budgeted for; and

WHEREAS, the City of Milwaukie is currently receiving wastewater treatment services from the District without a contract to fix the price for those services, which has created instability in the Wastewater Fund budget; and

WHEREAS, the City of Milwaukie received wastewater treatment services during fiscal year 2007-08 and 2008-09 at a total cost that is still being reconciled by the City and the District, but which will require a “true-up” payment to the District from the City for an amount that could exceed \$500,000; and

WHEREAS, the BCC’s unilateral action to cancel the Wholesale Contract, and related actions have caused the Wastewater Fund to incur significant legal and professional consulting expenses; and

WHEREAS, the City of Milwaukie must maintain revenue in the Wastewater Fund sufficient for necessary capital improvement, maintenance projects, minimum working capital and inflation factors; and

WHEREAS, unanticipated expenses due to the BCC’s unilateral termination of the Wholesale Contract and related BCC actions threaten to deplete the City’s Wastewater Fund, including its reserve account, by May 2010; and

WHEREAS, in November 2009, the Citizens Utility Advisory Board, which is composed of residents tasked with advising the Council on wastewater and other utility issues, recommended a wastewater rate increase of approximately \$2.00 per month to maintain the financial health of the wastewater utility given the current crisis with treatment rates; and

WHEREAS, Milwaukie Municipal Code Section 13.12.070(A) authorizes the City Council to establish sewer service charges by resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council that wastewater rates established by Resolution 52-2005 be amended as follows:

SECTION ONE: a Wastewater Service Surcharge of \$2.00/ccf (each 100 cubic feet of water used) is hereby adopted. A typical household uses 7 ccf of water per month. (This amounts to a \$14/month surcharge for a typical water customer in Milwaukie).

SECTION TWO: The surcharge will not be applied to low-income utility customers eligible for reduced rates under MMC section 13.2.010.

SECTION THREE: The Wastewater Service Surcharge shall remain in effect at least through the June/July 2010 billing cycle, but only until a new Wholesale Agreement is reached with the District. The Surcharge will terminate effective the first billing cycle after execution of a new Wholesale Agreement. Should a new Wholesale Agreement not be reached with the District by July 30, 2010, the Surcharge shall be extended through the December/January 2011 billing cycle, or until a new Wholesale Agreement is reached, whichever occurs first.

SECTION FOUR: Upon execution of a new Wholesale Agreement with the District, all funds collected by the City under this resolution shall remain in the Wastewater Fund to cover costs or contribute to reserve accounts associated with wastewater management.

SECTION FIVE: Previously adopted wastewater rates shall remain in effect until the new rate is in effect.

Introduced and adopted by the City Council on **January 19, 2009**.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Wendy Hemmen, Light Rail Design Coordinator

Subject: Establishment of Quiet Zones on the Union Pacific Mainline and Tillamook Branch

Date: January 20, 2009 for the February 2, 2010 Meeting

Action Requested

Adopt a resolution declaring the City of Milwaukie's intent to establish a Quiet Zone in Milwaukie on the Tillamook Branch. Update on Quiet Zone efforts on the Union Pacific Mainline.

History of Prior Actions and Discussions

October 16, 2007 – Council adopted a resolution, No. 61-2007, authorizing application to establish a Quiet Zone on the Union Pacific mainline as funding was available. Staff discussed proposed Supplementary Safety Measures (SSM) for the three crossings, Harrison Street, Oak Street, and 37th Avenue. Staff presented a list of persons interested in Quiet Zones (noting how long they had lived in Milwaukie) and provided case studies demonstrating the safety benefits of Quiet Zones.

March 20, 2007 – Staff reported to Council on the opportunity to leverage a Community Development Block Grant (CDBG) project to improve the pedestrian crossings on the Union Pacific Rail Road (UPRR) Mainline at Harrison, Oak, and 37th Avenue.

November 9, 2006 – Staff presented to Council regarding establishing a Quiet Zone on the Union Pacific mainline. Staff discussed the establishment of a Train Horn Quiet Zone with the installation of federally approved SSMs, the estimated cost of the measures, and showed the “sound shed” impact of the train horns.

Background

While the City has adopted a resolution stating the desire to establish a train horn quiet zone, a new resolution is needed for the Tillamook Branch. The implementation of this Quiet Zone will be based on funds available. Establishing the Quiet Zone will require new street signage at all crossings on the Tillamook Branch and incorporating comments from FRA, ODOT Rail, UPRR, PNWR.

Staff has researched quiet zone basics with other jurisdictions. Tualatin has recently issued a Notice of Intent (NOI) to create a quiet zone. TriMet has been leading this project for Tualatin and have consultants helping with the process. Tualatin desires to have the Quiet Zone in place a year from now. The process may take longer and Tualatin is now pushing TriMet to complete this. Portland Western Railroad has recently stated opposition to the Quiet Zone in Tualatin based on their perception that the train horn rule is flawed.

Staff met with Portland to learn from the North Waterfront Quiet Zone in process near Union Station. Portland has received comments back from the NOI it submitted earlier in 2009. They are currently in the design stage and working to iron out the details for each crossing.

The process for establishing a quiet zone is as follows:

- a) Crossing gates and warning lights must be in place at all subject crossings;
- b) Conduct a field diagnostic team review with representatives from the railroads, FRA, ODOT Rail, and the local authority;
- c) Update the National Inventory for each crossing (traffic data current);
- d) Submit a Notice of Intent to FRA;
- e) Design any improvements that may be required at each crossing to qualify for QZ;
- f) Install required improvements to crossings;
- g) Install signage for QZ;
- h) Send notification of QZ establishment and crossing orders;
- i) Reaffirm and update inventory every 2.5 to 3 years.

Milwaukie has issued two Notices of Intent (NOI) to create a quiet zone to the relevant parties on November 13, 2009 for both the mainline and Tillamook Branch. The Notice of Intent letters are Exhibit 1 and 2. The 60 day formal comment period has begun and will conclude in January 2010.

I. UPRR Mainline

In November 2006 staff reported to Council on options for mitigating train horn noise and improving railroad crossing safety in the city. Staff reported that over 31 trains a day utilize the Union Pacific mainline as it passes through the city. Each of these trains is required by federal law to sound its horn in a four-part sequence as it approaches each of Milwaukie's four at-grade crossings.

Staff discussed the establishment of a Train Horn Quiet Zone including the installation of federally approved SSMs as well as the potential cost, and the estimated "sound shed" impact of the train horns. Council directed staff to generate a log of persons interested in Quiet Zones (noting how long they had lived in Milwaukie) and to provide case studies demonstrating the safety benefits of Quiet Zones.

In the early part of 2007 staff polled the citizens to determine if citizens generally support a quiet zone or not. The majority of respondents support creating quiet zones. A small minority enjoy the train horns. By fall 2007, all 7 Neighborhood District Associations had expressed support and over 165 citizens responded to public outreach.

Staff learned that a prerequisite for establishing a Quiet Zone is improving pedestrian crossings within the zone to meet the relevant state standard. In 2007 and 2008 staff worked on projects to install pedestrian improvements at the Oak and 37th rail intersections.

Pedestrian safety improvements were made at the UPRR crossings at Oak Street and 37th Avenue during summer 2008. Improvements include concrete sidewalk, asphalt pathway, curbs, new guard rail, concrete panel inserts, and storm drainage improvements including new catch basins and a swale. The total cost for these improvements was about \$180,000 over a four year design, permitting, and construction duration.

After these improvements were made, Oak Street was paved as part of the Street Surface Maintenance Program. This was scheduled in a sequence to complement the new curbs and sidewalks. The total cost for paving Oak Street and reconstructing the Oak/Campbell intersection was \$62,000.

Staff reviewed median designs with ODOT Rail, UPRR, and FRA. The designs at that time limited access to a business on Harrison Street. This was a discussion point at the March and July 2007 City Council meetings. The need for access was heard and other options were looked into. Those options include Modified SSMs and Alternative Safety Measures (ASM). Local citizens and NDA's supported the city's plan to keep full business access on Harrison, limiting freight access on Oak while keeping the business

access open, and reconfiguring the intersection with 37th and Railroad Avenues. Oak Street and 37th Avenue were then moved forward for pedestrian improvements. Harrison Street had unresolved issues that needed further study.

Since 2007 staff has revised the Quiet Zone crossing plans as previously described. Based on the business access needs described above and a further understanding of the Quiet Zone tools, ASM's and modified SSM's will be utilized on the mainline. Staff is recommending the use of Alternative Safety Measures (ASM) for the mainline. Design sketches and descriptions are attached as Exhibit 3 for all three mainline crossings. The safety measures consist of modified medians at each intersection and adjusting the configuration of 37th Avenue and Railroad Avenue. At Harrison, the medians would be adjusted to allow full access to local businesses, including Purdy's Car Wash as shown in Exhibit 3. The sidewalks will be enhanced with CDBG grant funding in 2011. At Oak Street, medians and traffic islands will be placed to limit some travel movements but allow others necessary for local businesses depicted in Exhibit 3. At 37th Avenue, medians will be used in conjunction with intersection re-alignments to improve channelization, shown in Exhibit 3. Quiet Zone calculations have been run to verify that the proposals will qualify for a quiet zone. These proposed ASMs will be reviewed by FRA for approval.

UPRR performed maintenance during summer/fall 2009, replacing concrete rail panels to the mainline. Staff worked with UPRR to add panels as part of UPRR's maintenance to address safety issues at the Harrison crossing. UPRR installed the necessary panels for adequate pedestrian crossings.

In June 2009, staff met with ODOT Rail, FRA, and UPRR for a field diagnostic meeting, which is an on-site Quiet Zone infrastructure review. Staff has continued to speak with experts at FRA, ODOT Rail, and UPRR to help understand the Train Horn Rule. Staff has also read excerpts from the FRA's Train Horn Rule to help Milwaukie's understanding of the Rule.

The next steps are to continue working with ODOT Rail and FRA to enhance the safety at these intersections and to silence the train horns by meeting FRA's ASM requirements. After comments are received from the NOI, staff will prepare and submit an ASM application to FRA. Once that is approved a Rail Order Application will be submitted to ODOT Rail. After construction of all improvements and acceptance by FRA and ODOT Rail, the Quiet Zone will become active.

II. Tillamook Branch

The City entered into a Memorandum of Understanding (MOU) with TriMet in June of 2008 for transit improvements in Milwaukie through 2018. This MOU establishes how transit integrates with City plans, utilities, and infrastructure, including jointly pursuing a

Quiet Zone on the Tillamook Branch. TriMet agreed to design the light rail project to increase the likelihood of FRA approving a Quiet Zone designation on the Tillamook Branch.

Staff has been working on the Quiet Zone for the Tillamook Branch with regard to light rail operations. In April 2009, staff attended a presentation sponsored by TriMet regarding quiet zones. The presentation included rules and regulations to follow, the calculations necessary, how to perform the calculations, SSMs, ASMs, Wayside Horns, Quad Gates, and examples of specific crossings with safety measures installed. TriMet organized a diagnostic field review June 9, 2009.

To align both quiet zone processes, staff is working through the FRA process at the same time. The FRA Quiet Zone calculator (calculator) has been used to assess both the mainline and branch. The calculator is what the FRA uses to analyze the risk of accidents at road crossings. The FRA established the methods of the calculations and the numerical values to compare for the risk. A national risk threshold has been established and is updated annually.

Staff determined that based on the FRA quiet zone calculator, the Tillamook Branch in downtown currently meets the safety requirements for a quiet zone without additional infrastructure improvements. Calculations were then performed that include light rail. TriMet is proposing safety improvements at intersections along the Tillamook Branch that will reduce the risk to qualify for a quiet zone and be approximately equal to today's risk with a quiet zone.

Staff will continue to work with TriMet to continue the Quiet Zone through design upgrades and improvements to the crossings to qualify for the Quiet Zone. This process will continue for 5-6 years. The expected improvements consist of SSM's, modified SSM's, and also may utilize ASM's to allow the least impact to nearby businesses. The proposal will meet FRA quiet zone standards.

The next steps on the Tillamook Branch are to review NOI comments to be received by mid-January. Staff then would submit a Rail Order application to ODOT Rail for silencing of the train horns. Quiet zone signage would be installed once the application is acceptable. The National Grade Crossing Inventory would be updated to reflect current conditions. The Notice of Quiet Zone Establishment will be sent after the FRA approves the quiet zone. After signage installation the Final Rail Order silencing the trains will be issued. Ongoing design efforts with TriMet to ensure compliance with the Quiet Zone will continue until light rail is complete and additional rail orders are obtained with horns silenced for light rail operations. The Tillamook Branch Quiet Zone is subject to annual reviews by the FRA. Periodic updates by the City must be submitted to the FRA every 2.5 to 3 years.

Concurrence

The streets supervisor was consulted regarding adding the required signage for the Tillamook Branch Quiet Zone and concurs. Community Services also has been consulted and concurs with the Tillamook Branch Quiet Zone. The Engineering Department concurs with and supports the establishment of the Quiet Zones. Milwaukie residents have expressed overwhelming support. The FRA concurs that the quiet zones can be applied for and official comments from all parties will be sent to the city during the NOI comment period on both rail lines. TriMet concurs that Milwaukie establish a quiet zone on the Tillamook Branch.

Staff expects Union Pacific and Portland Western Railroads to come out against quiet zones in Milwaukie because the railroads are in disagreement with the FRA Train Horn Rule. UP and PNWR have both publicly come out against the Quiet Zone efforts in Tualatin.

Milwaukie has recently received comments on the Quiet Zone. These are included at Exhibit 4 and 5. ODOT Rail expressed their support for the mainline Quiet Zone. ODOT Rail objects to Milwaukie's current proposal to initiate a Quiet Zone on the Tillamook Branch prior to TriMet installing quiet zone treatments. ODOT cites an existing ability for vehicles to drive around activated gate arms at the existing crossings. During a phone conversation with staff, ODOT Rail officials expressed support for the Quiet Zone on the Tillamook Branch after TriMet infrastructure improvements have been made to all of the rail crossings.

Union Pacific Railroad will be submitting comments to both notices. UPRR has received the NOI mailings on a second mailing. Comments from UPRR are expected by early March.

Fiscal Impact

CDBG funding is committed for construction of the sidewalk improvements, UPRR design efforts, impacts to railroad right of way, and ADA upgrades on Harrison Street near the UPRR mainline crossing. Additional mainline project efforts will be completed as City budget allows. The additional funding areas needed will be determined in the future and as funds become available.

Minor funding for 2010-2011 fiscal year will be from the Streets budget for sign installation for the Tillamook Branch. This funding will be allocated in the 2010-2011 City budget.

Work Load Impacts

Minor staff impacts in Community Development to prepare and process documents to FRA and to manage the projects.

The impact to Operations will be minor as the Streets Department will install the quiet zone signage.

Alternatives

The city has a choice to make regarding the Tillamook Branch and if a Quiet Zone designation should be sought now or later. The first option is to not designate a Quiet Zone. The second is to designate a Quiet Zone to align with the opening of the light rail line. The third is to designate the Quiet Zone now and continue working with TriMet to ensure compliance with the quiet zone with the installation of light rail.

Staff recommends option 3, to designate a quiet zone now and work with TriMet to continue the quiet zone with light rail.

Attachments

1. QZ Mainline Notice of Intent
2. Tillamook Branch QZ Notice of Intent
3. QZ Mainline Crossing Design Set
4. ODOT Rail Division QZ Mainline NOI response.
5. ODOT Rail Division QZ Tillamook Branch NOI response.
6. Resolution to implement QZ on TB.



Parties to be notified:

Union Pacific Railroad
Terrel Anderson
9451 Atkinson St.
Roseville, CA 95747

Oregon DOT Rail Division
David Lanning
555 13th Street NE Suite 3
Salem OR 97301-4179

ODOT Region 1
Gail E. Curtis, Senior Planner
123 NW Flanders Street
Portland, OR 97209-4012

US Department of Transportation
Federal Railroad Administration
Darryl Morrow
PO Box 2342
Vancouver, WA 98668

Associate Administrator for Safety, Jo Strang
Office of Railroad Safety
Federal Railroad Administration
1200 New Jersey Avenue SE, MS 25
Washington, DC 20590

November 13, 2009

Sent Via: certified mail, return receipt requested.

Notice of Intent to Create a Quiet Zone (Mainline) – City of Milwaukie, Oregon

Attention:

This letter serves as the city's "Notice of Intent to Create a Quiet Zone." We have sent a copy of this notice to the above listed parties. This notice complies with 49 CFR Part 222 per section 222.43.

The City of Milwaukie is seeking to create a new 24 hour Quiet Zone through the City of Milwaukie. This Quiet Zone is located along the Union Pacific Railroad Mainline from Harrison Street to 37th Ave. in Milwaukie, Oregon.

For the Mainline Quiet Zone the following crossings are included:

| | | |
|-----------------|-----------|-----------------------|
| Harrison Street | MP 764.30 | DOT# 759756B (Public) |
| Oak Street | MP 764.10 | DOT# 759757H (Public) |
| 37th Avenue | MP 763.90 | DOT# 759758P (Public) |

In the mainline corridor, there are three public road (highway) rail crossings that will be upgraded to meet the standards for a 24-hour whistle ban. These are the only three public and/or private at-grade crossings along this stretch of the corridor.

All of these intersections currently exist as at-grade highway-rail crossings equipped with flashing lights and gates. In order to meet the FRA criteria for a Quiet Zone, the city will be upgrading crossings with lane barriers and signage.

Lane barriers will be utilized at Harrison Street. Lane barriers will be utilized At Oak Street. Lane barriers with channels and reconfiguration of 37th Avenue and Railroad Avenue intersection will be utilized at the 37th Avenue crossing. All of these upgrades will meet the FRA Alternative Safety Measures (ASM) or modified Supplemental Safety Measures (SSM) and will allow for a whistle ban at the crossings.

Please submit information or comments to the City of Milwaukie, Attention: Wendy Hemmen, 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206, during the 60-day comment period after the date on which the Notice of Intent was mailed. The comment period ends 1/12/2010. If the City of Milwaukie obtains from each party either written comments or written statements that the parties do not have any comments, then the 60-day comment period may terminate early. In addition to the US Mail address above, Ms. Hemmen may be reached via email at hemmenw@ci.milwaukie.or.us or via phone at 503-786-7694.

If you have any additional questions or concerns please contact the City of Milwaukie at 503-786-7694.

Sincerely,



Gary Parkin, PE
Engineering Director/City Engineer
City of Milwaukie



Wendy Hemmen, PE
Light Rail Design Coordinator
City of Milwaukie



Parties to be notified:

Union Pacific Railroad
Terrel Anderson
9451 Atkinson St.
Roseville, CA 95747

Portland and Western Railroad
Dale Hansen
200 Hawthorne Ave SE Ste. C-320,
Salem, OR 97301

Oregon DOT Rail Division
David Lanning
555 13th Street NE Suite 3
Salem OR 97301-4179

ODOT Region 1
Gail E. Curtis, Senior Planner
123 NW Flanders Street
Portland, OR 97209-4012

US Department of Transportation
Federal Railroad Administration
Darryl Morrow
PO Box 2342
Vancouver, WA 98668

Associate Administrator for Safety, Jo Strang
Office of Railroad Safety
Federal Railroad Administration
1200 New Jersey Avenue SE, MS 25
Washington, DC 20590

TriMet
David Unsworth
710 NE Holladay Street
Portland, OR 97232

November 13, 2009

Sent Via: certified mail, return receipt requested.

Notice of Intent to Create a Quiet Zone (Tillamook Branch) – City of Milwaukie, Oregon

Attention:

This letter serves as the city's "Notice of Intent to Create a Quiet Zone." We have sent a copy of this notice to the above listed parties. This notice complies with 49 CFR Part 222 per section 222.43.

The City of Milwaukie is seeking to create a new 24 hour Quiet Zone through the City of Milwaukie. This Quiet Zone is along the Tillamook Branch owned by Union Pacific Railroad and operated by Portland and Western Railroad. The Quiet Zone area is from Mailwell Street to 21st Avenue in Milwaukie, Oregon.

For the Tillamook Branch Quiet Zone the following crossings are included:

| | | |
|-------------------------|-----------|-----------------------|
| Mailwell Street | MP 741.04 | DOT# 749164N (Public) |
| SR 224 Under | MP 741.40 | DOT# 749165V (Under) |
| Harrison Street | MP 741.60 | DOT# 749166C (Public) |
| Monroe Street | MP 741.70 | DOT# 749167J (Public) |
| Washington Street | MP 741.88 | DOT# 749168R (Public) |
| 21 st Avenue | MP 741.92 | DOT# 749169X (Public) |

In the Tillamook Branch corridor, there are five public road (highway) rail crossings that are included to meet the standards for a 24-hour whistle ban. These are the only public and/or private at-grade crossings along this location of the corridor. The grade separated crossing is also listed above.

All of these at-grade intersections currently exist as highway-rail crossings equipped with flashing lights and gates. Quiet Zone calculations have been figured for this area. The Quiet Zone Risk Index is less than the Nationwide Significant Risk Threshold. Per 49 CFR Part 222 section 222.39.a.2.i this Quiet Zone request requires no improvements. No improvements, beyond signage, are planned for these locations to establish the Quiet Zone.

In approximately five or six years TriMet light rail trains are expected to utilize this corridor. To maintain the FRA criteria for a Quiet Zone, the transit authority (TriMet) will work with the project partners to design each crossing to comply with this Quiet Zone. TriMet will install quad gates and additional lane barriers and signage during construction of the proposed Portland to Milwaukie Light Rail project. These upgrades fall under the FRA Supplemental Safety Measures (SSM), modified SSM's, and/or Alternative Safety Measures (ASM) and will continue to allow a whistle ban at the crossings.

Please submit information or comments to the City of Milwaukie, attention Wendy Hemmen, 6101 SE Johnson Creek Boulevard, Milwaukie, OR 97206, during the 60-day comment period after the date on which the Notice of Intent was mailed. The comment period ends 1/12/2010. If the City of Milwaukie obtains from each party either written comments or written statements that the parties do not have any comments, then the 60-day comment period may terminate early. In addition to the US Mail address above, Ms. Hemmen may be reached via email at hemmenw@ci.milwaukie.or.us or via phone at 503-786-7694.

If you have any additional questions or concerns please contact the City of Milwaukie at 503-786-7694.

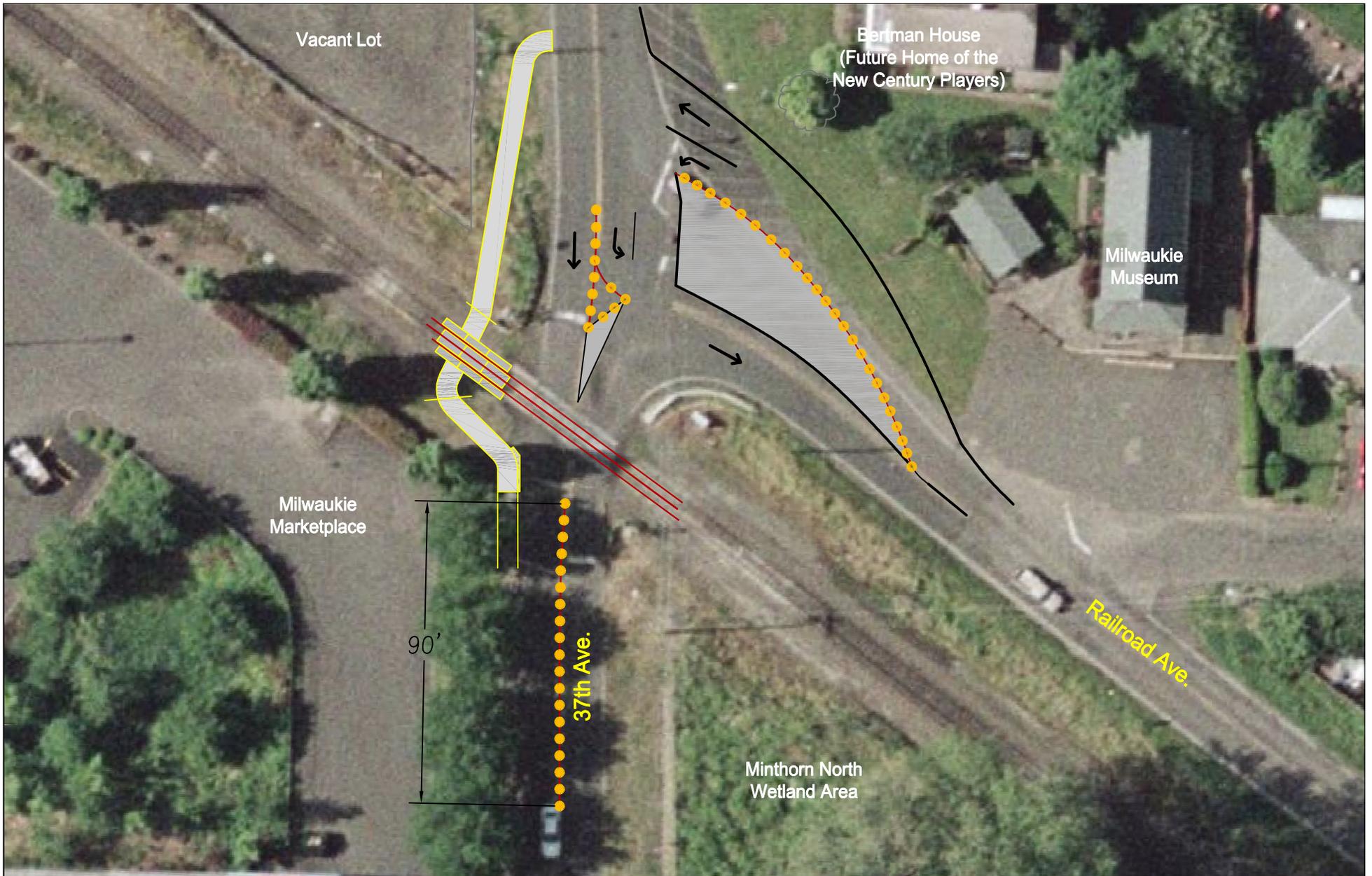
Sincerely,



Gary Parkin, PE
Engineering Director/City Engineer
City of Milwaukie



Wendy Hemmen, PE
Light Rail Design Coordinator
City of Milwaukie

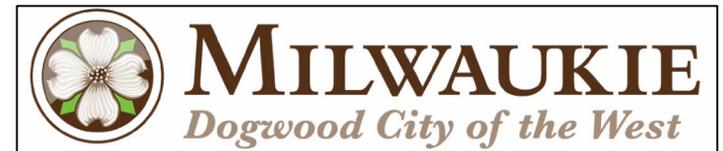


37th Avenue Crossing

Proposed Sidewalk and Median Barrier Curb Improvements

Legend

-  Proposed Median Barriers
-  Existing Sidewalk
-  Existing Railroad Tracks



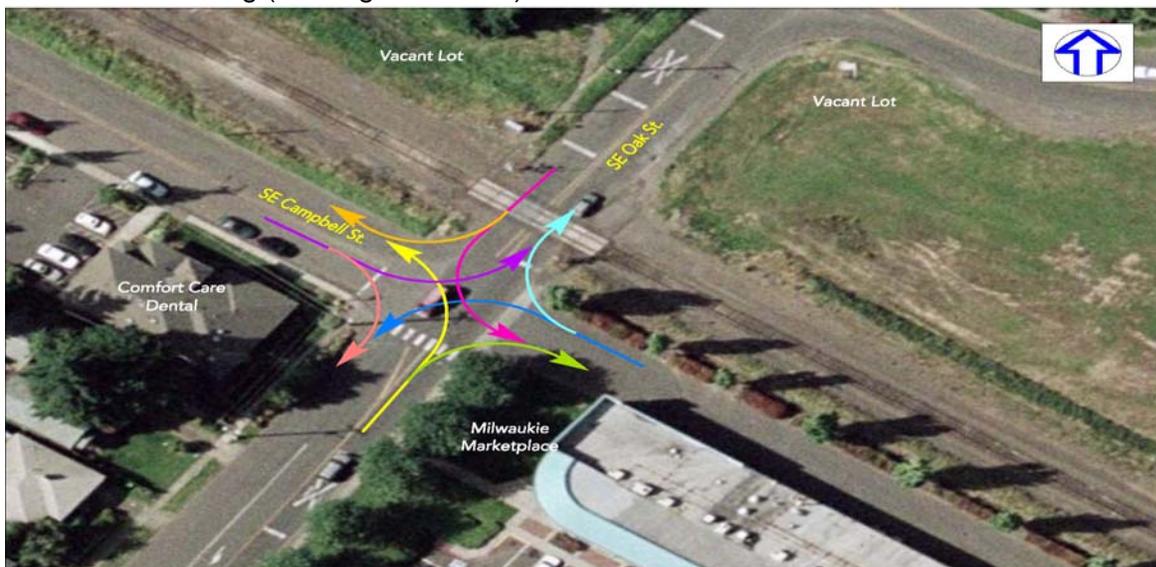
Oak Street Crossing

At Oak Street the project would construct median barriers on both sides of the rail crossing. The freight driveway accessing the Milwaukie Marketplace would retain freight turns from the driveway toward the 224 expressway. A short porkchop segment would be used to channel turning vehicles right from Campbell Street. The CDBG crossing safety project constructed sidewalks on both sides of Oak Street and moved the crosswalk on the southwest side away from the intersection of Oak Street and Campbell Street.

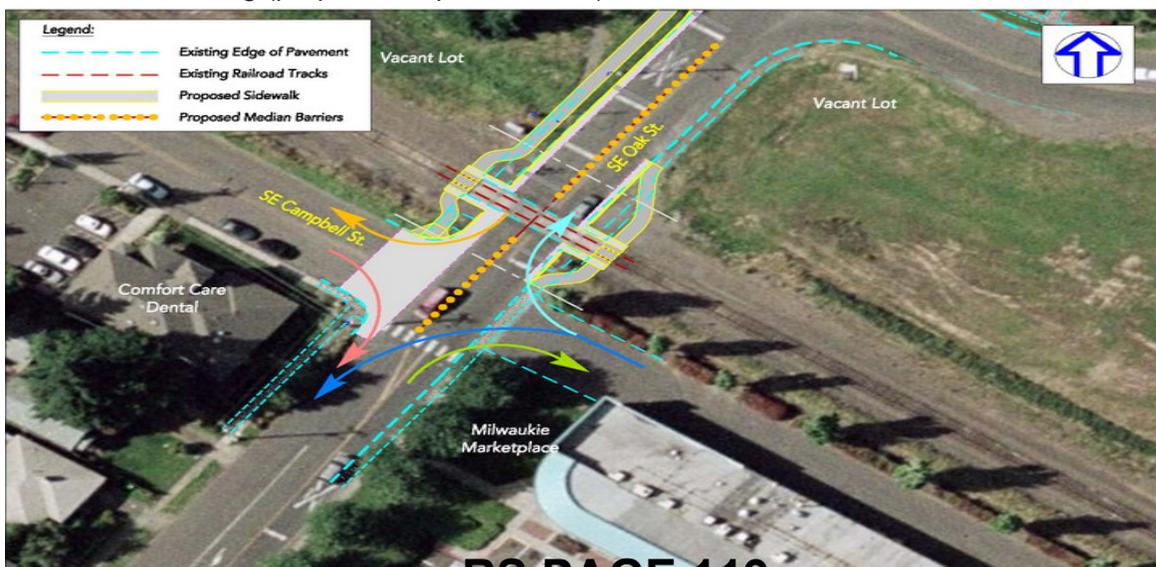
This configuration would:

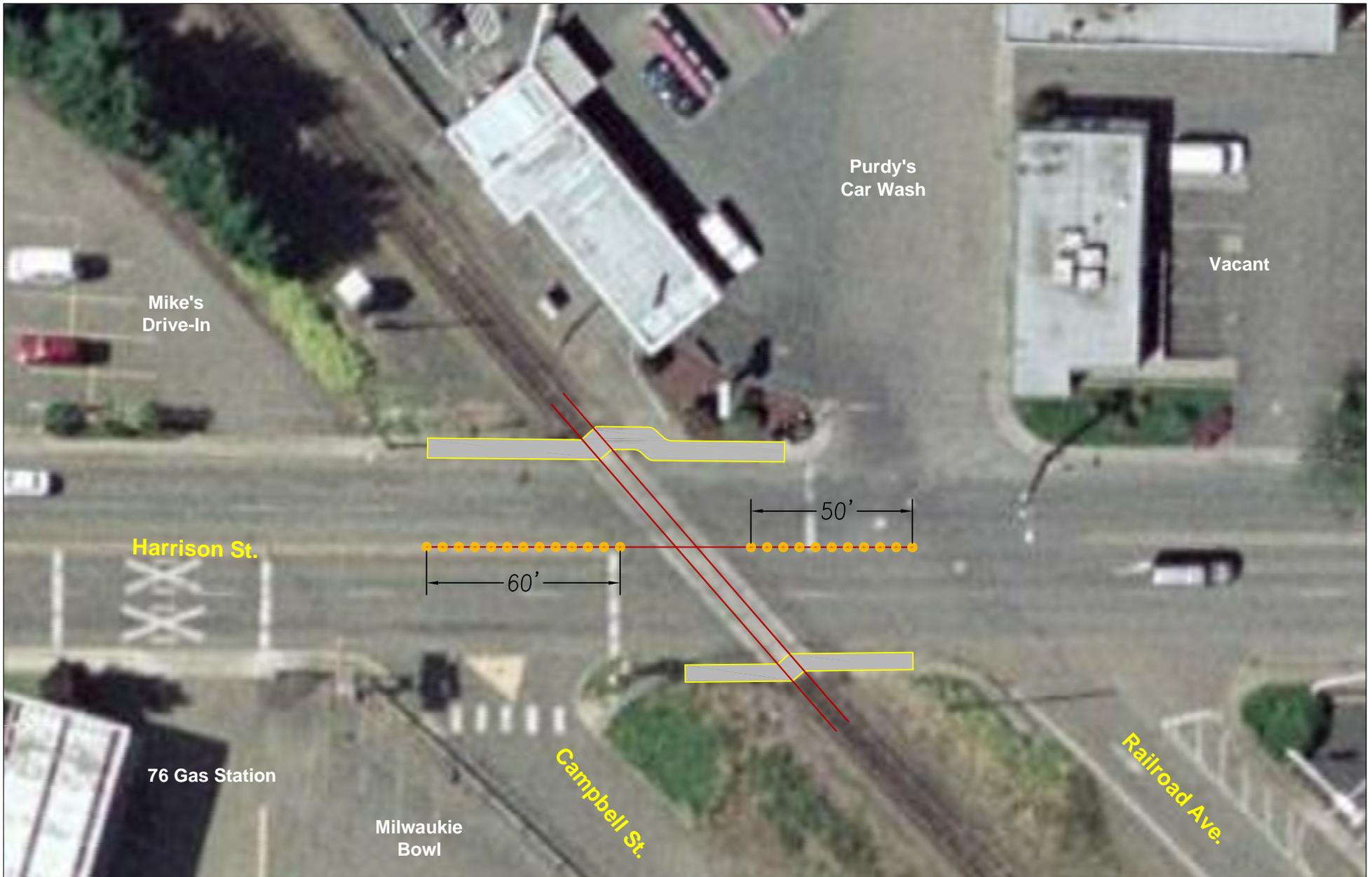
- Prevent left turns from SE Campbell Street onto SE Oak Street.
- Prevent left turns from SE Oak Street into the Marketplace freight driveway.
- Prevent vehicles from crossing the rail line when gate arms are lowered.
- Improve pedestrian, bicycle and handicapped access to The Milwaukie Marketplace and Gramor development.
- Retain the driveway accessing the north side of the Milwaukie Marketplace, preserving freight vehicle access.

Oak Street Crossing (existing conditions)



Oak Street Crossing (proposed improvements.)



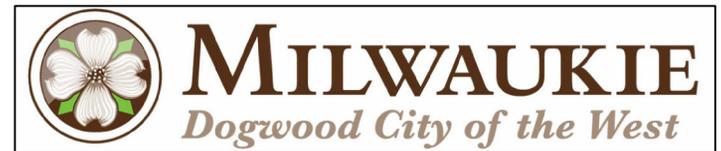


Harrison Street Crossing

Proposed Sidewalk and Median
Barrier Curb Improvements

Legend

-  Proposed Median Barriers
-  Proposed Sidewalk
-  Existing Railroad Tracks



Harrison Street Crossing

At Harrison Street the project would construct median barriers east and west of the rail line. The left turn from Harrison Street to 31st Avenue would be retained. The left turn from 31st Avenue would be lost. The next CDBG project includes sidewalk and ADA improvements at Harrison Street. The project would construct sidewalks (crossing panels recently installed by UPRR) across the rail line on both sides of Harrison Street.

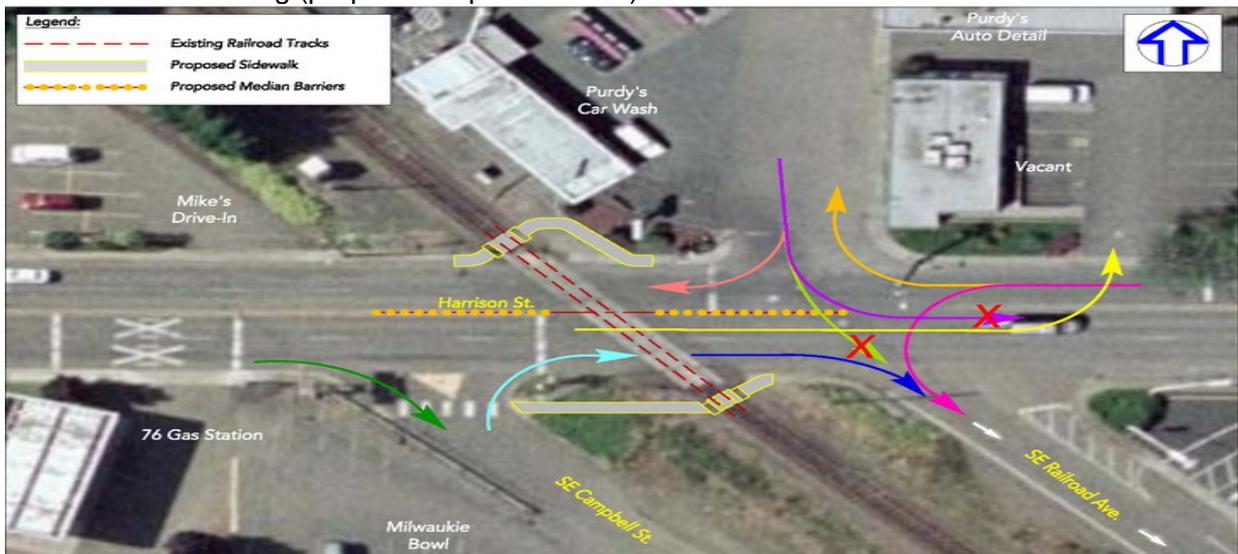
This configuration would:

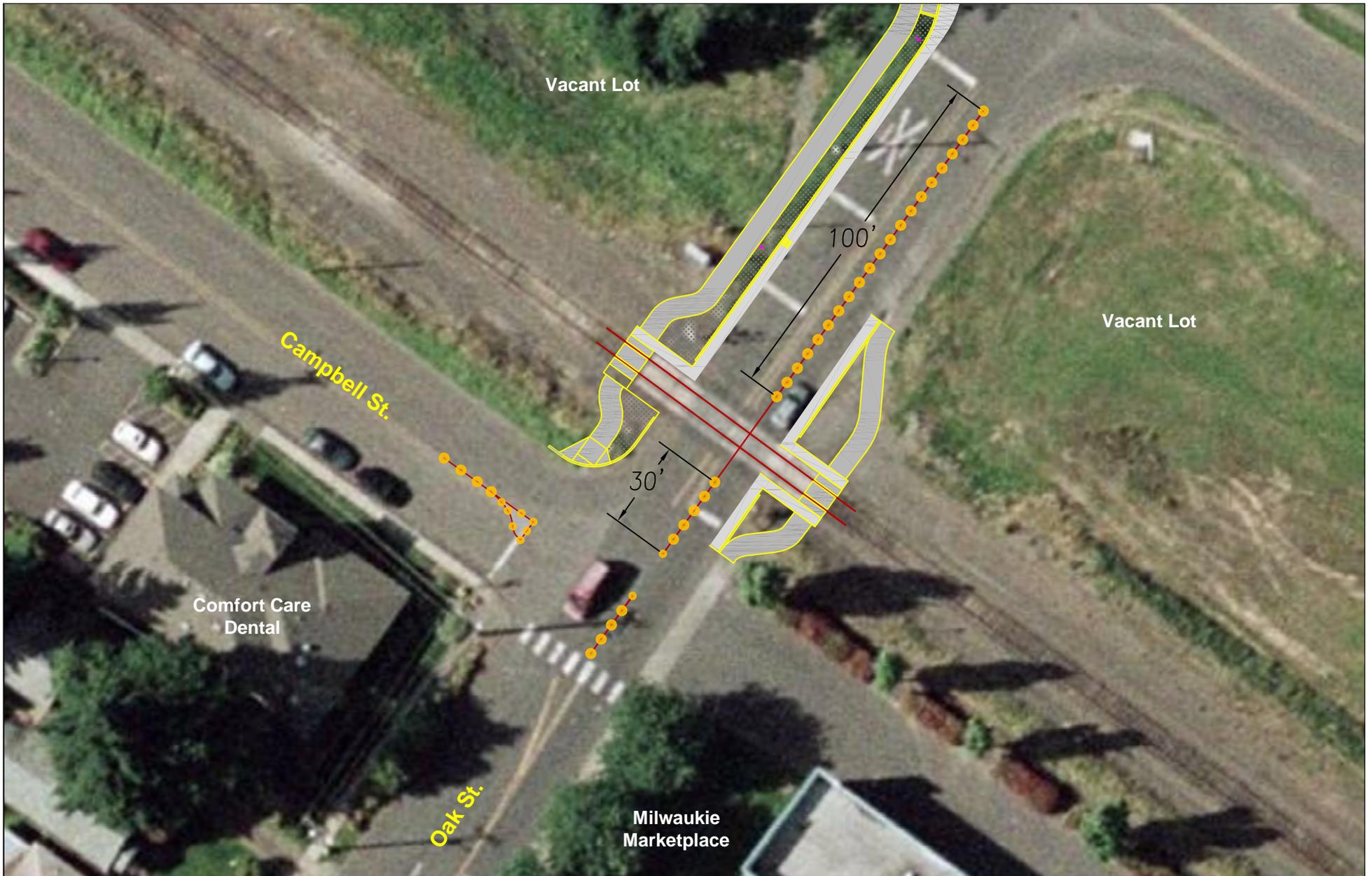
- Impact Purdy's car wash by preventing left turns from the site.
- Substantially improve crossing safety for motorists, bicyclists, and pedestrians.
- Prevent vehicles from crossing the rail line when gate arms are lowered.
- Allow pedestrian, bicycle, and handicapped access across the Harrison Street crossing previously not present.
- Improve pedestrian, bicycle, and handicapped access to Providence Hospital and Downtown Milwaukie.

Harrison Street Crossing (existing conditions.)



Harrison Street Crossing (proposed improvements.)

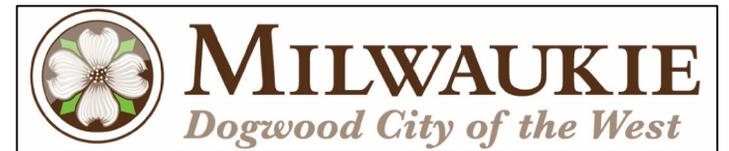




Oak Street Crossing
 Proposed Sidewalk and Median
 Barrier Curb Improvements

Legend

-  Proposed Median Barriers
-  Existing Sidewalk
-  Existing Railroad Tracks





January 6, 2010

Wendy Hemmen PE
Light Rail Design Coordinator
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

RE: Notice of Intent (NOI) to Create 24 Hour Quiet Zone (QZ) at Three Public Railroad-Highway Grade Crossings of Union Pacific Railroad Company, Brooklyn Subdivision, in Milwaukie, Clackamas County

Your NOI dated November 13, 2009, has been reviewed by the Rail Division. The State of Oregon, through its Department of Transportation, Rail Division, has exclusive authority to regulate public railroad-highway crossings in the state under ORS 824.202. Rail Division must issue appropriate crossing Orders authorizing alterations to the affected public grade crossings, in conjunction with the establishment of a QZ in Oregon.

A diagnostic team of representatives from Federal Railroad Administration (FRA); ODOT Rail Division; City of Milwaukie (Milwaukie); and Union Pacific Railroad Company met at the affected grade crossings on June 8, 2009.

As stated in Milwaukie's NOI, the City intends to alter the following crossings in order to establish the proposed QZ:

- At Harrison Street crossing 759756B
- At Oak Street crossing 759757H
- At 37th Avenue crossing 759758P

Milwaukie will construct non-traversable medians, with or without channelization devices, on the roadway approaches to the crossings. The medians will extend the FRA required distance in advance of the existing automatic gates at the crossings. FRA will determine the length of the medians, if they do not meet the minimum lengths required in Appendix A to 49 CFR § 222.39.

Milwaukie shall submit application(s) for crossing Order(s) seeking authority to alter the affected grade crossings. The applications shall include signed, engineered drawings at 90% of final design. ODOT Rail will review draft applications accompanied by engineered drawings at 60% of final design. After Milwaukie submits the required engineering drawings with its final crossing applications, the crossing Orders will be issued, if all parties agree with the terms of the Proposed Order(s).



ODOT Rail Response to NOI_UPRR Crossings
City of Milwaukie
January 6, 2010

Construction of non-traversable medians, with or without channelization devices, will increase public safety at the grade crossings by deterring motorists from driving around lowered crossing gates.

It is understood that establishment of the proposed QZ will follow issuance of the crossing Orders, construction of the authorized work, and written confirmation from ODOT Rail to Milwaukie that all crossing Order requirements have passed final inspection.



C. David Lanning, Crossing Compliance Specialist
Crossing Safety Section
503.986.4267
503.986.3183 (fax)
david.lanning@odot.state.or.us

cc: Terrel Anderson, UPRR
Gail Curtis, ODOT Region 1
Darryl Morrow, FRA Vancouver WA

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January 6, 2010

Wendy Hemmen PE
Light Rail Design Coordinator
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

RE: Notice of Intent (NOI) to Create 24 Hour Quiet Zone (QZ) at Six Public Railroad-Highway Grade Crossings of Union Pacific Railroad Company, leased to Portland & Western Railroad, Willsburg District, in Milwaukie, Clackamas County

Your NOI dated November 13, 2009, has been reviewed by the Rail Division. The State of Oregon, through its Department of Transportation, Rail Division, has exclusive authority to regulate public railroad-highway crossings in the state under ORS 824.202. Rail Division must issue appropriate crossing Orders authorizing alterations to the affected public grade crossings, in conjunction with the establishment of a QZ in Oregon. This includes authorization to furnish, install and maintain proposed NO TRAIN HORN (W10-9) signs in approach to public grade crossings within a QZ.

A diagnostic team of representatives from Federal Railroad Administration (FRA); ODOT Rail Division; City of Milwaukie (Milwaukie); TriMet; Union Pacific Railroad Company; and Portland & Western Railroad met at the affected grade crossings on June 9, 2009. The focus of the diagnostic team was planning for construction of two light rail tracks parallel to PNWR's Willsburg District. The diagnostic team determined that Supplemental Safety Measures (SSM) should be constructed at the affected grade crossings in conjunction with construction of the Portland-Milwaukie Light Rail Project.

As stated in Milwaukie's NOI, the City now intends to establish a QZ at six public grade crossings on the Willsburg District before the light rail project is constructed. The City proposes to establish the QZ without upgrading any of the subject grade crossings or installing SSM at any crossings. Milwaukie believes it may do so under 49 CFR § 222.39. The affected crossings are:

- Mailwell Drive crossing 749164N
- Harrison Street crossing 749166C
- Monroe Street crossing 749167J
- Washington Street crossing 749168R
- 21st Avenue crossing 749169X; and
- Adams Street at 21st Avenue crossing 927313D

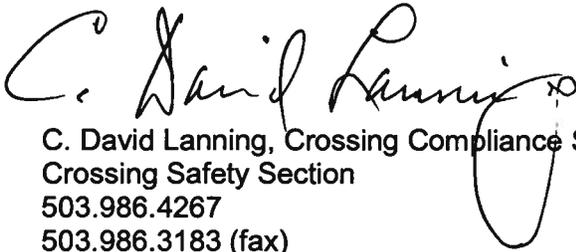


ODOT Rail Response to NOI_PNWR Crossings
City of Milwaukie
January 6, 2010

ODOT Rail is concerned about the safety of the subject grade crossings in the interim. Therefore, Rail Division objects to Milwaukie's current proposal because SSM's are needed to deter motorists from driving around lowered crossing gates. At the Washington Street crossing, Milwaukie Lumber Company's driveway is located between the existing crossing gates. Motorists exiting the driveway can easily circumvent the crossing gates.

Notwithstanding ODOT Rail's objections, if FRA allows Milwaukie to establish the proposed QZ, Milwaukie shall submit a letter application for a crossing Order seeking authority to install and maintain the FRA required signage in approach to the affected grade crossings. If all parties agree, ODOT Rail will issue the Order authorizing installation and maintenance of NO TRAIN HORN (W10-9) signs.

It is understood that establishment of the proposed QZ will follow issuance of the crossing Order, installation of the authorized signs, and written confirmation from ODOT Rail to Milwaukie that crossing Order requirements have passed final inspection.



C. David Lanning, Crossing Compliance Specialist
Crossing Safety Section
503.986.4267
503.986.3183 (fax)
david.lanning@odot.state.or.us

cc: Dale Hansen, PNWR
Terrel Anderson, UPRR
Gail Curtis, ODOT Region 1
Darryl Morrow, FRA Vancouver WA
David Unsworth, TriMet

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ATTACHMENT 6

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ESTABLISH A QUIET ZONE ALONG THE TILLAMOOK RAILROAD BRANCH FROM MAILWELL DRIVE TO LAKE ROAD.

WHEREAS, the City of Milwaukie has identified the desire to reduce train noise pollution, while improving crossing safety; and

WHEREAS, the Federal Railroad Administration has ruled that local public authorities may designate and request approval of Quiet Zones, through their State Department of Transportation, in which train horns will not be routinely sounded; and

WHEREAS, the Federal Railroad Administration has also approved specific railroad crossing safety measures for use in Quiet Zones; and

WHEREAS, Milwaukie is home to two Railroad lines, Union Pacific Mainline and the Tillamook Branch, and the City adopted Resolution No. 61-2007 on October 16, 2007, establishing intent to effectuate a Quiet Zone for the Union Pacific Mainline; and

WHEREAS, these improvements reflect the interests of Milwaukie businesses and Milwaukie's Neighborhood District Associations; and

WHEREAS, the Tillamook Branch is safe and can be designated a Quiet Zone at present with minimal infrastructure improvements; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie establishes its intent to effectuate a Quiet Zone along the Tillamook Branch Railroad:

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 2, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Gary Parkin, Engineering Director

Subject: Approval of Change Orders 1 and 2 for Additional Federal Stimulus Funding for NE Sewer Extension Project

Date: January 11, for the February 2, 2010 Meeting

Action Requested

Authorize staff to request that the Department of Environmental Quality (DEQ) allocate \$600,000 in federal stimulus funds for the City's NE Sewer Extension (NESE) project. The funding would allow the City to construct improvements that will keep City sewage from flowing into the City of Portland sewer system, and to replace a section of sewer main that has been planned for up-sizing and will need to be replaced as the NESE area connects to sewer. This request also enlarges the project's contingency.

History of Prior Actions and Discussions

January 2010: Council approved annexation of the Rights-of-Way in the NE Sewer Extension (NESE) project area (Ordinance no. 2010)

December 2009: Council awarded the contract for construction of the NE Sewer Extension (NESE) Project wastewater collection system to K and R Plumbing Construction Co. Inc., in the amount of \$2,653,257.05 (Resolution 78-2009).

October 2009: Council approved an IGA with Clackamas County Development Agency regarding payment to the City of urban renewal contributions to the project, amounting to a \$3450 discount on project costs for developed properties in the North Clackamas Revitalization Area (Resolution 64-2009). Council approved a request to the County to

transfer jurisdiction of the rights-of-way in the NESE Project Area from the County to the City (Resolution 66-2009).

September 2009: Council initiated annexation of the rights-of-way in the NESE Project Area by resolution (Resolution No. 58-2009). Council approved an updated Clean Water State Revolving Fund Loan Agreement for the NESE Project (Resolution 57-2009).

August 2009: Staff briefed Council on the status of the NESE Project and the need to annex the rights-of-way in this area.

June 2009: Council awarded a contract to Right-of-Way Associates Inc. for easement and appraisal services within the NESE Project Area.

February 2009: Staff briefed Council on the status of the NESE Project in Dual Interest Area “A”.

February 2009: Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to extend the City’s sewer system into Dual Interest Area “A”.

December 2008: Council approved a loan agreement from the Clean Water State Revolving Fund (CWSRF) to fund the extension of the City’s sewer system into Dual Interest Area “A” (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of the City’s sewer system into Dual Interest Area “A” including: entering into an intergovernmental agreement with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution No. 81-2008).

September 2008: Staff briefed Council at a work session on the proposed sewer extension project. Council requested additional information prior to acting.

May 2008: Staff briefed Council at a work session on the proposed sewer extension project, specifically with regard to City, County, State and intergovernmental requirements and policies. Staff presented information on relevant City and County policies, State law regarding annexation, and raised questions regarding service delivery and governance.

March 2008: Staff briefed Council at a work session on the need for sewer service in Dual Interest Area “A”. Staff informed Council that the City was coordinating with

Clackamas County and reaching out to owners and residents in this area to determine the level of interest in connecting to the City's sewer system.

September 2006: Staff briefed Council on State statute and City Comprehensive Plan policy regarding island annexations.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in Dual Interest Area "A". This proposal assumed a City project to extend sewer service into this unincorporated area of Clackamas County.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. With respect to Dual Interest Area "A", the agreement states: *"The City shall assume a lead role in providing urbanizing services."*

Background

The NESE project, a wastewater sewer system for the City's Urban Growth Management Agreement (UGMA) Dual Interest Area "A", is under construction. The project was estimated at \$4.5 million in December 2008. When American Recovery and Reinvestment Act (ARRA) funds became available to DEQ last year, the agency modified the CWSRF loan to incorporate the ARRA funding. The revised loan was structured to provide up to \$2 million at no interest and \$2 million as a grant. The City's loan is currently \$4 million (all ARRA).

The NESE construction bid award ended up far below initial estimates at \$2.65 million. Therefore, instead of placing \$4 million of stimulus funds the project is anticipated to only expend \$3.4 million.

DEQ approached the City last month, asking if there was additional work related to the NESE sewer project that could be added to the project scope. DEQ needs to account for its ARRA funds by mid February 2010. Unaccounted for funds will be redistributed elsewhere in the state or country.

The City has identified two projects related to the NESE project that can be quickly designed and incorporated into the NESE construction contract.

Change Order 1 (CO 1) is needed to correct an issue that arose from the Water Environment Services (WES) sewer construction project adjacent to the NESE project. The WES project will remove a pump station downstream from a portion of the City's system (see Attachments 2 and 3), which will result in the City's sewerage from about

90 properties flowing into the City of Portland's Lents line. Were this to happen, the City would be obligated to pay Portland its very high connection and usage fees for the flow. This change order will replace an existing section of sewer main on King Road from Linwood to Wichita to redirect the sewer flow to the NESE sewer main on Wichita Ave. This will allow the sewer to remain within the City's wastewater system.

Change Order 2 (CO 2) is a project to correct an issue downstream from the NESE project. The City's updated wastewater master plan has determined that as build-out of the sewer system occurs in the NESE area, a section of the main leading to the Brookside pump station will be under-sized to handle increased flow. This project is in the CIP and completing a portion of the project is planned for this year, budgeted at \$240,000. This Change Order would replace the existing main with a larger diameter main by employing a "no-dig" method of construction known as pipe bursting.

Adding these two CO's would bring the total loan need to about \$3.9 million. Staff will ask DEQ that the remaining loan amount, approximately \$100,000, provide additional contingency for the project.

Concurrence

Community Development, Engineering, and Public Works staff believe that the work requested are important improvements that should be done, and that the ARRA funds provide an unprecedented funding opportunity to complete the work at relatively low costs to the City.

Staff discussed this issue with the Citizen's Utility Advisory Board (CUAB) and received that committee's assent.

Fiscal Impact

The additional work will not be assessed to the NESE residents as part of the reimbursement district as the work is not wholly attributed to the installation of their sewer system. The cost for CO 1 will be borne by the City's wastewater fund. That cost is about \$100,000 (half the cost of the work will be paid by ARRA funds). The \$100,000 may be paid over 20 years with no interest. If the City elects not to perform this work, the connection fees to the City of Portland would need to be addressed. These may total about \$300,000.

Change Order 2 is estimated to cost \$300,000. Using the ARRA funds would cut the City cost in half (in a no interest loan). The \$150,000 cost, which may be paid over 20 years without interest, will be paid by the wastewater SDC fund. This project was anticipated to be constructed in 3-5 years with SDC funds that will be accumulated as NESE residents connect to the sewer system.

Approval of the additional work will be contingent on the ARRA funding being available and the funds not being required for the base NESE project. Should the ARRA funds be reduced by unanticipated project expenses, the additional work would be reduced as needed. Change Order 1 work would have priority.

| | Cost | | Repayment | |
|--------------|-----------|-----------|-----------|-----------|
| | CO1 | CO2 | WW Fund | WW SDC |
| AARA Grant | \$100,000 | \$150,000 | | |
| AARA 0% Loan | \$100,000 | \$150,000 | \$100,000 | \$150,000 |
| Total: | \$200,000 | \$300,000 | \$100,000 | \$150,000 |

Work Load Impacts

Community Development, Engineering, Public Works, and Finance Departments work closely together on capital projects. The Engineering Department will continue to manage this project with current staffing levels. The additional effort required to detail the change order work and then manage it is not a significant increase relative to the effort currently expended on the NESE project.

Alternatives

1. Approve the addition of the work and contingency as requested.
2. Modify the request to fund a portion of the additional work.
3. Deny the request, sending the unallocated ARRA funds back to DEQ.

Staff recommends Option 1 for the reasons stated in this report. If Option 2 is recommended as the course of action, staff suggests that Change Order 1 and a contingency and go forward. Option 3 exposes the City to fiscal risk should the base project incur costs far beyond those expected and due to newly required City of Portland connection fees.

Attachments

1. Resolution
2. Description of Change Order work
3. Map showing location of proposed Change Order work

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AUTHORIZING ADDITIONAL WORK FOR THE NE SEWER EXTENSION PROJECT AND
PROVIDING ADDITIONAL PROJECT CONTINGENCY.**

WHEREAS, the City of Milwaukie has undertaken a project in cooperation with Clackamas County and the Oregon Department of Environmental Quality (DEQ) to provide wastewater service in the unincorporated area known through its Urban Growth Management Agreement (UGMA) as Dual Interest Area "A"; and

WHEREAS, the project was approved for funding in the 2009/2010 budget; and

WHEREAS, the project was approved for funding by the Clean Water State Revolving Fund by the Oregon Department of Environmental Quality (DEQ); and

WHEREAS, the project was approved for funding by the American Recovery and Reinvestment Act (ARRA-Federal Economic Stimulus Program); and

WHEREAS, K & R Plumbing Construction was awarded the construction contract in accordance with City, State and Federal requirements; and

WHEREAS, the construction cost for the project was awarded at amount far less than anticipated, resulting in unallocated ARRA funds available to the project of about \$600,000; and

WHEREAS, the City has additional sewer needs associated with the NESE project that will cost about \$500,000 located at King Road and Wichita Ave (change order 1) and in Brookside Dr (change order 2); and

WHEREAS, retaining the ARRA funding level provides the City with contingency to fund cost increases that may be incurred during construction; and

WHEREAS, DEQ has requested that the City either provide a plan for expending the unallocated ARRA funds or return the funds to DEQ; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie requests DEQ to add sewer work designated as change orders 1 and 2 to the City's NESE project (Loan R06655).

Introduced and adopted by the City Council on February 2, 2010.

This resolution is effective on February 3, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 2

Change Order 1 (King Road Diversion Project)

Reverse flows within and area of the City of Milwaukie serving approximately 90 homes located adjacent to the terminus of a new pipe run for the expanding collection system. Flows from this area are currently combined with Clackamas County Service District No. 1 (CCSD No. 1) contributions and transferred to the jointly owned and operated Kellogg Wastewater Treatment Plant in the City of Milwaukie. Following improvements to the adjacent CCSD No. 1 collection system, these flows will be sent to the City of Portland Lents Trunk, requiring Milwaukie to pay connection fees. Through extension of a sewer pipe within the current construction contract by approximately 90 feet plus removing and replacing 460 feet of existing pipe, these flows can continue to flow within Milwaukie's system and into the Kellogg WWTP.

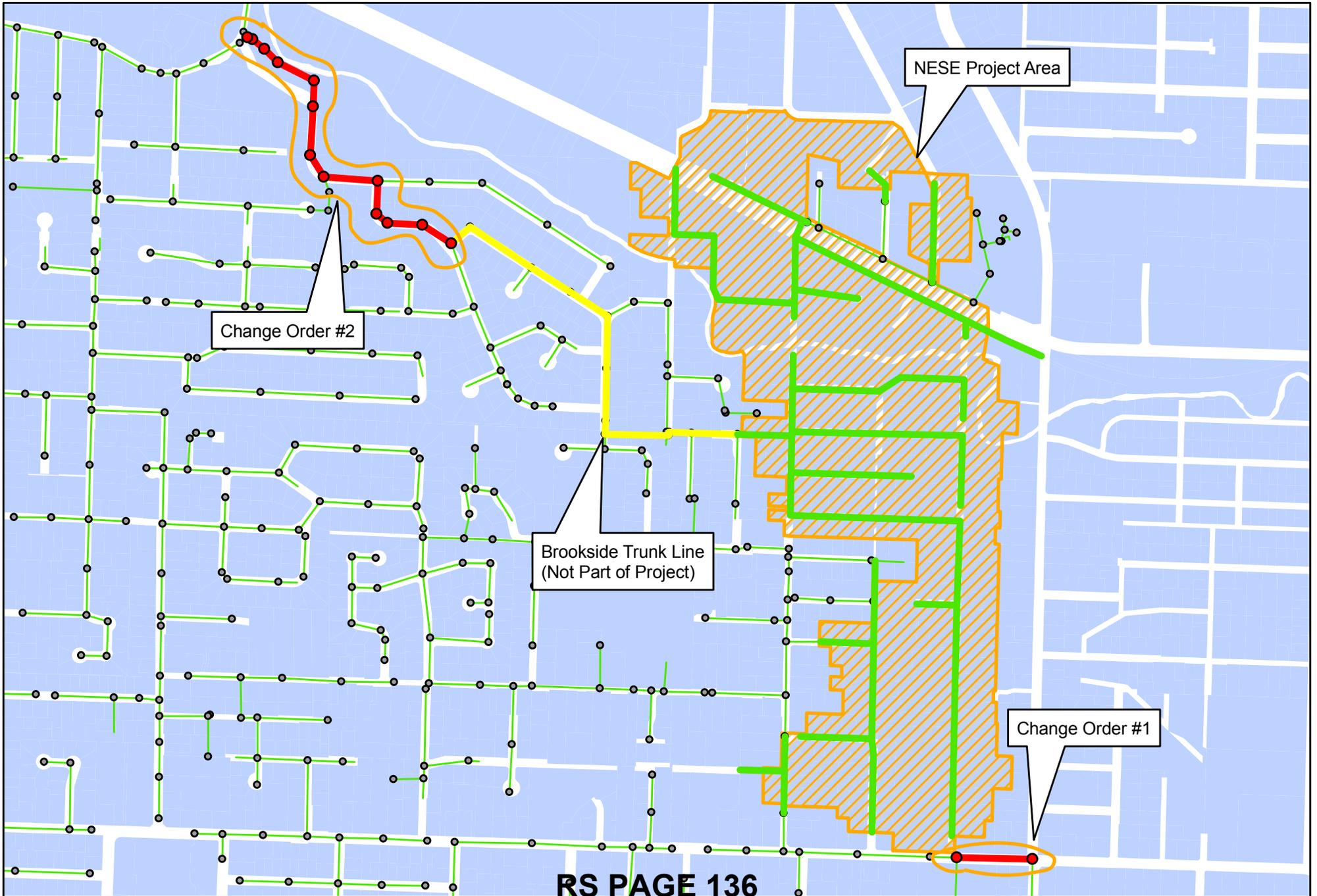
| | Description | Quantity | Unit | Unit Cost | Subtotal |
|-----------------------------|--|----------|------|-----------|------------------|
| 1. | New Sewer Pipe | 550 | Feet | \$130 | \$71,500 |
| 2. | Deepen existing planned sewer pipe on Wichita Ave. to receive reversed flow. | 730 | Feet | \$35 | \$25,550 |
| 3. | Surface Restoration | 550 | Feet | \$25 | \$13,750 |
| 4. | Manholes | 3 | Each | \$5,000 | \$15,000 |
| 5. | Service Laterals | 6 | Each | \$2,000 | \$12,000 |
| 6. | Traffic Control | 1 | L.S. | \$20,000 | \$20,000 |
| 7. | Bypass Pumping | 1 | L.S. | \$20,000 | \$10,000 |
| Subtotal Construction | | | | | \$167,800 |
| Contingency @ 5% | | | | | \$8,500 |
| Engineering & Admin. | | | | | \$18,700 |
| Total Estimated Cost | | | | | \$195,000 |

Change Order 2 (Brookside Main Upsizing Project)

Replace and existing gravity interceptor immediately downstream of the new collection system with a larger diameter pipe using trenchless construction techniques. The smaller pipe will be expanded in place using a pipe bursting machine, allowing a larger diameter replacement pipe to be inserted in its place within disturbing the existing ground surface. The larger pipe will eliminate anticipated surcharging from the additional flows upon full development of the expanded collection system.

| | Description | Quantity | Unit | Unit Cost | Subtotal |
|-----------------------------|------------------|----------|------|-----------|------------------|
| 1. | Sewer Pipe | 2,000 | Feet | \$85 | \$170,000 |
| 2. | Insertion Points | 10 | Each | \$1,000 | \$10,000 |
| 3. | Manhole Repairs | 12 | Each | \$750 | \$9,000 |
| 4. | Service Laterals | 35 | Each | \$1,200 | \$42,000 |
| 5. | Traffic Control | 1 | L.S. | \$10,000 | \$10,000 |
| 6. | Bypass Pumping | 1 | L.S. | \$20,000 | \$20,000 |
| Subtotal Construction | | | | | \$261,000 |
| Contingency @ 5% | | | | | \$13,000 |
| Engineering & Admin. | | | | | \$26,000 |
| Total Estimated Cost | | | | | \$300,000 |

Northeast Sewer Extension Change Orders #1 and #2





To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Director of Community Development & Public Works

From: Gary Parkin, Engineering Director

Subject: Third Annual Report on the Street Surface Maintenance Program

Date: January 22, for the February 2, 2010 Meeting

Action Requested

None. This is an update on the Street Surface Maintenance Program (SSMP) and is for information only.

History of Prior Actions and Discussions

December 2008: Second Annual Report on the SSMP

December 2007: First Annual Report on the SSMP

January 2007: The City of Milwaukie's SSMP was adopted by ordinance 3.25.020C, effective on July 1, 2007. The ordinance provided the basis for determining a street maintenance fee, and instituted an electric utility privilege tax and local gas tax to pave and reconstruct streets city-wide.

Background

The Public Works Director is required to make an annual report to the City Council regarding the state of the street network and the Program. This is the third annual report which is organized into the following sections:

- Completed Projects
- Upcoming Projects
- Overall Condition of the Network

- Workload Impacts and Overall Program Progress
- Revenue Summary
- Achievement of Program Goals

Completed Projects

Please see map attachment 1 (SSMP Completed Project + 5-year Upcoming Projects) for a map showing all the streets that have been paved in the first few years of this program. It also depicts the upcoming projects that will be constructed within the next 5 years. This map shows the City's Arterials, Collectors, and Neighborhood Routes, which are the streets that are the focus of the program.

Streets that have been paved so far during FY 2009-10 budget year include Logus Road, 27th Ave, and River Road. The City publicly advertised for bids and received between 5-6 responsive bidders on each project. Additionally, 34 local streets were crack sealed in the Ardenwald, Lake Road, and Linwood Neighborhoods, using city labor forces and equipment, and SSMP funding.

Logus Road (from Stanley Avenue to 49th Avenue) was paved in conjunction with the Logus Road Green Street Sidewalk and Storm Improvement Project. A large portion of Logus Road, near the grade school, needed to be reconstructed, rather than simply paved, thereby doubling the cost of the paving portion from \$75,000 to \$150,000. This project was completed in June 2009.

27th Ave, from Washington Street to Lake Road, was also paved in June at a cost of \$85,000. There were three speed humps in this section that needed to be removed and replaced. This project was awarded at \$18,500 less than the budgeted amount and it was completed in July.

River Road, from 99E to Lark Street, was paved at a cost of \$96,000 in September. This project was awarded at \$9,000 below the budgeted amount. A small section of Bluebird, between 99E and 21st Avenue, was also paved in conjunction with this project. Bluebird is a local street that was able to be paved due to its proximity and functionality as related to River Road.

Upcoming Projects

Remaining work for Year Three (FY 2009-10) of the SSMP is the paving of Linwood Avenue, Roswell Street reconstruction, and slurry sealing a variety of local streets. The paving of Linwood Avenue, from Monroe Street to Railroad Avenue, will be bid out and constructed in the spring of 2010. The project cost estimate is \$350,000. Roswell Street, from 32nd to 42nd was bid out in August 2009. The City decided to repackage and re-bid the work because of the high cost of bids received. This project has been

redesigned to incorporate cost savings strategies through the construction sequencing, material storage, and schedule, and will be re-bid this spring season. The project cost estimate is \$340,000 and construction will be in the summer of 2010, while the school is on summer vacation to avoid conflicts with emergency responders, school buses, parents, students, and teachers.

The bulk of the annual funding for Year Four (FY 2010-11) of the program (\$880,000) will be spent on the reconstruction of Lake Road from Oatfield to Where Else Lane. This will be constructed in conjunction with the Lake Road Federal Grant Multimodal Project in early 2011.

There are three major roadways that are scheduled to be paved between 2011 and 2017; these include Harrison Street, Monroe Street, and Railroad Avenue. All three of these roadways have failed bases, undersized and/or deficient storm systems, damaged and sunken sewer lines, and undersized waterlines (in sections). All of these streets require a full-section, full-depth reconstruction. The section of Harrison between Hwy 224 and 99E has an undersized storm line that surcharges storm water into the street near the Waldorf School. Because of this major and expensive utility work, and impacts of the light rail project and the Quiet Zone Project on the Harrison Crossing, these roads will be addressed in smaller sections.

Staff also considers which street sections are likely candidates for federal or state grant or stimulus funding, as well as roads that front large developable lots such as Lake Road near Kuehn. For example, Railroad Avenue is likely to have a sidewalk installed within the next 5-7 years, so it makes sense to hold off on paving for a few years, whereas Harrison Street already has sidewalks. It is preferable to pave up against a curb rather than against native soil. When you pave up against an existing curb the asphalt life is extended because of improved drainage. Also, the curb line sets the paving grade, so the street is at the correct elevation and will drain correctly.

Attachment 2 is an updated Ten-Year SSMP Project Schedule.

Since the SSMP program began in 2007 many lessons have been learned and experience has been gained about the condition of our utility infrastructure. On the Washington Street paving job in 2008 the shaking and rattling, from the paving operations and heavy equipment, shook loose a rusted water line which bubbled up through the asphalt. Additionally, a utility trench line that wasn't properly compacted many years ago, collapsed due to the vibrations that caused the trench rock to settle. Crews had to dig out 100-feet of 6-foot deep wet native soil and replace it with compacted rock. Additional sewer line trench failure also occurred during this project and couldn't be seen until a few months after paving. The trench line hasn't been repaired yet and is visible on Washington Street between 21st and the Railroad tracks (by the lumber yard).

While grinding or paving up against an old catch basin, the basin will crack into rubble due to the old brittle concrete getting rattled by the paving equipment. Many pedestrian ramps are not installed at the correct grade or they are not ADA compliant and need to be replaced. When paving in front of a school it is better to pave any streets that are primary access to schools during the summer break rather than while school is in session. Detouring and re-routing the buses and parents is difficult and maintaining access for emergency vehicles is problematic.

Overall Condition of the Network

The Engineering Department maintains a database of overall Pavement Condition Index (PCI) for the network, which includes assessment data for each street in the City. The database is updated each year with all the projects completed. A newly paved street has a PCI of 100. The last comprehensive evaluation of the street network was completed in 2004. At that time, the average PCI for the City was 67 on a scale of 100. When the SSMP began paving in 2007, the PCI was about 61. In the three years of street maintenance it is estimated that the PCI has increased to about 63.

Workload Impacts and Overall Program Progress

The workload to implement the SSMP is substantial. The Community Development, Engineering, Public Works, and Finance Departments work closely together on project selection, design, and construction. The Engineering Department will continue to manage the program with current staffing levels.

The Engineering, Community Development, and Operation Departments formed an SSMP Project team to coordinate the ten-year paving schedule with the Capital Improvement Plan, Public Improvement Projects, and other City projects. The City also coordinates with neighboring public and private agencies that have public utilities located within City road authority, such as PGE, NW Natural Gas, Qwest, Comcast, Oak Lodge Water and Sewer Districts, Clackamas River Water, and the City of Portland. Staff works to identify underground utility work located under the streets to be paved. The City provides written notice to all the public and private utilities of the upcoming projects, and imposes a 5-year moratorium on all newly paved streets (9 streets so far).

Revenue Summary

The SSMP (fund 315) collects revenues exclusively for expenditures within the Program. The three revenue sources are a street maintenance fee, a local gas tax, and an electric utility privilege franchise tax. Revenues from these sources are coming in at projected rates. Estimated revenues in year 2 were \$1.021 million and the actual revenues were \$1.057 million. Current year revenues are coming in as expected.

The majority of the SSMP budget is spent on the streets classified as Collectors and Arterials. About 60% is spent on extending the life of “good streets” and 30% is spent on reconstructing failed streets. The remaining 10% is spent on preventative maintenance such as crack sealing and slurry sealing local streets.

The City collects SSMP fees from local businesses based on the number of trip generations based on the type of business. The City recently discovered that 8 commercial accounts had not been properly adjusted and adjusted their fees. This netted the businesses about \$6,000 in credits.

Staff reviewed Oregon House Bill (HB) 2001, passed in 2009 and signed into law by the Governor, to consider whether it triggered Section 3.25.030 (B) of MMC, which directs dollar-for-dollar reductions in SSMP revenues when new revenues become available.

Staff believes that the new revenues available to the City under HB 2001 do not trigger this section because they are not dedicated to street maintenance. The first sentence of the applicable City Code section is (emphasis added):

“Upon the establishment of county, regional, state or other programs providing monies to the city *for street maintenance* at rates or annual amounts greater than those in effect at the time of adoption of the ordinance codified in this chapter, local fees or taxes shall be reduced in an equal amount to the additional monies made available to the city for street maintenance.”

The key phrase is “*for street maintenance*.” Staff believes that council did not intend for any new revenues that *could* be used for street maintenance—any new General Fund revenue, for example—trigger the SSMP revenue reductions. In the program document, which was adopted by Council as an exhibit to the enacting ordinance, the language is clarified further (emphasis added):

“The ordinance requires a reduction of local SSMP fees and/or taxes to balance any new revenue streams *dedicated to street maintenance* created at the state, county, regional or any other governmental level.”

HB 2001 generates additional revenues for the state Highway Trust Fund, which will result in an increase in the City share of such funds of about \$105,000 a year in 2009 and gradually increasing to \$438,000 by 2012. While the law does explicitly direct on the share of such funds to expend on preservation (i.e., maintenance) versus modernization (i.e., capital construction), none of the local share of funds is specifically dedicated to maintenance.

Staff believes this interpretation is consistent with public discussions that were held at the time the SSMP was under public review. The public concern that led to the language was, in large part, driven by an awareness of a County-led effort to establish similar fees dedicated to street surface maintenance. The MMC language still requires a reduction of SSMP charges, in the event a street surface maintenance fee were established at the County level or if a state gas tax increase were passed for the specific purpose of expanding local street surface maintenance effort.

Whether or not a reduction of SSMP fees is required by the City Code, Council, of course, may elect to make such a reduction. To assist Council in making that determination, staff has developed a list of high-priority unmet needs that could be addressed with anticipated HB 2001B revenues. Staff believes the first priority would be restoring the health of the street operations fund (Fund 320) through the following steps:

- Establishing a more prudent contingency balance
- Fully-funding reserve accounts representing City collections under the Fee-In-Lieu-Of-Construction (FILOC) program
- Restoring street operations level of service, including improving street marking replacement and repairing damaged local streets
- Establishing an emergency/safety capital account

After those issues are addressed, HB 2001B revenues could establish a more substantial Neighborhood Traffic Management Program, which could be expanded to address pedestrian safety issues as well. Staff has devoted some time to developing a “Walk Safely Milwaukie Program” proposal that builds on earlier iterations of the School Trip Safety Program and the Neighborhood Traffic Management Program. (See Attachment 3 for a description of the proposed WSMP.)

Achievement of Program Goals

The SSMP describes Program goals related to PCI Index, Deferred Maintenance, Maintenance, Stopgap Maintenance, and Program Cost.

PCI Index Goal - Bring all major streets to a rating of 75 or better, with adequate maintenance to sustain this level of pavement quality. Staff finds that Year Three progress towards this goal is satisfactory.

Deferred Maintenance Goal – Eliminate the backlog of deferred maintenance of pavement surfaces. The program is on target, following the 10 year street repair plan outlined at the program inception to accomplish this goal.

Maintenance Goals – The SSMP maintenance goal is to prevent any street from deteriorating to the point of requiring reconstruction. Staff finds that progress towards this goal is satisfactory with the 10 year plan focused on arterials and collectors.

Stopgap Goals – The SSMP stopgap goal is to continue to adequately fund and repair trouble spots throughout the city. Stopgap pothole patching has continued using state gas tax funds.

Program Cost Goals – The projected revenue of \$1.12 million per year has proven to be fairly reliable. The projected total revenue of almost \$11 million will meet the anticipated program cost.

Concurrence

The Citizen Utility Advisory Board reviewed this report and supports an aggressive approach regarding any Program surplus (spend excess fund balance according to Program priority). The updated project list was reviewed by the SSMP Project Team also.

Fiscal Impact

The SSMP Fund, fund 315, collects revenues specifically and exclusively for expenditures within the Program. The three revenue sources are a street maintenance fee, a local gas tax, and an electric utility privilege franchise tax. Revenues from these sources are coming in at projected rates (the privilege franchise tax comes in a single payment). Total revenue of \$1,020,000 is expected this year.

All of the SSMP projects have been designed in house with staff doing the project surveys, design, and project management work. This professional service typically costs about 25%, of the cost of construction – currently worth at about \$300,000 per year based on a \$1.2 million budget.

Attachments

1. SSMP map
2. Adjusted Ten-Year SSMP Project Schedule
3. Draft Walk Safely Milwaukie Program

ATTACHMENT 2

Updated Ten-Year SSMP Project Schedule

| Year | Activity | PCI | Activity Type | Estimate | Actual |
|---------|--|-----|-------------------------|--------------------|--------------------|
| Year 1 | Contractual Services | | Testing, King Road eval | \$25,000 | \$15,200 |
| 2007/08 | 37th Ave. (Lake to Wister) | 53 | Overlay/Rehab | \$72,162 | \$75,000 |
| | Washington St (McLoughlin to Oak) | 69 | Overlay/Rehab | \$181,098 | \$225,000 |
| | 42nd (Harvey to JCB) | 55 | Overlay/Rehab | \$137,283 | \$117,400 |
| | Crack Sealing | | Preventive Maintenance | \$125,000 | \$0 |
| | | | Total | \$540,543 | \$432,600 |
| | | | Revenue | \$800,000 | \$877,200 |
| | | | Balance | | \$444,600 |
| Year 2 | Contractual Services | | Testing, Inspection | \$25,000 | \$28,619 |
| 2008/09 | Engineering (in-house transfer) | | | \$86,484 | \$86,484 |
| | King Road (43rd to Hollywood) | 40 | Reconstruct | \$770,816 | \$720,000 |
| | Logus | 60 | Overlay/Rehab | \$75,000 | \$150,000 |
| | Oak Street | 55 | | \$85,802 | \$69,700 |
| | Crack/Slurry/Fog Seals | | Preventive maintenance | \$100,000 | \$90,762 |
| | | | Total | \$1,143,102 | \$1,145,565 |
| | | | Revenue | \$1,021,500 | \$1,057,000 |
| | | | Balance | | \$356,035 |
| Year 3 | Contractual Services | | Testing, Inspection | \$40,000 | |
| 2009/10 | Engineering (in-house transfer) | | | \$95,254 | \$95,254 |
| | 27th (Lake to Washington) (yr 4)* | 72 | Overlay/Rehab | \$103,545 | \$85,000 |
| | River Road (99E to Lark) (yr 6)* | 76 | | \$95,129 | \$96,650 |
| | Lake Road (Oatfield to Wherelse Ln) | 53 | | \$20,000 | \$20,000 |
| | Linwood Ave. (Railroad to Monroe) | 79 | Overlay/Rehab | \$334,423 | |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 | |
| | | | Total | \$788,351 | \$296,904 |
| | | | Revenue Estimate | \$1,015,500 | |
| | | | Balance(prev+rev-exp) | \$606,208 | |
| Year 4 | Contractual Services | | Testing, Inspection | \$40,000 | |
| 2010/11 | Engineering (in-house transfer) | | | \$98,112 | |
| | Roswell (32nd to 42nd) (yr 3)* | 52 | Reconstruct | \$340,000 | |
| | Lake Road (Oatfield to Freeman) | 53 | Overlay/Rehab | \$880,000 | |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 | |
| | | | Total | \$1,418,112 | |
| | | | Revenue Est | \$1,021,500 | |
| | | | Balance(prev+rev-exp) | \$209,596 | |
| Year 5 | Pavement Assessment (Visual) | | SSMP Program Expense | \$20,000 | |
| 2011/12 | Contractual Services | | Testing, Inspection | \$40,000 | |
| | Engineering (in-house transfer) | | | \$101,055 | |
| | Harrison Phase 1 (PSB to 42nd) | 44 | | \$460,000 | |
| | International Way (37th to Harm) (yr 7)* | 70 | Overlay/Rehab | \$400,000 | |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 | |
| | | | Total | \$1,121,055 | |
| | | | Revenue Estimate | \$1,021,500 | |
| | | | Balance(prev+rev-exp) | \$110,041 | |

*Original year project was scheduled

ATTACHMENT 2

Updated Ten-Year SSMP Project Schedule

| | | | | |
|---------|--|----|------------------------|-------------|
| Year 6 | Contractual Services | | Testing, Inspection | \$40,000 |
| 2012/13 | Engineering (in-house transfer) | | | \$104,087 |
| | Monroe Street | 41 | | \$800,000 |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 |
| | | | Total | \$1,004,087 |
| | | | Revenue Estimate | \$1,021,500 |
| | | | Balance(prev+rev-exp) | \$127,454 |
| Year 7 | Engineering (in-house transfer) | | | \$107,209 |
| 2013/14 | Contractual Services | | Testing, Inspection | \$50,000 |
| | Harrison Phase 2 (PSB to 99E) (yr 5)* | 44 | | \$480,000 |
| | Main Street (yr 11+)* | | | \$300,000 |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 |
| | | | Total | \$1,037,209 |
| | | | Revenue Estimate | \$1,021,500 |
| | | | Balance(prev+rev-exp) | \$111,745 |
| Year 8 | Engineering (in-house transfer) | | | \$110,425 |
| 2014/15 | Contractual Services | | Testing, Inspection | \$50,000 |
| | Freeman Way (yr 11+)* | 68 | Overlay/Rehab | \$300,000 |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 |
| | | | Total | \$560,425 |
| | | | Revenue Estimate | \$1,021,500 |
| | | | Balance(prev+rev-exp) | \$572,820 |
| Year 9 | Engineering (in-house transfer) | | | \$113,738 |
| 2015/16 | Contractual Services | | Testing, Inspection | \$50,000 |
| | Railroad Ave (Harrison to Harmony) (yr 6)* | 44 | Reconstruct | \$870,000 |
| | Harvey Street (32nd Ave past 42nd Ave) | 26 | Reconstruct | \$303,000 |
| | Pavement Assessment (Visual) | | SSMP Program Expense | \$30,000 |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 |
| | | | Total | \$1,466,738 |
| | | | Revenue Estimate | \$1,021,500 |
| | | | Balance(prev+rev-exp) | \$127,582 |
| Year 10 | Engineering (in-house transfer) | | | \$117,150 |
| 2016/17 | Contractual Services | | Testing, Inspection | \$50,000 |
| | 43rd (King to Howe) and Howe (to 42nd) | 73 | Overlay/Rehab | \$130,000 |
| | McBrod Avenue (yr 9)* | 27 | Reconstruct | \$370,000 |
| | Mailwell Ave (Main St. to Commerce Park) | 28 | Reconstruct | \$190,000 |
| | Crack/Slurry/Fog Seals | | Preventive Maintenance | \$100,000 |
| | | | Total | \$957,150 |
| | | | Revenue Estimate | \$1,021,500 |
| | | | Balance(prev+rev-exp) | \$191,932 |

*Original year project was scheduled



A PILOT PEDESTRIAN PROGRAM FOR MILWAUKIE NEIGHBORHOODS

A SUCCESSFUL WALK SAFELY MILWAUKIE PROGRAM WOULD:

- Empower Neighborhood District Associations (NDAs) to fund high priority improvements.
- Strengthen resident involvement in neighborhood planning by providing tools and resources to develop meaningful solutions.
- Create safe and pleasant conditions for pedestrians and bicyclists on local streets.
- Improve safety of arterial and collector streets, particularly at pedestrian crossings, without compromising auto mobility.

ADOPTED CITY POLICIES SUPPORT PEDESTRIAN SAFETY AND NEIGHBORHOOD TRAFFIC MANAGEMENT

- School Trip Safety Program (1995)
- Neighborhood Traffic Management Program (1997)
- Transportation System Plan (2007)

EXISTING POLICIES AND IDENTIFIED PROJECTS NEED RESOURCES

- State gas tax/registration fee increase makes new money available
- Up to \$200,000 available to Milwaukie NDAs

PROPOSED PROJECT SELECTION PROCESS

1. NDAs develop and propose projects (with City/PSAC consultation)
2. City staff score projects for technical merit
3. PSAC recommends top projects to implement
4. Project funds awarded for construction

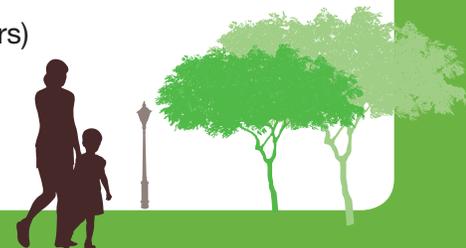


ELIGIBLE ACTIVITIES

- Small capital (under \$50,000; e.g., traffic islands or crosswalk treatments)
- Awareness and education (e.g., the “virtual school bus” or public education campaigns)
- Local match on large projects (e.g., sidewalk projects or multi-use paths)

NEXT STEPS

- Public involvement (PSAC, NDA leaders, workshop with TSP stakeholders)
- Refine project rating process
- Return to Council to adopt 5 year pilot program





PROGRAM

**A PILOT PEDESTRIAN PROGRAM
FOR MILWAUKIE NEIGHBORHOODS**

JANUARY 22, 2010

DRAFT

February 2010 Discussion Draft

Walk Safely Milwaukie Program

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Mission Statement

The Walk Safely Milwaukie Program (WSMP) empowers Milwaukie's neighborhoods to identify and implement local projects and other citizen-led activities to make walking in Milwaukie a more comfortable and commonplace experience.

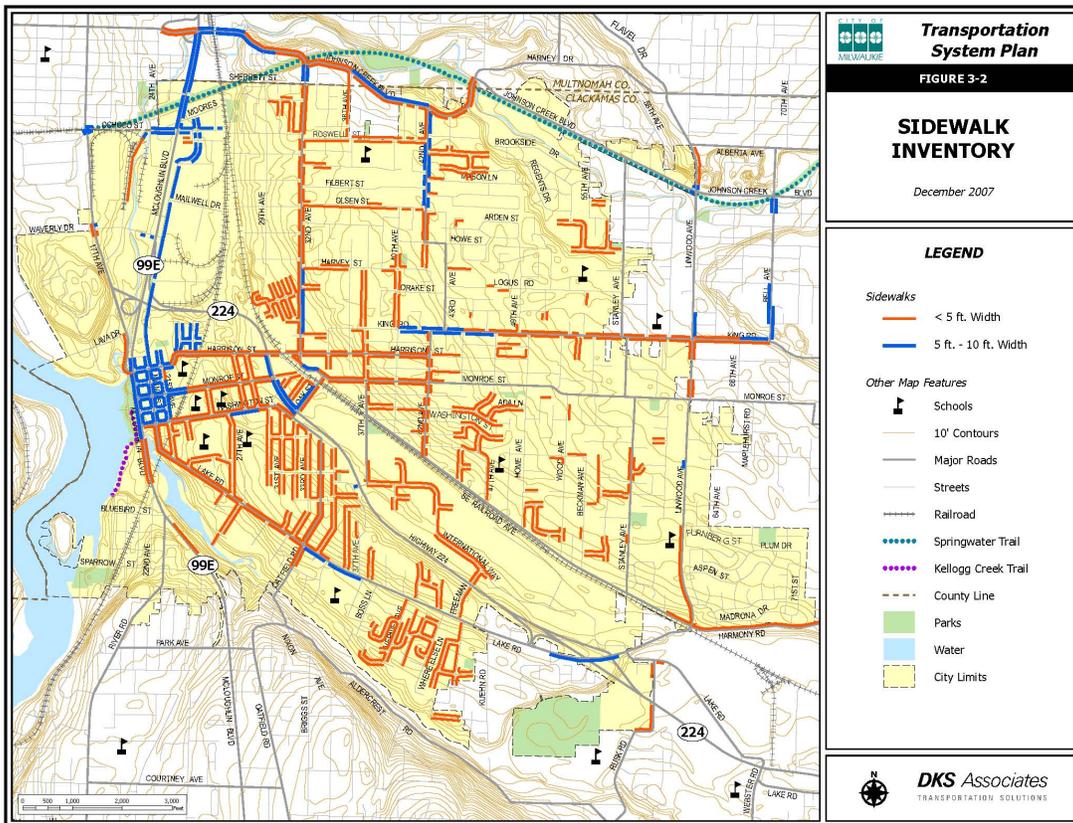
1. Existing Conditions & Need

Milwaukie's residential streets face increasing levels of motorized traffic – a pattern that will only worsen with time. All across the region, interactions between automotive, bicycle, and pedestrian traffic has become increasingly strained, presenting safety concerns for all road users, but particularly for pedestrians. In Milwaukie specifically, neighborhood concern about speeding, cut-through traffic, unsafe driving, and failing intersections is longstanding. Many Milwaukie streets have inadequate sidewalks, street lighting, and safe crossings. These factors reduce the feeling of safety for pedestrians, which, in turn, decreases citizens' interest and ability to walk – whether for exercise, pleasure, or transportation. The social quality of Milwaukie's neighborhoods is correspondingly weakened.

For years, Milwaukie's neighborhoods have voiced concern over this situation, and sought means for doing something about it (see Appendix A). In 1997, the City adopted a Neighborhood Traffic Management Program (NTMP) that was intended to address neighborhood traffic issues and pedestrian safety concerns. Until this year, little to no funding has been available to fund this program, due to the serious gap between funding availability for streetscape improvements and the almost incalculable need throughout Milwaukie's neighborhoods. During the 2008-2009 fiscal year, for example, neighborhoods received only about \$10,000 in total, which funded a few, small traffic calming and pedestrian safety projects identified through a collaborative process between NDA representatives, the Public Safety Advisory Committee, and the City Engineering Department.

Yet the City's recently completed Transportation System Plan (TSP) clearly describes the magnitude of the problem and the communities desire to make their streets more walkable. The TSP's Prioritized Master Plan Project List identifies 44 high and medium unfunded priority projects – 19 of which (or 43 percent) would improve the function and safety of non-motorized transportation. Chapter 11 of the TSP suggested funding a Neighborhood Pedestrian and Traffic Safety Program at the level of \$300,000 per year and identified numerous strategies for achieving the goal (the neighborhood traffic management "Tool Box").

Milwaukie has a fragmented and disconnected network of sidewalks, which makes walk trips, especially those of any distance, uncomfortable. The TSP notes that neighborhoods to the northeast of Highway 224, in particular, lack adequate pedestrian facilities. Many residential areas in this part of the city have no sidewalks whatsoever, and there are many intersections with partial or no ADA ramps. Sidewalk gap coverage is illustrated by the Sidewalk Inventory in the TSP (figure 3-2, reproduced below).



The issue goes beyond sidewalk gaps, however. In the Island Station NDA, neighbors have complained for years about pedestrian safety and high traffic speeds on River Road. The Ardenwald, Lewelling and Linwood NDAs have seen, and expect to see, additional cut-through traffic on collectors in their neighborhoods as Clackamas County and the city of Portland continue to add population. The Lake Road neighborhood has been waiting more than ten years for the transformation of Lake Road into a more pedestrian and bike-friendly boulevard – a project that has taken so long because of its total reliance on federal funding, and one which will still be difficult to get to on foot or bike for many Lake Road residents. The Hector Campbell NDA has voiced a mix of opinions about adding sidewalks – but most in the neighborhood would prefer that walking to the King Road Commercial Center was easier and safer. Only the Historic Milwaukie NDA has a fairly complete sidewalk network; however, this neighborhood has also been outspoken about driver behavior between downtown Milwaukie and Highway 224, and the impact of this behavior on neighborhood livability.

In short, all of the Milwaukie neighborhoods have been united in their concern about the impact of traffic near their homes, whether the leading concern is safety, noise, inconvenience, the slowness of project development, or a more general dissatisfaction with streets that meet the needs of cars while leaving neighbors to fend for themselves. The City has enacted policies consistent with neighborhood views, but has never had enough money to make much of a dent in the problem. The WSMP is designed to finally address this shortcoming.

2. Traffic Calming vs. Walkability

As defined in the 1990's (and perhaps as is currently conceived by many neighbors), the problem of walking in Milwaukie's neighborhoods, is principally a traffic problem. The thinking goes that if there were less traffic, or if traffic were "calmer", then pedestrians would naturally emerge.

On the one hand, the presence of traffic – especially traffic that is high volume, fast, and seemingly oblivious to the local surroundings – is a deterrent to walking. However, there are many, many streets in Milwaukie where traffic is most decidedly not a problem, but where Milwaukians don't feel comfortable walking regardless.

The WSMP recognizes that good walking environments require more than simply the absence of intimidating traffic. These characteristics include:

- Destinations within walking distance
- Supportive physical features of the streetscape (is the "walk zone" safe and comfortable?)
- An "interest factor" (is the walk interesting; can more than one route be selected; what are the chances of running into a neighbor?)
- The "people factor" (are others out walking also?)
- Safe/comfortable crossings (since one very difficult street crossing can dissuade the decision to walk at all).

The WSMP will calm traffic where possible but also broaden the range of ideas, efforts and comprehension of what makes a walkable city. Traveling on foot between neighborhood destinations enhances livability and promotes health and well being *while at the same time signaling to drivers to slow down*. Pedestrian safety projects and traffic calming devices that improve walking conditions within neighborhoods have the potential to decrease traffic speeds and vehicular noise levels. As a result, these projects can strengthen community identity and pride, put more eyes on the street, and potentially deter crime and other unwanted activity.

Walkable communities promote increased health and well-being for individuals and families, while providing residents opportunities to save money and take small steps toward protecting the environment. Walking burns as many calories as jogging yet is far less stressful and is appropriate for all ages. Walking is inexpensive transportation and can decrease our ecological footprint. As communities walk, neighbors become better acquainted, fostering stronger communities and increasing neighborhood safety. The simple presence of people within the vicinity of local streets has proven to decrease traffic speeds, making roadways safer for all users.

The following section on WSMP goals and eligible activities acknowledges the importance of traffic calming within the larger objective of improving "walkability" and livability. However, traffic calming alone won't necessarily get neighbors thinking together about key pedestrian improvements, nor make it easier for baby strollers to navigate tough crossings, nor make a walk trip more convenient from home to store, nor bind neighbors together with local businesses or schools in support of walkability. Projects and initiatives that aren't traffic calming focused can still be desirable under the WSMP concept, and may have, in fact, even greater benefits to a neighborhood.

3. Program Benchmarks & Eligible Activities

a. Benchmarks

The WSMP is founded on the understanding that both the built environment *and* social context affect walking behavior. The WSMP promotes education *and* engineering to improve the conditions and awareness in neighborhoods that are necessary to increase the propensity of walking. The walkability of a given streetscape is determined by the relationship between the street's physical features, urban design qualities, *and* individual reactions to those features and qualities. The extent to which individuals feel that a street is a safe and desirable place to walk largely determines its walkability. And the extent to which neighborhoods feel like they have influence over the gradual and positive transformation of their streets should improve neighbors' engagement with each other, their immediate environment, and the City itself.

The four benchmarks of the Walk Safely Milwaukie Program therefore, are:

- To empower Neighborhood District Associations (NDAs) to effectively fund high priority pedestrian projects and programs
- To increase the involvement of residents in neighborhood planning by providing tools and resources to develop meaningful solutions
- To create conditions that increase the sense of safety, ease and enjoyment for pedestrians and bicyclists on local streets
- To improve the safety of pedestrian crossings at arterial and collector streets without compromising auto mobility.

b. Eligible Activities

To achieve the 4 benchmarks and demonstrate the success and value of the WSMP, it is essential that neighborhoods have a high level of control over the desired improvements, but also that such improvements actually bring the desired effects to the neighborhood. The WSMP will not be able to, nor should it, fund every idea from every corner of Milwaukie. The Eligible Activities, as proposed in the Pilot phase of the program, are grouped into three categories:

1. Pedestrian Amenities and Local Street Calming
2. Street Design and Collector/Arterial Street Calming
3. Awareness and Education

Pedestrian Amenities and Local Street Calming

Many neighborhood and local streets would benefit from devices that would favor non-motorized traffic and improve the pedestrian experience in and around the street. These devices invite pedestrians to use streets as public spaces by slowing or deterring traffic indirectly. These can be low-cost, community-building elements that change the physical geometry of the street to promote its use by people outside of their cars. Examples include;

- New and improved sidewalks

- Adding and retrofitting ADA ramps
- Street-side seating
- Street trees
- Drinking fountains and other water features
- Community notice boards
- Play equipment-and other kid-friendly improvements
- Sculpture and Art
- Street Painting
- Median landscaping, gardens, and water quality features

Some locations on neighborhood and local streets call for street design and calming devices that influence both pedestrian and driver behavior equally. They promote walking while actively slowing or deterring traffic. Examples include;

- Shared streets – streets without curbs where bollards, chokers, and/or landscape elements define vehicle and pedestrian areas
- Center median with or without pedestrian refuge
- School safety improvements such as beacons at crossings
- Raised, lighted, decorative, or painted crosswalks or other intersection treatments, such as paving alternatives
- Entry treatments – use of landscaping to delineate and enhance a neighborhood entrance.

Street Design and Collector/Arterial Street Calming

Collector and arterial streets, by their nature, cater more to driver mobility, but need not sacrifice pedestrian safety. The following calming devices focus primarily on drivers, but also improve the pedestrian experience by providing safe crossings and refuge areas and managing access to heavy use streets from local neighborhoods. Examples include:

- Traffic circles
- Full/partial closure of local or skinny streets to prevent thru traffic by means of a physical barrier
- Divertes – a median or other barrier such as a curb extension, that forces traffic to turn in a particular direction thereby reducing cut-through traffic and collisions.

Finally, some devices are directed entirely at the driver. They intend to manage, slow, or deter traffic without direct or intentional impact on pedestrian volumes or safety. Examples include:

- Improved signage
- Speed bumps, humps, cushions or tables

- Traffic signals and signal timing changes
- Speed radar trailer and/or enhanced police enforcement
- Improved major street performance, i.e., provision of adequate capacity and connectivity on alternative arterials and collectors.

Awareness and Education

The more unsafe a roadway feels for pedestrians, the less likely we are to walk between short destinations. The absence of pedestrians gives drivers the impression of security and predictability, leading to increased speeds and a greater likelihood of reckless driving behavior. This can become a self-reinforcing effect, further deteriorating pedestrian safety and the likelihood that neighbors will choose to walk.

Encouraging social and cultural solutions to traffic problems is based, in part, on the concept that most residents are both drivers and pedestrians. Everyone has a stake in shifting the traffic dynamic within all neighborhoods to balance livability with mobility. A deeper understanding of how each of us is responsible for the character and quality of our neighborhoods is a key step in encouraging drivers to consider the context and implications of their driving behavior.

A neighborhood walking culture is the most basic and effective form of traffic calming because the presence of pedestrians makes drivers accountable for their driving behavior. At the same time a walking culture improves the social character and vitality of neighborhoods. As more residents are supported in their choice to walk between destinations, the use of local streets is diversified; bikers, cars, dogs, kids, joggers, and the elderly all begin to share the street environment. This highly varied environment reminds drivers that neighborhood streets are unpredictable, people-oriented spaces, and that their driving style and speed should reflect this.

The WSMP therefore seeks to empower neighborhoods to promote walkability and livability by raising awareness and educating neighbors about the interactivity of streets, drivers, pedestrians, cyclists and neighbors. Eligible Awareness and Education activities could therefore include:

- Citizen traffic calming workshops, trainings, and toolkits
- Walking Audits/Checklists and surveys to determine existing conditions
- Neighborhood Pace Car bumper sticker campaigns
- Neighborhood speed watch
- Neighborhood Traffic Treaties
- Events and programming such as International Walk and Bike to School Day
- Incentives that encourage businesses and other institutions to connect to the street with seating, outdoor art, or play structures.
- Cycling classes or safe walking route information and mapping resources.
- Requiring “Share the Road” classes for drivers that have received particular types of traffic violations.

Awareness and educational programs are relatively low-cost measures and should be undertaken in partnership between interested neighbors, other NDAs, schools, religious institutions, community coalitions and the City itself. The WSMP is structured to support and encourage social programming as a complimentary element to the construction of physical pedestrian amenities and traffic calming devices.

4. Responsibilities

To achieve the four benchmarks, the WSMP requires the successful collaboration of several responsible parties.

Milwaukie's NDAs are responsible for keeping abreast of traffic concerns in their neighborhood by walking regularly, listening to neighbor concerns, recording observations, and regularly reporting on traffic and walking conditions to the City through a Walk Safely Report to the Public Safety Advisory Committee (PSAC). NDAs are also responsible for submitting project proposals to PSAC, and justifying these projects, in writing, according to the established Project Ranking Criteria.

The Public Safety Advisory Committee is responsible for acting as an intermediary between NDAs and City staff, providing a forum for communication between these entities, and working in an advisory capacity as project proposals are developed and reviewed.

The City of Milwaukie's Community Development Department is responsible for supporting the NDAs in the development of a regular report on traffic conditions; providing consultation and resources to assist in program and project development; and determining if educational and enforcement solutions have been adequately considered or implemented prior to capital project implementation.

The City of Milwaukie's Engineering Department is responsible for reviewing and providing appropriate capital project recommendations in response to NDA Walk Safely Reports; advising and staffing the WSMP program at PSAC; evaluating proposed capital projects according to the established Project Ranking Criteria; explaining if any project proposals run afoul of safe or necessary traffic engineering; developing cost estimates to accompany capital project proposals; and designing, bidding, and managing small projects awarded funding.

The Community Development/Public Works Director is responsible for awarding, on an annual basis, WSMP funding and determining the use of any unallocated WSMP funds at the end of each fiscal year. The CD/PW Director shall also make an annual report to the City Council on the Program.

The Milwaukie City Council is responsible for reviewing the benefits of the Program and the wisdom of allocating city funds to the Program. The Council may also, in their role as City leaders, help the NDAs and City Departments collaborate and communicate about projects, goals or issues that arise in the Program.

5. Project Identification, Criteria and Allocation of Resources

a. Project Identification

The WSMP recognizes that neighbors’ best understand the problems facing their streets and the opportunities available to improve the pedestrian environment.

The WSMP project selection process empowers neighborhoods to effectively communicate pedestrian needs and traffic concerns to the City and to propose community-based solutions to these needs and concerns.

This process is proposed to run annually according to the following sequence:

- City staff will provide trainings, educational opportunities, and resources to NDAs and other interested community groups aimed at broadening citizen understanding of: “walkability”; traffic issues; the costs, benefits, and drawbacks associated with potential solutions; and how various pedestrian amenities and traffic calming approaches can affect driver/pedestrian behavior.
- By March, NDAs will develop a Walk Safely Report which will outline the neighborhoods’ perspective on current driving and walking conditions, trends, priorities and recommended potential improvements. The Report may or may not be updated annually, at the NDA’s discretion.
- By April, the Walk Safely Report will be submitted to PSAC for review and additional project recommendations.
- City staff will also review the Walk Safely Report and will provide feedback on recommendations forwarded by the NDA and the PSAC.
- Based on City and PSAC feedback, NDAs will submit project proposals by May 15.
- City staff will score and rank the proposals and award WSMP funding by June 30.

b. Capital Project Ranking Criteria

Alternatives Sought: Has the NDA considered if project objectives can be achieved more cost effectively through Awareness and Education and/or enforcement activities? Can a more cost-effective alternative be implemented while still satisfying neighborhood desires?

Scoring:
Pass/ fail

Promotes Walkability: Preference will be given primarily to projects whose primary objective is to promote non-motorized transportation and secondarily to those that minimize barriers to non-motorized travel.

Scoring:
3 = Promotes non-motorized travel in neighborhoods primarily and deters/slows motorized traffic secondarily
2 = Project deters/slows motorized traffic and promotes non-motorized transportation equally
1 = Project deters/slows motorized traffic primarily and promotes non-motorized transportation secondarily

Pedestrian Safety: To what extent will the project increase pedestrian safety within the proposed project area? Preference will be given to projects that respond to a known safety concern or area of accident history.

Scoring:

- 3 = Project site has "accident history"; defined as an average of over one reported and correctable accident per year over the past three years
- 2 = Project responds to known safety concern identified by neighborhoods and supported by City with no "accident history"
- 1 = Project respond to safety concern identified by neighborhoods but unverified by City

Designation as a Pedestrian or Bicycle Route: Does the proposed project improve non-motorized mobility on a designated pedestrian or bicycle route?

Scoring:

- 3 = Project is located directly on an established ped/bike route
- 1 = Project is near or will improve access to an established ped/bike route

Safe Routes to Schools: Preference will be given to projects that promote safer routes within the vicinity of schools.

Scoring:

- 3 = Project is within 500ft of a school
- 2 = Project is within 1000ft of a school
- 1 = Project is more than 1000ft from a school, but improves safe access to a school

Community Support: Preference will be given to projects with broad-based neighborhood support and to those that provide matching funds.

Scoring:

- 3 = 40 or more signatures (1 per address) from 4 or more streets in support
- 2 = 30-39 signatures (1 per address) from 3 or more streets in support
- 1 = 20-29 signatures (1 per address) from 2 or more streets in support

Additional two points available based on level of financial match pledged by sponsoring-NDA.

Promotes Pedestrian Usage: Preference will be given to projects that are within 500 feet of parks, multi-family housing, elderly housing, or any facility whose primary function is to serve the handicapped.

Scoring:

Add 1 to total if project satisfies this criterion.

Data-Supported: Preference will be given to projects identified within the TSP prioritized Master Plan Project List

Scoring:

- 3 = Project is "high" priority within the TSP
- 2 = Project is "med" priority within the TSP
- 1 = Project is "low" priority within the TSP

Traffic Speed: Priority given to projects on streets where drivers speed.

Scoring:

- 3 = 85-percentile speed is more than 10 MPH over posted speed
- 2 = 85-percentile speed is 5-10 MPH over posted speed
- 1 = 85-percentile speed is less than 5 MPH over posted speed

Project Cost: To be determined by Engineering Department. This information is advisory and not included in project scoring process.

c. Awareness and Education Project Ranking Criteria

The ranking of Awareness and Education projects (Programs) is inherently subjective and the following guidelines are pass/fail criteria to guide evaluators.

Promotes Safe Walking: Preference will be given to program proposals which demonstrate, with a high level of confidence, an ability to effectively promote safe walking through socio-cultural means, especially those that provide incentives, motivation, or resources to increase safe walking.

Calms Traffic: Preference will be given to program proposals which contain elements aimed at decreasing traffic volumes and speeds. Traffic calming program elements should strive to positively influence driver behavior through education, incentives, and encouragement.

Community Involvement: Preference will be given to program proposals that can demonstrate the project's ability to improve neighbor relations and build community, and those that contain significant public outreach elements.

Community Support: Preference will be given to proposals that offer demonstrable support of community members in the form of pledges to match City funds with other funds, volunteer time, or other in-kind contributions.

Project Partners: Preference will be given to program proposals that are supported by a wide variety of community institutions and those that complement or connect with other WSMP efforts or similar regional programs.

Well Planned: Preference will be given to projects that are the most appropriate action to address need, where appropriate consultation was sought from organizations or experts during program planning, and where program concept is well developed and organized.

Strong Leadership: Preference will be given to projects that demonstrate committed leadership and organization.

New Leaders: Preference will be given to projects that are supported by individuals that are becoming involved with their community or NDA for the first time, particularly youth.

Document Success: Preference will be given to program proposals that integrate tools for monitoring and measuring successes.

Project Cost: Includes cost of program elements (i.e. outreach materials, staff time etc) necessary to support applicant in actualizing the proposed program. This information is advisory and not included in project scoring process.

c. Resource Allocation

The WSMP is designed for use by all Milwaukie NDAs, and will be most successful if allocations, over time, flow into all parts of the City. However, as noted in Section 2, the

various NDAs come to the program with different needs and uneven levels of prior investment. *The WSMP should allocate resources as fairly as possible, with the geographic distribution of funding being one such factor to consider. Over time, if inequities appear between the level of awards between participating NDAs, this factor will receive greater weighting than others.* During the pilot period, however, the following factors will be considered equally in determining resource allocation:

- Overall Project Score – Numerical rankings based on criteria described above.
- Cost/Availability of Resources – Choices will be made based on funds available in that given year, such as a determination of the relative emphasis on capital projects versus Awareness and Education projects.
- Cost Effectiveness -- The total benefits of the project versus the WSMP contribution.
- Geographic Equity – If possible, the Program should award each NDA with funding for a highly ranked, lower-cost project at least every other year. Larger cost projects may not follow this guideline.

6. Project Implementation

Relatively small-scale traffic calming projects will be designed by the City's Engineering Department. Larger projects would most likely be designed under contract to the City. All construction, except for very small-scale projects, would be contracted through a competitive bid process. Contract work is overseen and managed by the City's Engineering and Streets Department staff. Project inspection is carried out by city staff or independent third party contractors under City staff supervision. City staff provides contracting guidelines to ensure that requirements are clear, procedures for documenting and correcting unacceptable work are in place, and all performance requirements are reflected in contracts.

Awareness and Education projects would be carried out largely by NDA members, with support from City staff. Expenditure and use of grant funds would be governed by the same rules as regular NDA disbursements. NDAs would be committed to provide the City an A&E Project Report at the conclusion of projects, typically in the next year's Walk Safely Report.

7. Reporting

The Public Works and Community Development Director will provide a report to City Council after the first year that significant funds are available, expected to be FY 2011-12. This report will include a summary of travel and walking conditions as reported by Milwaukie neighborhoods in their Walk Safely Reports, a listing of proposed projects and rankings, and a description of all funded projects, including their status.

Following completion of the Five Year pilot period, the Public Works and Community Development Director will return to Council with a second report, including similar information as above and recommending continuation, termination or revision of the Program. NDA input will be solicited on project outcomes and possible revisions.

8. Annual Program Budget

Funds will be budgeted on an annual basis, based on new income realized by augmentation of the City's Streets Fund (State Gas Tax Fund) due to implementation of State House Bill 2001. Budgeting determination for WSMP will be made only after deducting those new revenues necessary to maintain basic street maintenance services and adequately fund basic operations.

The initial Program Budget is based on projected HB 2001 revenues to the City of Milwaukie, for the Five Year pilot period, and is included as Appendix B.

9. Authority

Under City Council Resolution < >

APPENDIX A

Evolution of Milwaukie Neighborhood Traffic Management Programs (1995-Present)

Milwaukie Neighborhood Speed Watch Program (1995)

The **Milwaukie Neighborhood Speed Watch Program** was a public awareness campaign implemented in 1995, which encouraged neighbors to become involved in addressing speeding problems by recording and reporting speeding cars on neighborhood streets. After reporting, a letter from the Traffic Division was then sent to the registered owners of all matched vehicles encouraging them to drive at appropriate, marked, residential speeds.

School Trip Safety Program (1995)

By **Resolution 3-1995**, Council directed the Traffic Safety Committee to complete pedestrian safety studies for each elementary school in Milwaukie, leading to development of a School Trip Safety Program (STSP). This program mobilized a Task Force of parent volunteers, concerned neighbors, school administrators and city officials to discuss and prioritize improvements. Lasting 16 months, this effort resulted in the identification of project recommendations for the highest priority locations. Due to funding limitations, several potential projects, identified by the Task Force and considered and prioritized by City Staff, could not be implemented under the scope of the STSP. This, in turn, generated strong support for an ongoing Neighborhood Traffic Management Program (NTMP), which would continue prioritizing and implementing pedestrian safety and traffic calming projects identified by neighborhoods that were unable to be met within the STSP. By late 1996, the program had been outlined and contained educational, enforcement-based, and engineering elements.

Through 1997, 18 low-cost pedestrian safety and traffic calming projects were implemented under the *School Trip Safety Program* within the vicinity of elementary schools. Projects included improving signage, removing clear sight obstructions, and adding orange speed flags, flashing yellow beacon lights, crosswalks, sidewalks and curb extensions. Several larger projects that were identified by the STSP but were too large to accomplish immediately, such as Logus Road sidewalks, were added to the City's Capital Improvement Plan.

Neighborhood Traffic Management Program (1997)

Resolution No. 20-1997 declared the intent to initiate the Neighborhood Traffic Management Program and to evaluate the results of the program at six month intervals for a period of up to two years, and make necessary changes to the program prior to June 30, 1999.

The program was structured to respond to requests from Neighborhood Associations to improve traffic safety, particularly by reducing travel speeds. The NTMP was to be implemented by City staff, the Traffic Safety and Transportation Board, and NDAs. The following is a brief summary of the process as designed:

Phase 1: Problem Identification and Action Plan Preparation

- Citizens report traffic problems to Public Works (PW). Requests are forwarded to engineering to determine if the problem is eligible for NTMP. PW ranks each proposed problem area according to NTMP criteria after sufficient data is collected.
- PW Staff mails a survey to eligible property owners and residents to request input to confirm sufficient local support. 50% of eligible property owners must agree with the problem as stated in the survey form.
- PW staff, in conjunction with a Neighborhood Coordinator, coordinates a meeting with the neighborhood association. In this meeting the full nature of the traffic issue, the NTMP process, and survey results are explained. PW staff coordinates follow-up meetings with the NDA to compile an Action plan.

Phase 2: Resident Participation

- This phase requires neighborhood leadership to attempt to resolve the traffic issue using the Neighborhood Speed Watch Program, the SMART Trailer, and the Banner Program.
- Neighborhoods must demonstrate these solutions have been attempted before moving on to Phase 3.

Phase 3: Enhanced Law Enforcement Signage

- If problem is determined to be chronic and not resolvable through resident involvement, City Engineering will ask the Police Department for enhanced enforcement within the problem area.
- Signage solutions and stripping are also developed to support the increased enforcement.
- If/when the Police Department determines that enforcement is not feasible or effective, PW staff evaluates the need for Phase 4. The decision to move on to Phase 4 involves consultation between PW staff, Police Dept, the TSTB, and the applicable neighborhood association.

Phase 4: Capital Improvements

- If/when attempts at education and enforcement are not effective, PW staff proceed to a capital improvement project (CIP) solution. The solution requires a large amount of public resources and time and may involve funding participation by the benefiting neighborhood via a Local Improvement District or some other funding mechanism. When possible projects are preceded by a test using temporary devices.
- At least 50% of residents must support the proposed NTMP capital improvement before it can be forwarded to City Council for CIP approval.
- PW monitors NTMP devices and conduct follow-up evaluation within one (1) year to assess effectiveness.

Ordinance 1869 (2000)

Ordinance 1869 amended MMC Sections 2.10 and 2.24 to dissolve the Traffic Safety and Transportation Board and renamed the body the Traffic Safety Board. This body was responsible for reviewing and making recommendations on Traffic Control Device Requests and the NTMP traffic calming requests.

Ordinance 1906 (2002)

Ordinance 1906 amended the MMC Section 2.24 to create the Public Safety Advisory Committee, replacing the Traffic Safety Board. It was established for the purpose of advising and making recommendations to the Chief of Police and City Council regarding public safety needs in the city. The new code did not explicitly task the PSAC with reviewing and recommending NTMP traffic calming requests but rather includes “other activities as council may assign,” referencing Ordinance 1869.

In July 2005 the Public Safety Advisory Committee attempted to resuscitate the NTMP. PSAC underwent a process to redefine the program goals, process, and criteria for project selection and management. This led to a draft document submitted to the City Engineering Department, “Suggested Changes for Neighborhood/Residential Traffic Management Program.” This document outlined a process for residents to identify problems within their neighborhoods, using a “Traffic Control Request Form/application” to be filed by a concerned citizen and resolved by the City through traffic management devices—only if education and enforcement proves unsuccessful. Projects were to be evaluated and prioritized using a points-based ranking system that considered site conditions such as traffic volumes, speeds, proximity to schools, accident history, and existing pedestrian/bicycle usage. These changes were never adopted.

Since 2006, Community Development and Public Works have attempted to revitalize the NTMP. New revenue sources were sought to fill a very limited number of small traffic calming requests. In 2008 minor revisions were drafted for the NTMP, adding a pedestrian focus: NTM-PS (pedestrian safety). City Council was kept abreast of these minor program shifts, but these changes were never formally adopted by resolution.

Current NTMP funding is derived from Street Fund 320. During the 2008-2009 fiscal year, the NTMP received about \$10,000 which funded a few pedestrian safety projects identified through a collaborative process between NDA representatives, the Public Safety Advisory Committee, and Engineering. Given the limited funds, project selection is largely based on financial feasibility.

APPENDIX B

Projection of Funds Available to WSMP

Net Proceeds of HB 2001

The first step to determine resources available is to calculate net proceeds to Fund 320 from new HB 2001 revenue. Rather than simply counting all HB 2001 revenues as new and available to expend, this calculation accounts for the fact that baseline revenues are essentially flat and declining in real terms. The calculation is as follows:

| Fiscal Year | Forecast City Transp. Fund Disburse* | Milwaukie Share (Based on pop.) | '09-10 Rev. + Infla (3%) | Net Over '09-10 Budget |
|-------------|--------------------------------------|---------------------------------|--------------------------|------------------------|
| 2009-10 | \$111,507,928 | \$873,590 | \$850,000 | \$23,590 |
| 2010-11 | \$136,836,367 | \$1,072,021 | \$875,500 | \$196,521 |
| 2011-12 | \$162,425,015 | \$1,272,491 | \$901,765 | \$370,726 |
| 2012-13 | \$168,418,832 | \$1,319,449 | \$928,818 | \$390,631 |
| 2013-14 | \$169,845,412 | \$1,330,625 | \$956,682 | \$373,943 |
| 2014-15 | \$171,271,992 | \$1,341,802 | \$985,383 | \$356,419 |

*Projection by ODOT, "Forecast for City Transportation Fund Apportionments for Fiscal Years 2010 – 2014," released 09/2009. FY 2014-15 & beyond extrapolated by City staff.

In consultation with Public Works and Engineering, Community Development staff calculated the share of these new revenues necessary to restore basic services and re-establish fiscal stability to the Streets/State Gas Tax Fund (Fund 320), which has seen its purchasing power eroded in recent years.

The first priority identified was to establish a basic contingency in Fund 320 and fund the FILOC Reserve account. Total resources necessary are approximately \$350,000. This is the first priority, but can be phased over several years.

Three additional priorities were identified by Public Works and Engineering:

1. Establish funding to cover small, emergency capital projects. Unexpended funds in this line in each year would be available to support additional Fund contingency. This allocation would begin next fiscal year.
2. Improve striping repair practice. As a cost savings measure, Streets Department is currently replacing worn sections of markings, rather than the entire marking. This results in a degradation of marking reflectivity over time. Streets estimated a cost of \$25,000 to return to a more standard practice, beginning next fiscal year.
3. Streets also identified a need to re-establish a local and spot street repair effort. This program would extend the life of local streets and address problematic small sections of collectors and arterials before the SSMP can tackle them. This program would commence in FY 2011-12. (Cost estimate was based on establishing in-house capacity, including new equipment. However, the

Engineering and Streets Departments will be evaluating potential for cost savings through contracting these repairs.)

The WSMP is the “balancing” account making use of state gas tax funds not appropriated for Street Operations and Maintenance. On an annual basis as part of the Fund 320 budget process, those funds not essential to basic services, as defined by current practice with the additions described above, would be devoted to the WSMP. Current estimate of funds available to the WSMP in the Pilot years (and out years for illustration) is as follows:

| WSMP Program Year | FY | Net Revenue Gain | Conting/FILOC Reserve | Emergency Capital | Markings | Pavement Repairs | WSMP |
|-------------------|-------|------------------|-----------------------|-------------------|----------|------------------|-----------|
| 0 | 09-10 | \$23,590 | \$23,590 | \$0 | \$0 | \$0 | \$0 |
| 1 | 10-11 | \$196,521 | \$100,000 | \$25,000 | \$25,000 | \$0 | \$46,521 |
| 2 | 11-12 | \$370,726 | \$100,000 | \$25,000 | \$25,000 | \$135,000 | \$85,726 |
| 3 | 12-13 | \$390,631 | \$100,000 | \$25,000 | \$25,000 | \$135,000 | \$105,631 |
| 4 | 13-14 | \$373,943 | \$30,000 | \$25,000 | \$25,000 | \$135,000 | \$158,943 |
| 5 | 14-15 | \$356,419 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$171,419 |
| 6 | 15-16 | \$338,033 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$153,033 |
| 7 | 16-17 | \$318,761 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$133,761 |
| 8 | 17-18 | \$298,576 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$113,576 |
| 9 | 18-19 | \$277,450 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$92,450 |
| 10 | 19-20 | \$255,354 | \$0 | \$25,000 | \$25,000 | \$135,000 | \$70,354 |